**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: MAY 13 2015 OFFICE: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

**DISCUSSION**: The service center director (hereinafter "director") denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. The petition will be denied.

## I. PROCEDURAL AND FACTUAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a 41-employee "Digital Agency" established in In order to employ the beneficiary in what it designates as an "HR Associate" position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued a Request for Evidence (RFE). Thereafter, the petitioner responded to the director's RFE. The director reviewed the information and determined that the petitioner failed to establish eligibility for the benefit sought. The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, the petitioner asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

We base our decision upon our review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation; (2) the service center's RFE; (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Notice of Appeal or Motion (Form I-290B) and the petitioner's submissions on appeal. We reviewed the record in its entirety before issuing our decision.[1]

As will be discussed below, we have determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

## II. PROFFERED POSITION

The March 14, 2014 job offer indicates that the petitioner proposes to employ the beneficiary as a full-time HR Associate and states the following as the duties of the proffered position:

- Managing full-cycle recruiting process by sourcing, screening, scheduling and conducting interviews as well as on-boarding new employees

[1] We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

- Attending career fairs or college recruiting events to recruit skilled entry level professionals and maintaining a pool of talented candidates for future workforce needs
- Managing [the petitioner's] summer internship program
- [Planning] and performing new hire orientations/on-boarding as well as completing highly confidential paperwork
- Creating, up-dating and maintaining effective job descriptions
- Conducting salary surveys to determine compensation for new employees as well as maintaining internal and external equity
- Administering benefit programs including but not limited to health insurance, life and dental insurance, disability insurance, paid time off, 401 K and bonus plan
- Assisting managers and employees in completing quarterly performance reviews
- Ensuring accuracy of information and tracking progress of applicants in ATS [Applicant Tracking System]
- Designing and delivering efficient training programs to address developmental needs
- Communicating, implementing and providing guidance to employees on company policies and regulations
- Ensuring compliance with various federal and state laws e.g. HIPA and OSHA
- Performing investigations related to employee relations matters
- Conducting exit interviews to understand reasons for departure and analyzing trends
- Ensuring employees have the right tools and technologies to perform their job successfully
- Organizing company-wide employee events and activities
- Promoting diversity in the workplace through various HR initiatives and programs

- Leading special or ad hoc projects requiring advanced knowledge within a particular area of HR

- Creating and maintaining a happy engaged workforce through constant improvement in HR services and solutions

In a letter dated March 30, 2014, the petitioner states: "In order to perform the duties outlined above, the job applicant must have at least a bachelor's degree (and preferably a master's degree) in human resources from an accredited college or university." With the visa petition, the petitioner submitted evidence that the beneficiary received a master's degree in management from The beneficiary's résumé states that she also received a bachelor's degree in management studies from in India.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is an HR Associate position, and that it corresponds to Standard Occupational Classification (SOC) code and title 43-4161, Human Resources Assistants, Except Payroll and Timekeeping, from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a wage Level I, entry-level, position.

## III. SPECIALTY OCCUPATION

The issue is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position.

### A. The Law

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), defines the term "specialty occupation" as an occupation that requires:

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

> *Specialty occupation* means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the

> attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must also meet one of the following criteria:

> *(1)* A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
>
> *(2)* The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
>
> *(3)* The employer normally requires a degree or its equivalent for the position; or
>
> *(4)* The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens

who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

B. Analysis

Turning to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), we will first discuss the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

We recognize the U.S. Department of Labor's *Occupational Outlook Handbook* (*Handbook*) as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.[4] The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 43-4161, Human Resources Assistants, Except Payroll and Timekeeping, from O*NET. Upon review, we find that most of the duties attributed to the proffered position are consistent with the duties of *human resources generalists* as described in the *Handbook's* chapter on "Human Resources Specialists." Accordingly, we find that the proffered position is a human resources specialist as described in the *Handbook*.

The *Handbook* describes the occupation of "Human Resources Specialists" as follows:

> **What Human Resources Specialists Do**
>
> Human resources specialists recruit, screen, interview, and place workers. They also may handle human resources work in a variety of other areas, such as employee relations, payroll and benefits, and training.

[4] The *Handbook*, which is available in printed form, may also be accessed on the Internet, at http://www.bls.gov/oco/. Our references to the *Handbook* are to the 2014 – 2015 edition available online.

**Duties**

Human resources specialists typically do the following:

- Consult with employers to identify employment needs and preferred qualifications
- Interview applicants about their experience, education, training, and skills
- Contact references and perform background checks on job applicants
- Inform applicants about job details, such as duties, benefits, and working conditions
- Hire or refer qualified candidates for employers
- Conduct or help with new employee orientation
- Keep employment records and process paperwork

Many specialists are trained in all human resources disciplines and do tasks throughout all areas of the department. In addition to recruiting and placing workers, these specialists help guide employees through all human resources procedures and answer questions about policies. They often administer benefits, process payroll, and handle any associated questions or problems. They also ensure that all human resources functions comply with federal, state, and local regulations.

The following are types of human resources specialists:

***Employment interviewers*** work in an employment office and interview potential applicants for job openings. They then refer suitable candidates to employers for consideration.

***Human resources generalists*** handle all aspects of human resources work. They may have duties in all areas of human resources including recruitment, employee relations, payroll and benefits, training, and administration of human resources policies, procedures, and programs.

***Labor relations specialists*** interpret and administer a labor contract, regarding issues such as wages and salaries, employee welfare, healthcare, pensions, and union and management practices. They also handle grievance procedures, which are a formal process through which employees can make complaints.

***Placement specialists*** match employers with qualified jobseekers. They search for candidates who have the skills, education, and work experience needed for jobs, and they try to place those candidates with employers. They also may help set up interviews.

> ***Recruitment specialists***, sometimes known as ***personnel recruiters***, find, screen, and interview applicants for job openings in an organization. They search for job applicants by posting job listings, attending job fairs, and visiting college campuses. They also may test applicants, contact references, and extend job offers.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Human Resources Specialists," http://www.bls.gov/ooh/Business-and-Financial/Human-resources-specialists.htm#tab-2 (last visited May 1, 2015).

The *Handbook* states the following about the educational requirements of human resources specialist positions, in part:

> **How to Become a Human Resources Specialist**
>
> Most positions require that applicants have a bachelor's degree. However, the level of education and experience required to become a human resources specialist varies by position and employer.
>
> **Education and Work Experience**
>
> Most positions require a bachelor's degree. When hiring a human resources generalist, for example, most employers prefer applicants who have a bachelor's degree in human resources, business, or a related field.
>
> Although candidates with a high school diploma may qualify for some interviewing and recruiting positions, employers usually require several years of related work experience as a substitute for education.
>
> Some positions, particularly human resources generalists, may require work experience. Candidates often gain experience as human resources assistants, in customer service positions, or in other related jobs.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Human Resources Specialists," http://www.bls.gov/ooh/Business-and-Financial/Human-resources-specialists.htm#tab-4 (last visited May 1, 2015).

The *Handbook* does not report that a bachelor's degree, let alone one in a specific specialty, is normally required for entry into the occupation. The *Handbook* only reports that "[m]ost positions require a bachelor's degree" and "when hiring a human resources generalist, for example, most employers prefer applicants who have a bachelor's degree in human resources, business, or a related

field,"[5] and also that "the level of education and experience to become a human resources specialist varies by position and employer."

Also, the *Handbook* recognizes that degrees in different fields, i.e., human resources or business, are acceptable for entry into this field. Although a general-purpose bachelor's degree, such as a degree in business, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Therefore, the *Handbook*'s recognition that a general, non-specialty "background" in business is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not a normal, minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that working as a human resources specialist does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation, it does not support the proffered position as being a specialty occupation.

Where, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies this criterion by a preponderance of the evidence standard, notwithstanding the absence of the *Handbook's* support on the issue. In such a case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

To fill this void, the petitioner cited the inclusion of the proffered position in O*NET's Job Zone "Three" to demonstrate that it requires a minimum of a bachelor's degree in a specific specialty or its equivalent. However, inclusion in Job Zone "Three" does not demonstrate that a position requires a bachelor's degree. Contrary to the assertions of the petitioner, O*NET OnLine does not state a requirement for a bachelor's degree. Rather, it assigns this occupation a Job Zone "Three" rating, which groups it among occupations of which "most," but not all, "require training in vocational schools, related on-the-job experience, or an associate's degree." It provides no indication that human resources assistants require a bachelor's degree in a specific specialty. Therefore, O*NET OnLine information is not probative of the proffered position being a specialty occupation.

Finally, we find that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of human resources practices, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

[5] A *preference* for a candidate with a bachelor's degree in human resources, business, or a related field is not a *requirement* that the individual have such a degree to qualify for the position.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

Next, we find that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

In determining whether there is a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102.

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

The record does contain the letter from [redacted] senior vice president, human resources, at [redacted] stating that at her company and at others for which she has worked, in hiring for certain duties specified in an attachment, she has always required a minimum of a bachelor's degree in human resources or a related field. However, the attachment to which she referred was not provided. As such, the duties that she asserts require a specialized degree, and whether they are similar to the duties of the proffered position, are both unknown to us. Further, what array of subjects she would consider to be sufficiently closely related to human resources is not revealed. Finally, the practices of the companies for which one person has worked in human relations is insufficient to establish an industry-wide requirement.

The petitioner did provide several vacancy announcements issued by other companies. Those vacancy announcements are for positions entitled Human Resources Associate or HR Associate, Human Resources Representative, Human Resources Assistant, HR Talent Associate, and Associate HR Business Partner.

Those vacancy announcements were placed by, *inter alia*, ; the ; an organization identified as ; and a manufacturer of prescription lenses. None of the advertising organizations has been shown to be in the petitioner's industry and to be otherwise similar to the petitioner, and some are clearly not. As such, they are of no direct relevance to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

Some of those vacancy announcements state a requirement of a bachelor's degree, but not that the degree must be in any specific specialty. Clearly, those vacancy announcements do not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

One vacancy announcement states that the position announced requires a bachelor's degree in "Business Administration, Social Science, Liberal Arts, or other related field." Another states, "Bachelor's degree desired in Business or Human Resources-related field." A degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. Those vacancy announcements do not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

One vacancy announcement states that one or two years of experience may be substituted for the otherwise required bachelor's degree. Another vacancy announcement states, "Pertinent personnel experience at the professional level may be substituted for education requirement on a year to year basis." One or two years of experience has not been demonstrated to be equivalent to a bachelor's degree.

Further, the petitioner has designated the proffered position as a wage Level I position on the LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation.[6] However, most of the vacancy announcements provided state an experience requirement. As such, they do not appear to be wage Level I positions. In order to attempt to show that *parallel positions* require a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged to demonstrate that other wage Level I positions, entry-level positions requiring only a basic understanding of the occupation, require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Finally, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and required a minimum of a bachelor's

[6] For an explanation of wage levels, *see* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), *available at* http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from these announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.[7]

Thus, the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to positions that are (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

The evidence of record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties that comprise the proffered position entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties that collectively constitute the proffered position require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a wage Level I employee, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of the occupation.[8] This does not support the

[7] USCIS "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). As just discussed, the petitioner has failed to establish the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the petitioner still fails to demonstrate what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995).

[8] *See* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), *available at* http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

proposition that the proffered position is so complex or unique relative to other positions in the same occupation that it can only be performed by a person with a specific bachelor's degree, especially as the *Handbook* suggests that some human resources specialist positions do not require such a degree.

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for such positions, including degrees not in a specific specialty, and that some such positions may not require any college degree at all. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

We will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.[9]

The vacancy announcement of the proffered position states that the position requires at least a bachelor's degree in human resource management or human resource development or a closely related field. However, in her July 15, 2014 letter, counsel revealed that vacancy announcement was never published.

In her September 12, 2014 letter, the petitioner's director of human resources, stated that she has worked in human resources for 30 years, and has always required a minimum of a bachelor's degree in human resources or a related field when hiring for positions with responsibilities commensurate with those of the proffered position. In support, the petitioner submitted a copy of college transcript for its signatory, However, has degrees in management, and her degrees were apparently considered sufficiently closely related to human resources that she was hired as the petitioner's director of human capital. Further, no evidence was

[9] While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

submitted to support the proposition that "management" is closely and directly related to a human resources position. This suggests that, although the petitioner may require a degree in a field peripherally related to human resources for its human resources positions, it may not, in fact, require degree in a specific specialty closely and directly related to human resources.

Further, in her July 20, 2014 letter, stated that in hiring someone to fill the proffered position: "It was important the next HR associate had attained some type of formal education in Human Resources or had over 5 years in the tech industry." This does not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent for at least two reasons. First, a requirement of "some type of formal education in Human Resources" is not a requirement of a bachelor's degree in human resources. Second, she indicated that five years of experience might be substituted for the otherwise required education. However, five years of employment experience has not been demonstrated to be equivalent to a bachelor's degree.

Further still, in her July 15, 2014 letter, counsel stated that the petitioner never previously employed anyone in the proffered position, prior to hiring the beneficiary. While a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, it is unclear how an employer that has never recruited and hired for the position would be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*), which requires a demonstration that it normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position.

For all of those reasons, the petitioner has not demonstrated that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position, and has not, therefore, satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).

Finally, we will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position, such as: conducting salary surveys; creating, updating, and maintaining job descriptions; recruiting employees; conducting orientations for new employees; providing training for employees; managing a summer internship program; administering benefit programs; assisting with performance reviews; completing otherwise unspecified "highly confidential paperwork"; etc., contain insufficient indication of a nature so specialized and complex they require knowledge usually associated attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Overall, the evidence of record is inadequate to establish that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. In other words, the proposed duties have not been described with sufficient specificity to show that they are

more specialized and complex than the duties of human resource specialist positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Further, as was noted above, the petitioner filed the instant visa petition for a wage Level I human resources assistant position, a position for a beginning level employee with only a basic understanding of such positions. This does not support the proposition that the nature of the specific duties of the proffered position is so specialized and complex that their performance is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, directly related to human resources administration, especially as the *Handbook* indicates that some human resources specialist positions require no such degree.

For the reasons discussed above, the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

## IV. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed. The petition is denied.