



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF C-H-

DATE: NOV. 4, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a child development center, seeks to temporarily employ the Beneficiary as a “pre-school teacher” under the H-1B nonimmigrant classification. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. ISSUE

The issue before us is whether the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.¹

II. SPECIALITY OCCUPATION

A. Legal Framework

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), 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

¹ We conduct appellate review on a *de novo* basis. *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015); *see also* 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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 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. Fed. 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 individuals 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 individual, 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 or 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. The Petitioner and the Proffered Position

The Petitioner indicated that it is a child development center licensed to provide child care to a maximum of 107 children ages two months to five years old.² In a letter dated September 3, 2014, the Petitioner indicated that the Beneficiary will perform the following duties as a pre-school teacher³:

- Teaches preschool pupils academic, social and manipulative skills in private educational system. 20%
- Prepares lesson plan and teaching outline for course of study, lectures, demonstrations, and audiovisual teaching aids to present subject matter to class. 10%
- Supervises Teacher Assistants and childcare workers to ensure that proper care, instructions and supervisions are provided to all children at all times. 10%

² The Petitioner also submitted a copy of its license, which states that it is a child development center for children ages two months through five years. It further indicates that the maximum number of children the Petitioner is allowed to care for in its facility is 107, up to 80 of whom may be under two years old.

³ While the Petitioner indicated that the proffered position is that of a “pre-school teacher,” we note that the Petitioner is a child development center for children ages two months through five years, and the Petitioner did not indicate the ages of the children that the Beneficiary would be responsible for. Without such information, the Petitioner did not sufficiently establish that the Beneficiary would perform some of the proposed duties such preparing, administering and correcting tests. “[G]oing on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.” *In re Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

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- Prepares, administers, and corrects tests and records results. 5%
- Plans individual and group activities to stimulate growth in language, social and motor skills, such as learning to listen to instructions and playing to others. 5%
- Discusses pupils' academic and behavioral problems with parents and suggests remedial action. 5%
- Instructs children in activities designed to promote social, physical, and intellectual growth needed for primary school. 5%
- Assigns lessons, corrects papers and hears oral presentations. 10%
- Keeps attendance and grades records. 5%
- Supervises and ensures the safety and well-being of the children at all times, being alert for needs and/or problems of the children as individuals and as a group. 10%
- Documents children's daily achievements, accomplishments, and developmental milestones, using the Creative Curriculum Goals and Objectives as a guide and makes sure that her assistants/aides do the same. 5%
- Schedules classroom fire drills, fieldtrips, co-workers' planning and evaluation meetings/trainings, and quarterly meetings/social gatherings with parent's/guardians. 5%
- Updates the Director of any classroom, children, and parents' concerns (developmental milestones, suspected abuse/neglect, special needs, unusual incidents/accidents, etc.). 5%

The Petitioner further indicated that "a baccalaureate degree. . . is normally our minimum requirement for entry into this particular position."

The Petitioner also submitted a Labor Condition Application (LCA) in support of the instant petition. The Petitioner indicated that the proffered position corresponds to the occupational category "Preschool Teachers, Except Special Education" with SOC (ONET/OES) code 25-2011, at a Level I (entry level) wage.

C. Analysis

As a preliminary matter, we note that the Petitioner did not indicate that the proffered position requires a bachelor's degree or its equivalent, in a specific specialty. As mentioned, the Petitioner stated that "a baccalaureate degree. . . is normally our minimum requirement for entry into this particular position."

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained previously, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Thus, a petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. There must be a close correlation between the required specialized studies and the position; the mere requirement of a degree, without further specification, does not establish the position as a specialty occupation. *Cf.*

Matter of Michael Hertz Assocs., 19 I&N Dec. 558, 560 (Comm'r 1988) (“The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility.”). While a general-purpose bachelor’s degree 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. *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

Based on the Petitioner’s statements that its minimum requirement for the proffered position is only a bachelor’s degree, without further requiring the degree to be in any specific specialty, we cannot find that the proffered position qualifies as a specialty occupation. The Director’s decision must therefore be affirmed and the appeal dismissed on this basis alone.

Nevertheless, we will analyze the duties as described and the evidence of record to determine whether the proffered position as described would qualify as a specialty occupation. To that end and to make our determination as to whether the employment described above qualifies as a specialty occupation, we turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

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 Department of Labor (DOL)’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 We have reviewed the section of the *Handbook* on “How to Become a Preschool Teacher,” which states the following, in part:

Education and training requirements vary based on settings and state regulations. They range from a high school diploma and certification to a college degree.

Education

In childcare centers, preschool teachers generally are required to have a least a high school diploma and a certification in early childhood education. However, employers may prefer to hire workers with at least some postsecondary education in early childhood education.

Preschool teachers in Head Start programs are required to have at least an associate’s degree. However, at least 50 percent of all preschool teachers in Head

⁴ All of the references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>. The excerpts of the *Handbook* regarding the duties and requirements of the referenced occupational category are hereby incorporated into the record of proceeding.

Start programs nationwide must have a bachelor's degree in early childhood education or a related field. Those with a degree in a related field must have experience teaching preschool-age children.

In public schools, preschool teachers are generally required to have at least a bachelor's degree in early childhood education or a related field. Bachelor's degree programs teach students about children's development, strategies to teach young children, and how to observe and document children's progress.

Licenses, Certifications, and Registrations

Many states require childcare centers, including those in private homes, to be licensed. To qualify for licensure, staff must pass a background check, have a complete record of immunizations, and meet a minimum training requirement. Some states require staff to have certifications in CPR and first aid.

Some states and employers require childcare workers to have a nationally recognized certification. Most often, states require the Child Development Associate (CDA) certification offered by the Council for Professional Recognition. Obtaining the CDA certification requires coursework, experience in the field, a written exam, and observation of the candidate working with children.

Some states recognize the Child Care Professional (CCP) designation offered by the National Early Childhood Program Accreditation. Candidates for the CCP must be 18 years old, have a high school diploma, experience in the field, take courses in early childhood education, and pass an exam.

In public schools, preschool teachers must be licensed to teach early childhood education, which covers preschool through third grade. Requirements vary by state, but they generally require a bachelor's degree and passing an exam to demonstrate competency. Most states require teachers to complete continuing education credits to maintain their license.

U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Preschool Teachers, <http://www.bls.gov/ooh/education-training-and-library/preschool-teachers.htm#tab-4> (last visited Oct. 28, 2015).

The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into this occupation. Rather, the occupation accommodates other paths for entry, including a high school diploma. Further, the Petitioner is a private child development center, not a public school, and no evidence was provided to indicate that the Petitioner is a Head Start program.

The *Handbook* reports that certification may be advantageous or even required for some preschool teacher positions. However, there is no indication that the Petitioner requires the Beneficiary to have obtained the designation CDA, CCP, or any other professional certification or designation to serve in the proffered position.

Thus, the *Handbook* does not support the claim that the occupational category of preschool teachers is one for which normally the minimum requirement for entry is a baccalaureate degree or higher in a specific specialty, or its equivalent.

The Petitioner has not established that the proffered position falls under an occupational category for which the *Handbook* – or another authoritative source – indicates that a bachelor’s degree in a specific specialty, or its equivalent is normally the minimum requirement for entry. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

*The requirement of a baccalaureate or higher degree in a specific specialty,
or its equivalent, is common to the industry in parallel
positions among similar organizations*

Next, we will review the record regarding 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 such 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 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or another independent, authoritative source, reports a standard industry-wide requirement for at least a bachelor’s degree in a specific specialty, or its equivalent. We incorporate by reference the previous discussion on the matter.

There are no submissions from the industry’s professional association(s) indicating that it has made a degree a minimum entry requirement. Nor are there letters or affidavits from firms or individuals in the industry attesting that such firms routinely employ only individuals with a degree in a specific specialty.

In support of the assertion that the degree requirement is common to the Petitioner’s industry in parallel positions among similar organizations, the Petitioner submitted copies of job advertisements.

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However, upon review of the documents, we find that the Petitioner's reliance on the job announcements is misplaced.

As noted, the Petitioner stated that it is a child development center established in [REDACTED] with 28 employees and a gross income of more than \$1.5 million. The Petitioner designated its business operations under the North American Industry Classification System (NAICS) code 624410.⁵ This NAICS code is designated for "Child Day Care Services." The U.S. Department of Commerce, Census Bureau website describes this NAICS code by stating the following:

This industry comprises establishments primarily engaged in providing day care of infants or children. These establishments generally care for preschool children, but may care for older children when they are not in school and may also offer pre-kindergarten educational programs:

U.S. Dep't of Commerce, U.S Census Bureau, 2012 NAICS Definition, 624410 – Child Day Care Services, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited Oct. 28, 2015).

For the Petitioner to establish that other organizations are similar, it must demonstrate that they share the same general characteristics. Without such evidence, documentation submitted by the Petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the Petitioner. When determining whether the Petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). Notably, it is not sufficient for the Petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

Upon review of the documentation, the Petitioner did not 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.

For instance, the advertisements include positions with [REDACTED] (a government entity) and [REDACTED] (a public school), [REDACTED] (an employer with two campuses), and [REDACTED] (an institution of higher education). There is insufficient information to establish that these advertisements are for organizations that are similar to the Petitioner.

⁵ According to the U.S. Census Bureau, the North American Industry Classification System (NAICS) is used to classify business establishments according to type of economic activity and each establishment is classified to an industry according to the primary business activity taking place there. See <http://www.census.gov/eos/www/naics/> (last visited Oct. 28, 2015).

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Moreover, the Petitioner has not sufficiently established that the advertised positions are parallel to the duties of the proffered position. For example, the position at [REDACTED] is for a Lead Teacher in the “4s Classroom.” With respect to the job posting by [REDACTED] this institution requires a bachelor’s degree *in a specific specialty*, i.e., a bachelor’s degree in an education-related field, only for its Preschool II (3-4 years old) classroom. The Petitioner here, however, has not specified the age group of the children for whom the Beneficiary would be responsible.

As the documentation does not establish that the Petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed.⁶ Therefore, the Petitioner has not established that a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent, is common to the Petitioner’s industry in 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. For the reasons discussed above, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The particular position is so complex or unique that it can be performed only by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the Petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor’s degree in a specific specialty, or its equivalent.

The evidence of record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than pre-school teaching positions that can be performed by persons without at least a bachelor’s degree in a specific specialty or its equivalent. The description of the

⁶ Although the size of the relevant study population is unknown, the Petitioner does not demonstrate what statistically valid inferences, if any, can be drawn from these advertisements with regard to determining the common educational requirements for entry into parallel positions in similar companies. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that “[r]andom selection is the key to [the] process [of probability sampling]” and that “random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error.”)

As such, even if the job announcements supported the finding that the position of accountant for companies that are similar to the Petitioner requires a bachelor’s or higher degree in a specific specialty, or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* that such a position does not require at least a baccalaureate degree in a specific specialty, or its equivalent, for entry into the occupation in the United States.

duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The evidence of record does not refute the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for preschool teacher positions, including high school diplomas and degrees not in a specific specialty.

This is further evidenced by the LCA submitted by the Petitioner in support of the instant petition. The LCA indicates a wage level at a Level I, entry-level wage, which is the lowest of four assignable wage levels.⁷ Without further evidence, the record of proceeding does not indicate that the proffered position is complex or unique as such a position falling under this occupational category would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage.⁸ For example, a Level IV (fully competent) position is designated by DOL for employees who “use advanced skills and diversified knowledge to solve unusual and complex problems.”⁹

⁷ The wage levels are defined in DOL’s “Prevailing Wage Determination Policy Guidance.” A Level I wage rate is described as follows:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer’s methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

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.flcdcenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

Thus, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that she would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she would receive specific instructions on required tasks and expected results. DOL guidance indicates that a Level I designation should be considered for positions in which the employee will serve as a research fellow, worker in training, or an intern.

⁸ The issue here is that the Petitioner’s designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), an entry-level position would still require a minimum of a bachelor’s degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor’s degree in a specific specialty or its equivalent. That is, a position’s wage level designation may be a consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

⁹ For additional information regarding wage levels as defined by DOL, 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.flcdcenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

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On appeal, the Petitioner states that “the duties of the preschool Teachers are by nature complex and can only be performed by someone who is a Bachelor’s Degree holder.” The Petitioner cites to an unpublished AAO decision, which the Petitioner refers to as *Matter of Garland I.S.D.*, EAC 06-216-52028 (AAO Sept. 8, 2006), to support the assertion that “[i]t has been held that Teacher has been previously recognized as a Professional as long as he or she has ‘. . . a degree in any academic major’” However, the Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision, which involved a public school district as the petitioner and a public primary or secondary school teaching position. We also note that while 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Accordingly, the evidence of record is insufficient to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The employer normally requires a baccalaureate or higher degree in a specific specialty, or its equivalent, for the position

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor’s degree in a specific specialty, or its equivalent, for the position. To this end, we usually review the Petitioner’s past recruiting and hiring practices, information regarding employees who previously held the position, and any other documentation submitted by a petitioner in support of this criterion of the regulations.¹⁰

The Petitioner provided the educational credentials of 19 employees holding the title of preschool teacher. However, the Petitioner claims to have 28 employees and was established in [REDACTED]. The Petitioner did not document the educational credentials of the other preschool teachers it currently employs or has employed in its 25-year history.¹¹ Moreover, some of the Petitioner’s employees hold degrees determined to be the equivalent of U.S. bachelor’s degrees in the natural sciences, biology and chemistry education, or unspecified bachelor’s degree. We note that the Beneficiary holds the equivalent of a U.S. bachelor’s degree in English, which the Petitioner asserts also satisfies

¹⁰ To satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. USCIS must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F.3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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, or its equivalent, as the minimum for entry into the occupation as required by section 214(i)(1) of the Act. According to the Court in *Defensor*, “To interpret the regulations any other way would lead to an absurd result.” *Id.* at 388. If USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position – and without consideration of how a beneficiary is to be specifically employed – then any beneficiary with a bachelor’s degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. See *id.*

¹¹ See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

its minimum educational requirements. This variance in fields confirms that the Petitioner's requirement of a general bachelor's degree, without further specification, is insufficient to establish the proffered position as a specialty occupation.

Overall, the evidence of record does not indicate that the Petitioner normally requires a baccalaureate or higher degree in a *specific specialty*, or its equivalent, for the proffered position under the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 in a specific specialty, or its equivalent

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

Upon review of the record of the proceeding, we find that the Petitioner has not provided sufficient evidence to satisfy this criterion of the regulations. In the instant case, relative specialization and complexity have not been credibly developed by the Petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. Additionally, given the young age of the children that the Petitioner is licensed to care for, the burden of proof is on the Petitioner to demonstrate that the Beneficiary would actually perform all of the proffered duties as stated by the Petitioner.

We further incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a Level I position (the lowest of four assignable wage-levels) relative to others within the occupational category. Without more, Petitioner has not demonstrated that its proffered position is distinguishable by relatively specialized and complex duties compared to others within the occupation.

On appeal, the Petitioner highlights the Beneficiary's educational qualifications as evidence under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). More specifically, the Petitioner highlights that the Beneficiary "is a graduate of Bachelors Degree in Education [*sic*]." However, the Petitioner's assertions on this point are unpersuasive. First, the evidence of record reflects that the Beneficiary has the equivalent of a U.S. bachelor's degree in English, not in education. Further, the test to establish a position as a specialty occupation is not the education or experience of a proposed Beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner did not establish that its particular position is so complex or unique that it can only be performed by an individual with at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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For the reasons related in the preceding discussion, the Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). We therefore cannot find that the proffered position qualifies as a specialty occupation.¹²

III. CONCLUSION AND ORDER

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.

Cite as *Matter of C-H-*, ID# 14235 (AAO Nov. 4, 2015)

¹² As the identified ground of ineligibility is dispositive of the Petitioner's appeal, we need not address any additional issues in the record of proceeding.