



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF G-, LLC

DATE: APR. 7, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a medicinal and botanical manufacturing facility, seeks to temporarily employ the Beneficiary as an “interpreter/translator” under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director, California Service Center, denied the petition. The Director concluded that the proffered position is not a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred in its determination that the proffered position is not a specialty occupation.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

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) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

- (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.

8 C.F.R. § 214.2(h)(4)(iii)(A). U.S. Citizenship and Immigration Services (USCIS) has consistently interpreted 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 proposed 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”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

II. THE PROFFERED POSITION

According to its support letter, dated March 26, 2015, the Petitioner “manufactures pharmaceuticals, nutraceuticals, dietary supplements, and cosmetic lotions for export around the world.” The Petitioner seeks to employ the Beneficiary as an interpreter/translator and described the position as follows:

[The Petitioner] needs a person who can not only interpret in the spoken language, but also a person who can translate in the technical written language of business. This person would be responsible for listening to, understanding both spoken and written statements, translation of business correspondence, technical documentation, marketing material, and tradeshow coordination between the Chinese and English languages. In addition the person must be able to travel between the various countries and regions that [the Petitioner] does business in and act as an official translator and interpreter to facilitate and mediate discussion. It is important that [the Petitioner’s] concepts and ideas for product launches, registrations, new marketing strategies be relayed in a precise manner. Text must be edited and proofread to accurately reflect the language.

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Daily, the Interpreter/Translator will be receiving communication from our foreign offices and customers and must be able to translate this in a timely and efficient manner. Occasionally during the week, they will need to be able to translate and confer during video conferences and Skype calls, as well as traditional telephone calls. Each month there will be a need for meetings with management to relay information from customers and distributors, and also to get answers to questions they may have. Large conferences and formal meetings will occur several times per year, especially when traveling for tradeshows, product launches, and smaller exhibitions. All of this requires interpretation/translation. Moreover, the sophistication or [sic] such interpretation/translation needs in an international business setting requires a Master's Degree in Foreign Language and Applied Linguistics.

In a letter dated July 30, 2015, provided in response to the request for evidence (RFE), the Petitioner stated that "the complexity of the duties are such that they cannot be competently performed by an individual possessing less than a bachelor's degree in applied linguistics, a master's degree is preferred."

The Petitioner further broke down the proffered duties into percentages as follows:

The Interpreter/Translator will spend approximately 40% (16 hours per week) of their time translating our many technical documents and marketing brochures into Mandarin Chinese. These technical documents include clinical studies, toxicology studies, product information sheets, specification sheets and safety data sheets. Marketing material for bulk Products and finished products will also need to be translated. The Interpreter/Translator will also be responsible for translating any documents that should be required for registration with the foreign health departments and other necessary government agencies in Mandarin speaking countries. Registration of our products is currently in progress in China. Obtaining certification with Chinese health authorities is a very complex process. The Interpreter/Translator will assist [the Petitioner's] management team with its interactions with Chinese authorities and assist our team to facilitate our business with our distributors. On a day to day basis the Interpreter/Translator will receive communications from our foreign offices and customers and must be able to translate this in a timely manner.

Distribution contracts, intellectual property contracts and service agreements will need to be accurately translated back and forth from English and Mandarin. One specific contract that must be translated is the [REDACTED] Non-Exclusive Distributer Agreement[.] That Agreement must be accurately translated into Mandarin before [REDACTED] will sign it.

Also, [the Petitioner] is currently obligated under the [REDACTED]. This contract provides in Section C2a (page 3) that all documents for this registration must be translated. Also there will be future contracts with [REDACTED] that will also need to be translated in order [to] conduct additional business with those companies.

The Interpreter/Translator will spend approximately 30% (12 hours per week) of their time interpreting for [the Petitioner's] executive management team in negotiations with foreign government health departments and other agencies, as well as with foreign distributors and customers in our efforts to expand sales in Asia. The Interpreter/Translator must interpret the language and cultural differences for our management team to accurately explain to us during meetings and other negotiations, as well as at trade show, what [the Petitioner] must do in order to conduct business properly and to increase sales in accordance with the desires of potential large-scale customers.

Customer service will account for 10% (4 hours per week) of the Interpreter/Translator's time. This will entail speaking to customers to determine their needs and to effectively communicate this to [the Petitioner]. These activities will involve our distributors in Taiwan [REDACTED] Thailand [REDACTED] Thailand), China [REDACTED] and Singapore/Malaysia [REDACTED].

The Interpreter/Translator will also accompany [the Petitioner's] management to meetings and negotiations with new potential customers of [the Petitioner] in Asian countries. In order to obtain licensing in foreign countries and to garner new customers, [the Petitioner] conducts many business meetings, either as video conferences or face-to-face meetings. This will account for 20% (8 hours per week) of the Interpreter/Translator's time.

III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.¹ Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.²

¹ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

² The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), 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. To inform this inquiry, we recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Interpreters and Translators" corresponding to the Standard Occupational Classification code 27-3091.⁴

We have reviewed the section of the *Handbook* on "How to Become an Interpreter or Translator," which states in pertinent part:

Although interpreters and translators typically need at least a bachelor's degree, the most important requirement is that they be fluent in at least two languages (English and at least one other language). Many complete job-specific training programs. It is not necessary for interpreters and translators to have been raised in two languages to succeed in these jobs, but many grew up communicating in the languages in which they use for work.

Education

The educational backgrounds of interpreters and translators vary widely, but it is essential that they be fluent in English and at least one other language.

High school students interested in becoming an interpreter or translator should take a broad range of courses that focus on English writing and comprehension,

³ All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

⁴ The Petitioner classified the proffered position at a Level II wage (the second lowest of four assignable wage levels). We will consider this selection in our analysis of the position. The "Prevailing Wage Determination Policy Guidance" issued by the DOL provides a description of the wage levels. A Level II wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a good understanding of the occupation but that she will only perform moderately complex tasks that require limited judgement. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdatabase.com/download/NPWHC_Guidance_Revised_11_2009.pdf. A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner's job opportunity. *Id.*

foreign languages, and computer proficiency. Other helpful pursuits for prospects include spending time in a foreign country, engaging in direct contact with foreign cultures, and reading extensively on a variety of subjects in English and at least one other language. Through community organizations, students interested in sign language interpreting may take introductory classes in American Sign Language (ASL) and seek out volunteer opportunities to work with people who are deaf or hard of hearing.

Beyond high school, people interested in becoming interpreters or translators have numerous educational options. Although many jobs require a bachelor's degree, majoring in a language is not always necessary. Rather, an educational background in a particular field of study can provide a natural area of subject-matter expertise.

Training

Interpreters and translators generally need specialized training on how to do their work. Formal programs in interpreting and translating are available at colleges and universities nationwide and through nonuniversity training programs, conferences, and courses.

Many people who work as interpreters or translators in more technical areas—such as software localization, engineering, or finance—have a master's degree. Those working in the community as court or medical interpreters or translators are more likely to complete job-specific training programs or certificates.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., Interpreters and Translators, <http://www.bls.gov/oooh/media-and-communication/interpreters-and-translators.htm#tab-4> (last visited Apr. 6, 2016).

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. While the *Handbook* states that interpreters and translators typically need at least a bachelor's degree, it also states that the educational background of interpreters and translators vary widely. In other words, the *Handbook* does not demonstrate that this occupational category is one for which normally the minimum requirement for entry is a baccalaureate degree or higher in a specific specialty, or its equivalent.

On appeal, the Petitioner asserts that “8 C.F.R. § 214.2(h)(4)(iii)(A)(I) does not require that the degree be in a specific specialty, or that the position require a degree in a specific specialty.” However, we note 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). 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 at 387. 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. Further, 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 at 147. Therefore, 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) 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.

On appeal, the Petitioner refers to a number of court cases to support its position that a specific specialty is not required.⁵ However, the cases do not support the Petitioner’s claim that the regulatory criterion does not require a degree in a specific specialty.

For example, the Petitioner cites to *Chung Song Ja Corp. v. USCIS*, No. C14-0177RSM, 2015 WL 1058110 (W.D. Wash. 2015). However, the court in *Chung Song Ja Corp* states “[w]hile 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) does not use the language of ‘specific specialty,’ USCIS does not abuse its discretion in reading this regulation together with 8 C.F.R. 214.2(h)(4)(ii), which defines ‘a specialty occupation’ as one that ‘requires the attainment of a bachelor’s degree or higher in a specific specialty, or its equivalent.’”⁶

The Petitioner also cites to *Raj and Co. v. USCIS*, 85 F.Supp.3d 1241(W.D. Wash. 2015).⁷ However, we note that in *Raj*, the court stated that a specialty occupation requires the attainment of a bachelor’s degree or higher in a specific specialty, or its equivalent. The court confirmed that this issue is well-settled in case law and with USCIS’s reasonable interpretation of the regulatory framework. In the decision, the court noted that “permitting an occupation to qualify simply by requiring a generalized bachelor degree would run contrary to congressional intent to provide a visa program for specialized, as opposed to merely educated, workers.” The court stated that the regulatory provisions do not restrict qualifying occupations to those for which there exists a single, specifically tailored and titled degree program; but rather, the statute and regulations contain an equivalency provision.⁸ Again, we agree with the court that a specialty occupation is one that

⁵ We also note that, in contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. *See Matter of K-S-*, 20 I&N Dec. 715, 719-20 (BIA 1993). Although the reasoning underlying a district judge’s decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter.

⁶ The court ultimately found that USCIS ignored that “statutory and regulatory allowance for occupations that require the attainment of the ‘equivalent’ of specialized bachelor’s degree as a threshold for entry” and overturned the decision. We further note that *Chung Song Ja Corp.* does not share the same fact pattern as the present petition because the proffered position in that case was for a part-time health care manager.

⁷ We note, however, that in the district court case, the employer designated the position as a “Marketing Analyst & Specialist” position. However, as the proffered position is for an interpreter/translator, the positions are not similar.

⁸ In *Raj*, the court concluded that the employer met the first criterion. We must note, however, that the court stated that “[t]he first regulatory criterion requires the agency to examine the generic position requirements of a market research analyst in order to determine whether a specific bachelor’s degree or its equivalent is a minimum requirement for entry

requires the attainment of a bachelor's or higher degree in a specific specialty or its equivalent. We further note that a petitioner must also demonstrate that the position requires the theoretical and practical application of a body of highly specialized knowledge in accordance with section 214(i)(1)(B) of the Act and 8 C.F.R. § 214.2(h)(4)(ii), and satisfy one of the four criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The Petitioner also cites to *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), for its proposition that “[t]he knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge.”⁹

We agree with the aforementioned proposition that “[t]he knowledge and not the title of the degree is what is important.” In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the “degree in the specific specialty (or its equivalent)” requirement of section 214(i)(1)(B) of the Act. In such a case, the required “body of highly specialized knowledge” would essentially be the same. Since there must be a close correlation between the required “body of highly specialized knowledge” and the position, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be “in *the* specific specialty (or its equivalent),” unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added). As will be discussed later, the Petitioner has not met its burden to establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those tasks.

The Petitioner also cited *Tapis Int'l v. INS*, 94 F. Supp. 2d 172 (D. Mass. 2000) for the same concept as *Residential Fin. Corp.*¹⁰ We agree with the district court judge in *Tapis*, that in satisfying the specialty occupation requirements, both the Act and the regulations require a bachelor's degree in a specific specialty or its equivalent, and that this language indicates that the degree does not have to be a degree in a single specific specialty. Moreover, we also agree that, if the requirements to

into the profession.” Thus, the decision misstates the regulatory requirement. That is, the first criterion requires the Petitioner to establish that a baccalaureate or higher degree (in a specific specialty) or its equivalent is normally the minimum requirement for entry into the particular position.

⁹ 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.

¹⁰ We note that a “professional position” differs from qualifying as a specialty occupation. Specifically, a specialty occupation requires theoretical and practical application of a body of highly specialized knowledge, and a bachelor's degree in a specific specialty, or its equivalent. Therefore, while an occupation may be identified as a profession under section 101(a)(32) of the Act, that occupation would not necessarily qualify as a specialty occupation unless it meets the definition of the term at section 214(i)(1) of the Act.

perform the duties and job responsibilities of a proffered position are a combination of a general bachelor's degree and experience such that the standards at both section 214(i)(1)(A) and (B) of the Act have been satisfied, then the proffered position may qualify as a specialty occupation. We do not find, however, that the U.S. district court is stating that any position can qualify as a specialty occupation based solely on the claimed requirements of a petitioner.

Instead, 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 a specific specialty as the minimum for entry into the occupation as required by the Act.¹¹

Here, the Petitioner has not met its burden to establish that a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. As mentioned, the Petitioner initially asserts that a degree in a specific specialty is not required under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). Further, on appeal, the Petitioner asserts that the proffered position is "similar to those positions discussed in the cases cited above, in that a degree and specialized knowledge is required, even if a degree with a specific title is not." However, the Petitioner has not explained what specialized knowledge is required, and that it is normally the minimum requirement for entry into the particular position.¹²

Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

B. Second Criterion

The second criterion presents two, alternative prongs: "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[.]" 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong contemplates common industry practice, while the alternative prong narrows its focus to the Petitioner's specific position.

¹¹ The Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Tapis*. The district judge's decision in that case appears to have been based largely on the many factual errors made by the service center in its decision denying the petition. We further note that the Director's decision was not appealed to us. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by us in our *de novo* review of the matter.

¹² The Petitioner asserted that the Beneficiary has a Master's degree in Foreign language and Applied Linguistics. However, 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.

1. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the “degree requirement” (i.e., a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

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 Petitioner’s industry’s professional association(s) indicating that it has made a degree a minimum entry requirement. 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. However, upon review of the documents, we find that the Petitioner’s reliance on the job announcements is misplaced.

The Petitioner stated that it is a medicinal and botanical manufacturing facility. The Petitioner designated its business operations under the North American Industry Classification System (NAICS) code 325411.¹³ This NAICS code is designated for “Medicinal and Botanical Manufacturing,” an industry primarily engaged in (1) manufacturing uncompounded medicinal chemicals and their derivatives (i.e., generally for use by pharmaceutical preparation manufacturers) and/or (2) grading, grinding, and milling uncompounded botanicals.”¹⁴

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

¹³ 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 Apr. 6, 2016).

¹⁴ U.S. Dep’t of Commerce, U.S. Census Bureau, 2012 NAICS Definition, 325411 – Medicinal and Botanical Manufacturing, <http://www.census.gov/cgi-bin/sssd/naics/naicsreh> (last visited Apr. 6, 2016).

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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.

The Petitioner has not established that it meets this criteria. For instance, the advertisements were not placed by companies similar to the Petitioner. Instead, the ads were placed by a government outsourced services provider, home care agency, printing company, and staffing company for an unidentified employer. The Petitioner did not provide sufficient information to establish that it shares the same general characteristics with the advertising organizations.

Further, the Petitioner has not established that the postings are for parallel positions. For instance, responsibilities for the bilingual Spanish translator position for [REDACTED] include “create quotes and invoices to submit to client” and “assign projects to internal/external sources.” There is no further information to establish that the primary duties and responsibilities of the advertised position are parallel to the proffered position. Moreover, the posting for Chinese translators lists “a four-year college degree,” but does not indicate that it must be in specific specialty or its equivalent. As discussed, 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 position. Although 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. *See Royal Siam Corp.*, 484 F.3d at 147. 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.¹⁵

On appeal, the Petitioner asserts that it “is a highly unique company” and “the greater industry of interpreting and translating important documents supports [its] argument” that the degree requirement is common to the industry. In support, the Petitioner submitted a letter from [REDACTED] a company it

¹⁵ The Petitioner did not provide any independent evidence of how representative the job postings are of the particular advertising employers' recruiting history for the type of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the actual hiring practices of these employers.

Further, the Petitioner does not demonstrate what inferences, if any, can be drawn from these advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (7th ed. 1995). As such, even if the job announcements supported the finding that the position required a bachelor's or higher degree in a specific specialty, or its equivalent (for organizations in the same industry that are similar to the Petitioner), 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* published by the Bureau of Labor Statistics that such a position does not normally require at least a baccalaureate degree in a specific specialty, or its equivalent, for entry into the occupation in the United States.

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previously used for its interpreter and translation services. The letter from [REDACTED] stated that “[a]ny linguist that we take on must have a university degree in Translation, followed by a master’s degree that relates to their chosen specialism.” It further indicated that “[t]hey must also have either 3 years translation experience or demonstrate 100,000 words of experience to us.”

However, the printouts from [REDACTED] website in the record of proceedings reflect different requirements than what is provided in its letter and do not indicate that a bachelor’s degree in a specific specialty or its equivalent is required for interpreter/translator positions.¹⁶ For example, for its translator positions, [REDACTED] states:

Our translators are all native speakers who translate into their mother-tongue and are selected on the basis of:

- Relevant qualifications-Higher education degree in Translation or similar
- Evidence of specialized areas e.g. translating medical documentation
- 3 years/ 100,000 words or experience
- 2 professional reference

Translators complete a test-piece relevant to their special[ty].

While [REDACTED] lists a “higher education degree in Translation” or “3 years/ 100,000 words or experience” as part of its selection criteria, it does not indicate that it is a requirement. Further, based on this document, we cannot determine if a higher education degree is equivalent to a bachelor’s degree. Moreover, in discussing quality assurance measures, [REDACTED] states that for its staff selection, “all [its] linguists translate into their native language” and “selection process includes a test-piece in respective language pair and completion of a client-specific test-piece.” In other words, the documentary evidence does not demonstrate that [REDACTED] requires a bachelor’s degree in a specific specialty is required for its translator position. Therefore, the Petitioner has not established that the degree requirement is common to the “greater industry of interpreting and translating important documents.”

Thus, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

2. Second Prong

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

¹⁶ “[I]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence.” *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92. Inconsistencies undermine probative value of [REDACTED] letter.

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performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

Upon review, we find that the Petitioner has not established that its particular position meets this alternative prong. On appeal, the Petitioner states that the Beneficiary would "translate highly complex documents, and perform interpreter services in sophisticated settings." However, the Petitioner does not sufficiently demonstrate why a degree in linguistics is required to perform the duties of the proffered position.

Specifically, the Petitioner states in its brief that its documents contain "legal terms of art, and/or have acquired significant secondary legal meaning beyond a literal meaning." As an example, the Petitioner states that "the term 'consequential damages' has a distinct contractual meaning, and denote[s] a type or category of damages"; therefore, the "translator would have to understand the significance of the way the words relate to each other, and their corresponding words or concepts *in the other language*." The Petitioner further asserts that "linguistics is the scientific study of language, and linguists 'study how to represent the structure of the various aspects of language (such as sounds or meaning), how to account for different linguistics patterns theoretically, and how the different components of language interact with each other.'"

However, the Petitioner does not sufficiently explain how "legal terms of art" such as "consequential damages" can be translated by the study of structure of the language and understanding the significance of the way the words relate to each other. As the Petitioner notes, "consequential damages" is defined as "[l]osses that do not flow directly and immediately from an injurious act but that result indirectly from the act" and is a term of art; but the Petitioner does not explain how the study of linguistics will render translation of such a term of art.¹⁷

Similarly, the Petitioner claims that it has "voluminous scientific documents" that are "highly complex material." The Petitioner also claims that it requires toxicology studies to be translated," and that "[a] mistranslation of a toxicology study could have extremely dire consequences," and thus "accurate translation is of extreme importance." However, again, the Petitioner does not sufficiently explain how the study of linguistics contributes to accurate translation of highly complex scientific terms.

Moreover, 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 it may believe are so complex and unique. While a few related courses may be beneficial, or even required, in performing certain duties of the position, the Petitioner has not demonstrated 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 proffered position.

¹⁷ We note that in at least two distribution agreements, [REDACTED] the language of the agreement is "expressly stipulated to be the English language," which raises question on whether the documents need to be translated.

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To support its claim that the particular position in question is so complex or unique, the Petitioner submits on appeal two opinion evaluations of the proffered position by: (1) [REDACTED] Assistant Professor of Accounting and [REDACTED] Assistant Professor of Law at [REDACTED] (joint evaluation); and (2) [REDACTED] Associate Professor of Japanese Languages, Literature & Culture at [REDACTED]. However, we find that the letters are of limited probative value in finding that the proffered position qualifies as a specialty occupation.

The letter from [REDACTED] states: “[the Petitioner] is an exceptionally unusual business with unique challenges that can only be met by the selection of an interpreter/translator with a minimum of an undergraduate degree, or preferably a candidate with an advanced degree in linguistics or a related field.” We note, however, that the requirement of a general undergraduate degree that is not in a specific specialty is inadequate to establish that a position qualifies as a specialty occupation. As explained above, USCIS interprets the supplemental degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring a degree in a specific specialty that is directly related to the proposed position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. A “preference” for an advanced degree in linguistics or a related field is not the same as a minimum requirement and, therefore, the letter from [REDACTED] does not establish a requirement of at least a bachelor’s degree in a *specific specialty* for interpreter/translator positions.

Further, the letter states that the “employee hired into this position will be a very visible member of [the Petitioner’s] team, joining the executive team in meetings, representing the company at international trade shows, and providing direct customer service to the distribution partners.” The letter further states that “it would be inappropriate to hire an individual lacking a college degree for a role with this level of complexity.” However, there is no indication that the Petitioner has advised [REDACTED] that it designated the proffered position as a Level II position on the submitted LCA, indicating that it is a position for an employee who has a good understanding of the occupation, but who will only perform moderately complex tasks that require limited judgment.¹⁸ It appears that [REDACTED] would have found this information relevant for their opinion letter. Moreover, without this information, the Petitioner has not demonstrated that [REDACTED] possessed the requisite information necessary to adequately assess the nature of this particular position.

For all of these reasons, the letters from [REDACTED] carry limited evidentiary weight and they do not establish that the proffered position qualifies as a specialty occupation. We may, in our discretion, use advisory opinion statements submitted by the Petitioner as expert testimony. *Matter of Caron Int’l, Inc.* 19 I&N Dec. 791, 795 (Comm’r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we are not

¹⁸ 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.

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required to accept or may give less weight to that evidence. *Id.* For efficiency's sake, we hereby incorporate the above discussion regarding the letters into our analysis of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Similarly, we find that the letter from [REDACTED] also has limited probative value in satisfying this criteria, because it is not supported by documentary evidence. The letter from [REDACTED] states that the proffered position requires at least a bachelor's degree program in linguistics or a related field. In support of her conclusion, [REDACTED] includes a profile of translators at the [REDACTED] and an "article" entitled [REDACTED]

We have reviewed the documents, and find that they do not support [REDACTED] conclusions. For example, the profile of translators from the [REDACTED] appears to indicate that the translators are native speakers; however, they have degrees in various fields such as nursing, educational psychology, English, dentistry, Japanese literature and more.

The printout from [REDACTED] states that its team of translators and interpreters who work for this industry have professional degrees, such as MDs and PhDs "in all major areas of life sciences and medicine." There is no mention of a minimum requirement of a degree in linguistics or related field; thus, it does not support [REDACTED] conclusions. Further, [REDACTED] letter does not reference or discuss authoritative studies, surveys, industry publications, publications, or other sources of empirical information which she may have consulted in the course of her evaluative process. Therefore, we find that the conclusion reached by [REDACTED] is not supported by independent, objective evidence demonstrating the manner in which she reached her conclusions, and has little probative value in satisfying the criteria.

Accordingly, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

C. Third Criterion

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.¹⁹

¹⁹ 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

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The Petitioner has not provided any evidence that it has previously employed or recruited anyone as an interpreter/translator to perform the proffered duties. On appeal, the Petitioner states, “the in-house position of Interpreter / Translator is new for the petitioner, as [the Petitioner] has previously used contracted interpretation and translation services from [REDACTED].”

The plain language of the regulation is clear that this criterion applies to the Petitioner’s past recruitment and hiring only – not past employment practices of its contractors. However, even if we were to consider [REDACTED] hiring practices under this criterion, the record of proceedings contains inconsistencies regarding [REDACTED] claims, and we are therefore unable to determine its requirements for its interpreter or translator positions.

Therefore, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

D. Fourth Criterion

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. We incorporate our previous discussion regarding the Petitioner’s claims that the proffered position is more complex because of the scientific and technical nature of the documents and language being translated or interpreted. As discussed previously, the Petitioner has not adequately demonstrated that a master’s degree (or even a bachelor’s degree) in linguistics directly relates to the proffered duties.

In response to the RFE, the Petitioner submitted two letters to support its position that the duties of the proffered position are complex. However, we find that the letters are of little probative value. One letter was from the Petitioner’s customer in [REDACTED] [REDACTED] dated June 16, 2015, which stated that the documents from the Petitioner were previously translated by a third party, then later reviewed and re-written because they were not correctly translated. [REDACTED] claimed that correct Chinese language translation resulted in increase of purchases from the Petitioner. [REDACTED] further claimed that “complexity of pharmaceutical ingredient lists and detailed scientific research articles, which are a major part of our marketing are far beyond the translation abilities of a fluent person who does not have the specialized training of a college degree in applied linguistics.” However, the writer did not provide a substantive, analytical

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.*

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basis for his opinion and ultimate conclusion. Specifically, he did not support his conclusions by providing sales records or citations of any research material used. He has not provided sufficient facts that would support the assertion that the proffered position requires at least a bachelor's degree in a specific specialty (or its equivalent).

The other letter was from the executive director of [REDACTED] where the Petitioner is located. The letter stated that the functions of the proffered position “are so highly specialized that only an Interpreter/Translator with a degree [in] foreign language/applied linguistics can adequately perform them.” However, the writer did not adequately establish his expertise to render the opinion made in this matter. There is no indication that he conducted any research or studies pertinent to the educational requirements for such positions, or that he was recognized by professional organizations that he is an authority on those specific requirements.

Further, the writer did not reference or discuss any studies, surveys, industry publications, authoritative publications, or other sources of empirical information that he may have consulted in the course of evaluative process. The writer did not provide a substantive, analytical basis for his opinion and ultimate conclusion.

We also incorporate our earlier discussion regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a Level II position (out of four assignable wage-levels) relative to others within the occupational category, and hence one not likely to be distinguishable by relatively specialized and complex duties. Therefore, in the instant case, relative specialization and complexity have not been credibly developed by the Petitioner as an aspect of the proffered position.

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.

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.

Cite as *Matter of G-, LLC*, ID# 16010 (AAO Apr. 7, 2016)