



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

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

MATTER OF T-K-I-F-, LLC

DATE: JAN. 12, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a law firm, seeks to temporarily employ the Beneficiary as a “senior executive immigration paralegal” 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. ISSUES

The issues before us are whether (1) the proffered position qualifies as a specialty occupation; and (2) the Beneficiary is qualified to serve in a specialty occupation position in accordance with the applicable statutory and regulatory provisions.¹

II. SPECIALTY 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:

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).

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must 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 Proffered Position

The Petitioner is a solo practitioner law firm established in 2014 with a gross annual income of \$50,000. The Petitioner seeks to employ the Beneficiary as a senior executive immigration paralegal with an annual salary of \$60,008. In its support letter dated October 17, 2014, the Petitioner indicated that the Beneficiary will perform the following duties (with percentages added from the Petitioner’s unsworn affidavit dated January 23, 2015):

- Prepare affidavits, USCIS forms, and court documents for submission to the Immigration Court, the USCIS, and the National Visa Center for the purpose of obtaining legal status for clients; (10%)
- Procure documentation from clients in support of their US immigration cases; (5%)
- Assess the quality of documentation provided by the clients to best position client for effective case presentation to USCIS; (5%)
- Assemble documents including (but not limited to) legal forms, support letters, and correspondence; prepare same for submission to USCIS or other government bodies; (2%)

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- Discuss with clients and attorney appropriate strategies to best qualify applicants for legal status; (10%)
- Employ knowledge of USCIS forms, consular processing, immigration court procedure, and visa bulletins to best position client for a successful submission; (15%)
- Communicate with attorney, clients and court personnel regarding issues including, but not limited to: case status, docketing, deadlines, appointments, legal strategy, scheduling, and submission of filings; (10%)
- Meet with clients to discuss direction of the cases as well as to assess supporting documentation; (15%)
- Investigate facts of case through public records and communicate with court personnel regarding same; (5%)
- Coordinate with clients for payments of legal and filing fees; (8%)
- Assist in preparation of witnesses for upcoming court hearings and interviews with USCIS examiners; (8%)
- Utilize Court Manual to conform documents to Immigration Procedure; (5%)
- Interface with Court Information System (CIS) for purpose of determining client status; (2%) and
- Liaise with personnel from government agencies including the USCIS and the BIA (Board of Immigration Appeals). (3%)

The Petitioner further indicated that “a Bachelor’s degree in English, Paralegal Studies, a directly related field, or the equivalent” is required to perform the proffered duties. In addition, in response to the RFE, the Petitioner stated that “five years of experience as a [p]aralegal” is also required.

C. Analysis

1. The Petitioner’s Requirements

As a preliminary matter, it must be noted that the Petitioner’s requirement of at least a bachelor’s degree in “English, Paralegal Studies, a directly related field, or the equivalent” for the proffered position, without more, is inadequate to establish that the proposed position qualifies as a specialty occupation. 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

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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, however, 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).

Here, the Petitioner claims that the duties of the proffered position can be performed by an individual with a bachelor’s degree in paralegal studies, English, a related field or the equivalent. The issue here is that it is not readily apparent that paralegal studies and English are closely related or that the field of English is directly related to the duties and responsibilities of the particular position proffered in this matter. For example, the Beneficiary’s academic transcript lists courses such as “Apocalyptic Literature,” “Introduction to the Literature of England,” “Romantic Literature,” “Shakespeare,” and “Seventeenth Century Literature.” The Petitioner has not explained how such courses are directly related to performing the duties of the proffered position.²

Here and as indicated above, the Petitioner, who bears the burden of proof in this proceeding, has not established either (1) that paralegal studies and English are closely related fields or (2) that the field of English is directly related to the duties and responsibilities of the proffered position. Absent this evidence, it cannot be found that the proffered position is a specialty occupation.

Therefore, absent evidence of a direct relationship between the claimed degrees required and the duties and responsibilities of the position, it cannot be found that the proffered position requires anything more than a general bachelor’s degree. As explained above, 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. USCIS has consistently stated that, although a general-purpose bachelor’s degree, such as a degree in business administration, 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 139, 147 (1st Cir. 2007).

We further note that the Petitioner does not provide information about “related field.” Moreover, the record contains insufficient evidence regarding what would be considered “equivalent.” However, we note that in response to the RFE, the Petitioner indicated that the proffered position requires “at least the attainment of a Bachelor’s Degree in English, Paralegal Studies, a directly related field, or the equivalent and five years of experience as a Paralegal” and “[the Beneficiary]’s education and experience qualifies her to perform the above listed duties.” However, the fact that the Petitioner states that the Beneficiary qualifies for the proffered position demonstrates that the position is not a

² We will discuss the letters from [REDACTED] later in the discussion.

specialty occupation. As noted, the Petitioner indicated that the Beneficiary has a U.S. equivalent of a bachelor's degree in English. Further, the Petitioner provided records from the Beneficiary's previous H-1B employer, which indicates that the Beneficiary's previously proffered position was as an administrative assistant, not a paralegal. Further, the letter lists generic duties for the Beneficiary's previous position, such as being "responsible for overseeing a number of administrative functions within the office." There is no other evidence that the Beneficiary has other experience related to the proffered position. The Petitioner's acknowledgement that the Beneficiary qualifies for the proffered position based on a generic bachelor's degree and work experience indicates that the proffered position is not a specialty occupation.³

The evidence of record does not establish how these two dissimilar fields of study form either a body of highly specialized knowledge or a specific specialty, or its equivalent. Without more, the Petitioner's statement indicates that the proffered position is not in fact a specialty occupation. The Director's decision must therefore be affirmed and the appeal dismissed on this basis alone.

2. The Supplemental Criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)

Moreover, it also cannot be found that the proffered position qualifies as a specialty occupation as the Petitioner has not satisfied any of the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). To reach this conclusion, we first turned 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 Paralegal or Legal Assistant," which states the following, in part:

Most paralegals and legal assistants have an associate's degree in paralegal studies, or a bachelor's degree in another field and a certificate in paralegal studies.

³ Under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the Petitioner must establish that (1) the Beneficiary attained "education, specialized training, and/or progressively responsible experience in the specialty equivalent to the completion of such degree, and (2) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

⁴ All of the references are to the 2016-2017 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.

Education

There are several paths a person can take to become a paralegal. Candidates can enroll in a community college paralegal program to earn an associate's degree. However, many employers prefer, or even require, applicants to have a bachelor's degree.

Because only a small number of schools offer bachelor's and master's degrees in paralegal studies, applicants typically have a bachelor's degree in another subject and earn a certificate in paralegal studies.

Associate's and bachelor's degree programs in paralegal studies usually offer paralegal training courses in legal research, legal writing, and the legal applications of computers, along with courses in other academic subjects, such as corporate law and international law. Most certificate programs provide intensive paralegal training for people who already hold college degrees.

Employers sometimes hire college graduates with no legal experience or legal education and train them on the job. In these cases, the new employee may have experience in a technical field that is useful to law firms, such tax preparation, nursing, or criminal justice.

Other Experience

In many cases, employers prefer candidates who have at least 1 year of experience in a law firm or other office setting. In addition, a technical understanding of a specific legal specialty can be helpful. For example, a personal-injury law firm may desire a paralegal with a background in nursing or health administration.

Work experience in a law firm or other office setting is particularly important for people who do not have formal paralegal training.

Many paralegal training programs offer internship, in which students gain practical experience by working for several months in a private law firm, the office of a public defender or attorney general, a corporate legal department, a legal aid organization, or a government agency. Internship experience helps students improve their technical skills and can enhance their employment prospects.

Certifications

Although not required, some employers may prefer to hire applicants who have completed a paralegal certification program. Many national and local paralegal organizations offer voluntary paralegal certifications to students able to pass an exam. Other organizations offer voluntary paralegal certifications for paralegals who meet certain experience and education criteria. For more information about paralegal certifications, see the More Info section.

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U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., Paralegals and Legal Assistants, <http://www.bls.gov/ooh/legal/paralegals-and-legal-assistants.htm#tab-4> (last visited Jan. 7, 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 *Handbook* states that most paralegals and legal assistants have an associate's degree in paralegal studies, or a bachelor's degree in another field and a certificate in paralegal studies. The *Handbook* indicates that employers sometimes hire college graduates with no legal experience or legal education and train them on the job. Because the *Handbook* does not indicate that a bachelor in a specific specialty, or its equivalent is normally the minimum requirement for entry, the *Handbook* does not support the proffered position as being a specialty occupation.

Moreover, to the extent described in the record, the duties comprising the proffered position appear to fall within the general functions normally performed by paralegals or legal assistants, but the nature and level of education and/or equivalent training and experience required to perform those functions are not self-evident. The Petitioner provides insufficient evidence distinguishing the proffered position from paralegal or legal assistant positions not requiring the application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. “[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)).

The *Handbook* reports that certification may be helpful for obtaining some paralegal positions. However, there is no indication that the Petitioner requires the Beneficiary to have obtained any professional certification or designation to serve in the proffered position. Thus, the *Handbook* does not support the claim that the occupational category of paralegals or legal assistants is one for which normally the minimum requirement for entry is a baccalaureate degree or higher in a specific specialty, or its equivalent.

Further, we find that 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.

For example, the Petitioner submitted two Internet article titled [REDACTED] and [REDACTED]. However, both articles do not indicate that a bachelor's degree in specific specialty, or its equivalent is normally the minimum requirement for entry into the proffered position. For example, while the article titled [REDACTED] states that paralegal positions increasingly require a bachelor's degree, it also states that “there isn’t a one-size-fits-all educational path for paralegals” and “the level of education necessary to gain entry into the paralegal field is greatly influenced by the geographic location of the firm and

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the person's individual goals." Further, "Hiring Trends" indicate "firms are split right now"; "some require a degree and a certificate; some just want the certificate." However, there is no evidence that attainment of a certificate requires at least a bachelor's degree in a specific specialty or its equivalent. We also note that the authors in these articles do not specify any studies, surveys, industry publications, or relevant empirical-data resource for their pronouncements about educational requirements. Therefore, we do not regard them as authoritative or probative evidence.

The Petitioner refers to another article titled [REDACTED] to assert that "the pool of applicants for various positions, including paralegal jobs, is better educated and therefore more competitive" in the [REDACTED] area. However, the article merely discusses the average amount of schooling attained in a given city and cautions against accuracy of the data. Further, the Petitioner's conclusion is not supported by independent, objective evidence demonstrating the manner in which it reached the conclusions stated in the letter.

The Petitioner also submitted two expert opinion evaluations to establish that the proffered position qualifies as a specialty occupation. The evaluations are provided by: (1) [REDACTED] Esquire, Professor of Law at [REDACTED] and (2) [REDACTED] Esquire, Professor of [REDACTED]. The letter from [REDACTED] states that the proffered position requires "a Bachelor's Degree in Paralegal Studies, English, or a related area, plus 5 years of work experience." The letter from [REDACTED] states that the proffered position "would require a minimum of a Bachelor's Degree in English, Paralegal Studies, a directly related field, or the equivalent."

As noted, the requirement of a bachelor's degree in English, Paralegal Studies, or a related field 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.

Further, both letters do not reference or discuss authoritative studies, surveys, industry publications, or other sources of empirical information which they may have consulted in the course of their evaluative process. [REDACTED] refers to the [REDACTED] and states that "legal employers use comparable standards. . . when hiring [p]aralegals, including the requirement that 'a baccalaureate in any field, plus not less than six months in-house training as a legal assistant.'" However, if even if the Petitioner had established that the [REDACTED] is an authoritative source, which the Petitioner had not, the [REDACTED] does not indicate that a bachelor's degree or its equivalent in a specific specialty is normally the minimum requirement for legal assistants or paralegals.

Further, both authors provide a brief, general description of the Petitioner's business activities based on the Petitioner's support letter; however, they do not demonstrate or assert in-depth knowledge of the Petitioner's specific business operations or how the duties of the position would actually be performed in the context of the Petitioner's business enterprise. For instance, there is no evidence

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that they have in-depth knowledge of the Petitioner's business operations gained through such means as visiting the Petitioner's premises, observing the Petitioner's employees, interviewing them about the nature of their work, or documenting the knowledge that they apply on the job. [REDACTED] states that his opinion is limited to the information that he received from the Petitioner-the support letter dated October 17, 2014, and the Beneficiary's resume, "based on the assumption that the documents are accurate." Likewise, [REDACTED] simply lists the tasks verbatim from the Petitioner's letter. Their opinion does not relate their conclusion to specific, concrete aspects of the Petitioner's business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue. Moreover, they did not support their conclusions by providing copies or citations of any research material used. They did not provide 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).

Therefore, we find that the conclusions reached by [REDACTED] and [REDACTED] lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which they reached such conclusions. As such, the letters are not probative evidence towards satisfying any criterion of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Counsel provides a copy of a federal court decision (*Fred 26 Importers, Inc. v. DHS*, 445 F. Supp.2d 1174 (C.D. Cal. 2006) that overturned an H-1B human resources manager denial wherein we had not considered expert letters and other evidence when determining the position did not qualify as a specialty occupation pursuant to the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Here, we reviewed the expert letters, but find that they have limited value to establish the proffered position 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 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).

For the reasons discussed above, we find that the Petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. 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

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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. The Petitioner submits an affidavit from [REDACTED] Esquire, who, like the Petitioner, is a solo practitioner. [REDACTED] affidavit states that "the hiring standards in [the [REDACTED] metro area] are consistent with [a] higher level of education" and that "any paralegal that I might hire must have a bachelor's degree in a related field or the equivalent experience." However, [REDACTED] does not indicate that paralegal positions such as the one proffered here normally require at least a bachelor's degree in a specific specialty. Further, there is no indication that he has published any work or conducted any research or studies pertinent to the educational requirements for paralegal positions, and no evidence of recognition that he is an authority on those specific requirements. [REDACTED] did not reference any supporting authority or any empirical basis for the pronouncement. The letter lacks the requisite specificity and detail and his claims are not supported by independent, objective evidence demonstrating the manner in which he reached the conclusions stated in the letter.

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.

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.

The advertisements, which were primarily placed by large law firms, require at least a bachelor's degree, but not one of the advertisements specify that the paralegal position advertised requires at least a bachelor's degree in a *specific specialty or its equivalent*. For example, [REDACTED] requires a bachelor's degree but does not state a specific specialty. As discussed previously,

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requiring a general bachelor's degree, without more, does not establish that the proffered position is a specialty occupation. It is noted that some employers also require relevant experience. However, there is insufficient evidence in the record to establish that the employers' requirements for the advertised positions are equivalent to a bachelor's degree in a specific specialty. Moreover, the Petitioner did not establish that the advertising employers are similar to the Petitioner. As noted, the Petitioner is a solo practitioner established in [REDACTED]. The advertisement from a recruiter, [REDACTED] describes its client as "a full service law firm employing approximately 450 attorneys worldwide."⁵

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

⁵ While USCIS should not limit its review to the size of a petitioner and must consider the actual responsibilities of the proffered position, we find that it is reasonable to assume that the size of an employer's business has or could have an impact on the claimed duties of a particular position. *See EG Enters., Inc. v. Dep't of Homeland Sec.*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). The size of a petitioner may be considered as a component of the nature of the petitioner's business, as the size impacts upon the actual duties of a particular position.

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 paralegal 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.

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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 sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. For instance, the Petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it may believe are so complex and unique. We note that the letters from [REDACTED] both state that a degree in English is directly relevant to duties of the proffered position. However, as discussed, the letters are not supported by independent, objective evidence in which they reached such conclusions, and have limited probative value.

The evidence of record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than paralegal 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 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 paralegal positions, including associate degrees and degrees not in a specific specialty.

The Petitioner claims that the Beneficiary is well qualified for the position. 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. 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.⁷

⁷ 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

The Petitioner has not provided any evidence that it has previously employed or recruited anyone as a paralegal to perform the proffered duties. Therefore, 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.

Although the Petitioner has stated that this is an advanced paralegal position requiring a level four prevailing wage level, we do not find that the Petitioner has submitted sufficient evidence to support this proposition. As noted, in the Form I-129, the Petitioner stated that it is a law firm with one employee and gross income of \$50,000 per year, established in 2014. However, the proffered position is for a senior executive immigration paralegal to work at a salary that is equivalent to the prevailing wage of \$60,008 per year. The Petitioner has not explained how it can afford to pay someone in the proffered position a salary that is higher than its stated gross income. We therefore do not find the Petitioner's statements with respect to the advanced nature of the proffered position to be credible. "[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.

Further, even if the Petitioner could demonstrate a Level IV wage-designation is appropriate, this would not reflect that the occupation qualifies as a specialty occupation as, discussed previously, there is no 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

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.*

for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

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.⁸

D. Case Law

In the appeal, the Petitioner cites to *Chung Song Ja Corp. v. USCIS*, No. C14-0177RSM, 2015 WL 1058110 (W.D. Wash. 2015) and claims that “the District Court chastises the AAO for requiring precise qualifying degrees.” 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.’”⁹ Further, as noted, 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) to state that “a position is also a professional position where the employer or the job requires a degree or its equivalent and thus some combination of education and experience may be sufficient.” However, 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.

Nonetheless, 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 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,

⁸ 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.

⁹ 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 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.

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.

In addition, the district court judge does not state in *Tapis* that, simply because there is no specialty degree requirement for entry into a particular position in a given occupational category, USCIS must recognize such a position as a specialty occupation if the beneficiary has the equivalent of a bachelor's degree in that field. In other words, we do not find that *Tapis* stands for either (1) that a specialty occupation is determined by the qualifications of the Beneficiary being petitioned to perform it; or (2) that a position may qualify as a specialty occupation even when there is no specialty degree requirement, or its equivalent, for entry into a particular position in a given occupational category.

First, USCIS cannot determine if a particular job is a specialty occupation based on the qualifications of the Beneficiary. A beneficiary's credentials to perform a particular job are relevant only when the job is first found to qualify as a specialty occupation. USCIS is required instead to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether a beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. at 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].").

Second, in promulgating the H-1B regulations, the former INS made clear that the definition of the term "specialty occupation" could not be expanded "to include those occupations which did not require a bachelor's degree in the specific specialty." 56 Fed. Reg. 61,111, 61,112 (Dec. 2, 1991) (to be codified at 8 C.F.R. pt. 214). More specifically, in responding to comments that "the definition of specialty occupation was too severe and would exclude certain occupations from classification as specialty occupations," the former INS stated that "[t]he definition of specialty occupation contained in the statute contains this requirement [for a bachelor's degree in the specific specialty or its equivalent]" and, therefore, "may not be amended in the final rule." *Id.*

In any event, the Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Tapis*.¹⁰ We also note that, in contrast to the broad precedential authority

¹⁰ 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

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 of law. *Id.* at 719.

In the appeal, the Petitioner also cites to a recent district court case, *Raj and Co. v. USCIS*, 85 F.Supp.3d 1241(W.D. Wash. 2015) and states that "requiring specifically tailored degree programs defies the plain language of the [INA]."¹¹ 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.¹² Again, we agree with the court that a specialty occupation is one that 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).

III. BENEFICIARY'S QUALIFICATIONS

The Director also found that the Beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. However, a beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the proffered position does not require a baccalaureate or higher degree in a specific specialty, or its equivalent. Therefore, we need not and will not address the Beneficiary's qualifications further, except to note that due to inconsistencies

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.

¹¹ 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 a paralegal, the positions are not similar.

¹² 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 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.

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present in the evaluations of the Beneficiary's foreign degrees and we find that they not credible evidence.

For example, the March 2, 2004, evaluation states that, based on a Duplicate Mark Sheet from [REDACTED] the Beneficiary had passed the Master of Arts II English Examination, and that this accomplishment is equivalent to one year of university-level credit from an accredited college or university in the United States. However, the July 23, 2010, evaluation states, in contrast to the March 2, 2004 evaluation, that based on a Duplicate Mark Sheet from [REDACTED] the Beneficiary had passed the Master of Arts II English Examination in 2001, and that this accomplishment is equivalent to a master's degree in English from an accredited college or university in the United States. Notably, the record does not contain documentary evidence from [REDACTED]

This evaluation also states that it relies on the transcript of credits from [REDACTED] from 1986 to 1989 to find that the Beneficiary has equivalent of three years of college-level credit. However, the transcript reflects grades from 1986 to 1990, and the Beneficiary appears to have received a degree in 1990. "[I]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence." *Matter of Ho*, 19 I&N Dec. at 591. 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.

Moreover, the Petitioner also has not provided evidence that combination of the Beneficiary's education and work experience establish that the Beneficiary possesses the equivalent of a U.S. bachelor's degree in any specific specialty. Therefore, since evidence was not presented that the Beneficiary has at least a U.S. bachelor's degree in a specific specialty, or its equivalent, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

IV. 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 T-K-I-F-, LLC*, ID# 14870 (AAO Jan. 12, 2016)