



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

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

MATTER OF W-L-O-, PLLC

DATE: MAR. 21, 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 law clerk 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, Vermont 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 concluding that the proffered position is not a specialty occupation. Upon *de novo* review, we will dismiss the appeal.

**I. 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:

*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*

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*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 law firm established in [REDACTED] with eight employees and a gross annual income of \$962,000. In its undated support letter submitted with the petition, the Petitioner stated that the Beneficiary will perform the following duties as a law clerk (with percentages) as follows:

[A]s a law clerk, [the Beneficiary] will assist lawyers by researching (20% of work), [p]reparing legal documents (20% of work), meet with clients and communicate in Chinese language (30% of work), assist lawyers in court (20% of work), and informing lawyers about relevant laws in China, (10% of work).

The Petitioner also stated that “[t]he position requires a master degree of law, one-year law clerk working experience.”

As stated in the H Classification Supplement to Form I-129, Petition for a Nonimmigrant Worker, the Beneficiary would: “[a]ssist lawyers by researching and preparing legal documents. Meet with clients and assist lawyers in court. Informing lawyers about relevant Chinese law.”

The Petitioner also submitted a labor condition application (LCA) in support of the instant petition. The Petitioner stated that the proffered position corresponds to the occupational category “Paralegals and Legal Assistants” with SOC (ONET/OES) code 23-2011, at a Level I (entry level) wage.

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In response to the Director's request for additional evidence (RFE), the Petitioner submitted an affidavit that includes the following statements in pertinent part:

[M]y law firm is certified to represent clients before the International Trade Court and practice International law. 98% of my clients are Chinese and Chinese international companies. Some of our cases are involved in International Trade dispute and requires a paralegal to prepare legal documents for Court of International Trade. To be a paralegal involved in these specific cases, which is the position offered to [the Beneficiary], the paralegal needs to have had advanced knowledge on comparative law and International law procedure. A bachelor degree is a minimum for this position. . . .

[A]s my law firm is located in the [REDACTED] like other firms in this area, we only hire paralegals with bachelor's degrees in any field or a higher degree.

[T]he nature of the position offered to the [Beneficiary] is to hold training sessions for all other personnel in the company, including attorneys. This duty not only requires deep understanding and knowledge of law, but also requires familiarity with my company's practices and procedures. I believe only [the Beneficiary] has the ability and experience to handle this unique nature of the duty of a paralegal at my firm.

[M]y company is preparing to open up a branch office in China. [The Beneficiary], with his: Bachelor of law degree in China, Master of law degree in global legal studies, and his fluency in Mandarin language; will be uniquely able to handle the application process for my branch office. He will also communicate with foreign counterparts in [REDACTED] Office.

On appeal, the Petitioner states the following:

[t]he work is also more complex and unique than other paralegal work in that it not only requires paralegal training in the US legal system, but also requires foreign legal training in order to assist in preparation for SEC and foreign regulatory inspections and inquir[ies]. Paralegal [will] deal with corporate vendors, research vendor and production and product licensing compliance with international standard and rules, and participate in litigation case strategy by providing specialty in foreign law and regulations. Paralegals must have knowledge of International business law, like FOA buyer and seller in international business trade cases. The beneficiary would be involved in all aspects of the research, drafting, and compilation of legal motion and briefs, and ultimately file them with the Court, which itself requires knowledge and training of the CM/ECF federal system. The position also involves legal training of other employees in the company, which requires extensive understanding of law and more specifically, International trade law and foreign law. . . .

### C. Analysis

In its affidavit dated May 7, 2015, the Petitioner stated that “like other firms in this area, we only hire paralegals with bachelor’s degrees in any field or a higher degree.” However, the Petitioner’s claim that a bachelor’s degree is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation.

A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. There must be a close correlation between the required specialized studies and the position; thus, the mere requirement of a degree, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm’r 1988) (“The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility.”). Thus, while a general-purpose bachelor’s degree may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. The Petitioner’s assertion that its minimum requirement for the proffered position is only a bachelor’s degree, without further requiring that that degree be in any specific specialty, 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.

Additionally, we find that the record of proceeding contains conflicting information regarding the specific nature of the job duties to be performed by the Beneficiary. When determining whether a position is a specialty occupation, we must look at the description of the specific duties of the position. To ascertain the intent of a petitioner, we look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that we can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the Director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that “[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation.”

For H-1B approval, the Petitioner must demonstrate a legitimate need for an employee to exist and to substantiate that it has H-1B caliber work for the Beneficiary for the period of employment requested in the petition. It is incumbent upon the Petitioner to demonstrate it has sufficient work to require the services of a person with at least a bachelor’s degree in a specific specialty, or its equivalent, to perform duties at a level that requires the theoretical and practical application of at least a bachelor’s degree level of a body of highly specialized knowledge in a specific specialty for the period specified in the petition.

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The Petitioner contends that the duties of the proffered position entails are more specialized than those generally performed by paralegals due to the Petitioner's status as a boutique law firm specializing in international trade law, the Petitioner's plans to open a branch office in China, and the Petitioner's plans for the Beneficiary train members of its staff, including attorneys and other paralegals. However, we find that although the Petitioner may be engaged in international trade law as one of its activities, the record of proceeding lacks sufficient, consistent and credible documentation regarding the actual work that the Beneficiary will perform to substantiate the claim that the Petitioner has H-1B caliber work for the Beneficiary for the period of employment requested in the petition.

For example, when the Petitioner initially submitted the petition, the stated minimum job requirements – a master's degree in law combined with one year of clerking experience – made no reference to knowledge, skills, or experience in international trade law. Nor was experience in international trade law required. However, the Petitioner expanded the Beneficiary's duties in response to the RFE by claiming that the Beneficiary would prepare legal documents for the Court of International Trade, and that consequently he “needs to have had advanced knowledge on comparative law and International law procedure” and that “[b]ecause [the Beneficiary] has a Master of Law degree, he has extensive knowledge in the area of law the firm practices, specifically, international trade law.”

Moreover, despite its statement that the Beneficiary would be “the paralegal” preparing documents for the [REDACTED] the Petitioner asserts on appeal that “[c]ontrary to the USCIS’ decision, the offered position is ‘law clerk’, not paralegal” and that “the law clerk/paralegal position is a specialty occupation because the position requires the beneficiary to perform duties normally performed by licensed lawyers.” The Petitioner also states on appeal that “[t]he beneficiary would be involved in all aspects of the research, drafting, and compilation of legal motion and briefs, and ultimately file them with the Court . . . .”

As the Petitioner first stated that the Beneficiary would work as a paralegal and then later stated that he would work as a law clerk, which are two distinct positions, we find the Petitioner's assertions inconsistent, and that this inconsistency undermines the probative value of the Petitioner's claims regarding both the services the Beneficiary will perform and the actual nature and requirements of the proffered position.<sup>1</sup> When a petition includes numerous discrepancies, those inconsistencies raise concerns regarding the veracity of the Petitioner's assertions.

Moreover, we note inconsistencies in the record with respect to the Petitioner's minimum hiring requirements. For example, although the Petitioner initially required a Master of Law degree combined with a year of work experience, the Petitioner later stated that a bachelor's degree in a

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<sup>1</sup> If the Petitioner intends for the Beneficiary to engage in duties that would normally be performed by a licensed attorney, which some of the proposed duties seem to mirror, then the petition would also have to be denied because the Beneficiary would not be qualified to perform such duties, and because the LCA does not correspond to the petition in that it was certified for a position located within the paralegals and legal assistants occupational category.

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non-specific field would suffice. The Petitioner also submitted a copy of an advertisement for the proffered position which similarly stated a requirement for a bachelor's degree, but did not require that the degree come from a specific specialty.<sup>2</sup>

Because of the discrepancies discussed above, we cannot determine the nature and scope of the Beneficiary's employment. The record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position qualifies as a specialty occupation. Therefore, we cannot determine that description of the proffered position communicates: (1) the actual work that the Beneficiary would perform; (2) the complexity, uniqueness and/or specialization of the tasks; and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty. "[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.

The inability to establish the substantive nature of the work to be performed by the Beneficiary consequently precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines: (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4. Accordingly, as the Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation. The petition, therefore, cannot be approved.

However, in order to afford the Petitioner a thorough decision we will nonetheless analyze the proffered position under the specialty occupation criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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<sup>2</sup> We also note that the Beneficiary's transcript for his Masters of Law degree at [REDACTED] appears to have included only one course related to international trade law – namely, international arbitration law - and, notably, this is the one graded course he took in which he earned a lower grade (satisfactory) than the rest of his Masters of Law degree coursework (in which he received honors). The Beneficiary's transcript for the Masters of Law degree does not appear to include any comparative law courses. Therefore, if, as the Petitioner claims, the proffered position requires advanced knowledge on comparative law and international law procedure as well as extensive knowledge in international trade law as part of coursework towards the qualifying U.S. (or equivalent) degree in law, it does not appear that the Beneficiary meets the minimum requirements for the position.

*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.<sup>3</sup> As noted, the Petitioner submitted an LCA certified for a job prospect located within the "Paralegals and Legal Assistants" occupational category. The *Handbook* states the following about the educational requirements of positions located within this occupational category:

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.

U.S. Dep't 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 Mar. 18, 2016).

The *Handbook* makes clear that paralegal and legal assistant positions do not normally require a minimum of a bachelor's degree in a specific specialty or its equivalent. It indicates that some such positions are available to people with only an associate's degree. It further indicates that some such positions that may require a bachelor's degree do not require that the degree must be in a specific specialty.

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<sup>3</sup> 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.

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In certain instances, the *Handbook* is not determinative. When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the Petitioner to provide persuasive evidence that the proffered position more likely than not satisfies this or one of the other three criteria, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the Petitioner's responsibility to provide probative evidence (e.g., documentation from other objective, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation.

For example, the Petitioner submitted an article entitled [REDACTED]. However, this article does not indicate that a bachelor's degree in a specific specialty, or its equivalent is normally required for entry into positions located within the occupational category designated by the Petitioner. For example, while the article 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 the person's individual goals." We also note that the author of this article does not specify any studies, surveys, industry publications, or relevant empirical-data resource for its pronouncements about educational requirements. Therefore, we do not regard this article as authoritative.

Nor do the materials from DOL's Occupational Information Network (O\*NET) establish that the proffered position qualifies as a specialty occupation under this criterion. O\*NET is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a requirement for a given position, as O\*NET's JobZone designations make no mention of the specific field of study from which a degree must come. As was noted previously, we interpret 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. The Specialized Vocational Preparation (SVP) rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. For all of these reasons, the O\*NET excerpt submitted by the Petitioner is of little evidentiary value to the issue presented on appeal.

The occupational category designated by a petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and we regularly review the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. However, to satisfy the first criterion, 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. That is, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title or designated occupational category. 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 Beneficiary, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384.

In this case, 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 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.

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)).

Here and as already discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative source) reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions indicating that any professional association of paralegal and legal assistants 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, and find that they do 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 18 advertisements, which were placed primarily by large law firms and companies, all state a requirement for a bachelor's degree, but not one of them requires a bachelor's degree in a *specific*

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*specialty*, or the equivalent. As discussed previously, requiring a general bachelor's degree, without more, does not establish that the proffered position is a specialty occupation.

The only advertisement that specifies any particular field is the one placed by [REDACTED] which states a requirement for either a bachelor's degree in fine arts or liberal arts, or a master's degree in theater administration with experience in the entertainment industry. We note first that this is not the same requirement specified by the Petitioner for the proffered position. Further, the requirement for a bachelor's degree in liberal arts is inadequate to establish that a position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as liberal arts, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988). To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained 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 may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

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.<sup>4</sup> 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

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<sup>4</sup> 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.

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*

The record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that “an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree.” To begin with and as discussed previously, the record does not credibly demonstrate exactly what the Beneficiary will do on a day-to-day basis such that complexity or uniqueness can even be determined. A full analysis of job duties in relation to the requirements of this alternative prong is therefore not possible.

That said, we do note that the LCA submitted by the Petitioner indicates a wage level at a Level I (entry) wage, which is the lowest of four assignable wage levels.<sup>5</sup> Without further evidence, the record of proceeding does not indicate that the proffered position is complex or unique as such a position falling under this occupational category would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage.<sup>6</sup> For example, a Level IV (fully competent) position is designated by DOL for

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<sup>5</sup> The wage levels are defined in DOL’s “Prevailing Wage Determination Policy Guidance.” A Level I wage rate is described as follows:

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

U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

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

<sup>6</sup> The issue here is that the Petitioner’s designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), an entry-level position would still require a minimum of a bachelor’s degree in a specific specialty, or its equivalent, for

employees who “use advanced skills and diversified knowledge to solve unusual and complex problems.”<sup>7</sup> The evidence of record does not establish that this position is significantly different from other positions in the occupational category such that it refutes the *Handbook’s* information that a bachelor’s degree in a specific specialty or its equivalent is not required for the proffered position.

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 review the Petitioner’s past recruiting and hiring practices, as well as information regarding employees who previously held the position, and any other documentation submitted by the Petitioner in support of this criterion of the regulations.

To merit approval of the petition under this criterion, the record must establish that a petitioner’s imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. While a petitioner may assert that a proffered position requires a specific degree, that statement alone without corroborating evidence cannot establish the position as a specialty occupation. Were we limited solely to reviewing a petitioner’s claimed self-imposed requirements, then any individual with a bachelor’s degree could be brought to the United States to perform any occupation as long as the Petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner’s stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent, to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term “specialty occupation”).

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. We must examine the actual

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entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor’s degree in a specific specialty or its equivalent. That is, a position’s wage level designation may be a consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

<sup>7</sup> For additional information regarding wage levels as defined by DOL, see U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.flcdatacenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf).

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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 as the minimum for entry into the occupation as required by the Act.

In response to the RFE, the Petitioner provided a list of its prior paralegals who have a wide range of degrees. While one of the prior paralegals holds a master of law degree, the Petitioner's other prior paralegals hold the following degrees: master's in modern European studies with a concentration in EU history, law and international affairs; master of accounting; bachelor of science in human development; bachelor of arts in accounting and information systems; bachelor's in economics; and bachelor's in legal environment and enterprise. Further, the Petitioner submitted a copy of its advertisement for the proffered position, which stated simply that the person filling the position "[m]ust have a bachelor's or higher degree. Must have taken legal course work." Even if the Petitioner were able to demonstrate that all of its paralegals perform the same duties as the ones for the proffered position, which it did not, we note that the Petitioner appears to accept a wide range of bachelor's degrees, master's degrees, and experience for its paralegal positions, which lends additional support to our observation that the Petitioner appears to find acceptable a wide spectrum of bachelor's degrees rather than one in a specific specialty. We hereby incorporate the prior discussion that the requirement of a general bachelor's degree, without more, does not establish that the proffered position is a specialty occupation.

With regard to the single prior paralegal employed by the Petitioner who purportedly held the same degree as the one offered to the Beneficiary, the Petitioner stated as follows:

[I]n 2009, my company filed an H-1B petition for [REDACTED] to work as a Paralegal at my firm. USCIS approved the petition and held that the Paralegal position at my firm was a specialty occupation that required, at minimum, a Bachelor's degree in any field. At the same time, USCIS determined that [REDACTED] who held a Master of Law degree, qualified for that specialty occupation. [REDACTED] background was the same as [the Beneficiary's] background. [The Beneficiary] also holds a Masters of Law degree. Also [the Beneficiary] is being offered the same position as [REDACTED] specifically for International Trade cases in the firm. Therefore, I urge USCIS to be consistent and approve my H-1B petition for [the Beneficiary].

The Petitioner has not included a copy of the petition it filed on behalf of [REDACTED]. However, we take administrative notice of USCIS records, which indicate that the approval of that petition was revoked on January 4, 2010. While we do not know the reason behind the revocation, the fact that the petition was revoked does not support the Petitioner's claim that we should approve the present petition based on a previously approved petition. Further, if a petitioner wishes to have USCIS prior

decisions considered, the Petitioner is permitted to submit copies of such evidence that it either obtained itself and/or received in response to a Freedom of Information Act request filed in accordance with the applicable regulations. Otherwise, “[t]he non-existence or other unavailability of required evidence creates a presumption of ineligibility.” 8 C.F.R. § 103.2(b)(2)(i).

For all of these reasons, the Petitioner has not satisfied 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 for the reasons discussed previously.

We further incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a Level I position (the lowest of four assignable wage-levels) relative to others within the occupational category. Without more, the position is one not likely distinguishable by relatively specialized and complex duties. That is, without further evidence, the Petitioner has not demonstrated that its proffered position is one with specialized and complex duties as such a position falling under this occupational category would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a substantially higher prevailing wage.

Finally, we do not find the unpublished AAO decisions cited by the Petitioner persuasive. The Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. 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.

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.<sup>8</sup>

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<sup>8</sup> 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.

## II. CONCLUSION AND ORDER

As set forth above, we agree with the Director's determination that the proffered position is not a specialty occupation. Accordingly, the appeal will be dismissed and the petition denied.

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) (citing *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966)). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of W-L-O-, PLLC*, ID# 15965 (AAO Mar. 21, 2016)