



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

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

In Re: 8428091

Date: JULY 17, 2020

Appeal of California Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (H-1B)

The Petitioner, a talent and literary agency, seeks to extend the Beneficiary's temporary employment as a "talent agent" under the H-1B nonimmigrant classification for specialty occupations. Immigration and Nationality Act (the Act) section 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 of the California Service Center denied the petition, concluding that the record did not establish that the proffered position qualifies as a specialty occupation. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.<sup>1</sup> We review the questions in this matter *de novo*.<sup>2</sup> Upon *de novo* review, we will dismiss the appeal.

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

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<sup>1</sup> Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

<sup>2</sup> See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

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

8 C.F.R. § 214.2(h)(4)(iii)(A). We construe the term “degree” to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

## II. ANALYSIS

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

The Petitioner stated that the Beneficiary will be employed as a “talent agent” and provided a job description that consisted of ten bullet points. In response to the Director’s request for evidence (RFE) and on appeal, the Petitioner provided additional descriptions in paragraph form.<sup>3</sup>

### A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category “Agents and Business Managers of Artists, Performers, and Athletes” corresponding to the Standard Occupational Classification code 13-

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<sup>3</sup> The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

1011.<sup>4</sup> We generally consider the information contained in the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* regarding the duties and educational requirements of the wide variety of occupations it addresses,<sup>5</sup> however, there are occupational categories which the *Handbook* does not cover in detail, and instead provides only summary data.<sup>6</sup> The subchapter of the *Handbook* titled "Data for Occupations Not Covered in Detail" states, in relevant part, that the "[t]ypical entry-level education" for a variety of occupations within the category of "[b]usiness and financial operations occupations" is a "Bachelor's degree," without indicating that the bachelor's degree must be in a specific specialty.<sup>7</sup> Thus, the *Handbook* is not probative in establishing that these positions comprise an occupational group for which the normal minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent.

The Petitioner also references the DOL's O\*NET summary report for "Agents and Business Managers of Artists, Performers, and Athletes." The O\*NET Summary Report does not establish that a bachelor's degree *in a specific specialty*, or the equivalent, is normally required. It provides general information regarding the occupation, but it does not support a conclusion that the proffered position requires a bachelor's degree in a specific specialty, or the equivalent.

Instead, O\*NET assigns these positions a "Job Zone Four" rating, which states "most of these occupations require a four-year bachelor's degree, but some do not." Moreover, the Job Zone Four designation does not indicate that any academic credentials for Job Zone Four occupations must be directly related to the duties performed. In addition, the specialized vocational preparation (SVP) rating designates this occupation as  $7 < 8$ . An SVP rating of 7 to less than (" $<$ ") 8 indicates that the occupation requires "over 2 years up to and including 4 years" of training. While the SVP rating indicates the total number of years of vocational preparation required for a particular position, it is important to note that it does not describe how those years are to be divided among training, experience, and formal education. The SVP rating also does not specify the particular type of degree, if any, that a position would require.<sup>8</sup> Further, although the summary reports provide the educational requirements of "respondents," it does not account for 100% of the "respondents." Moreover, the respondents' positions within the occupation are not distinguished by career level (e.g., entry-level, mid-level, senior-level). Finally, the graph in the summary report does not indicate that the "education level" for the respondents must be in a specific specialty. For all of these reasons, O\*NET does not establish the proffered position as a specialty occupation.

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<sup>4</sup> A petitioner submits the LCA to DOL to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the area of employment or the actual wage paid by the employer to other employees with similar duties, experience, and qualifications. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

<sup>5</sup> We do not maintain that the *Handbook* is the exclusive source of relevant information.

<sup>6</sup> Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Data for Occupations Not Covered in Detail, "Business and financial operations occupations," <https://www.bls.gov/ooh/about/data-for-occupations-not-covered-in-detail.htm#Management%20occupations> (last visited Jul. 16, 2020). Here, the *Handbook* does not provide specific information for the various occupations which might be classified within the occupational category.

<sup>7</sup> The *Handbook* also indicates that this occupation does not require typical on-the-job training. *Id.*

<sup>8</sup> For additional information, see the O\*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

The Petitioner references information contained at CareerOneStop.com in support of its arguments, however this resource does not state that a minimum of a bachelor's degree in a specific field is required.<sup>9</sup> While, the site states that individuals in positions within this occupational category "usually" have a bachelor's degree, it does not state that this degree is required, nor does it state that the bachelor's degree must be in a specific specialty. Instead, the site lists possible programs that can prepare a person for such an occupation, but it does not indicate that the programs comprise an exhaustive or exclusive list or that such programs are required in order to enter the occupation. The Occupation Profile lists degree "[p]rograms that can prepare you" for these types of positions. However, the H-1B statute uses the word *requires*, not the phrase *can prepare*: "the term 'specialty occupation' means an occupation that requires...."<sup>10</sup> The terms are not interchangeable. To analogize, a medical degree *can prepare* someone to teach a middle school biology course, but that does not mean the degree was *required*. CareerOneStop specifically states that "these are not requirements for entering this field, but the information can help you understand how qualified you might be." If CareerOneStop is not even *intended* to address "the requirements for entering this field," then by virtue of its own self-limiting language, CareerOneStop would seem irrelevant to the question at hand.

Moreover, we reviewed the survey data contained in the site and conclude that, similar to O\*NET, the respondents' positions within the occupation are not distinguished by career level (e.g., entry-level, mid-level, senior-level), which is relevant in determining the requirements to enter into the occupation. Furthermore, the graph and percentages do not indicate that the "education level" for the respondents must be in a specific specialty. Therefore, CareerOneStop does not establish the proffered position as a specialty occupation.

Also in support of its arguments, the Petitioner cites to various court opinions. Initially, we note that in contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decisions of a United States district courts in matters arising even within the same district.<sup>11</sup> 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.<sup>12</sup>

The Petitioner cites to *RELX, Inc. v. Baran*<sup>13</sup> to support its argument that a position may be specialized even when the position permits more than one specific specialty for entry into it. As the foregoing discussion demonstrates, while we agree that the bachelor's degree does not have to be a degree in a single specific specialty, we do not agree with the analytical framework set forth by the *RELX* court.

In *RELX*, the court did not address the statutory and regulatory provisions as they pertain to the requirement that the bachelor's degree, or its equivalent, be in a *specific specialty*. To avoid restricting the qualifying occupations to those for which a single, specific specialty exists, the court did not consider the requirement for specialization and overlooked that neither the *Handbook* nor O\*NET

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<sup>9</sup> CareerOneStop for the occupational category of "Agents and Business Managers of Artists, Performers, and Athletes" can be accessed at <https://www.careeronestop.org/site-search.aspx?keyword=talent%20agent> (last visited Jul. 16, 2020).

<sup>10</sup> INA § 214(i)(1)

<sup>11</sup> See *Matter of K-S-*, 20 I&N Dec. 715, 719-20 (BIA 1993).

<sup>12</sup> *Id.*

<sup>13</sup> *RELX, Inc. v. Baran*, 397 F.Supp.3d 41 (D.D.C. Aug. 5, 2019).

stated that for the occupational category in question the referenced bachelor's degree must be in a specific specialty. In overlooking this relevant detail, the court disposed of the precedential authority created by *Royal Siam Corp. v. Chertoff*<sup>14</sup> and continued to do so when it examined the evidence presented for the other criteria. As such, we disagree with its conclusion that the petitioner in the RELX case had sufficiently shown that its particular position was one in which a bachelor's degree in a specific specialty is required.

We also disagree with the court's statement that "[the Petitioner] did not just make a general reference to O\*NET. Rather, [the Petitioner] stated that the Data Analyst position is aligned with the DOL's 'Business Intelligence Analyst' position for which there is a detailed description that is directly relevant to the inquiry of whether the position is specialized."<sup>15</sup> While we agree that O\*NET is relevant, the court's treatment of O\*NET as dispositive simply because the proffered position aligned with the occupational category disregards the *specific specialty* analysis that underpins *Royal Siam Corp.* The RELX court further stated that "[s]ince the [*Handbook*] indeed does provide specific detailed information regarding educational requirements for the computer operations category, and the detailed information states most of the occupations require a four-year bachelor's degree, the agency's rationale was both factually inaccurate and not supported by the record."<sup>16</sup> Here, again the court did not undertake the proper inquiry regarding the specific educational requirements of the position and instead regards a general requirement for a bachelor's degree as sufficient to discharge the petitioner's burden.

As is the case here, because the *Handbook* and O\*NET do not describe the normal minimum educational requirements with sufficient specificity to establish that the positions falling within the occupational category are specialized, a petitioner cannot rely on them to establish eligibility. As such, a petitioner must show that its particular position is one for which a bachelor's degree is normally required, as well as how the stated field(s) of study directly relate to the performance of the duties. In other words, though we agree that the bachelor's degree does not have to be a degree in a single specific specialty, this agreement is predicated upon the fields of study being closely related to the duties of the position and a petitioner providing sufficient evidence of such relation. Here, as discussed throughout this decision, the record does not sufficiently establish the duties and requirements for the proffered position, which undermines the Petitioner's claims regarding the minimum qualifications for entry into the particular position.<sup>17</sup>

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a

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<sup>14</sup> *Royal Siam Corp.*, 484 F.3d 139 at 147 (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position").

<sup>15</sup> *RELX, Inc.*, 397 F.Supp.3d at 54.

<sup>16</sup> *Id.*

<sup>17</sup> The record must establish that a petitioner's stated degree requirement is not a matter of preference for high-caliber candidates but is necessitated instead by performance requirements of the position. See *Defensor*, 201 F.3d at 387-88. Were we limited solely to reviewing a petitioner's claimed self-imposed requirements, an organization could bring any individual with a bachelor's degree to the United States to perform any occupation as long as the petitioning entity created a token degree requirement. *Id.*

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 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.<sup>18</sup> For the foregoing reasons, we cannot agree with the reasoning contained in the *RELX* decision<sup>19</sup> and therefore conclude that the Petitioner’s reliance upon the case does not support its eligibility.<sup>20</sup>

As previously discussed with regard to the instant case, the *Handbook* does not individually address the various positions within the occupational category and only generally states that the typical entry-level education is a bachelor’s degree. Likewise, O\*NET simply states “[m]ost of these occupations require a four-year bachelor’s degree, but some do not.” Neither source specifies whether the various occupations within that category require the referenced bachelor’s degree to be in a *specific specialty*.

On appeal, the Petitioner cites to a district court case, *Raj and Co. v. USCIS*,<sup>21</sup> and claims that it is relevant here. We reviewed the decision; however, the Petitioner has not established that the duties and responsibilities, level of judgment, complexity, supervisory duties, independent judgment, or amount of supervision in that case are analogous to the position proffered here.<sup>22</sup> There is little indication that the positions are similar.

Further, 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 the agency’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.<sup>23</sup>

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<sup>18</sup> Section 214(i)(1)(B) of the Act (emphasis added).

<sup>19</sup> The Petitioner also cited to *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012) and *Tapis Int’l v. Immigration and Naturalization Service*, 94 F. Supp. 2d 172 (D. Mass. 2000) for the proposition that “there is no apparent requirement that the specialized study needed be in a single academic discipline...The knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation specific majors.” As the Petitioner cited these cases for reasons similar to that for which it cites to *RELX*, we incorporate herein by reference our discussion of closely related specialties as it pertains to our analysis of the *RELX* case.

<sup>20</sup> We further note that the Director’s decision in *RELX* was not appealed to us. Based on the district court’s findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision to address many of the concerns articulated by the district court if they could not have been remedied by us in our *de novo* review of the matter.

<sup>21</sup> *Raj and Co. v. USCIS*, 85 F. Supp. 3d 1241 (W.D. Wash. 2015).

<sup>22</sup> We note that the Director’s decision was also not appealed to our office. 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 in our *de novo* review of the matter.

<sup>23</sup> 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

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.

Consequently, if the court meant to suggest that any position classified under the occupational category “Market Research Analysts” would, as it stated, “come within the first qualifying criteria” – we must disagree.<sup>24</sup> The occupational category designated by a petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. 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.<sup>25</sup>

Nevertheless, it is important to note that the court in *Raj* determined that the evidence in the record demonstrated that the particular position proffered required a bachelor’s degree in market research or its equivalent as a minimum for entry. Further, the court noted that “[t]he patently specialized nature of the position sets it apart from those that merely require a generic degree.” The position in *Raj* can, therefore, be distinguished from the instant position. Here, the duties and requirements of the position as described in the record of proceeding do not indicate that this particular position proffered by the petitioner is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

## B. Second Criterion

The second criterion presents two, alternative prongs: “The degree requirement is common to the industry in parallel positions among similar organizations *or, in the alternative*, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with

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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).

<sup>24</sup> In *Raj*, the court quoted a brief excerpt from the *Handbook*; however, the quotation is from the 2012-2013 edition rather than the current 2014-2015 edition (which contains several revisions). Further, we observe that the court did not address the section of the *Handbook* indicating that there are no specific degree requirements to obtain the Professional Researcher Certification credential – and therefore to work as a market research analyst.

<sup>25</sup> See generally *Defensor*, 201 F.3d 384.

a degree[.]” 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong contemplates common industry practice, while the alternative prong narrows its focus to the Petitioner’s specific position.

### 1. First Prong

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

We generally consider the following sources of evidence to determine if there is such a common degree requirement: 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 establish that such firms “routinely employ and recruit only degreed individuals.”<sup>26</sup>

For our consideration under this prong, the Petitioner submitted job vacancy announcements, LinkedIn and IMDb profiles for positions with other companies, as well as letters from other companies attesting that they employ only degreed individuals for their talent agent positions. The Director’s decision provided a detailed explanation of why the job vacancy announcements and profile printouts did not establish an industry standard. On appeal, the Petitioner does not address any specific issues regarding the Director’s analysis of these vacancy announcements or profile printouts. Because the AAO generally does not address issues that are not raised with specificity on appeal and the Petitioner has not addressed any specific issues raised by the Director concerning the vacancy announcements or profile printouts, any issues concerning them are deemed to be waived.<sup>27</sup> The Petitioner *does* address specific issues concerning the Director’s analysis of the company letters from Claire Best & Associates, Verve Talent and Literary Agency, as well as Clear Talent Group. Therefore, we limit our discussion of this prong of the second criterion to these letters.

Each letter confirms that across talent agents as an industry and also among the talent agents in each of their own companies, there is standard for at least a bachelor’s degree in business, communications, or marketing.<sup>28</sup> Paradoxically, the Petitioner’s own stated required qualifications for its talent agent position differ from the requirements stated by the authors of these letters, thereby undermining the Petitioner’s claims of an industry standard. Furthermore, the statement that a general-purpose bachelor’s degree (business or business administration) would be sufficient to perform the duties of the talent agent position also undermines the Petitioner’s claims that positions in the occupational category are specialized.<sup>29</sup>

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<sup>26</sup> 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) (considering these “factors” to inform the commonality of a degree requirement)).

<sup>27</sup> See, e.g., *Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009). The courts’ view of issue waiver varies from circuit to circuit. See *Rizk v. Holder*, 629 F.3d 1083, 1091 n.3 (9th Cir. 2011) (finding that issues not raised in a brief are deemed waived); *Martinez-Serrano v. INS*, 94 F.3d 1256, 1259 (9th Cir. 1996) (finding that an issue referred to in an affected party’s statement of the case but not discussed in the body of the brief is deemed waived).

<sup>28</sup> The Claire Best & Associates letter specifically states “business administration,” while the other two state “business.”

<sup>29</sup> *Royal Siam Corp.*, 484 F.3d at 147 (a general-purpose bachelor’s degree in business may be a legitimate prerequisite for a particular position, but such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation). See also *Irish Help at Home LLC v. Melville*, No. 13-cv-00943-MEJ, 2015 WL 848977 (N.D. Cal., Feb. 24, 2015), *aff’d* 679 Fed. App’x 634 (9th Cir. 2017).



The claims made by the authors regarding the proffered position do not reflect a comprehensive knowledge of the specific duties of the proffered position. Though the authors state that their talent agent positions are similar to or “indistinguishable” from the proffered position, the information in the letters remains general and does not include a detailed examination of the proffered position’s specific duties. As the authors do not engage in a meaningful discussion of the duties of either their own talent agent positions or the proffered position, it cannot be concluded that a degree requirement is common to the industry in parallel positions among similar organizations.

For instance, the Claire Best letter states that their talent agents must “tap their network of promoters, PR managers, and industry executives to grow our clients’ careers.” While having marketing and promotion knowledge may be helpful to perform this duty, the letter does not explain why such knowledge would be required to perform this duty or why the knowledge could not be obtained through study in other academic areas or simply life experience in general. At face value, the duty does not appear to be closely related to a specific course of study learned in a bachelor’s degree program in a specific specialty. Instead, the duty appears to be largely personality driven, dependent upon an individual client’s needs or the people a talent agent knows.

Likewise, the Verve letter states that talent agents “must analyze industry trends, assess production compatibility, [and] negotiate contract terms and conditions” and that these skills cannot be achieved without university level training. In addition to not defining what “production compatibility” means in the talent agent context, the author fails to identify any course of study in the qualifying fields that relates to the performance of these duties. Further, the author does not explain or sufficiently support its claims that the ability to analyze industry trends, for example, can only be learned in a bachelor’s degree program in business, communications, or marketing.

In addition to this, the Verve letter provides no meaningful discussion concerning the actual activities of a talent agent, but rather makes vague and abstract claims such as, “our talent agent and equivalent positions require the successful performance of specialized and complex duties, translating cutting-edge ideas into concrete, viable realities.” The letter does not identify any specific work that might be characterized as a cutting-edge idea or any examples or definitions of “concrete, viable realities,” nor does the letter explain what duties are specialized and complex and why.

Similarly, the author of the Clear Talent Group letter merely lists duties and then declares the work to be complex, specialized, and unique, without providing adequate support for those assertions. We read that talent managers are “responsible for managing their clients’ business, financial, and legal affairs,” but the letter offers no specifics as to what day-to-day activities performance of this duty involves. Moreover, the author fails to connect how or why the ability to perform this duty would be learned in a bachelor’s degree program in, for example, communications, which it previously claimed was one of the qualifying fields of study.

While the authors may draw inferences that certain courses or knowledge obtained through a bachelor’s degree in communications, marketing, or business may be beneficial in performing certain duties of the position, we disagree with the collective inference that a specific degree is required in order to perform the duties of a position falling within this occupational category. None of the letters offer cogent analysis of how and why the specific duties require any specialized knowledge.

The similarity of the broad declarations made in the letters and the overall lack of analysis in how each author arrived at such conclusions suggests that the authors were asked to confirm preconceived notions about an industry standard. Furthermore, without corroborating evidence to establish an actual routine in hiring, general statements submitted at the behest of the Petitioner offer little probative value in establishing a routine in recruiting and employing only degreed individuals. While we will review the opinions presented, they have little value as they are unsupported by specific analysis of the duties and educational requirements that dictate the claimed industry standard.<sup>30</sup> We may, in our discretion, use opinion statements submitted by the Petitioner as advisory.<sup>31</sup> 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.<sup>32</sup>

The Petitioner has not provided sufficient probative evidence to establish that a bachelor's degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations. Thus, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

## 2. Second Prong

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

Upon review of the totality of the record, the Petitioner has not sufficiently explained or documented why the proffered position is so complex or unique that a bachelor's degree in a specific specialty is required. When determining whether a position is a specialty occupation, we also look at whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge attained through at least a baccalaureate degree in a specific discipline.

Though the Petitioner claims that the work is specialized due to the high-end or high-profile clientele with whom the Beneficiary works, the evidence contained in the record does not support this claim. First, merely working with high-profile clientele does not establish that the work itself is specialized. Second, though the Petitioner claims several well-known performers as part of its clientele, the evidence provided by the Petitioner does not indicate that the Beneficiary will be the talent agent for these named performers. Furthermore, when examining the Beneficiary's network, as submitted through the IMDb printouts, we observe many miscellaneous crew members and individuals working in costume and wardrobe. As production crew members do not generally attract household name recognition, the Petitioner then bears the burden of establishing how names such as [REDACTED], [REDACTED], or [REDACTED] would be considered high-profile clients. Without further information, these printouts alone do not establish how the Beneficiary works with high-profile or high-end clientele.

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<sup>30</sup> We hereby incorporate our discussion of these letters into our discussion of the other 8 C.F.R. § 214.2(h)(4)(iii)(A) criteria.

<sup>31</sup> *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988).

<sup>32</sup> *Id.*

In examining the work itself, the Petitioner has not explained how tasks such as (1) developing a client base by establishing communication with client company representatives; (2) providing advice to clients on how to stay within their budget; and (3) identifying sources of new talent in concert halls would require the theoretical and practical application of a body of highly specialized knowledge. Similarly, the Petitioner stated that the duties include hiring professional staff on behalf of clients; collecting fees, commissions, or other payments; and creating financial statements that list earnings and expenses. These duties appear to be administrative or clerical in nature and we question whether they require any specialized knowledge or skill. Furthermore, to the extent that we can ascertain what “helps increase profit through personal appearances” actually involves, we conclude that merely being physically present somewhere would not involve specialized knowledge. As described, it appears the Beneficiary will not be relieved of performing non-qualifying duties.

The Beneficiary’s work product samples also do not establish a unique or complex position. Much of the work product is comprised of contracts and template letters for which the Petitioner has not demonstrated the Beneficiary actually wrote in their entirety. Rather, it appears as though the documents contain boilerplate contractual terms which the Beneficiary modifies as needed to meet the needs of a particular client. Other documents include basic correspondence, personnel forms, and waivers. Simply filling in a name or wage into a contract, inserting terms onto a blank line, having a client complete a pre-prepared form, or itemizing a costume inventory do not appear to be activities so unique or complex that they require a bachelor’s degree in a specific specialty to perform.

Though the Petitioner states that these duties cannot be reliably carried out by someone without at least a bachelor’s degree in entertainment communications, entertainment management, or business management, we conclude that the Petitioner has not substantiated its claims with sufficient evidence. Accordingly, we conclude that the Petitioner has not shown that the position is so complex or unique that it can be performed only by an individual with at least a bachelor’s degree in a specific specialty, or its equivalent.

The Petitioner claims that the Beneficiary is well-qualified for the position and references her qualifications. However, the test to establish a position as a specialty occupation is not the education or experience of a particular beneficiary, but whether the position itself requires at least a bachelor’s degree in a specific specialty, or its equivalent. The Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position, and it did not identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. Accordingly, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

### C. Third Criterion

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor’s degree in a specific specialty, or its equivalent, for the position. To satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history.

The record must establish that a petitioner's stated degree requirement is not a matter of preference for high-caliber candidates but is necessitated instead by performance requirements of the position.<sup>33</sup> Were U.S. Citizenship and Immigration Services (USCIS) limited solely to reviewing the 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 created a token degree requirement.<sup>34</sup> Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner's past recruitment and hiring practices, as well as information regarding employees who previously held the position.

The Petitioner submitted a chart of individuals it claims are current or former talent agent employees, their job titles, their education levels, along with copies of educational records for some, but not all of them. We infer that the Petitioner wishes to demonstrate that its employees have specialized degrees. Based on the title of the position, many individuals appear to occupy or have occupied different roles than the proffered position. Further, some of the roles appear to be more senior than the proffered position, including VP of Literary Talent, Sr. VP of Physical Production, Partner, Business Affairs Executive, and VP of Comedy and Touring.

The record does not include a list of job duties performed by these employees or the job advertisements for their positions. Therefore, we do not know what the recruitment process for hiring these individuals involved or whether specialized degrees were prerequisites. We are also unable to discern whether these individuals have or had the same or similar substantive responsibilities, duties, and performance requirements as the proffered position. Though it has been in business since 1962, the Petitioner has not provided the total number of people it has employed in the past to serve in the proffered position.

We acknowledge the LinkedIn profiles of various individuals, but this information does not establish that the duties of the position require a particular degree. The Petitioner appears to accept a wide range of degrees, including theater arts, music, marketing and economics, communications, English literature, and business administration-government. As the Director noted, this range suggests that entry into the position does not require the attainment of a bachelor's or higher degree in a specific specialty. This mass grouping of degree-fields is simply too broad to support a finding that the proffered position meets the definition of a "specialty occupation."

On appeal, the Petitioner argues that these degrees are not disparate fields of study but that they are, "in fact, a combination of degrees either in an arts/entertainment discipline with work experience in business management or business communication, or the reverse – a combination of degrees in business management or business communication, coupled with work experience in arts or entertainment."<sup>35</sup> Even if we accept this explanation, the Petitioner has not established how a degree in English literature, for example, would meet any of the Petitioner's qualifying combinations.

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<sup>33</sup> See *Defensor*, 201 F.3d at 387-88.

<sup>34</sup> *Id.*

<sup>35</sup> This explanation appears to alter the Petitioner's previously articulated requirements for the position. The Petitioner previously stated that the position requires a bachelor's degree in "Entertainment Management, Entertainment Communications, Business Management, or a closely related discipline, together with prior professional experience in the entertainment industry." As articulated on appeal, the Petitioner states that it accepts business management or business communication experience also.

Furthermore, the Petitioner included “or a closely related discipline” to its original articulation of the minimum qualifications, which contemplates that other academic disciplines could qualify. Nevertheless, the Petitioner has not adequately explained how the various fields of theater arts, music, marketing and economics, communications, English literature, and business administration–government would be considered “a closely related discipline” to either each other; to the study of entertainment management, entertainment communications, or business management; or to the duties of the proffered position. The current record of proceedings does not establish how this wide and divergent range of degrees could form either a body of highly specialized knowledge or a specific specialty.<sup>36</sup>

Consequently, no determination can be made about the Petitioner’s normal recruiting and hiring practices for the proffered position when the submitted employment evidence covers employees with disparate degrees who occupy positions that have not been determined to be the same as or similar to the proffered one. The Petitioner has not persuasively established that it normally requires at least a bachelor’s degree in a specific specialty, or its equivalent, for the proffered position.

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

#### D. Fourth Criterion

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

Although some tasks may connote a requirement of familiarity with general business principles, including entertainment or arts industry knowledge, the record is insufficient to establish that the duties require anything more than a few basic courses and a broad educational background. While a few such courses may be beneficial in performing certain duties of the position, the Petitioner, who bears the burden of proof, has not demonstrated how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position.

For the same reasons we discussed under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), we conclude that the Petitioner has not established that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). We incorporate our earlier discussion and analysis on this matter.

Consequently, the Petitioner has not satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

### III. CONCLUSION

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation.

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<sup>36</sup> “A position that requires applicants to have any bachelor’s degree, or a bachelor’s degree in a large subset of fields, can hardly be considered specialized.” *Caremax, Inc. v. Holder*, 40 F.Supp.3d 1182, 1187-88 (N.D. Cal. 2014).

The appeal will be dismissed for the above stated reasons.<sup>37</sup> In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

**ORDER:** The appeal is dismissed.

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<sup>37</sup> We are not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be "absurd to suggest that [USCIS] or any agency must treat acknowledged errors as binding precedent." *Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987). A prior approval does not compel the approval of a subsequent petition or relieve the Petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act, 55 Fed. Reg. 2,606, 2,612 (Jan. 26, 1990) (to be codified at 8 C.F.R. pt. 214).

A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of eligibility for the benefit sought. See *Tex. A&M Univ. v. Upchurch*, 99 F. App'x 556 (5th Cir. 2004). Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of a beneficiary, we would not be bound to follow the contradictory decision of a service center. See *La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at \*3 (E.D. La. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001).