

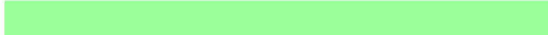



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 01 2014** OFFICE: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the Vermont Service Center on August 15, 2013. In the Form I-129 visa petition, the petitioner describes itself as a hotel hospitality business established in 1998. In order to employ the beneficiary in what it designates as management analyst position, the petitioner seeks to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on November 14, 2013, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements. Counsel submitted a brief and additional documents in support of this assertion.

The record of proceeding before us contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. We reviewed the record in its entirety before issuing its decision.¹

For the reasons that will be discussed below, we agree with the director that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

I. FACTUAL AND PROCEDURAL BACKGROUND

In this matter, the petitioner states in the Form I-129 petition that it seeks the beneficiary's services as a management analyst to work on a full-time basis at an annual salary of \$51,000. In a support letter dated July 2, 2013, the petitioner stated the following regarding the duties and requirements of the proffered position:

Job Duties

In this position, [the beneficiary's] specific duties will include: (i) analyzing procedures to devise most efficient methods of accomplishing company goals; (ii) studying financial planning, organizational change and cost analysis of the organization; (iii) gathering and organizing information on problems and procedures including present operating procedures; (iv) designing systems and procedures for work simplifications and measurement studies, and preparing operations and procedures manuals to assist management in operating more efficiently and effectively; (v) analyzing data gathered, develop information and proposes available

¹ We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

solutions for alternate methods of proceedings to management; (vi) organizing and documenting findings of studies and recommend to the management on implementation of new systems, procedural changes, and company goals; (vii) interacting with other managers and executives to assure the smooth functioning of newly implemented systems and procedures; (viii) preparing cost estimate reports to determine accurate and competitive pricing of products and services; (ix) producing and analyzing monthly budgets and activity reports; (x) reviewing market trends and competition in the insurance industry; and (xi) preparing reports and graphic illustrations of findings.

Minimum Job Requirements

Due to the complex and demanding requirements of the position of a Management Analyst, only a person of exceptional ability and skills in business administration is capable of qualifying as a Management Analyst for [the petitioner]. These minimum prerequisites for the offered position require a skilled professional with a Bachelor's degree in Business Administration, or a related field.

The petitioner indicated that the beneficiary is qualified to perform services in the proffered position by virtue of his foreign education and his employment experience, including employment with the petitioner in the proffered position since 2010. The petitioner provided an evaluation of the beneficiary's credentials prepared by the Center for Educational Research and Evaluation, which states that the beneficiary has attained the equivalent of a U.S. Bachelor of Science degree based on the beneficiary's education and work experience. In addition, the petitioner submitted copies of the beneficiary's foreign diploma and transcripts.

The petitioner provided a Labor Condition Application (LCA) in support of the instant H-1B petition. The LCA designation for the proffered position corresponds to the occupational classification "Management Analysts" - SOC (ONET/OES) code 13-1111, at a Level I (entry level) wage.

The director found the initial evidence insufficient to approve the petition, and issued an RFE on September 9, 2013. The director requested that the petitioner submit probative evidence to establish eligibility for the benefit sought and outlined the evidence to be submitted.

On October 31, 2013, counsel responded to the director's RFE by submitting a brief and the following additional documents:

- Federal tax returns for the petitioner for 2011 and 2012;
- Selected quarterly federal tax returns for 2011 and 2012;
- Copies of Form W-2, Wage and Tax Statements, issued by the petitioner for 2012;
- Corporate documents related to the petitioner;
- An operating license;
- Invoices issued by and to the petitioner;

- An excerpt from the U.S. Department of Labor's (DOL) Occupational Outlook Handbook's (Handbook) section on the occupational category "Management Analysts";
- A printout of the Occupational Information Network (O*NET) OnLine Summary Report for the occupation "Management Analysts";
- Copies of several job postings;
- Copies of previously submitted documents regarding the beneficiary's qualifications;
- Documents regarding the beneficiary's prior employment;
- A copy of what appears to be an Immigration and Naturalization Service (INS) memorandum dated November 1995;
- Notices regarding the beneficiary's prior visa approvals;
- The beneficiary's federal tax returns for 2011 and 2012; and
- Pay statements in the name of the beneficiary.

The director reviewed the information provided in the initial H-1B petition and in response to the RFE. Although the petitioner and counsel claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish eligibility for the benefit sought and denied the petition. Counsel for the petitioner submitted an appeal of the denial of the H-1B petition. In support of the appeal, counsel submitted a brief and additional evidence, including:

- An organizational chart for the petitioner;
- Position descriptions for four of the petitioner's employees;
- A letter from the petitioner; and
- Copies of previously submitted documents.

II. APPLICABLE LAW AND INTERPRETATIONS

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

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 also 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. Federal 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 & Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal*

Siam Corp. v. Chertoff, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens 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 alien, 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 nor 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.

III. MATERIAL FINDINGS

The issue here is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, we will make some preliminary findings that are material to the determination of the merits of this appeal.

A. Description of the Duties of the Proffered Position

To ascertain the intent of a petitioner, USCIS must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency 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."

Thus, a crucial aspect of this matter is whether the petitioner has adequately described the duties of the proffered position, such that USCIS may discern the nature of the position and whether the position requires both the theoretical and practical application of a body of highly specialized knowledge and the attainment of at least a baccalaureate degree in a specific discipline or its equivalent for entry into the occupation, as required by section 214(i)(1) of the Act. The petitioner has not done so.

In the instant case, the duties of the proffered position, as described by the petitioner in support of the Form I-129 petition have been stated in generic terms that fail to convey the actual tasks the beneficiary will perform on a day-to-day basis.² The duties as described by the petitioner consist substantially of duties taken directly from the O*NET OnLine Summary Report for the occupation "Management Analysts" and other online sources. The O*NET OnLine Summary Report for "Management Analysts" indicates that individuals in this occupation "[c]onduct organizational studies and evaluations, design systems and procedures, conduct work simplification and measurement studies, and prepare operations and procedures manuals to assist management in operating more efficiently and effectively." This report lists the following "tasks" as pertaining to this occupational category:

- Gather and organize information on problems or procedures.
- Analyze data gathered and develop solutions or alternative methods of proceeding.
- Confer with personnel concerned to ensure successful functioning of newly implemented systems or procedures.
- Develop and implement records management program for filing, protection, and retrieval of records, and assure compliance with program.
- Review forms and reports and confer with management and users about format, distribution, and purpose, and to identify problems and improvements.
- Interview personnel and conduct on-site observation to ascertain unit functions, work performed, and methods, equipment, and personnel used.
- Document findings of study and prepare recommendations for implementation of new systems, procedures, or organizational changes.
- Prepare manuals and train workers in use of new forms, reports, procedures or equipment, according to organizational policy.
- Design, evaluate, recommend, and approve changes of forms and reports.
- Plan study of work problems and procedures, such as organizational change, communications, information flow, integrated production methods, inventory control, or cost analysis.

U.S. Department of Labor, Employment & Training Administration, O*NET OnLine, 13-1111 – Management Analysts, on the Internet at <http://www.onetonline.org/link/summary/13-1111.00> (last visited July 31, 2014).

² In response to the RFE, counsel provided an expanded description of the duties of the proffered position and a breakdown of the percentage of the beneficiary's time to be spent on certain sets of duties. Counsel's brief was not endorsed by the petitioner and the record of proceeding does not indicate the source of the expended description of the duties and responsibilities that counsel attributes to the proffered position. We reviewed the information and note that without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The website [REDACTED] provides the following job description for a Management Analyst":

- 1) Analyzes business or operating procedures to devise most efficient methods of accomplishing work: Plans study of work problems and procedures, such as organizational change, communications, information flow, integrated production methods, inventory control, or cost analysis.
- 2) Gathers and organizes information on problem or procedures including present operating procedures.
- 3) Analyzes data gathered, develops information and considers available solutions or alternate methods of proceeding.
- 4) Organizes and documents findings of studies and prepares recommendations for implementation of new systems, procedures or organizational changes.
- 5) Confers with personnel concerned to assure smooth functioning of newly implemented systems or procedure.
- 6) May install new systems and train personnel in application.
- 7) May conduct operational effectiveness reviews to ensure functional or project systems are applied and functioning as designed.
- 8) May develop or update functional or operational manuals outlining established methods of performing work in accordance with organizational policy.

[REDACTED] Management Analysts, available on the Internet at [http://\[REDACTED\]](http://[REDACTED]) (last visited July 31, 2014).

Providing job duties for a proffered position from O*NET or other Internet sources is generally not sufficient for establishing H-1B eligibility. That is, while this type of description may be appropriate when defining the range of duties that may be performed within an occupational category, it cannot be relied upon by a petitioner when discussing the duties attached to specific employment for H-1B approval as this type of generic description fails to adequately convey the substantive work that the beneficiary will perform for the petitioner on a day-to-day basis. In establishing a position as qualifying as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary *in the context of the petitioner's business operations*, demonstrate that a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition.

The generically described duties do not make sufficient reference to the petitioner's specific business operations such that we may ascertain the daily tasks that the beneficiary is expected to perform. To the extent that they are described, the proposed duties do not provide a sufficient factual basis for conveying the substantive matters that would engage the beneficiary in the performance of the

proffered position for the entire period requested. Moreover, the job descriptions in the record of proceeding fail to communicate (1) the actual work that the beneficiary would perform on a day-to-day basis; (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 or its equivalent. The petitioner's assertion with regard to the educational requirements for the position is therefore unpersuasive, as it is not supported by the job description or probative evidence.

B. Requirements for the Proffered Position

The academic requirement identified by the petitioner as the minimum education necessary to perform services in the proffered position does not qualify the position as a specialty occupation. Specifically, the petitioner stated that the duties of the proffered position require an individual with a bachelor's degree in business administration, or a related field. To qualify 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 duties and responsibilities of the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a general-purpose degree (or a degree with a generalized title such as business administration, without further specification) does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To demonstrate 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. 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. Although a general-purpose degree (including a degree in business administration) may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.³ The petitioner's assertions that a general purpose degree is sufficient to perform the duties of the position indicate that the proffered position is not in fact a specialty occupation.

³ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

C. Availability of Specialty Occupation Work

The record contains insufficient evidence to establish that the petitioner is able to provide specialty occupation employment to the beneficiary for the entire requested validity period of the visa petition. Specifically, on appeal, counsel and the petitioner provided an organizational chart which indicates that the petitioner already employs a management analyst, [REDACTED]. The record reflects that the petitioner operates one motel in Austin, Texas. According to the organizational chart, the petitioner employs a president, a managing analyst, a director of sales, an employee with marketing responsibilities, two front desk clerks, and housekeeping staff. In addition to the management analyst already on the petitioner's staff, the petitioner proposes to hire the beneficiary for a second management analyst position. However, the petitioner has not sufficiently explained in the context of its specific business operations why a second management analyst is required.

On appeal, the petitioner provided generalized job descriptions for its director of sales, its marketing employee, and the two research analyst positions. The duties of the proffered position in this document are described in the same generic terms discussed above. Thus, the document provides little insight into the actual tasks that the beneficiary is expected to perform. In a letter dated November 21, 2013, submitted on appeal, the petitioner states that the beneficiary will be working under another management analyst to increase efficiency, performance, and growth of the business, and notes that it is no longer a franchise of a chain hotel. However, this explanation not supported by corroborating evidence and is insufficient in itself to establish a legitimate need for the proffered position in the context of the petitioner's business operations. We therefore find that the evidence of record does not establish by a preponderance of the evidence that the petitioner has sufficient specialty occupation work to occupy the beneficiary for the entire employment period requested.

D. Discrepancies in the Record

We also observe that the record of proceeding contains several discrepancies. For instance, the petitioner has made varying representations regarding the beneficiary's employment with the petitioner. Specifically, in its letter dated July 2, 2013, the petitioner stated, "Since 2010, [the beneficiary] has been employed by [the petitioner] in the position of a Management Analyst." However, in a letter dated November 21, 2013, the petitioner states that the beneficiary was employed as a market research analyst until September 19, 2013. The letter states that the beneficiary "was promoted to Management Analyst" on September 20, 2013. No explanation as to who took over the beneficiary's former duties was provided.

Further, while the petitioner claims that the beneficiary was employed as either a market research analyst or a management analyst since 2010, the pay statements submitted in response to the RFE suggest otherwise. The petitioner provided pay statements in the name of the beneficiary that reveal that he was paid at a rate of \$8.00 per hour between February 1, 2011 and July 31, 2011 for approximately eight hours per week of work. This wage is substantially less than the wage that the petitioner should have paid for either a market research analyst or a management analyst.⁴ The pay

⁴ At that time, the minimum hourly prevailing wage for a market research analyst was \$21.21. *See All*

statements reflect that on August 1, 2011, the beneficiary began to receive a salary of \$3,708.00 twice a month. No explanation for the change in wage/salary rate was provided. Although the petitioner stated that the beneficiary was promoted to management analyst on September 20, 2013, the pay statement for the period of October 1, 2013 through October 15, 2013 indicates that the beneficiary continued to receive the same semi-monthly salary of \$3,708.00. We note that the hourly rate associated with this full-time salary (\$46.35 per hour) exceeds the prevailing wage as listed on the LCA (\$25.26 per hour), as well as the amount the petitioner represented that it will pay the beneficiary. On the Form I-129 the petitioner attested that it will pay the beneficiary a full-time salary of \$51,000 per year (\$24.51 per hour). On the LCA the petitioner states that it will pay \$52,800 per year (\$25.38).

In addition, the record indicates that the petitioner operates one motel that is not associated with a hotel chain. The petitioner has provided an organizational chart of its staff, as described above. However, on appeal, the petitioner provided a job description for its director of sales that states that she "leads and manages the team in the Regional Sales Office." The organizational chart simultaneously submitted with the job description does not show any other sales personnel, nor is it apparent that the petitioner has a "Regional Sales Office" based on the other evidence of record. Similarly, counsel references "area managers" and "retail managers"; however, neither of these positions appear on the organizational chart or the employee list.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

IV. SPECIALTY OCCUPATION ANALYSIS

We now turn to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). As explained earlier in this decision, the petitioner has not established the nature of the proffered position and in what capacity the beneficiary will actually be employed within the petitioner's business operations. The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary 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

Industries Database for 7/2009 - 6/2010 for Market Research Analysts in Travis County (Austin, TX) at the Foreign Labor Certification Data Center, Online Wage Library on the Internet at <http://www.flcdatcenter.com/OesQuickResults.aspx?code=19-3021&area=12420&year=10&source=1> (last visited July 31, 2014). For a management analyst, the minimum prevailing wage was \$19.36 per hour. See All Industries Database for 7/2009 - 6/2010 for Management Analysts in Travis County (Austin, TX) at the Foreign Labor Certification Data Center, Online Wage Library on the Internet at <http://www.flcdatcenter.com/OesQuickResults.aspx?code=13-1111&area=12420&year=10&source=1> (last visited July 31, 2014).

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.

Nevertheless, assuming, *arguendo*, that the petitioner had adequately and accurately described the duties of the proffered position, we will now discuss the proffered position in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

USCIS recognizes DOL's *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁵ As previously discussed, the petitioner asserts that the proffered position falls under the occupational category "Management Analysts." We reviewed the section of the *Handbook* regarding the occupational category "Management Analysts," including the section entitled "How to Become a Management Analyst," which describes the following preparation for the occupation:

Education

A bachelor's degree is the typical entry-level requirement for management analysts. However, some employers prefer to hire candidates who have a master's degree in business administration (MBA).

Few colleges and universities offer formal programs in management consulting. However, many fields of study provide a suitable education because of the range of areas that management analysts address. Common fields of study include business, management, economics, political science and government, accounting, finance, marketing, psychology, computer and information science, and English.

Analysts also routinely attend conferences to stay up to date on current developments in their field.

Licenses, Certifications, and Registrations

The Institute of Management Consultants USA (IMC USA) offers the Certified Management Consultant (CMC) designation to those who meet minimum levels of education and experience, submit client reviews, and pass an interview and exam covering the IMC USA's Code of Ethics. Management consultants with a CMC designation must be recertified every 3 years. Management analysts are not required to get certification, but it may give jobseekers a competitive advantage.

⁵ All of the references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>. The excerpts of the *Handbook* regarding the duties and requirements of the referenced occupational categories are hereby incorporated into the record of proceeding.

Work Experience in a Related Occupation

Many analysts enter the occupation with several years of work experience. Organizations that specialize in certain fields typically try to hire candidates who have experience in those areas. Typical work backgrounds include management, human resources, and information technology.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Management Analysts, on the Internet at <http://www.bls.gov/ooh/business-and-financial/management-analysts.htm#tab-4> (last visited July 31, 2014).

When reviewing the *Handbook*, it must be noted that the petitioner designated the proffered position as a Level I (entry level) position on the LCA.⁶ The Level I wage rate as defined in DOL's "Prevailing Wage Determination Policy Guidance" 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.⁷

Thus, in designating the proffered position at a Level I wage, the petitioner has indicated that the proffered position is a comparatively low, entry-level position relative to others within the same

⁶ Wage levels should be determined only after selecting the most relevant O*NET code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.

⁷ Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

occupation. That is, 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 he would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results. Based upon the petitioner's designation of the proffered position as a Level I (entry) position, it does not appear that the beneficiary will be expected to serve in a senior or leadership role. As noted above, according to DOL guidance, a statement that the job offer is for a research fellow, worker in training or an internship is indicative that a Level I wage should be considered.

The *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into this occupation. Rather, the *Handbook* states that many fields of study provide a suitable education for management analysts. The *Handbook's* narrative indicates that common fields of study include business, management, economics, political science and government, accounting, finance, marketing, psychology, computer and information science, and English. According to the *Handbook*, a range of programs can help people prepare for jobs in this occupation. The *Handbook* states that many analysts enter the occupation with several years of work experience, and that typical work backgrounds include management, human resources, and information technology. The *Handbook* does not conclude that normally the minimum requirement for entry into these positions is at least a bachelor's degree in a *specific specialty*, or its equivalent.

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" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in disparate fields (such as business, management, economics, political science and government, accounting, finance, marketing, psychology, computer and information science, and English) would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Here, the *Handbook* indicates a baccalaureate degrees in various fields are acceptable for entry into the occupation. In addition to recognizing degrees in disparate fields (i.e., business, management, economics, political science and government, accounting, finance, marketing, psychology, computer and information science, and English), the *Handbook* indicates that a common field of study for this occupation is business and that some employers prefer to hire candidates who have an advanced degree in business administration. A *preference* for a candidate with a master's degree in business administration is not an indication of a *requirement* for the same. Furthermore, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Therefore, the *Handbook's* recognition that a general, non-specialty degree in business is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not normally the minimum requirement for entry into this occupation.

In addition, the *Handbook* reports that management analysts are not required to get certification, but it may give jobseekers a competitive advantage. According to the *Handbook*, the Institute of Management Consultants USA (IMC USA) offers the Certified Management Consultant (CMC) designation to those who meet minimum levels of education and experience, submit client reviews, and pass an interview and exam covering the IMC USA's Code of Ethics. There is no indication that the petitioner requires the beneficiary to have obtained the CMC designation or any other professional designation to serve in the proffered position.

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook* (or other objective, authoritative source) indicates that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the position 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)(1).

Next, we will review the record of proceeding 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 to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports a standard, industry-wide requirement of 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 from the industry's professional association indicating that it has made a degree a minimum entry requirement.

In the Form I-129, the petitioner stated that it is a hotel hospitality business established in 1998, and has 20 employees. The petitioner stated its gross annual income as \$1.3 million and its net annual income as \$243,000.

The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 721110. According to the U.S. Census Bureau, NAICS is used to classify business establishments according to type of economic activity and each establishment is classified to an industry according to the primary business activity taking place there. See <http://www.census.gov/eos/www/naics/> (last visited July 10, 2014). The NAICS code specified by the petitioner is designated for "Hotels (except Casino Hotels) and Motels," and is defined by the U.S. Department of Commerce, Census Bureau as follows:

This industry comprises establishments primarily engaged in providing short-term lodging in facilities known as hotels, motor hotels, resort hotels, and motels. The establishments in this industry may offer food and beverage services, recreational services, conference rooms and convention services, laundry services, parking, and other services.

U.S. Dep't of Commerce, U.S Census Bureau, 2007 NAICS Definition, 721110 – Hotels (except Casino Hotels) and Motels, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited July 31, 2014).

In response to the RFE, counsel submitted several job announcements. However, the petitioner did not provide any independent evidence of how representative these job advertisements are of the advertising employers' recruiting history for the type of jobs advertised. Further, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices.

Further, the petitioner has not established that the advertising organizations are similar to it. The record of proceeding contains job postings for TJX Companies, Inc. (parent company of retailers T.J. Maxx, Marshalls, and HomeGoods); East Bay Municipal Utility District (water supply and wastewater utility); UT Southwestern Medical Center (healthcare institution); MultiLingual Solutions (provider of corporate language services); LongView (health IT practice); Universal Studios Home Entertainment (media and entertainment company); Premera Blue Cross (health insurance); Unilever (consumer packaged goods manufacturer); BCS Incorporated (energy and utilities consultant); Indus Technologies, Inc. (aerospace and defense industry); Agilex (technology consulting); and The Mil Corporation (a government contractor). The petitioner also provided several postings that either did not specify the name of the employer, or did not provide details

regarding the organization.⁸ None of the postings appear to be for organizations in the petitioner's industry or similar to it.

When determining whether the petitioner and an organization share the same general characteristics, such factors may include information regarding the nature or type of organization, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such information, evidence submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. It is not sufficient for the petitioner and counsel to claim that an organization is similar and in the same industry without providing a legitimate basis and corroborating evidence to support such an assertion. Neither counsel nor the petitioner have specified what characteristics they believe the petitioner shares with these organizations. As previously noted, without further information, the petitioner has not established that the advertisements are for similar organizations in the petitioner's industry.

Additionally, the advertisements appear to be for dissimilar positions and/or for more senior positions.⁹ For example, the posting from [REDACTED] seeks an individual specialized in IT software management and compliance. The proffered position does not appear to be specifically focused on software management and compliance. [REDACTED] advertises for a retail inventory management analyst to analyze retail buying trends, "shelf turns," store shipping schedules, and other metrics that do not appear to be relevant to the petitioner's business operations (management of a single motel). [REDACTED] requires skills in statistical data analysis using software such as SAS, SQL, and SPSS. The duties of the proffered position do not appear to include such statistical data analysis. [REDACTED] district requires five years of progressively responsible experience in addition to a bachelor's degree. As previously noted, here, the petitioner characterized the proffered position as a Level I (entry level) position. Similarly, the positions with [REDACTED] required several years of experience in addition to a bachelor's degree.

Further, contrary to the purpose for which they were submitted, the advertisements do not demonstrate that a bachelor's degree in a *specific specialty* (or its equivalent) is common in the petitioner's industry

⁸ The petitioner also provided several poor quality photocopies of what appear to be newspaper job postings. As these documents are illegible in part, we cannot decipher the content or probative value of this evidence.

⁹ As previously discussed, the petitioner has classified the proffered position as a Level I (entry level) position, the lowest of four possible designations. According to DOL guidance, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; that he will be expected to perform routine tasks that require limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. Furthermore, a Level I wage is appropriate for a worker in training or an internship. See *id.*

in parallel positions among similar organizations. Many of the postings, including advertisements for positions with [REDACTED]

[REDACTED] indicate that a bachelor's degree is required, but do not state a requirement for a specific specialty. Several other postings indicate that a general-purpose bachelor's degree, such as a degree in business or business administration, is acceptable preparation for the advertised positions. These advertising organizations include [REDACTED]

[REDACTED] As previously noted, while a general-purpose degree (including a degree in business administration) may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

Furthermore, the petitioner fails to establish the relevancy of the provided examples to the issue here.¹⁰ That is, the petitioner has not demonstrated 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 organizations.¹¹

Thus, based upon a complete review of the record of proceeding, the petitioner has not established that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is (1) common to the petitioner's industry (2) in parallel positions (3) among organizations similar to the petitioner. Thus, 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).

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.

¹⁰ 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.

¹¹ The petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these few job postings with regard to the common educational requirements for entry into parallel positions in similar organizations. *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 (for organizations similar to the petitioner and in the same industry) required 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* published by the Bureau of Labor Statistics- an authoritative source that did not conclude that such a position requires at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

In support of its assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted various documents, including evidence regarding its business operations. For example, the petitioner provided an organizational chart, an employee list, various tax documents, corporate documents, an operating license, and some invoices.

A review of the record of proceeding indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty, or its equivalent. Furthermore, the petitioner has not established why a few related courses or industry experience alone is insufficient preparation for the proffered position. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it may believe are so complex and unique. While a few related courses may be beneficial, or even required, in performing certain duties of the position, the petitioner has failed to demonstrate 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. The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information and evidence to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.¹²

The petitioner has indicated that the beneficiary's educational background and work experience will assist him in carrying out the duties of the proffered position. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself qualifies as a specialty occupation. In the instant case, the petitioner does not establish which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. The petitioner fails to demonstrate 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 or higher in a specific specialty, or its equivalent. Consequently, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

¹² This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. More specifically, the LCA indicates a wage level at a Level I (entry level) wage. As previously mentioned, the wage-level of the proffered position indicates that the beneficiary is only required to have a basic understanding of the occupation; that he will be expected to perform routine tasks that require limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. Upon review of DOL's instructive comments, we observe that the petitioner did not designate the proffered position as involving "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II) when compared to other positions within the same occupation. *Id.*

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 or higher degree in a specific specialty, or its equivalent, for the position. To this end, USCIS reviews the petitioner's past recruiting and hiring practices, information regarding employees who previously held the position, as well as any other documentation submitted by a 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. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F.3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge as well as the attainment of a baccalaureate or higher degree in the specific specialty or its equivalent as the minimum for entry into the occupation as required by section 214(i)(1) of the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. See *id.* at 388.

The petitioner has submitted an employee list in which it represents that only one other employee has attained at least a bachelor's degree. However, evidence of this individual's education was not provided. Even if such documentation had been provided, we note that the petitioner has represented that this individual's job duties differ from those of the proffered position.¹³ It must be noted that the educational level of employees who hold different positions is not relevant to the instant issue of whether the proffered position qualifies as a specialty occupation. Further, even if the petitioner had established that its degreed employee holds the same position as the proffered position, evidence regarding the hiring of one degreed employee over the petitioner's approximate 15 years of business operations is insufficient to satisfy this criterion.

¹³ We observe that the position descriptions provided on appeal do not list the same job duties for the "managing analyst" (who the petitioner claims has at least a bachelor's degree) and the proffered position of management analyst. The description for the proffered position submitted on appeal, like those provided elsewhere in the record, does not establish the duties that the beneficiary will perform in the context of the petitioner's business operations. Thus, the tasks that the beneficiary will perform in the proffered position are unknown. Regardless, as the petitioner did not provide the same description of duties for the managing analyst as for the proffered position, it is apparent that the petitioner believes that these positions are not the same. Therefore, the petitioner's hiring history in regard to the managing analyst position cannot be considered relevant to the petitioner's hiring history for the proffered position.

Upon review of the record, the petitioner has not provided sufficient, probative evidence to establish 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 third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

Counsel asserts that the nature of the specific duties of the position in the context of its business operations 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. We reviewed all of the evidence in the record, including the petitioner's statement, the organizational chart, the employee list, and all of the tax documents, corporate documents, the operating license, and the invoices. However, we find that the petitioner's statements and the submitted documentation fail to support the assertion that the proffered position qualifies as a specialty occupation under this criterion of the regulations. More specifically, in the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position.

Furthermore, we also reiterate our earlier comments and findings with regard to the implication of the petitioner's designation of the proffered position in the LCA as a Level I (the lowest of four assignable levels). That is, the Level I wage designation is indicative of a low, entry-level position relative to others within the same occupational category, and hence one not likely distinguishable by relatively specialized and complex duties.

The petitioner has not established that the nature of the specific duties is so specialized and complex that the 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. We, therefore, conclude that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

V. BENEFICIARY QUALIFICATIONS

In addition to the above described deficiencies of the instant petition, the AAO notes a further issue that precludes approval of the requested benefit. Although the AAO does not need to examine the issue of the beneficiary's qualifications where the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation, the AAO notes that the petitioner has not demonstrated that the beneficiary is qualified to perform services in a specialty occupation position.

Specifically, the claimed equivalency was based on work experience. However, there is no evidence that the evaluator had the authority to grant college-level credit for work experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience and that the beneficiary also has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. *See* 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and (D)(1).

In the instant case, the AAO observes that the petitioner provide an evaluation of the beneficiary's credentials performed by a commercial evaluation service. USCIS does not accept evaluations of work experience from commercial evaluation services. Further, even if the evaluation had not been performed by a commercial service, there is no independent evidence in the record from appropriate officials, such as deans or provosts, to establish that [REDACTED] is, in the language of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), "an official [with] authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience."

Furthermore, upon review of the beneficiary's employment letters, the AAO finds that the letters provide insufficient information regarding the beneficiary's work history and duties (e.g., complexity of the job duties; the level of judgment; the amount and level of supervision; the level of understanding required to perform the job duties).¹⁴ Instead, the letters describe the beneficiary's duties in terms that do not convey the substantive nature of the work that the beneficiary performed. The letters do not present an adequate factual foundation for the evaluators to determine that the beneficiary has the education, specialized training, and/or progressively responsible experience that are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and that he has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. *See* 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). Thus, the AAO finds that the evaluation fails to establish that the beneficiary's education, training and/or work experience are the equivalent of a bachelor's degree in a specific specialty based upon the information provided. In light of the lack of a sufficient factual foundation discussed above, the evaluation is insufficient even if it had been rendered by an official qualified under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

Moreover, when USCIS determines a beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), it must be demonstrated that the beneficiary's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the beneficiary has documented recognition of expertise in the specialty. In the instant case, the documentation from the beneficiary's prior employers does not establish that his work experience

¹⁴ One of the letters is a letter of support for an L-1A visa petition. This letter is unsigned. The letter states that the beneficiary was employed by [REDACTED] since 2006. However, the other letter regarding the beneficiary's prior employment states that he was employed full-time with [REDACTED] until March 2007. The discrepancies in the dates of employment call into question the veracity of the statements they contain.

included the theoretical and practical application of specialized knowledge and that his experience was gained while working with peers, supervisors, or subordinates who have a degree in the specialty occupation, or its equivalent. Additionally, the petitioner did not submit probative documentation establishing that the beneficiary has recognition of expertise in the specialty. As such, since evidence was not presented that the beneficiary has at least a U.S. bachelor's degree in any specific specialty, or its equivalent, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

VI. CONCLUSION AND ORDER

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition is denied.