



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

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

MATTER OF S-H-H-

DATE: AUG. 10, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a home health care provider, seeks to temporarily employ the Beneficiary,¹ on a part-time basis, as an “operations manager” under the H-1B nonimmigrant classification for specialty occupations. *See* 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 Vermont Service Center denied the Form I-129, Petition for a Nonimmigrant Worker, concluding that the record did not establish that: (1) the proffered position qualifies as a specialty occupation; and (2) the Beneficiary is qualified to perform services in a specialty occupation.

On appeal, the Petitioner asserts that the Director erred in denying the petition.

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.

¹ According to the Petitioner, the president of the petitioning company and the Beneficiary are siblings.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

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

8 C.F.R. § 214.2(h)(4)(iii)(A). We have consistently interpreted 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. THE PROFFERED POSITION

In the initial submission, the Petitioner provided the following description for the proffered position:

- Assess & analyze the management of company’s daily operations. Identify problems & make recommendation for cause of actions. Develop & implement new operation systems for management and delivery systems and improve efficiency of the existing systems. Maintains overall responsibility for developing and implementing marketing programs and strategies.
- Management to provide feasible and efficient operation. Monitor financial status of the company; Conduct operational effectiveness review to ensure functional or project systems are applied and functioning as designed. Analyze Accounting Reports including Profit and Loss (Income Statement), Detail General Ledger, etc., and marketing reports on spreadsheets, statistic charts and document findings of studies and prepare recommendations for implementation of systems and procedures to company.
- Be responsible for spearheading strategic direction initiatives and planning, coordination, and management of the company’s integrated marketing, public relations, and strategic communications program.

In response to the Director's request for evidence (RFE), the Petitioner stated that the Beneficiary would perform the following tasks:

- Coordination and Supervision – Coordinate, manage and monitor the workings of various departments in the organization. (20%)
- Best Practices – Improve processes and policies in support of organizational goals. Formulate and implement organizational policies and procedures to maximize output. Monitor adherence to rules, regulations and procedures. (20%)
- Review financial statements, sales and activity reports, and other performance data to measure productivity and goal achievement and to determine areas needing cost reduction and program improvement. (30%)
- Determine staffing requirements, and interview, hire and train new employees, or oversee those personnel processes. (10%)
- Plan and direct promotional activities such as market promotions, school visiting and filming, coordinating with other team heads in China as required. (10%)
- Design and produce promotional materials such program brochures. (5%)
- Marketing and Customer Service – Manage customer support. Plan and support promotional activities. (5%)

The Petitioner reported that the minimum entry requirement for the proffered position is a bachelor's degree in business administration or its equivalent.

III. ANALYSIS

For the reasons set out below, we have determined that the proffered position does not qualify as a specialty occupation.² Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.³ We further note that an inaccurate statement anywhere on the Form I-129 or in the evidence submitted in connection with the petition mandates its denial. *See* 8 C.F.R. § 214.2(h)(10)(ii); *see also id.* § 103.2(b)(1).

A. Degree in a Specific Specialty

The Petitioner claimed that an H-1B petition should be approved even if the position does not require a degree in a specific specialty. We do not agree. The 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*

² Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

³ 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.

Joint Venture v. Fed. Sav. and Loan Ins. Corp., 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. See *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), we have consistently interpreted the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”). Applying this standard, USCIS regularly approves H-1B petitions for qualified individuals who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

B. General Degree Requirement

The Petitioner also claimed that a bachelor’s degree in business administration (or its equivalent) is sufficient to perform the duties of the position. However, a petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. Cf. *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm’r 1988).

Although a general-purpose bachelor’s degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *Royal Siam*, 484 F.3d at 147.⁴

⁴ Specifically, the judge explained in *Royal Siam*, 484 F.3d at 147, that:

The courts and the agency consistently have stated that, although a general-purpose bachelor’s degree,

It is important to note, however, that a general degree requirement does not necessarily preclude a proffered position from qualifying as a specialty occupation. For example, an entry requirement of a bachelor's degree in business administration with a concentration in a specific field, or a bachelor's degree in business administration combined with relevant education, training, and/or experience may, in certain instances, qualify the proffered position as a specialty occupation. In either case, it must be demonstrated that the entry requirement is equivalent to a bachelor's or higher degree in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp.*, 484 F.3d at 147.

Again, the Petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration (or its equivalent). Without more, this assertion does not establish the proffered position is a specialty occupation.

C. Degrees in Disparate Fields of Study

The Petitioner further asserted that an H-1B petition should be approved for a position in which the degree requirement includes a variety of unrelated disciplines. We reviewed the Petitioner's statement, but it appears that it misconstrues the legal standard for a specialty occupation.

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

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

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.

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 Petitioner simply makes a broad statement claiming that a variety of fields should be acceptable for H-1B approval.

D. Description of the Proffered Position

We will now address the Petitioner's description of the duties of the position. A crucial aspect of this matter is whether the Petitioner has sufficiently described the tasks of the proffered position such that we may discern the nature of the position and whether the position actually requires at least a baccalaureate degree in a specific discipline (or its equivalent). We find that the Petitioner has not done so. The record lacks sufficient details regarding the nature and scope of the proffered position.

For instance, the Petitioner reported that the Beneficiary will be responsible for "coordinating with other team heads in China as required." However, the Petitioner claims to be a small home health care provider located in Texas. We must therefore question who these "other team leads in China" are and how this duty relates to the Petitioner's business operations.

According to the Petitioner, the Beneficiary will also be responsible for "school visiting and filming." Yet, the Petitioner did not explain how this task relates to its business, and the record lacks sufficient information about the Beneficiary's specific role and the complexity of the task.

Moreover, several of the duties are copied virtually verbatim from other sources. For example a duty, amounting to 30% of the Beneficiary's time, is recited from the U.S. Department of Labor's (DOL) O*NET OnLine Summary Report for "11-1021.00 – General and Operations Managers." Other duties for the proffered position, amounting to 45% of the Beneficiary's time combined, are copied from the Operations Manager Job Description on the "Best-Job-Interview.com" website. It is generally not sufficient to copy duties from DOL or other sources to establish a position as a specialty occupation.

Additionally, on the labor condition application (LCA)⁵ submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "General and Operations Managers." However, on appeal, the Petitioner states that "the duties specified as well as the nature of the Petitioner's business taken together illustrates that the position [is] analogous to that of Medical and Health Services Managers, SOC code 11-9111."

Importantly, these occupational categories are distinct and separate occupational categories. The Petitioner did not explain why it classified the proffered position under the occupational category

⁵ The Petitioner is required to submit a certified LCA to us 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 experience and qualifications who are performing the same services. See *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542, 545-46 (AAO 2015).

“General and Operations Managers” if it believed the proffered position analogous to the occupational category “Medical and Health Services Managers.” A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm’r 1998).

Without a meaningful job description and clarification on how the proffered position will relate to the Petitioner’s business operations and objectives, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation’s level of knowledge in a specific specialty. The tasks as described do not sufficiently communicate (1) the actual work that the Beneficiary will perform; (2) the complexity, uniqueness, or specialization of the tasks; or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty. We therefore find the evidence of record insufficient to demonstrate that the proffered position qualifies as a specialty occupation.

Nevertheless, we will continue our analysis of whether the proffered position qualifies as a specialty occupation for the purpose of performing a comprehensive analysis. We will next discuss the record of proceedings in relation to the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

E. 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. We recognize DOL’s *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁶

On the LCA, the Petitioner claimed the proffered position falls under the occupational category “General and Operations Managers.”⁷ The requirements for this occupation are discussed in the *Handbook*’s chapter for Top Executives.

⁶ All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and we regularly review the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

⁷ The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). We will consider this selection in our analysis of the position. The “Prevailing Wage Determination Policy Guidance” issued by the DOL provides a description of the wage levels. A Level I wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. This wage rate indicates that the Beneficiary: (1) will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) will be closely supervised and the work closely monitored and reviewed for accuracy; and (3) will receive specific instructions on required tasks and expected results. U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at <http://fledatacenter.com/download/>

The *Handbook* states, in pertinent part, that the education and training requirements for this occupation vary widely by position and industry. Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Top Executives (2016-17 ed.). According to the *Handbook*, workers may be able to substitute experience for education - and workers without a college degree may be able to work their way up. *Id.* The *Handbook* also states: "Most general and operations managers hired from outside an organization need lower level supervisory or management experience in a related field." *Id.*

The *Handbook* reports that these positions generally impose no specific degree requirement on individuals seeking employment. Here, the Petitioner has not provided sufficient documentation from a probative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

F. Second Criterion

The second criterion presents two alternative prongs: "The degree requirement is common to the industry in parallel positions among similar organizations *or, in the alternative*, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree[.]" 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong casts its gaze upon the 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.

In determining whether there is such a common degree requirement, factors we often consider include: whether the *Handbook* (or another independent, authoritative source) 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 already discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative source) reports an industry-wide requirement for at least

NPWHC_Guidance_Revised_11_2009.pdf. A prevailing wage determination starts with an entry-level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner's job opportunity. *Id.*

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.

The Petitioner stated in its letter of support that a bachelor's degree in business administration, or its equivalent, is required. However, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals."

The Petitioner does not submit probative evidence that demonstrates the degree requirement is common to the industry in parallel positions among similar organizations. Therefore, the Petitioner has not satisfied the criterion of 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.

In support of the petition, the Petitioner provided information regarding the proffered position and its business operations. When discussing H-1B employment, the Petitioner's description must be comprehensive enough to properly ascertain the minimum educational requirements necessary to perform those duties.

While the record contains several iterations of the Beneficiary's responsibilities, the descriptions lack sufficient details establishing, for instance, the complexity or uniqueness of the job duties, specific supervisory duties, independent judgment required, or the amount of supervision received. The Petitioner has not distinguished the proffered position as more complex or unique from other positions within the same occupation that can be performed by persons without such a degree. While a few related skills and techniques may be beneficial in performing certain duties of the position, the Petitioner has not demonstrated how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position.

Further, the Petitioner has designated the proffered position as a Level I position on the LCA.⁸ This designation, when read in combination with the Petitioner's statements, the evidence presented and

⁸ The issue here is that the Petitioner's designation of this position as a Level I position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), such a position would still require a minimum of an advanced degree in a specific specialty, or its equivalent, for entry. Similarly,

the *Handbook's* account of the requirements for this occupation, suggests that the particular position is not so complex or unique that the duties can only be performed by an individual with bachelor's degree or higher in a specific specialty, or its equivalent.

The Petitioner claims that the Beneficiary is well qualified for the position, and references his qualifications. However, the test to establish a position as a specialty occupation is not the credentials of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. The record does not meet the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

G. 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.

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 v. Meissner*, 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.* 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 stated that the company was established in 2002 and that it has 13 employees. It provided an organizational chart, showing four employees serving in multiple positions. More specifically, [REDACTED] serves as president, administrator, supervising nurse, operations manager, and human resources; [REDACTED] serves as interdisciplinary/educational team and budget/accounting/billing department; [REDACTED] serves as office manager, and [REDACTED] as case manager. The Petitioner did not explain the reason it claimed to have 13 employees but its organizational chart only shows four employees.

The Petitioner further stated that its administrator, [REDACTED] has been performing the duties of the proffered position and holds a bachelor's degree with numerous years of experience in management. However, the Petitioner did not identify the specific specialty or field of [REDACTED] bachelor's degree. It also did not clarify whether her experience was gained in the position. Moreover, the Petitioner did not provide the total number of people it has employed to serve in the proffered

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

position. Consequently, it cannot be determined how representative the Petitioner's claim regarding *one individual* (over a 14-year period) is of the Petitioner's normal recruiting and hiring practices.

In response to the RFE, the Petitioner stated it "only employs people who have a bachelor's degree or higher" and that "all of its current employees have a bachelor's degree or higher." However, the Petitioner did not provide additional information about these individuals (e.g., job titles and duties, credentials). Accordingly, it is unclear whether: (1) the duties and responsibilities of these individuals are the same or similar to the proffered position; and (2) whether their education directly relates to their jobs.

In response to the RFE, the Petitioner submitted Wage and Tax Statements (Forms W-2) for several individuals. Upon review, we find that the Forms W-2 indicate that the compensation paid to these individuals varied considerably from each other. Further, the amounts do not correspond to the Beneficiary's offered salary. Thus, this suggests that the individuals are employed in different positions.

On appeal, the Petitioner argues that its statements alone should be accorded the evidentiary value they deserve and given "due consideration" as they are not contradicted by any evidence in the record. However, again, to satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. We 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*, 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 a baccalaureate or higher degree in the specific specialty, or its equivalent, as the minimum for entry into the occupation as required by section 214(i)(1) of the Act. According to the Court in *Defensor*, "To interpret the regulations any other way would lead to an absurd result." *Id.* at 388. If we 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 beneficiary with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.*

Given that the Petitioner has not submitted sufficient evidence to corroborate its statements referring to its past hiring practices and its previous employee in the proffered position having had a bachelor's degree in a specific specialty, we cannot conclude that the Petitioner normally requires a bachelor's degree in a specific specialty, or its equivalent for this position.

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

H. 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.

The Petitioner asserts that the job duties of the proffered position are specialized and complex. We refer to 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 wage, and hence one not likely distinguishable by relatively specialized and complex duties. We have also reviewed the Petitioner's description of duties for the proffered position. The Petitioner has not sufficiently explained how these duties require the theoretical and practical application of a body of highly specialized knowledge, and the 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 record does not include sufficient probative evidence that the duties require more than technical proficiency in the field. Therefore, the Petitioner has not demonstrated 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).

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.

IV. BENEFICIARY QUALIFICATIONS

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

V. CONCLUSION

The appeal must be dismissed because the Petitioner did not establish that the proffered position is a specialty occupation.

ORDER: The appeal is dismissed.

Cite as *Matter of S-H-H-*, ID# 410635 (AAO Aug. 10, 2017)