



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

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

MATTER OF E-C- INC

DATE: AUG. 10, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a computer consulting firm, seeks to temporarily employ the Beneficiary as a "programmer analyst" 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 California Service Center denied the petition, concluding that the evidence of record does not establish that the proffered position qualifies as a specialty occupation.

On appeal, the Petitioner submits additional evidence and asserts that the Director erred in the decision.

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

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

- (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).

Where the work is to be performed for entities other than the petitioner, evidence of the client companies’ job requirements is critical. *Defensor* at 387-88. The court in *Defensor* held that the former Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary’s services. *Id.* Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

II. PROFFERED POSITION

The Petitioner stated that the Beneficiary will serve as a “programmer analyst.” On the labor condition application (LCA), the Petitioner designated the proffered position under the occupational category “Computer Programmers” corresponding to the SOC code 15-1131.¹

¹ The Petitioner classified the proffered position at a Level II wage. We will consider this selection in our analysis of the position. The “Prevailing Wage Determination Policy Guidance” issued by the U.S. Department of Labor (DOL) provides a description of the wage levels. DOL’s wage-level guidance specifies that a Level II designation is reserved for positions involving only moderately complex tasks requiring limited judgment. U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdatcenter.com/download/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.*

In a letter submitted with the initial petition, the Petitioner provided the following description of the Beneficiary's duties:

- Partner with internal teams to define and prioritize informational requirements.
- Create reports and data extracts against large data sets using SQL/Tableau.
- Stay current with technical best practices and industry trends and advise and educate management on their importance.
- Work with teams to improve our reporting and analysis of our customers, products, or marketing programs.
- Visualizing and reporting data findings creatively in a variety of formats. Design A/B tests to evaluate behaviors.
- Evaluate third-party analysis tools for possible use within the project.
- Write Customized Framework for application.
- Provide Weekly Status to Project Manager.
- Attend Daily scrum meetings.

In the same letter, the Petitioner stated that the position requires a "bachelor's degree or a closely related field, or the equivalent" to perform the job duties.

In response to the request for evidence (RFE), the Petitioner submitted a new job description:²

Duties	Percentage of Time
Ensures use requirements fit in with the overall development approach	5%
Provide senior-level analytical, design, development, testing, implementation, and initial production support services	20%
Develop within the technical framework of the client	20%
Completes and finalizes the technical functional specifications of assigned tasks	5%
Assists DBAs in remodeling the database schema and migration of data	10%
Creates class and activity diagrams as needed for assigned modules	10%
Writes clean code following standard guidelines for the project including comments describing blocks of code and develops stored procedures, triggers, and view using T-SQL on SQL Server 2008 R2	10%

² For clarity, we modified the format of the job description into a chart.

Provide requirement specifications, design documentation, application code, test cases and scripts, test results, user documentation, training material, and implementation plans	10%
Perform unit testing, integration testing and system testing check-out as part of application development	5%
Provide weekly status reports as required by the project's Project Manager	5%

The Petitioner indicated that the Beneficiary will work in-house on a project for the State of [REDACTED]. In a letter provided on the Petitioner's letterhead, [REDACTED] "CIO" of the [REDACTED], states that the Petitioner has a contract with [REDACTED] and listed the duties of programmer analysts working on the [REDACTED] project.³ The letter also states that "it is anticipated that those working on this project will have a minimum of bachelor's degrees in computer science, engineering (any)[,] information technology, management information systems, business administrat[ion] or related degree."

III. ANALYSIS

For the reasons set out below, we have determined that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. Specifically, the record (1) does not describe the position's duties with sufficient detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.⁴

A. Description of the Duties

A crucial aspect of this matter is whether the Petitioner has described the duties of the proffered position such that we may discern the nature of the position. The Petitioner has not done so here.

For instance, the initial job description stated that the Beneficiary will "partner with teams," and "work with teams," but these statements lack adequate information to determine the Beneficiary's role, as well as how much independent judgement is required from him - and the amount of supervision he will receive.

³ This letter signed by the client is on the Petitioner's letterhead rather than the letterhead of the client company. On appeal, the Petitioner submits the exact same letter but with a different date and on the client's letterhead. The Petitioner did not provide an explanation and we are unable to reconcile this oddity.

⁴ The Petitioner submitted documentation in support of 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.

Furthermore, the job description submitted in response to the RFE substantially differs from the initial job description: every task is different. For example, the second job description does not state that the Beneficiary will work with teams, as mentioned twice in the initial description. Further, the new description indicated that Beneficiary will provide “senior-level analytical, design, development, testing, implementation, and initial production support services.” The initial description did not mention these “senior-lever” services.⁵ The Petitioner does not explain the reason for these variances in the job duties for the proffered position.

In addition, in response to the RFE, the Petitioner explained that depending on the need of the clients, the “Beneficiary will either work in house on the [redacted] project or on [the Petitioner’s] proprietary project, [redacted].” The Petitioner provided a document regarding an [redacted] project but it is not clear if this is the same project as the referenced [redacted]. In addition, the project outline did not indicate that the Petitioner will require the services of a programmer analyst, or the Beneficiary specifically.

Overall, the Petitioner has not provided a sufficient explanation of the demands, level of responsibilities, complexity, or requirements necessary for the performance of these duties. The Petitioner must substantiate that it has H-1B caliber work for the Beneficiary. Here, the Petitioner has not established the substantive nature of the work to be performed by the Beneficiary, which precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

B. Position Requirements

Further, the requirements for the position as stated in the record raise a number of issues.

First, the Petitioner claimed that the proffered position requires an individual with a “bachelor’s degree or a closely related field, or the equivalent,” but did not submit an explanation of what type of field of study is required. We interpret the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to

⁵ The Petitioner has not established that the Beneficiary’s performance of these “senior-level” services is consistent with its claim that the proffered position is a Level II position within the occupational category. The Petitioner is required to submit a certified LCA to U.S. Citizenship and Immigration Services (USCIS) 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, 545-546 (AAO 2015).

require a degree in a specific specialty that is directly related to the proposed position. However, in this case, the Petitioner did not indicate a bachelor's degree in a specific specialty was required for the position. Thus, for this reason the petition cannot be approved.

Second, the record contains inconsistent information regarding the minimum requirements for the proffered position. More specifically, the Petitioner's statement in the support letter varies considerably from the client's [REDACTED] who reports that "it is anticipated that those working on this project will have a minimum of bachelor's degrees in computer science, engineering (any)[,] information technology, management information systems, business administrat[ion] or related degree." The Petitioner did not provide an explanation for the variances in the record as to the type of bachelor's degree required for the position.

Third, it does not appear that the client has any specific educational requirements for the position as it states that such credentials are simply "anticipated." A *preference* for high-caliber employees is not sufficient to establish a position as a specialty occupation.

Fourth, the client stated that a degree in business administration is acceptable for the proffered position. 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).

Thus, for the above reasons, the petition cannot be approved. Nevertheless, we will perform a comprehensive analysis of the evidence provided pursuant to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).⁶

C. First Criterion

We turn first 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. To inform this inquiry, we recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁷

⁶ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

⁷ 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 USCIS regularly reviews 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.

As previously mentioned, the Petitioner designated the proffered position under the occupational category “Computer Programmers.”

We reviewed the *Handbook’s* subchapter entitled “How to Become a Computer Programmer,” which states, in pertinent part, that some employers hire workers with an associate’s degree.⁸ Thus, the *Handbook* does not support the Petitioner’s assertion that a bachelor’s degree is required for entry into this occupation.

On appeal, the Petitioner cites to DOL’s Occupational Information Network (O*NET) summary report. The summary report for “Computer Programmers” provides general information regarding the occupation; however, it does not support the Petitioner’s assertion regarding the educational requirements for these positions. For example, the Specialized Vocational Preparation (SVP) rating cited within O*NET’s Job Zone designates this occupation as 7 < 8. An SVP rating of 7 to less than (“<”) 8 indicates that the occupation requires “over 2 years up to and including 4 years” of training. While the SVP rating indicates the total number of years of vocational preparation required for a particular position, it is important to note that it does not describe how those years are to be divided among training, formal education, and experience – and it does not specify the particular type of degree, if any, that a position would require.⁹

In response to the RFE, the Petitioner notes that the O*NET indicated that 78% of respondents have a bachelor’s degree or higher. But this does not account for 100% of the “respondents,” and the respondents’ positions within the occupation are not distinguished by career level (e.g., entry-level, mid-level, senior-level). Additionally, the graph in the summary report does not indicate that the “education level” for the respondents must be in a specific specialty.

In the instant matter, 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)(I).

D. 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.

⁸ Bureau of Labor Statistics, U.S. Dep’t of Labor, *Occupational Outlook Handbook*, Computer Programmers (2016-17 ed.).

⁹ For additional information, see the O*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

1. First Prong

To satisfy the 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* reports that the industry requires a degree; whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms “routinely employ and recruit only degreed individuals.” See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or another authoritative source, reports a requirement for at least a bachelor’s degree in a specific specialty, or its equivalent. We incorporate by reference the previous discussion on the matter. Furthermore, the Petitioner has not offered evidence from an industry professional association, or from firms or individuals in the industry, indicating such a degree is a minimum requirement for entry into the position.

The Petitioner submitted a few job announcements placed by other employers. The Petitioner stated that the advertisements are for “similar IT organizations.” However, we note that some of the job postings do not appear to involve organizations similar to the Petitioner. For example, the Petitioner is a software consulting company, whereas the posting are from:

- [REDACTED] – a project to work for an insurance subsidiary
- [REDACTED] – a staffing services company
- [REDACTED] development center (a.k.a. [REDACTED]) – a multi-national company with a position in the gaming studios

Although the announcements generally indicate the number of employees working for each company, the Petitioner did not articulate how this demonstrates the companies’ similarity to it, particularly since the number of employees working for these companies varies considerably.¹⁰ Further, the Petitioner does not explain how the services provided by these companies are similar to those provided by the Petitioner or how it came to the conclusion that they are in the same industry.

When determining whether the Petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the Petitioner to claim that an organization is similar and in the same industry without providing a basis for such an assertion.

¹⁰ The Petitioner indicates on the Form I-129, Petition for a Nonimmigrant Worker, that it employs 47 individuals.

Further, many of the advertisements do not appear to be for parallel positions. For example, the postings require a degree and several years of experience, such as:

- [REDACTED] -3 to 5 years of experience
- [REDACTED] -5 to 7+ years of experience
- [REDACTED] -over 5 years of experience

More importantly, the Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.¹¹

Without more, the Petitioner has not provided sufficient evidence to establish that a bachelor's degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations. Thus, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

2. Second Prong

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

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 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. The Petitioner's job description lacks sufficient details establishing, for instance, the complexity or uniqueness of the job duties, supervisory duties (if any), 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.

¹¹ It must be noted that even if all of the job postings indicated that a requirement of a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the Petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining 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").

Further, the Petitioner has designated the proffered position as a Level II position on the LCA.¹² This designation, when read in combination with the evidence presented and 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.¹³

The Petitioner claims that the Beneficiary is well-qualified for the position, and references the Beneficiary's credentials as evidence that the proffered position is a specialty occupation. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. Here, the Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position, and it did not identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. Thus, 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).

E. 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 USCIS limited solely to reviewing the Petitioner's claimed self-imposed requirements, any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the Petitioner created a token degree requirement. *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.

¹² The Petitioner's designation of this position as a Level II position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, a Level II wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a low level position would still require a minimum of an advanced degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty, or its equivalent. That is, a position's wage level designation may be a relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

¹³ The evidence of record does not establish that this position is significantly different from other positions within the occupational category such that it refutes the *Handbook's* information to the effect that some courses are advantageous to obtaining such a position, but not specifying that a bachelor's degree or higher in a specific specialty (or its equivalent) is required.

The Petitioner submitted copies of a job advertisement it placed for the position of programmer analyst. In the ad, the Petitioner states that a bachelor's degree in computer science, computer applications, computer engineering, technology or related is required. The educational requirement in this advertisement is very different from the Petitioner's educational requirement, as stated in the support letter (which indicated a bachelor's degree with no specific specialty is acceptable). The Petitioner did not explain this variance and it is not clear if the job advertisement is for the same or similar job to the proffered position.

In response to the Director's RFE, the Petitioner submitted evidence relevant to nine individuals, including their foreign academic credentials, payroll documentation, and prior H-1B approval notices. The Petitioner only provided evaluations of the foreign academic credentials for three of the nine individuals.

The Petitioner was established in 2000. The Petitioner did not provide the total number of people it has employed to serve in the proffered position. Consequently, it cannot be determined how representative the Petitioner's claim regarding nine individuals (over a 17-year period of time) is of the Petitioner's normal recruiting and hiring practices.

Further, the Petitioner does not explain or document the duties and responsibilities of these positions and how their knowledge compares to the proffered position, nor does it articulate the body of highly specialized knowledge required for these positions. The record lacks evidence establishing that their work has the same or similar substantive responsibilities, duties, and performance requirements as the proffered position.

The Petitioner has not persuasively established that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the position. Therefore, the Petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

F. Fourth Criterion

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

Although the Petitioner generally refers to the Beneficiary's duties as "specialized," we find that the Petitioner has not sufficiently developed relative specialization and complexity as an aspect of the proffered position. The proposed duties have not been described with enough detail to show that they are more specialized and complex than other computer programmer positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner does not establish how the generally described duties elevate the proffered position to a specialty occupation. We also incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the position in the LCA as a Level II position, and not as the higher Level III (referring to "special skills or knowledge") or Level IV (referring to "complex

or unusual problems”) wage levels. For the reasons discussed above, the evidence of record does not meet 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

IV. BENEFICIARY’S QUALIFICATIONS

As the Petitioner did not demonstrate that the proffered position is a specialty occupation, we need not fully address other issues evident in the record. That said, we wish to identify an additional issue to inform the Petitioner that this matter should be addressed in any future proceedings.¹⁴

Specifically, the record does not currently demonstrate that the Beneficiary’s combined education and work experience is the equivalent of a U.S. bachelor’s degree in a specific specialty. The Petitioner submitted the Beneficiary’s foreign degree and transcript, and a few letters of professional experience, but it did not provide an evaluation to indicate that the Beneficiary’s credentials are the equivalent of a U.S. bachelor’s degree. See 8 C.F.R. § 214.2(h)(4)(iii)(C).

V. CONCLUSION

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation.¹⁵

ORDER: The appeal is dismissed.

Cite as *Matter of E-C-, Inc.*, ID# 481526 (AAO Aug. 10, 2017)

¹⁴ In reviewing a matter *de novo*, we may identify additional issues not addressed below in the Director’s decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003) (“The AAO may deny an application or petition on a ground not identified by the Service Center.”).

¹⁵ Since the Petitioner did not demonstrate that the proffered position is a specialty occupation, we will not discuss other issues, including whether the Petitioner has sufficient office space.