The Petitioner, a footwear and accessory wholesaler, seeks to temporarily employ the Beneficiary as a “graphic designer” 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 Petitioner did not establish, as required, that the proffered position is a specialty occupation.

On appeal, the Petitioner submits a brief and contends that the petition should be approved.

Upon de novo review, we will dismiss the appeal.¹

I. LEGAL FRAMEWORK

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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 We follow the preponderance of the evidence standard as specified in Matter of Chawathe, 25 I&N Dec. 369, 375-76 (AAO 2010).
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. PROFFERED POSITION

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category “Graphic Designers,” corresponding to the Standard Occupational Classification code 27-1024, at a Level I wage rate. In

---

2 The Petitioner is required to submit a certified LCA to U.S. Citizenship and Immigration Service (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).

3 The Petitioner classified the proffered position at a Level I wage, which is 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 Department of Labor (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: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that she will be closely supervised and her work closely monitored and reviewed for accuracy; and (3) that she will receive specific instructions on required tasks and expected results. DOL, 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. A wage
its support letter, the Petitioner stated that the Beneficiary would perform the following duties (note: errors in the original text have not been changed):

[The Petitioner] wishes to hire [the Beneficiary] in the position of Graphic Designer, where [the Beneficiary] will create designs, concepts, and sample layouts based on knowledge of layout principles and esthetic design concepts; she will determine size and arrangement of illustrative material, and select style and size of type; [the Beneficiary] will confer with marketing professionals in [the Petitioner] to discuss and determine the designs; she will develop graphics and layouts for product illustrations; she will review final layouts and suggest improvements as needed; [the Beneficiary] will prepare illustrations of rough sketches of material, discussing them with marketing professionals and making necessary changes; and she will use computer software to generate new images.

The Petitioner provided additional details about the duties of the position, including the percentages of time to be spent performing its various tasks, in response to the Director’s request for evidence (RFE). According to the Petitioner, the proffered position requires a bachelor’s degree in graphic design or a related field.

III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.4

Before addressing the specialty-occupation criteria contained at 8 C.F.R. § 214.2(h)(4)(ii)(A)(/)-(4), we will briefly discuss an issue which precludes a finding that the proffered position is a specialty occupation.

Here, we observe discrepancies and deficiencies in the Petitioner’s statements which raise questions regarding the reliability of its job descriptions. For example, the Petitioner stated that the Beneficiary would work with its “marketing professionals,” and also refers to its “other department professionals” in response to the RFE, suggesting that the Beneficiary would interact with a multitude of individuals. However, the Petitioner stated on the H-1B petition that it only has two employees, and the tax return it submitted shows no wages or salaries paid to any employees.

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.

4 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.
Further, the apparent mismatch between the Petitioner’s statement regarding the degree of independence the Beneficiary would exercise and its Level I wage designation compounds this problem. As noted, in designating a Level I wage the Petitioner indicated that the Beneficiary would perform routine tasks that require limited, if any, exercise of judgment.\(^5\) As instructed in the DOL’s wage-level guidance, statements that a job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.\(^6\) However, several of the Petitioner’s statements appear to conflict with its Level I designation. For example, the Petitioner stated that the Beneficiary would work “with minimum supervision,” claimed that her tasks would be “highly discretionary,” and described the proffered position as one that is “advanced.” These statements suggest that the Beneficiary would exercise a higher level of judgement, discretion, and independence than that indicated by the Level I wage designation.\(^7\) Regardless, it further calls into question the reliability of the Petitioner’s job description.

In addition, the Petitioner’s initial description of the Beneficiary’s job duties appears to have been copied virtually verbatim from the Occupational Information Network (O*NET) details report for the occupational category “Graphic Designers.” See O*NET Details Report for “Graphic Designers,” http://www.onetonline.org/link/details/27-1024.00 (last visited Aug. 23, 2017). This type of description may be appropriate when defining the range of duties that may be performed within an occupational category, but it does not adequately convey the substantive work that the Beneficiary would perform within the Petitioner’s actual business operations and, thus, generally cannot be relied upon by a petitioner when discussing the duties attached to specific employment. Given this deficiency and the discrepancies discussed above, we must question the overall reliability of the Petitioner’s job descriptions.

Accordingly, we are unable to determine the actual substantive nature of the proffered position, which in turn precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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. The Director’s decision must therefore be affirmed and the appeal dismissed on this basis.

---


\(^6\) Id.

\(^7\) In any event, they call into question whether the LCA corresponds to and supports the H-1B petition under 20 C.F.R. § 655.705(b), which would appear to constitute another ground for denial. However, because the proffered position is not a specialty occupation we will not discuss this matter further except to note that the Petitioner should be prepared to address it in any future H-1B proceedings.
Though this issue precludes approval of this H-1B petition, we will nonetheless review the evidence of record in light of the four specialty-occupation criteria contained at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)-(4) for the purpose of performing a more comprehensive analysis. In conducting that review, we will assume, arguendo, that the Petitioner had submitted a reliable job description that established the proffered position as being located within the “Graphic Designers” occupational category.

A. First Criterion

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

As noted, the Petitioner designated the proffered position as being located within the “Graphic Designers” occupational category. The Handbook’s chapter entitled “How to Become a Graphic Designer” states, in pertinent part, that although a bachelor’s degree in graphic design is usually required, someone with a bachelor’s degree in another field “can meet most hiring requirements” so long as he or she has pursued “technical training in graphic design.” Bureau of Labor Statistics, U.S. Dep’t of Labor, Occupational Outlook Handbook, Graphic Designers (2016-17 ed.).

Thus, the Handbook does not state that a bachelor’s degree in a specific specialty, or the equivalent, is normally required for these positions. Though the Handbook states that a bachelor’s degree in graphic design or a related field is usually required, it continues to state that individuals with a bachelor’s degree in another field may pursue unspecified “technical training” in graphic design to meet most hiring qualifications. The Handbook does not indicate that such “technical training” must be the equivalent of a bachelor’s degree in a specific specialty. Accordingly, the Handbook does not support the proffered position as being a specialty occupation.

In addition, when comparing the duties of the proffered position to those of other positions located within this occupational category, we note that the Petitioner stated on the LCA that it will pay the Beneficiary a Level I wage, which indicates that it is an entry-level position. Given the Handbook’s implication that a bachelor’s degree in a specific specialty, or the equivalent, is not normally

---

8 Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.
9 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.
required for these positions, it seems unlikely that an entry-level position possessing these characteristics would carry such a requirement.

Nor does the position evaluation the Petitioner submits meet its burden. Though we have reviewed a letter concluding that the proffered position requires a degree in “art,” we find it unpersuasive.

We find first that the Petitioner has not established qualifications to opine upon the nature of the proffered position. For example, he does not discuss the Petitioner’s business operation beyond a three-sentence summarization. Nor does he describe the duties of the proffered position in any meaningful detail beyond a list of seven bullet-pointed duties which are identical in substance to the Petitioner’s initial job description. As discussed above, however, the Petitioner’s initial job description appears to have been copied virtually verbatim from the O*NET Details Report for the “Graphic Designers” occupational category, and is inadequate to convey the substantive work that the Beneficiary would perform within the Petitioner’s actual business operations. The evaluation does not further describe the Beneficiary’s duties within the context in which they actually be performed within the Petitioner’s specific business operation. Moreover, he does not reference the Petitioner’s Level I wage-level designation and, given that he refers to the position as “high-level,” we question whether he was aware of it. Considered collectively, we find that these shortcomings indicate an incomplete review of the Petitioner’s business operation and proffered position.

In addition, we observe that the evaluation does not state that a bachelor’s degree in a specific specialty, or the equivalent, is required. While he states that “the Graphic Designer job requires highly technical graphic arts-related knowledge and ability” as well as a “degree in field such as Art, or a related discipline,” he does not state that such knowledge and ability must come from a bachelor’s-level degree. The term “degree” could include an associate’s or a non-bachelor’s technical degree. Therefore, the evaluation does not establish that a bachelor’s degree in a specific specialty, or the equivalent, is normally required.

We may, in our discretion, use opinion statements submitted by the Petitioner as advisory. Matter of Caron Int’l, Inc., 19 I&N Dec. 791, 795 (Comm’r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. Id. Consistent with Caron Int’l, we find that this evaluation does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) and, for the sake of efficiency, hereby incorporate this finding into our analysis of the remaining specialty-occupation criteria.

For all of these reasons, we find that the Petitioner has not established that at least a bachelor’s degree in a specific specialty, or the equivalent, is normally the minimum requirement for entry into the particular position, and thus has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).
B. Second Criterion

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

We generally consider the following sources of evidence to determine if there is such a common degree requirement: whether the Handbook reports that the industry requires a degree; whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry establish that such firms “routinely employ and recruit only degreed individuals.” 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 (considering these “factors” to inform the commonality of a degree requirement) (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. 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. Furthermore, 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 record contains job vacancy announcements for our consideration under this prong. To be relevant for this consideration, the job vacancy announcements must advertise “parallel positions,” and the announcements must have been placed by organizations that (1) conduct business in the Petitioner’s industry and (2) are also “similar” to the Petitioner. Upon review, we find that none of these job vacancy announcements satisfy that threshold.

In particular, the record contains insufficient documentary evidence to establish that any of these job vacancy announcements were placed by companies that (1) conduct business in the Petitioner’s industry and (2) are also “similar” to the Petitioner. For example, though the Petitioner submitted job vacancy announcements placed by, among others, a producer of adult cinema, a retailer of upscale food and wine gifts, an online ticker retailer, a home décor company, it does not explain how
Matter of G-M- Inc.

these two criteria are satisfied. None of the announcements provide enough information about the general characteristics of the advertising companies to legitimately compare them to the Petitioner.

Further, not all of the advertised job opportunities are for “parallel positions.” As noted, the Petitioner attested to DOL that the proffered position is a Level I, entry-level position. However, some of the advertised positions require significant work experience. For example, a qualification for one of the advertised positions is five years of work experience. Two require three to five years of work experience. In addition, we observe that several of the job vacancy announcements contain terms that seem to be at odds with a Level I designation (e.g., “[a]ble to work independently,” “intermediate level graphic design position,” a requirement for “advanced experience,” etc.). These factors suggest that the advertised positions are not all entry-level positions that are “parallel” to the one proffered here.

For all of these reasons, the Petitioner has not established that any of these job vacancy announcements are relevant. Even if that threshold had been met, we would find that they did not satisfy this prong of the second criterion, as they do not indicate that a bachelor’s degree in a specific specialty, or the equivalent, is common to the industry in parallel positions among similar organizations.\(^{10}\) To the contrary, several advertisers indicated that only a general bachelor’s degree is required, as they did not specify any field of study from which the required bachelor’s degree must come. These advertisers’ requirement of a general bachelor’s degree, without further specification, is not equivalent to the requirement for at least a bachelor’s degree in a specific specialty (or its equivalent).\(^{11}\)

Consequently, 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.

\(^{10}\) 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”).

\(^{11}\) See Royal Siam Corp., 484 F.3d at 147. Cf. Matter of Michael Hertz Assoc., 19 I&N Dec. 558, 560 (Comm’r 1988) (“The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility as a specialty occupation.”).
We find that the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. In other words, the Petitioner has not demonstrated how the duties of the proffered position as described in the record require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor’s or higher degree in a specific specialty, or its equivalent, is required to perform them. For example, the Petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and establish how such a curriculum would be necessary to perform the duties it believes are so complex and unique. While a few related courses may be beneficial, or even required, in performing certain duties of the position, we find that 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.

As discussed, the Handbook does not indicate that a bachelor’s degree in a specific specialty, or the equivalent, is normally required for positions located within this occupational category. We acknowledge the Petitioner’s general indications regarding the knowledge and associated entry requirements associated with the proffered position. However, the Petitioner’s wage-level designation undercuts any claim that it satisfies this criterion. The Petitioner claims that the Beneficiary is well-qualified for the position, and references her qualifications. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor’s degree in a specific specialty, or its equivalent. We find that Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position, and it did not identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. Accordingly, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

C. Third Criterion

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor’s degree in a specific specialty, or its equivalent, for the position. The

---

12 Though we acknowledge generalized assertions in this regard, we decline to defer to his conclusions regarding the applicability of the Beneficiary’s coursework to the duties of the position given the concerns raised above regarding the apparent incomplete nature of his review of the position.

13 The Petitioner’s designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, unique, and specialized compared to other positions within the same occupation. Nevertheless, a Level I 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 Level I, entry-level position would still require a minimum of a bachelor’s 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.
record indicates that this is a newly-created position and, in any event, there is no evidence of prior recruiting or hiring requirements for the position.

We are not persuaded by the Petitioner’s assertion on appeal that, in the “absence of past practices, normalcy could be established by reviewing the petitioner’s actual position requirement.” The record must establish that a petitioner’s stated degree requirement is not a matter of preference for high-caliber candidates but is necessitated instead by performance requirements of the position. See Defensor, 201 F.3d at 387-88. Were we limited solely to reviewing a petitioner’s claimed self-imposed requirements, an organization could bring any individual with a bachelor’s degree to the United States to perform any occupation as long as the petitioning entity created a token degree requirement. Id. Thus, a petitioner’s claimed self-imposed educational requirement for this position, by itself, is not sufficient to demonstrate eligibility under this criterion. The Petitioner has not satisfied 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

D. Fourth Criterion

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

We acknowledge the Petitioner’s assertions regarding the specialization and complexity of the position’s duties. We again note that the duties are identical to the tasks in DOL’s O*NET detailed report for “Graphic Designers.” They have not been sufficiently developed by the Petitioner to establish that they are more specialized and complex than graphic designer positions that are not usually associated with at least a bachelor’s degree in a specific specialty, or its equivalent. Therefore, we incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a Level I position (of the lowest of four assignable wage-levels) relative to others within the same occupational category. The Petitioner has not demonstrated in the record that its proffered position is one with specialized and complex duties 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. Consequently, we still find that the petition must be denied even when we assume, arguendo, that the Petitioner had submitted a reliable job description that established the proffered position as being located within the “Graphic Designers” occupational category.

IV. CONCLUSION

The Petitioner has not established that the proffered position is a specialty occupation.14

---

14 Because these issues preclude approval of the petition we will not address any of the additional issues we have
ORDER: The appeal is dismissed.