



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

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

MATTER OF S-I-, INC.

DATE: DEC. 26, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a nonprofit organization, seeks to temporarily employ the Beneficiary as a “director of operations” 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 record did 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 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.

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 response to the Director’s request for evidence (RFE), the Petitioner provided the following job duties for the proffered position:

Specific Duties	% of Time
Daily management of Academy community (emails, phone calls, meetings) including high-level academics and authors	20%
Develop second cohort of Academy Fellowship program	30%
Daily co-working and communication with partners and clients across the globe.	80% of work will be international in nature
Collate and synthesize writings (e.g. journal articles, blogs, emails, reports) on sustainability, ecology & society for the Academy audiences (e.g. practitioners, fellows, general public)	30%
Marketing of Academy courses, workshops, publications and all other offerings	30%
Leads communications function on behalf of the Academy with major organizations, including [REDACTED] and [REDACTED]	25%
Identifying and developing relationships, and potential partnerships, for the interactive [REDACTED] research project	10%

Writing five-year fundraising strategy, and accompanying implementation plan. Communicating to all staff and wider Academy community	20% during development, and 5% with maintenance
Manage income and fundraising efforts for the second cohort of Academy Next Generation Leaders program	30% during Year 1, 20% for Years 2 and 3
Create effective strategy for maximizing donations to the field of awareness-based systems change, working with similar organizations in the field, e.g. [REDACTED]	5%
General fundraising research	< 5%
Creating five-year communications strategy focusing on how to increase the field of awareness-based systems [sic] change, (and accompanying implementation plan)	20% during development, and 5% with maintenance
Increasing awareness and understanding of systems thinking	80% (ongoing across all work)
Lead courses (both online and in-person) on research impact	15%
[O]utreach materials for international use, in order to build Academy recognition and reputation with	15%
Ongoing donor relationship building across all major donors, creating new and maintaining existing relationships	10-15%
Develop and implement Academy [REDACTED] offering (two-year plan and structure). This includes researching potential [REDACTED] negotiating with contractors for each [REDACTED] recruiting participants, coordinating during the online courses, and managing impact and evaluation of	15%
Co-lead [REDACTED] providing all technical support, liaison [sic] between course instructor and [sic]	10%
As part of the Academy Managerial Team, this role will provide input and work across all areas of strategic planning	12%

### III. ANALYSIS

For the reasons set out below, we have determined that the proffered position does not qualify 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.<sup>1</sup>

#### A. Requirements for the Position

Preliminarily, we note that the Petitioner has provided inconsistent requirements for the position which undermines the Petitioner's claims regarding the proffered position.

In the letter filed in support of the petition, the Petitioner indicated that the proffered position requires a bachelor's degree in nonprofit management, sustainability, or a related field, and knowledge and skills in social change issues and communications in sustainable social systems. However, in response to the RFE, the Petitioner indicated that the position requires a master's degree in ecology, business or social studies, and fluency in at least two European languages. In the same document, the Petitioner listed additional special skills that are required for the position including "fundraising experience for nonprofits," "experience and skills teaching and facilitating 'research impact' courses/session," "experience of Academy [REDACTED] offering," and statistical analysis. On appeal, the Petitioner asserts that the Beneficiary will be "the key operation director" and her "complex job duties will shape the strategic direction and program implementation of [its] organization."

Notably, on the labor condition application (LCA),<sup>2</sup> the Petitioner classified the proffered position at a Level I wage (the lowest of the four assignable wage levels) under the occupational category "General and Operations Managers," corresponding to the Standard Occupational Classification (SOC) code 11-1021.<sup>3</sup>

The U.S. Department of Labor (DOL) guidance states a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable

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

<sup>2</sup> The Petitioner is required to submit a certified LCA 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).

<sup>3</sup> 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. 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](http://flcdatcenter.com/download/NPWHC_Guidance_Revised__11__2009.pdf).

performance in that occupation. Factors to be considered when determining the wage level for a position include the complexity of the job duties, as well as the levels of judgment, supervision, and understanding required to perform the job duties.

The Petitioner's assertion that the proffered position requires a master's degree, significant level of responsibility and expertise, and foreign language skills, does not appear to be reflected in the wage level on the LCA.<sup>4</sup> This conflict challenges the overall credibility of the petition in establishing the nature of the proffered position and in what capacity the Beneficiary will be employed.<sup>5</sup> Therefore, we are precluded from finding that the proffered position is a specialty occupation. Nevertheless, for the purpose of providing a comprehensive analysis, we will continue to assess the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).<sup>6</sup>

#### B. 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. 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.<sup>7</sup>

The *Handbook* states, in pertinent part, that the education and training requirements for this occupation vary widely by position and industry.<sup>8</sup> 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. The *Handbook* also states that "[m]ost general and operations managers hired from outside an organization need lower level supervisory or management experience in a related field." Further, the *Handbook* reports that these positions generally impose no specific degree requirement on individuals seeking employment. The *Handbook* does not support the Petitioner's

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<sup>4</sup> For example, a language requirement other than English in a job offer generally is considered a special skill for all occupations (with the exception of Foreign Language Teachers and Instructors, Interpreters, and Caption Writers). Further, the Petitioner's education requirement of a master's degree is higher than the bachelor's degree listed in O\*NET (general and operations managers fall under Job Zone Four, which groups it among occupations for which "most . . . require a four-year bachelor's degree, but some do not"), and therefore, also requires a one-level increase. Further, the Petitioner appears to require special skills that are beyond what is normally required in the occupational category.

<sup>5</sup> Further, we are not able to determine whether the LCA corresponds to and supports the petition under 20 C.F.R. § 655.705(b).

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

<sup>7</sup> 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.

<sup>8</sup> Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Top Executives (2016-17 ed.).

assertion that a baccalaureate or higher in a specific specialty (or its equivalent) is necessary for entry into this occupation. Rather, the *Handbook* does not indicate that there are any specific degree requirements for these jobs, and instead emphasizes the importance of strong leadership abilities and experience for this occupation

The Petitioner references DOL's Occupational Information Network (O\*NET) summary report for "General and Operations Managers" - SOC code 11-1021.00. We reviewed the summary report and note that it provides general information regarding the occupation. It does not, however, support the Petitioner's assertion regarding the educational requirements for these positions.

We will first focus on the Specialized Vocational Preparation (SVP) rating. DOL designates the occupation as having an SVP  $7 < 8$ . This indicates that the occupation requires "over 2 years up to and including 4 years" of training. While the SVP rating provides 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.<sup>9</sup>

Next we will address DOL's designation in the summary report of the occupation as a Job Zone Four, which groups it among occupations for which "most . . . require a four-year bachelor's degree, but some do not." Further, O\*NET does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty directly related to the occupation.

Finally, we note that the summary report provides the educational requirements of "respondents," but does not account for 100% of the "respondents." 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. Further, while the graph indicates that 29% of respondents reported that a bachelor's degree is required, a higher percentage of respondents reported that some college (no degree) or a high school diploma (or equivalent) is sufficient. Thus, the summary report provides general information regarding the occupational category, but it does not corroborate the Petitioner's claim regarding that these positions require an educational background, or its equivalent, commensurate with a specialty occupation.

In the instant matter, the record lacks sufficient evidence to support a finding that the position, as described, is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

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

### C. 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 (S.D.N.Y. 1989) (considering these “factors” to inform the commonality of a degree requirement)).

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 a bachelor’s degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry’s professional association indicating that it has made a degree a minimum entry requirement.

In its letter of support, the Petitioner stated that a bachelor’s degree in nonprofit management, sustainability, or a related field, plus knowledge of social change issues and communications in sustainable social systems is required for the proffered position. The Petitioner then stated that “these are also the usual requirements for such positions at [the Petitioner] and in the nonprofit industry.” However, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner’s industry to establish that such firms “routinely employ and recruit only degreed individuals.”

On appeal, the Petitioner submits a summary of 16 individuals employed in parallel positions among other nonprofit organizations, including their job title, employer, and education. The Petitioner also submits their resumes and information from each employers’ website. According to the summary provided, the individuals’ degrees are in a wide variety of subjects, such as business administration, community and economic development, economics, international studies, finance, environmental

studies, public health, international business, anthropology and sociology, marketing, organizational leadership, geology and geophysics, and global affairs, peacebuilding, and human rights.

While the Petitioner asserts that each employer will require its own specific area of study, as it pertains to the work of the organization, we note that the listed educational degrees are in disparate fields and thus not adequate to establish that the requirement of a degree in a specific specialty is common to the industry. 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. A minimum entry requirement of a degree in disparate fields (e.g., economics and anthropology and sociology), however, 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).

Further, among the educational degrees, some of the individuals have a bachelor's or master's degree in business administration. 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).

On appeal, the Petitioner also submits copies of job announcements placed by other employers. However, upon review of the documents, we find that the Petitioner's reliance on the job announcements is misplaced.

First, while all of the hiring employers are nonprofit organizations, we note that the Petitioner did not provide additional information about the nature and scope of their businesses to demonstrate that they are similar to the Petitioner.<sup>10</sup> 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.

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<sup>10</sup> It appears that the hiring employers are primarily organizations involved in public health, gender justice, education, health care, economics, disability services, and family services.



Second, the advertisements do not appear to be for parallel positions. For instance, many of the postings appear to be for more senior, experienced employment than the proffered position.<sup>11</sup> Moreover, some of the postings do not include sufficient information about the tasks and responsibilities for the advertised positions. Thus, the Petitioner has not sufficiently established that the primary duties of the advertised positions are parallel to the proffered position.

Third, the advertisements do not indicate that at least a bachelor's degree in a directly related specific specialty (or its equivalent) is required.<sup>12</sup> Further, while most of the postings report that a bachelor's degree is required, some do not specify that any particular discipline is required. Therefore, it appears that a general degree is sufficient for these positions. Overall, the job postings suggest, at best, that although a bachelor's degree is sometimes required for these positions, a bachelor's degree in a *specific specialty* (or its equivalent) is not.<sup>13</sup>

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<sup>11</sup> For instance: [REDACTED] requires a bachelor's degree and seven years of relevant experience; [REDACTED] requires a master's degree, 10 years of experience in international development, eight years of experience in international gender equality, five years of management, and fluency in at least one world language other than English; [REDACTED] requires a bachelor's degree and seven years of experience; [REDACTED] requires a master's degree, eight years of experience, and fluency in English and Spanish; [REDACTED] requires a bachelor's degree, three years of related management experience, and five years of clinical research-related experience; [REDACTED] requires a master's degree; [REDACTED] requires an unknown degree (one line specifically missing from the job advertisement), eight years of program management experience, and two years of senior NGO management experience; the [REDACTED] requires a master's degree and seven years of specified experience, four of which must have been in a management-level position; [REDACTED] requires a bachelor's degree, four years of related business/operations experience, and two years of demonstrated success managing small teams; [REDACTED] requires a master's degree, five years of experience, and fluency in Spanish; [REDACTED] requires a master's degree, a NYS Certification, five years of experience as a special education teacher, and five years of experience as a school administrator; [REDACTED] requires a bachelor's degree and five years of experience; [REDACTED] requires a bachelor's degree, three years of clinical/managerial experience with the emotionally disabled population; [REDACTED] requires a bachelor's degree and five years of experience; [REDACTED] requires a bachelor's degree and five years of supervisory experience; [REDACTED] requires a bachelor's degree and four years of progressive experience; and [REDACTED] requires a master's degree and 10 years of international public health work experience, including five years managing complex country programs. However, the Petitioner indicated that the proffered position is an entry-level (Level I) position on the LCA.

<sup>12</sup> The degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but a bachelor's degree in a specific specialty that is directly related to the duties of the position. See section 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

<sup>13</sup> 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").

As the documentation does not establish that the Petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary.<sup>14</sup> That is, not every deficit of every job posting has been addressed.

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 to properly ascertain the minimum educational requirements necessary to perform those duties.

In response to the RFE, the Petitioner claimed that the proffered position's duties are so complex and unique and outlined the minimum education, training, and experience needed for each listed duty. For example, the Petitioner stated that the position requires "someone who can interact and answer questions on systems thinking," "awareness of European education systems," "experience in building community," "extensive international experience and contacts," and "large group experiential learning experiences." These statements, however, do not demonstrate that the necessary knowledge for the proffered position is attained through an established curriculum of particular courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent. 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.<sup>15</sup> This designation, when read in combination with the Petitioner's statements, the evidence presented and

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<sup>14</sup> The Petitioner did not provide any independent evidence of how representative the job postings are of the particular advertising employers' recruiting history for the type of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the actual hiring practices of these employers.

<sup>15</sup> 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

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 a 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 her 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).

#### D. 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.

Upon review of the record, we find that the Petitioner did not submit information regarding employees who currently or previously held the position.<sup>16</sup> The record does not establish that the Petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, directly related to the duties of the position. Therefore, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

#### E. 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. However, the record does not sufficiently demonstrate that they are more specialized and complex than other general and operations manager positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. We again 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 position (of the lowest of four assignable wage-levels) relative to others within the same occupational category. We have also reviewed the job descriptions for the proffered

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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 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.

<sup>16</sup> In support of this criterion, the Petitioner submits a list of employees that includes their job title and education, along with copies of their resumes. However, none of the employees listed hold the proffered position. Therefore, without more, this information does not appear to be relevant to the instant matter.

position. While we understand that the Beneficiary must have some skills and industry knowledge in order to perform these duties, the Petitioner has not sufficiently explained how these tasks 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.

Upon review of the totality of the record, the Petitioner has not established that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. For the reasons discussed above, the evidence of record does not satisfy the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

#### IV. CONCLUSION

The Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.

**ORDER:** The appeal is dismissed.

Cite as *Matter of S-I, Inc.*, ID# 881860 (AAO Dec. 26, 2017)