

(b)(6)



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

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

MATTER OF [REDACTED]

DATE: FEB. 27, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a manufacturer of consumer drones, seeks to temporarily employ the Beneficiary as a "human resources generalist" 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, California Service Center, denied the petition. The Director concluded that the Petitioner had not established that the proffered position qualifies as a specialty occupation.

On appeal, the Petitioner submits additional evidence and asserts that the Director erred in her 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:

Matter of [REDACTED]

- (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” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the 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 Form I-129, Petition for a Nonimmigrant Worker, the Petitioner described itself as a nine-employee consumer drones developer located in [REDACTED] California. The Petitioner indicated that the Beneficiary will work as a full-time human resources (HR) generalist at one of its other offices in [REDACTED] California. The Petitioner further indicated that the Beneficiary will be paid an annual salary of \$55,000.

On the labor condition application (LCA) submitted in support of the petition, the Petitioner designated the proffered position under the occupational category “Human Resources Specialists” corresponding to the Standard Occupational Classification (SOC) code 13-1071, at a Level I wage rate.<sup>1</sup> Consistent with the Form I-129 petition, the Petitioner represented on the LCA that the Beneficiary’s sole place of employment will be at the Petitioner’s [REDACTED] office.

In the initial letter of support, the Petitioner provided a general description of the job duties for its human resources generalist position. In response to the Director’s request for evidence (RFE), the Petitioner clarified that the proffered position “is a senior level position” that “will be responsible for

---

<sup>1</sup> The Petitioner is required to submit a certified LCA to 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).

Matter of [REDACTED]

delivering critical company-wide HR initiatives.” The Petitioner stated that the Beneficiary will serve “as a key member of the company’s HR Group, [and] will support three offices ([REDACTED] and [REDACTED] which currently have over 30 associates and are estimated to grow to 50 associates in 2016.” The Petitioner emphasized the complexity and specialization of the Beneficiary’s duties, stating that he “holds a high-level position which requires regular interaction and collaboration with managers as well as senior-level management at Headquarters. This position holds a high level of discretionary authority and requires a highly advanced and specialized knowledge of Human Resource Management.” According to the Petitioner, the proffered position requires a minimum of a bachelor’s degree in human resources, business management, or a closely related field, or the equivalent.

The Petitioner provided the following table listing the proffered job duties and the percentages of time the Beneficiary will spend on each duty:

Percentage of Time Spent	Expanded Description of Duties
5%	<b><u>Recruitment</u></b> <ul style="list-style-type: none"> <li>Responsible for all U.S. campus recruiting events for [the Petitioner]</li> </ul>
10%	<b><u>Onboarding</u></b> <ul style="list-style-type: none"> <li>Revamp onboarding process</li> <li>Implement onboarding process for every new hire, including preparation of all related legal and company required documents (e.g., I-9, E-Verify, W-4, direct deposit, Employee Record, and Email Account) and creation and delivery of orientation presentation to new employees on their first day</li> </ul>
10%	<b><u>Performance Evaluation and Training</u></b> <ul style="list-style-type: none"> <li>Streamline performance evaluation process</li> <li>Educate, coach, and partner with managers to effectively conduct performance evaluations and develop employees</li> </ul>
15%	<b><u>HRIS (Human Resources Information System)</u></b> <ul style="list-style-type: none"> <li>Work with outside vendor to design functionalities in the e-HR system based on internal needs</li> <li>Lead communication training for management and employees</li> </ul>
15%	<b><u>Payroll</u></b> <ul style="list-style-type: none"> <li>Conduct payroll survey and design semi-annual compensation adjustment strategies that align with [the Petitioner’s] U.S. business goals</li> </ul>
15%	<b><u>Benefits</u></b> <ul style="list-style-type: none"> <li>Negotiate with vendors and brokers to upgrade current benefits offering</li> <li>Keep current on compensation trends and ensure that company’s total compensation is competitive in the market to attract the best talent for [the Petitioner] in the U.S.</li> </ul>

Matter of [REDACTED]

10%	<u><b>HR Analytics</b></u> <ul style="list-style-type: none"> <li>Develop and interpret reports on different workforce topics, such as recruiting and retention, to identify trends and problem areas for all HR teams</li> </ul>
5%	<u><b>Training</b></u> <ul style="list-style-type: none"> <li>Collaborate with internal customers to identify and assess training needs</li> <li>Build and execute legal compliance required training for all employees</li> </ul>
5%	<u><b>Employee Action and Termination Process Management</b></u> <ul style="list-style-type: none"> <li>Work with managers to streamline the employee exit process, including processing of final paycheck and COBRA coverage management</li> <li>Ensure that all documentation and processes are followed correctly to minimize potential legal risks</li> </ul>
10%	<u><b>Employee Relations and Employee Engagement</b></u> <ul style="list-style-type: none"> <li>Effectively manage employee conflict and grievance</li> <li>Champion the Employee Engagement Program, from engagement survey design, to result interpretation and recommendation proposal</li> <li>Provide morale initiatives to ensure employees are engaged and inspired to deliver great business results</li> </ul>

On appeal, the Petitioner asserts that the Director misunderstood the nature and scope of the Petitioner's overall operations and the proffered position. The Petitioner explains that it is a global company headquartered in China, with around 5,000 employees worldwide. Within the United States, the Petitioner (located in [REDACTED] California) serves as "the U.S. Headquarters for the company." It also serves as "the parent company of three legal entities which employ a total of 180 employees in five (5) U.S. offices." The Petitioner's three subsidiaries consist of: (1) a research and development company in [REDACTED] California, with 28 employees; (2) a customer support and logistics company in [REDACTED] California, with 103 employees; and (3) a marketing and business development company spread out into three office locations: [REDACTED] California, with 35 employees; [REDACTED] California, with 9 employees; and [REDACTED] New York, with 5 employees. As the U.S. Headquarters, the Petitioner "provides legal, HR, IT, accounting, and policy support for the U.S. operation[s]."

Regarding the proffered position, the Petitioner asserts that, as a member of the company's "local HR Team," the Beneficiary "will provide HR support and services to all of its 180 employees who are employed in its five (5) U.S. offices." The Petitioner states: "[The Beneficiary] is one of two local HR Team members who will support all of [the Petitioner's] U.S. operations. He is a critical member of the team and has a broad scope of responsibility for managing the entire HR operations in the U.S. (emphasis in original)." The Petitioner further states that "[t]he Global HR Team for [the worldwide company] currently has fifty (50) employees and the company has seven (7) local HR Team members."

## 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 provides inconsistent information regarding the proffered position, and consequently, whether it requires an educational background, or its equivalent, commensurate with a specialty occupation.<sup>2</sup>

## A. Nature of Proffered Position

When determining whether a position is a specialty occupation, we must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, USCIS looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, and other material aspects of the position. Here, the Petitioner has provided inconsistent information about both the proffered position and the company's operations such that we are unable to understand the nature of the position being offered.

Regarding its operations, the Petitioner attested on the Form I-129 that it is a nine-employee company established in 2015. We note that all attestations on the Form I-129 are made under the penalty of perjury. Further, on the H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement to the Form I-129, the Petitioner represented that it does not employ 50 or more individuals in the United States (section 1, question 1). Moreover, it represented that it currently employs a total of 25 or *fewer* full-time equivalent employees in the United States, *including all affiliates or subsidiaries of the company*, and therefore does not need to pay the higher filing fee mandated by the American Competitiveness and Workforce Improvement (ACWIA) Act of 1998 (section 2, question 9).<sup>3</sup> The Director relied upon the information provided by the Petitioner on the Form I-129 and filing fee supplement to assess the position's qualification as a specialty occupation.

On appeal, however, the Petitioner asserts that it "is not a company with nine (9) employees but employs a total of 180 employees in five (5) U.S. offices." But the Petitioner does not explain why

<sup>2</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>3</sup> ACWIA was enacted to, among other things, provide protections in the H-1B process against the displacement of United States workers. ACWIA requires that every petitioner pay a "training" fee for each H-1B petition that it files. The ACWIA fee is currently \$750 for petitioners who employ a total of 25 or fewer full-time workers in the United States, and \$1500 for petitioners who employ 26 or more full-time workers in the United States. As indicated above, question 9 on the supplement form specifically instructs a petitioner to include affiliates or subsidiaries in its total employee count.

The Petitioner paid the lower fee of \$750, attesting that its company, including all affiliates and subsidiaries, employs a total of 25 or fewer full-time employees in the United States.

Matter of [REDACTED]

it represented itself as a nine-employee company exempt from paying the higher ACWIA fee. The Petitioner has not elucidated why we, like the Director, should not rely upon on the information provided on the Form I-129 and filing fee supplement.<sup>4</sup>

It is incumbent upon the Petitioner to resolve inconsistencies in the record by competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the Petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. *Id.* In addition, an inaccurate statement anywhere on the Form I-129 or in the evidence submitted in connection with the petition mandates its denial. See 8 C.F.R. §§ 214.2(h)(10)(ii), 103.2(b)(1). Without independent, objective evidence reconciling the inconsistencies in the record, we must question the credibility of the Petitioner's assertions.<sup>5</sup>

Not only is the record inconsistent with regard to the Petitioner's operations, but it is also inconsistent with regard to the proffered position's associated job duties, responsibilities, and level of authority within the organization. Critical to this matter is the Petitioner's repeated emphasis on the proffered position's complexity, specialization, and high level of responsibility. The Petitioner stated, for example, that the proffered position "is a senior level," "high-level position . . . that holds a high level of discretionary authority and requires a highly advanced and specialized knowledge of Human Resource Management." According to the Petitioner's appeal, the Beneficiary will be "a critical member of the team and has a broad scope of responsibility for managing the entire HR operations in the U.S."

In contrast, the Petitioner characterized the proffered position on the LCA as a Level I position within the "Human Resources Specialists" occupational classification. This occupational classification does not inherently encompass managerial duties. To support this conclusion, we rely on the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* and the Occupational Information Network (O\*NET), both of which we consider authoritative sources on duties of the wide variety of occupations that they address. Neither source indicates that "Human Resources Specialists" are typically responsible for duties amounting to the management of a company's human resources operations, as the Petitioner states about the proffered position.<sup>6</sup>

<sup>4</sup> Even the number of employees in each of the Petitioner's U.S. subsidiaries does not align with the information on the Form I-129 that the Petitioner has 9 employees. The Petitioner listed its [REDACTED] office as its address on the Form I-129. According to the Petitioner's appeal, the [REDACTED] office has 35 employees. The only place of employment listed on the Form I-129 and LCA was the Petitioner's [REDACTED] office, which has 28 employees. The Petitioner's [REDACTED] office has 9 employees, but the Petitioner did not list its [REDACTED] address as a place of employment for the Beneficiary.

<sup>5</sup> We additionally must question whether the Petitioner has met all filing requirements, and whether this appeal is properly before us. For example, if the Petitioner's payment of the lower ACWIA fee was improper, then the instant petition was not properly filed with all required fees. 8 C.F.R. § 103.2(a)(1) (requiring every benefit request to be filed with fee(s) as required by regulation. If filed without proper fees, the instant petition should have been rejected, and an appeal would not have been available to the Petitioner. 8 C.F.R. § 103.2(a)(7)(i) (a benefit request which is submitted with an incorrect fee will be rejected); 8 C.F.R. § 103.2(a)(7)(iii) (there is no appeal for a rejected benefit request). Nevertheless, since the record does not demonstrate the proffered position as a specialty occupation and therefore the petition cannot be approved, the Petitioner's payment of all required fees is a moot issue.

<sup>6</sup> For more information about the typical job duties for this occupational category, see e.g., the *Handbook* chapter on



Matter of [REDACTED]

The “Human Resources Specialists” occupational classification seems even more at odds with the Petitioner’s characterization of the proffered position when we also consider the Level I (entry) wage rate selected on the LCA. According to the Department of Labor’s (DOL) “Prevailing Wage Determination Policy Guidance,” a Level I wage rate is generally appropriate for *entry-level* positions for which the Petitioner expects the Beneficiary to have a *basic* understanding of the occupation.<sup>7</sup> 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 he will be closely supervised and his work closely monitored and reviewed for accuracy; and (3) that he will receive specific instructions on required tasks and expected results.<sup>8</sup> The Petitioner’s selection of a Level I, entry-level wage rate for a position within an occupational category that does not inherently convey managerial responsibilities does not support the position’s claimed “senior level” or “high-level” of responsibilities.

Instead, the claimed high-level managerial responsibilities and job duties appear more appropriate for a position within the “Human Resources Managers” occupational classification corresponding to SOC code 11-3121. Whereas “Human Resources Specialists” typically perform the daily tasks related to human resources functions, “Human Resources Managers” typically plan, direct, or coordinate these activities and serve as a link between management and employees. For example, the *Handbook* states that “Human Resources Managers” typically “[l]ink an organization’s management with its employees” and “[serve] as a consultant with other managers advising them on human resource issues.”<sup>9</sup> Similarly, O\*NET states that “Human Resources Managers” typically “[serve] as a link between management and employees by handling questions, interpreting and administering contracts and helping resolve work-related problems,” and “[a]dvise managers on organizational policy matters.”<sup>10</sup> These descriptions generally align with the Petitioner’s statement that the Beneficiary will have “a broad scope of responsibility for managing the entire HR operations in the U.S.”

---

“Human Resources Specialists,” available at <http://www.bls.gov/ooh/business-and-financial/print/human-resources-specialists.htm> (last visited Feb. 22, 2017), as well as the O\*NET Details Report for “Human Resources Specialists,” available at <https://www.onetonline.org/link/details/13-1071.00> (last visited Feb. 22, 2017). These sources do not indicate that “Human Resources Specialists” typically are responsible for the management of a company’s human resources operations.

<sup>7</sup> 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).

<sup>8</sup> *Id.* A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner’s job opportunity. *Id.* A Level I wage should be considered for research fellows, workers in training, or internships. *Id.*

<sup>9</sup> For more information about the “Human Resources Managers” occupational category in the *Handbook*, see <http://www.bls.gov/ooh/management/print/human-resources-managers.htm> (last visited Feb. 22, 2017).

<sup>10</sup> For more information about the “Human Resources Managers” occupational category in O\*NET, see the O\*NET Details Report for “Human Resources Managers,” available at <https://www.onetonline.org/link/details/11-3121.00> (last visited Feb. 22, 2017).

Matter of [REDACTED]

We note that several of the Beneficiary's proposed job duties, such as "work with outside vendor to design functionalities in the e-HR system" and "negotiate with vendors and brokers to upgrade current benefits offerings," were previously performed by [REDACTED] according to the copy of her resume (submitted in response to the Director's RFE). But although the Petitioner identified [REDACTED] as an individual who is or was "employed in the same or similar position (HR Generalist or HR Specialist)," her resume identifies her position as the Petitioner's "HR Supervisor/HR Business Partner."

We also note that [REDACTED] or another human resources manager located within the United States, is no longer depicted on the Petitioner's organizational chart (submitted on appeal). Instead, the Petitioner's organizational chart depicts the company's U.S. human resources department as composed solely of two human resources personnel, including the Beneficiary. The Beneficiary is overseen by a human resources manager located in China. The Petitioner confirms on appeal that the Beneficiary is one of only two local human resources team members who will support "all of [the Petitioner's] U.S. operations," and will be a "critical member of the team and has a broad scope of responsibility for managing the entire HR operations in the U.S." That the Beneficiary is one of only two personnel responsible for managing the Petitioner's entire U.S. human resources operations, again, conflicts with the Petitioner's characterization of the proffered position as a Level I, entry-level position within the "Human Resources Specialists" occupational category.<sup>11</sup>

There are other discrepancies in the record as well. For example, as noted above, the Petitioner's organizational chart depicts only two human resources personnel, including the Beneficiary, within the United States. The Petitioner likewise states on appeal that it currently has two "local HR Team members located in the U.S." But the Petitioner also confusingly states on appeal that it has "seven (7) local HR Team members." Further still, in the same appeal brief, the Petitioner states that "[s]ince its establishment in 2013, [the Petitioner] has employed a total of four individuals in an HR capacity," and that "[a]ll four of those local HR Team members [are located] in the U.S." The

<sup>11</sup> Although not asserted by the Petitioner, we note that if the Petitioner had believed its position to be a combination of "Human Resources Specialists" and "Human Resources Managers" positions, then it should have chosen the "Human Resources Managers" occupational classification on the LCA. For purposes of the LCA, the DOL instructs that, when the duties of a proffered position involve a combination of more than one occupational category, an employer should choose the highest paying occupation. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

Pursuant to the Petitioner's certified LCA, the Level I prevailing wage for "Human Resources Specialists" in the area and time period of intended employment is \$53,123 per year. But the prevailing wage for a Level I "Human Resources Managers" in the same area and time period of intended employment is \$101,150 per year. For more information regarding the wages for "Human Resources Managers" (SOC code 11-3121) in the [REDACTED] Metropolitan Statistical Area for the period 7/2015 – 6/2016, see [http://www.ficdatacenter.com/OesQuickResults.aspx?code=11-3121&area=\[REDACTED\]&year=16&source=1](http://www.ficdatacenter.com/OesQuickResults.aspx?code=11-3121&area=[REDACTED]&year=16&source=1) (last visited Feb. 22, 2017). The proffered wage of \$55,000 per year does not cover the Beneficiary's performance of job duties involving human resources management.



Matter of [REDACTED]

record is therefore unclear as to how many individuals the Petitioner employs in its local human resources department.

The record is also unclear as to the Beneficiary's place(s) of employment. The Petitioner represented on the Form I-129 and LCA that the Beneficiary will only work at the Petitioner's office in [REDACTED] California. But on appeal the Petitioner identifies its [REDACTED] worksite as the location of its research and development center. The Petitioner also claims on appeal that the company's U.S. headquarters, located in [REDACTED] California, will provide human resources support services for its U.S. operations. The Petitioner has not clarified why the Beneficiary will apparently work from its research and development office instead of its headquarters office, which is responsible for all U.S. human resources functions.

Moreover, the Petitioner states that the Beneficiary "will support three offices ([REDACTED] and [REDACTED]). The Petitioner has not explained how the Beneficiary will provide support services to these other locations which were not included on the LCA. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Finally, the Petitioner has provided inconsistent evidence about its own educational requirement for the proffered position. On one hand, the Petitioner states that the proffered position requires a minimum of a bachelor's degree in human resources, business management, or a closely related field, or the equivalent. On the other hand, the Petitioner's job advertisement for the proffered position states that a "Bachelor's degree [is] required." The Petitioner's advertisement does not state that the required bachelor's degree must be in any *specific specialty*. The record does not contain objective evidence pointing to where the truth lies.

As previously stated, it is incumbent upon the Petitioner to resolve inconsistencies in the record by competent objective evidence pointing to where the truth lies. *Ho*, 19 I&N Dec. at 591-92. Because the Petitioner has provided incomplete, inconsistent descriptions of its business operations and the proffered position, we are precluded from understanding where and what exactly the Beneficiary will be doing, the level of complexity and specialization of his job duties, and the level and type of education minimally needed to perform the proffered position. In other words, the record does not adequately convey the substantive nature of the proffered position.

We are therefore precluded from 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. Because the Petitioner has not

Matter of [REDACTED]

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.

#### B. Opinion Letters

Nor do the opinion letters submitted on appeal satisfy any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) in order to demonstrate the proffered position's qualification as a specialty occupation.

On appeal, the Petitioner submits an opinion letter from [REDACTED] a recruiting consultant contracting with the Petitioner to perform "staffing and recruiting services for the company." The Petitioner additionally submits an opinion letter from [REDACTED] professor and chairman of the Department of [REDACTED] at the [REDACTED]. Upon close review of these letters, we conclude that they are insufficient.

[REDACTED] opines that the Petitioner and companies like the Petitioner require at least "a Bachelor's degree or its equivalent as the minimum requirement for entry into the position of HR Generalist." However, [REDACTED] letter does not corroborate the Petitioner's alternative claim that the proffered position requires at least a bachelor's degree in human resources, business management, or a closely related field, or the equivalent. Like the Petitioner's job advertisement, [REDACTED] letter does not state that the proffered position requires a bachelor's degree *in a specific specialty*, or its equivalent, which is required to qualify as a "specialty occupation" as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

As previously discussed, section 214(i)(1) of the Act defines the term "specialty occupation" as an occupation that requires, in part, the "attainment of a bachelor's or higher degree *in the specific specialty* (or its equivalent) as a minimum for entry into the occupation in the United States." The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates this statutory definition. In the criteria at 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*, 484 F.3d at 147.

Thus, if the Petitioner's minimum entry requirement for the proffered position is a general bachelor's degree as stated by [REDACTED] (and reflected in the Petitioner's job advertisement), then this indicates that the proffered position is not a specialty occupation. 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. There must be a close correlation between the required specialized studies and the position; thus, the mere requirement of a degree, 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) ("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."). We therefore conclude that [REDACTED] letter does not establish the proffered position's qualification as a specialty occupation.

Matter of [REDACTED]

We do not find [REDACTED] letter to demonstrate the proffered position's qualification as a specialty occupation, either. In pertinent part, [REDACTED] characterizes the proffered position as "assum[ing] more advanced duties with respect to the employer's human resource management operations." He states that the proffered position "will play a key role in developing, managing, implementing, administering, and/or assisting with human programs and solutions." He further states: "The position does not merely execute functional or administrative routines of employee monitoring and management, but rather contributes to the larger integration of HR objectives with business strategy."

It does not appear that [REDACTED] opinion was based on sufficient, accurate information about the position proposed here. In particular, [REDACTED] does not indicate whether he considered, or was even aware of, the Petitioner's designation of the proffered position as a Level I, entry-level, "Human Resources Specialists" position on the LCA. Nor does his letter reflect an awareness of the numerous other inconsistencies in the record, including about the Petitioner's operations and claimed educational requirement. In short, [REDACTED] opinion does not demonstrate a sound factual basis for his conclusions about the duties of the proffered position and its educational requirements.

Accordingly, we conclude that the letters from [REDACTED] and [REDACTED] are not sufficient to establish the proffered position as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). 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.*

#### IV. CONCLUSION

The record does not sufficiently demonstrate that the proffered position qualifies as a specialty occupation. The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of* [REDACTED] ID# 105235 (AAO Feb. 27, 2017)