The Petitioner, a three-employee cloud software business, seeks to temporarily employ the Beneficiary as a “User Interface and User Experience 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, Vermont Service Center, denied the petition. The Director denied the petition concluding that the Petitioner had not established that it had sufficient specialty occupation work for the intended employment period.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director erred when determining that it did not have sufficient specialty occupation work for the intended employment period and submits evidence in support of this assertion.

We conduct de novo review on appeal. Upon review of the evidence submitted on appeal, we find that the Petitioner has established that it is an active company and that more likely than not it has sufficient work to employ the Beneficiary in the proffered position. However, as will be discussed, the record does not establish that the proffered position requires a baccalaureate or higher degree in a specific specialty or its equivalent. Moreover, the record does not establish that the certified labor condition application (LCA) corresponds to the petition. Accordingly, we withdraw the Director’s statement that a user interface and user experience designer is traditionally a specialty occupation and remand the matter to the Director for further development of the record and a new decision.

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:
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” 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, 387-88 (5th Cir. 2000).

II. PROFFERED POSITION

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as its “user interface and user experience designer.” The Petitioner described the duties of the position as follows:

- Design user interface and navigation for the web application, Apple iPhone and iPad app.
- Maintain a responsive and consistent web design.
- Define screen based design to ensure user interface visually communicates user path and company vision.
- Develop and explore user task flows, screen designs and wireframes.
- Work closely with the development team to prepare the team product and enterprise product.
Collaborate on design process to deliver rapid prototypes, concept sketches, interactive and visual design.

Apply digital tools skills including Slack, Trello and Moqups to interface design.

According to the Petitioner, the minimum requirements to perform these tasks “include the attainment of a Bachelor’s degree, or equivalent, in Digital Arts, Interactive Design, Graphic and Digital Design or a related field.”

In response to the Director’s request for evidence (RFE), the Petitioner provided the following allocation of time to the Beneficiary’s proposed tasks:

- Design user interface and navigation for the web application, Apple iPhone and iPad app (50%)
- Maintain a responsive and consistent web design (35%)
- Work closely with the development team to prepare the team product and enterprise product (10%)
- Apply digital tools skills including Slack, Trello and Moqups to interface design (5%).

The Petitioner provided a narrative to further describe the nature of a user interface and user experience designer in the context of its business operations. The Petitioner also referenced the three initially stated duties omitted from the initial description, but did not allocate any of the Beneficiary’s time for the performance of those tasks.

III. ANALYSIS

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

On the LCA2 submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category “Multimedia Artists and Animators” corresponding to the Standard Occupational Classification code 27-1014.3

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

2 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).

3 The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). We will consider this selection in our analysis of the position. The “Prevailing Wage Determination Policy Guidance” issued by

We have reviewed the Petitioner’s description of duties and other information in the record to determine whether the proffered position falls within the parameters of the occupation designated on the certified LCA. Upon review, there is insufficient evidence to demonstrate that the proffered position is primarily a multimedia artist and animator occupation. The Petitioner has not described duties that relate to or include animation, visual effects for television, movies, video games, or other forms of media. The Petitioner has not provided probative evidence that demonstrates that its user interface/user experience (UI/UX) designer corresponds most closely to that of a multimedia artist or animator. Given that the LCA submitted in support of the petition is certified for an occupational classification that does not appear to be in accord with the proffered job duties, it must therefore be concluded that the LCA does not correspond to the petition. Accordingly, the petition cannot be approved for this reason.

Moreover, even if the described duties fall within the occupation certified on the LCA, the Handbook’s discussion of the academic requirements to perform the duties of a multimedia artist and animator occupation does not support a claim that this occupation is a specialty occupation. In the *Handbook*’s subchapter on “How to Perform the Duties of a Multimedia Artist and Animator,” it reports that “[e]mployers typically require a bachelor’s degree,” and that those in the occupation “typically have a bachelor’s degree in fine art, computer graphics, animation, or a related field.” See U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., the DOL provides a description of the wage levels. A Level I wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. This wage rate indicates: (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. U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdatcenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf. A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner’s job opportunity. *Id.*

4 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.
“Multimedia Artists and Animators,” https://www.bls.gov/ooh/arts-and-design/multimedia-artists-and-animators.htm#tab-4 (last visited Feb. 17, 2017). The *Handbook’s* recognition that a bachelor’s degree in fine arts, a degree of general applicability, is sufficient to perform the duties of the occupation, indicates that this occupation is not a specialty occupation.5

Furthermore, it appears more likely than not that the Beneficiary’s proposed duties fall within the occupation of a web developer/designer. For example, the Petitioner claims that the Beneficiary will spend 50 percent of her time designing a portion of its web application for the Apple iPhone and iPad and an additional 35 percent of her time maintaining a responsive and consistent web design. The *Handbook* reports that an individual in the web developer occupation designs and creates websites and is responsible for the look of the site. See U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., “Web Developers,” https://www.bls.gov/ooh/computer-and-information-technology/web-developers.htm#tab-2 (last visited Feb. 17, 2017). It appears that a UI/UX designer position in this instance may be a subcategory of a web developer/designer occupation.6 The *Handbook* indicates that the academic qualification for a web developer/designer is typically an associate’s degree in web design or a related field. See *Id.* at https://www.bls.gov/ooh/computer-and-information-technology/web-developers.htm#tab-4 (last visited Feb. 17, 2017).

We note here that the record does not include the Petitioner’s organizational chart depicting the titles of its three employees or any evidence of the actual responsibilities of its three employees. We have reviewed the Petitioner’s outline of key milestones for its project submitted on appeal and note that it divides the key milestones between its designer and engineers. However, this document does not elaborate upon their duties, beyond the general outline. Accordingly, we are unable to ascertain how the proposed position will actually fit within the Petitioner’s development team. Because of the generalized description of the proffered position and the lack of evidence in the record distinguishing the Beneficiary’s responsibilities from others, we are unable to determine that the proffered position falls within either a multimedia artist or animator or even the web developer/designer occupation. Moreover, as discussed above, neither of these occupations requires a bachelor’s degree in a specific specialty.

We have also reviewed the advertisements submitted by the Petitioner for the position of a UI/UX designer. The advertisements confirm that employers generally do not require a bachelor’s degree in a specific specialty to perform the duties of this occupation. For example, some advertisers only prefer a bachelor’s degree and rely on the individual’s experience. Additionally, when the advertisers specify a degree as either preferred or required, they recite a variety of fields as

5 “Fine Arts” include painting, sculpture, architecture, music, and poetry. Pursuant to some definitions, it also includes drama, dance, painting, sculpture, music, and photography. However broadly or narrowly defined, the term “Fine Arts” includes a wide array of subjects and does not, per se, constitute a specific specialty.

6 We reviewed the Petitioner’s submission of an article providing an overview of the occupation of a user interface and user experience designer. The article, while informative, does not sufficiently distinguish a UI/UX designer from a web developer/designer position or indicate that a UI/UX designer position requires a bachelor’s degree in a specific specialty, or its equivalent, to perform.
qualifying the candidate to perform the duties of a UI/UX designer. The fields identified in the various advertisements include bachelor’s degrees in computer science, web design and development, human-computer interaction, interaction design, psychology, interactive or visual design, visual arts, graphic design, liberal arts, accounting, business, engineering, information engineering, and social science. Some of the advertisers require only a general bachelor’s degree with no specific discipline identified and some also accept an unspecified amount of experience they deem equivalent to a bachelor’s degree. Again, the wide range of acceptable experience and degrees to perform the duties of a UI/UX designer indicates that this occupation is not a specialty occupation.

Also, the Petitioner has provided a generalized description of the Beneficiary’s proposed duties which does not convey sufficient substantive information to establish the relative complexity, uniqueness and/or specialization of the proffered position or its duties. Without this information we are unable to discern the nature of the actual position and whether the tasks described entail the need for a particular level of education, or educational equivalency, in a body of highly specialized knowledge in a specific specialty. There is insufficient evidence to identify the occupation of the proffered position and to determine whether the duties, as described, 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.

The Petitioner has not established the substantive nature of the work to be performed by the Beneficiary, which therefore precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for entry into 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.

Accordingly, as the Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies for classification as a specialty occupation and the petition could not be approved on this basis alone.

\footnote{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, without further specification, does not establish the position as a specialty occupation. \textit{Cf. Matter of Michael Hertz Assoc.}, 19 I&N Dec. 558, 560 (Comm’r 1988).}
IV. CONCLUSION

The Director in this matter improperly concluded that a user interface and user experience designer occupation is a specialty occupation and we withdraw that conclusion. The Petitioner has not been accorded the opportunity to address the deficiencies in the record regarding the specialty occupation nature of the proffered position on appeal or to offer evidence that its UI/UX designer falls within the parameters of a multimedia artist and animator occupation as designated on the certified LCA. Accordingly, we will remand the record for further development of these issues.

On remand, the Director should afford the Petitioner an opportunity to submit additional evidence and legal argument on these issues.

As always in these proceedings, the burden of proof rests with the Petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The decision of the Director, Vermont Service Center, is withdrawn. The matter is remanded to the Director, Vermont Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as Matter of B-, Inc., ID# 220149 (AAO Feb. 27, 2017)