



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

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

MATTER OF Q-C-, INC.

DATE: JAN. 26, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a 10-employee construction company, seeks to temporarily employ the Beneficiary on a part-time basis as a "market research analyst" under the H-1B nonimmigrant classification for specialty occupations. See Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director, California Service Center, denied the petition. The Director concluded that the Petitioner had not established the proffered position as a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner submits a brief and additional evidence and asserts that the Director erroneously concluded that it had not established that the proffered position is a specialty occupation.

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). U.S. Citizenship and Immigration Services (USCIS) has 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

In response to the Director’s request for evidence (RFE), the Petitioner provided the following description of duties for the proffered part-time market research analyst position (paraphrased for clarity):

The Beneficiary will spend 50 percent of his time on responsibilities as a market research analyst, including the following duties:

- Establish, develop, and run marketing department and oversee activities of marketing department personnel.
- Prepare marketing objectives.
- Further develop the company by opening new locations.
- Plan, direct, or coordinate marketing policies and programs, such as determining the demand for products and services offered by the firm and its competitors, and identifying potential customers.
- Develop pricing strategies with the goal of maximizing profits while increasing market share or share of the market while ensuring the firm’s customers are satisfied.
- Evaluate the financial aspects of product development, such as marketing budgets, expenditures, and development appropriations.

(b)(6)

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- Coordinate or participate in promotional activities, working with advertisers or production managers to market products or services.
- Coordinate or participate in promotional activities or trade shows, working with developers, advertisers, or production managers to market products or services.
- Consult with buying personnel to gain advice regarding the types of products or services expected to be in demand for upper class clients.
- Collect and analyze data on customer demographics, preferences, needs, and buying habits to identify potential markets and factors affecting product demand.
- Conduct research on consumer opinions and carpet marketing strategies, collaborating with marketing professionals, statisticians, pollsters, and other professionals. Conduct market research studies and analyze the findings. Research international and local market conditions for stone products.

The Beneficiary will spend 10 percent of his time conducting market research and analysis of the carpet market in the United States based on experience gained in the Philippines, including the following duties:

- Identify, develop, and evaluate marketing strategy.
- Gather data on competitors and analyze their prices, sales, and method of marketing and distribution.
- Evaluate demographics, prices, distribution channels, and market outlets.
- Measure the effectiveness of marketing, advertising, and communications programs and strategies.
- Prepare reports of findings, illustrating data graphically and translating complex findings into written text.

The Beneficiary will spend 10 percent of his time introducing [REDACTED] into the U.S. market, including the following duties:

- Develop and implement procedures for identifying advertising needs. Assess promotional needs.
- Generate vital information to facilitate decisions on the promotion, distribution, and design of products or services.
- Provide management with information and proposals concerning the promotion, distribution, design, and pricing of company products or services.
- Offer insights about product potentials.
- Meet with clients to ascertain marketing goals.

¹ The Petitioner explains that the Beneficiary established this brand in the Philippines and that it planned, with the Beneficiary's help, to distribute this product in the United States.

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- Measure and assess customer and employee satisfaction. Solicit customer feedback.

The Beneficiary will spend 10 percent of his time acting as a liaison between the Petitioner and other companies for prospective sales, including the following duties:

- Identify new market opportunities.
- Determine brand perceptions and reputations.
- Evaluate market penetration.
- Analyze designs and sizes suitable for target market both local and foreign.
- Provide recommendations to optimize marketing campaigns.
- Identify market segments, estimate consumer demand, and position products.
- Help develop advertising brochures, sales plans, and product promotions.
- Develop rebates, giveaways, and other incentives.

The Beneficiary will spend 10 percent of his time monitoring sales and participating in big projects with [REDACTED] including the following duties:

- Keep track of sales.
- Monitor industry statistics and follow trends in trade literature.
- Create database and capture market data.
- Analyze data on past sales to predict future sales.
- Identify positive financial outcomes.
- Seek to increase profitability.

The Beneficiary will spend 10 percent of his time conducting secondary research and establishing new market outlets, including the following duties:

- Gather information and findings from industry associations and marketing experts.
- Establish comparative data from current and previous research findings, documentation, and recommendations.
- Establish new market outlets with the Beneficiary's ability to speak four languages (Mongolian, English, Russian, and Tagalog).

According to the Petitioner, in order to perform all of the listed job responsibilities, the Beneficiary should have extensive knowledge which can only be gained with the basis of a college education.

On appeal, the Petitioner listed six general duties and then provided a lengthy narrative outlining the demands and role of a market research analyst.² The Petitioner also identified eight responsibilities for a standard market research analyst.

² The six general areas of discussion included: running the marketing department, researching local market conditions for

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 (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.³

On the labor condition application (LCA)⁴ submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Market Research Analysts and Marketing Specialists" corresponding to the Standard Occupational Classification code 13-1161.⁵ Upon review of the general description of duties, the Petitioner has not provided sufficient evidence of what the Beneficiary will actually do in the proposed position so that we may analyze and ascertain the educational requirements required to perform those duties.

For example, several of the proffered position's listed duties paraphrase the duties listed in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* subchapter on "Market Research Analysts," rather than describing the actual duties that will engage the Beneficiary while working within the Petitioner's organization. See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., Market Research Analysts, <https://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-2> (last visited Jan. 18, 2017). The Petitioner also recites portions of the broadly stated duties outlined in the Occupational Information Network (O*NET) Online Summary Report for market research analysts and marketing specialists. See <http://www.onetonline.org/link/summary/13-1161.00> (last visited Jan. 18, 2017). The overview of an occupation as reported in the *Handbook* and in the O*NET

stone products, identifying, developing, and evaluating marketing strategies, further developing the company by opening new locations, implementing marketing promotion, and developing a strategic marketing plan.

³ 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.

⁴ 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, 545-46 (AAO 2015).

⁵ 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 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://flcdatacenter.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.*

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summary report cannot be relied upon when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. Although the Petitioner briefly references its stone products, its plan to introduce the Beneficiary's carpet brand into the U.S. market, and its "big projects with [REDACTED]"⁶ the Petitioner does not otherwise tie specific marketing tasks to its construction business or to its contracts with two home builders submitted on appeal.

Additionally, the Petitioner indicated that the individual in the proffered position will establish, develop, and run the marketing department and oversee activities of marketing department personnel, but the record does not include an organizational chart or business plans indicating when the Petitioner expects such a department to be established and when the Beneficiary would be tasked with overseeing the activities of marketing department personnel. Moreover, while the Petitioner has provided a lengthy narrative of the proposed duties, the narrative continues to repeat the various general duties of a standard market research analyst, without detailing specific tasks associated with them.

The Petitioner's overview of the occupation does not place the Beneficiary's actual duties within the context of the Petitioner's 10-employee company which specializes in fabrication and installation of countertops. Nor does this overview convey an understanding of the Beneficiary's actual duties for the Petitioner. Upon review of the Petitioner's general description of the proffered position, it is not possible to ascertain what specific duties will actually engage the Beneficiary on a day-to-day basis in his role developing the Petitioner's market research efforts. Again, as the record does not include an organizational chart or business plan, it is unclear whether the Petitioner has personnel to sell its products, including any products related to its expansion into the carpet industry, or to provide other services unrelated to market research to the Petitioner's organization, or whether the Beneficiary's tasks would also involve these duties.

The Petitioner's generic description of the market research analyst occupation rather than the specific duties attached to the proffered position, 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

⁶ The Petitioner neither identified the big projects with [REDACTED] and what they entail, nor submitted documentary evidence of its relationship with [REDACTED]. A petitioner's unsupported statements are of very limited weight and normally will be insufficient to carry its burden of proof. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)); *see also Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

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 appeal must be dismissed on this basis alone. We will nevertheless perform a complete specialty occupation analysis under each of the four, alternative criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).⁷

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 *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁸

The subchapter of the *Handbook* entitled "How to Become a Market Research Analyst" states, in relevant part, the following:

Most market research analysts need at least a bachelor's degree. Top research positions may require a master's degree. Strong math and analytical skills are essential.

Education

Market research analysts typically need a bachelor's degree in market research or a related field. Many have degrees in fields such as statistics, math, and computer science. Others have backgrounds in business administration, the social sciences, or communications.

Courses in statistics, research methods, and marketing are essential for these workers. Courses in communications and social sciences, such as economics or consumer behavior, are also important.

⁷ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

⁸ 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.

Some market research analyst jobs require a master's degree. Several schools offer graduate programs in marketing research, but many analysts complete degrees in other fields, such as statistics and marketing, and/or earn a master's degree in business administration (MBA). A master's degree is often required for leadership positions or positions that perform more technical research.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., Market Research Analysts, <https://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-4> (last visited Jan. 18, 2017).

When reviewing the *Handbook*, we note that the Petitioner designated the proffered position under this occupational category at a Level I wage on the LCA. Based upon the Petitioner's designation of the proffered position as a Level I position (relative to others with the occupation) it does not appear that the Beneficiary will serve in a senior or leadership role or in a position that performs more technical research which would require a master's degree.

The *Handbook* does not indicate that a bachelor's degree *in a specific specialty*, or the equivalent, is normally required for entry into this occupation. That is, while the *Handbook* states that market research analysts typically need a bachelor's degree in or related to market research, it also states that "[m]any" market research analysts have degrees in various other fields such as statistics, math, and computer science. Based on the various degrees which many research analysts can possess, the *Handbook* does not support the position's eligibility under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

In general, provided the specialties are closely related, e.g., statistics and math, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" 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. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of degrees in disparate fields, such as market research and computer science, would not meet the statutory requirement that the degree be "in *the* specific specialty," 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).⁹ The Petitioner has not done so here.

⁹ Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. As just stated, this also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Moreover, the *Handbook* indicates that general-purpose bachelor's degrees in business administration and the social sciences are acceptable for entry into the market research analyst occupation. This statement is consistent with the Petitioner's educational requirement for the proffered position, which includes a bachelor's degree in business administration. But again, a minimum requirement of a general-purpose bachelor's degree, such as a business administration degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp.*, 484 F.3d at 147; cf. *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 560).

For these reasons, the *Handbook* is not determinative on the issue of the academic requirements for a generic market research analyst.

Finally, we have considered the Petitioner's citation to *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), for the proposition that "[t]he knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge."¹⁰

We agree with the aforementioned proposition that "[t]he knowledge and not the title of the degree is what is important." 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. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, 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). Here, however, the Petitioner has not met its burden to establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to the duties described. Instead, the Petitioner emphasizes that the required degree is a general bachelor's or college degree.

¹⁰ The Petitioner also references the *Residential Finance* court as finding that the prospective employee's knowledge is what is relevant and not the title of the degree. We do not find that the *Residential Finance* court issued this finding. We also point out there that USCIS cannot determine if a particular job is a specialty occupation based on the qualifications of a beneficiary. A beneficiary's credentials to perform a particular job are relevant only when the job is first found to qualify as a specialty occupation. USCIS is required instead to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether the beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. Cf. *Matter of Michael Hertz Assocs.*, 19 I&N Dec. at 560 ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].").

In any event, while the Petitioner claims that its position is analogous to the position proffered in *Residential Finance*, the record does not include sufficient probative evidence to establish that the facts of the instant petition are analogous to those in *Residential Finance*.¹¹ We also note that, in contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising even within the same district.¹² See *Matter of K-S-*, 20 I&N Dec. 715, 719-20 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.*

In this case, the Petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent.¹³ The record lacks sufficient evidence to support a finding that the duties and requirements of 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.

Upon review of the totality of the record, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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 concentrates upon the common industry practice, while the alternative prong narrows its focus to the Petitioner's specific position.

¹¹ It is noted that the district judge's decision in that case appears to have been based largely on the many factual errors made by the Director in the decision denying the petition. We further note that the Director's decision was not appealed to us. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by us in our *de novo* review of the matter.

¹² The Petitioner also cites *Raj and Co. v. USCIS*, 85 F. Supp. 3d 1241 (W.D. Wash. 2015); however, the Petitioner did not demonstrate that the facts of that case are analogous to the facts of the instant petition.

¹³ The Petitioner further refers to the *Handbook* as establishing that the occupation has been classified as a Job Zone 4 occupation with a Specific Vocational Preparation (SVP) of 7 to 8. However, this classification and rating derive from O*NET Summary Reports. Upon review, O*NET does not indicate that 4-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty directly related to the occupation. Accordingly, the O*NET information is not probative of the proffered position being a specialty occupation.

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.

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

Here and as already discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative sources) 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.

On appeal, the Petitioner references job listings and the Director’s analysis of those job listings. However, the record does not include any advertisements for market research analysts or any other occupation. The Director’s decision in this matter specifically noted that the Petitioner had not submitted “evidence to demonstrate that a degree in a specific field of study is common to the construction industry in parallel positions among similar organizations.” While the Director also noted that the record included a copy of a letter from the Beneficiary’s former employer, the Director correctly found that the Beneficiary’s previous employer did not specify that a bachelor’s degree was required for the position.

As the record does not include probative evidence that a “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, 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 this matter, the evidence of record does not distinguish the proffered position as unique from or more complex than other market research analyst positions that can be performed by persons without

at least a bachelor's degree in a specific specialty, or its equivalent. As determined above, the record does not credibly demonstrate exactly what the Beneficiary will do on a day-to-day basis such that complexity or uniqueness can even be determined. That is, the evidence of record does not establish that this position is significantly different from other market research analyst positions such that it refutes the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for market research analysts' positions, including degrees in fields of general applicability.

The Petitioner asserts on appeal that its goal in offering the position to the Beneficiary was to further develop the company and that the Beneficiary was the only business expert responsible for various areas of the company's marketing. Again, we have reviewed the Petitioner's lengthy narrative describing the proffered position and emphasize that the Petitioner did not submit probative evidence of its business operations and did not detail the Beneficiary's proposed duties within the context of its business operations. Although the Petitioner claims that the proffered position's duties are so complex and unique that a bachelor's degree is required, the Petitioner does not demonstrate how its market research analyst's duties 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 instance, the Petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it claims are so complex and unique. While a few related courses 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.

This is further evidenced by the LCA submitted by the Petitioner in support of the instant petition.¹⁴ Again, the LCA indicates that, relative to other positions located within the "Market Research Analysts and Marketing Specialists" occupational category, the Beneficiary would perform routine tasks that require only a basic understanding and require limited, if any, exercise of judgment. Without further evidence, the record does not demonstrate that the proffered position is complex or unique as such a position falling under this occupational category would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage.

¹⁴ 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, 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.

The Petitioner claims that the Beneficiary is well-qualified for the position, and references his formal education and experience as evidence that the proffered position is a specialty occupation. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. Here, the Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position, and it did not identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. Thus, it cannot be concluded that the Petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

C. Third Criterion

The Petitioner indicates that it is a new company and offers no evidence that it previously employed a market research analyst. To satisfy this specific criterion the record must include evidence that the performance requirements of the position generated the Petitioner's recruiting and hiring history. While a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, it is unclear how an employer that has not previously recruited and hired for the position would be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). We also note that a petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation.¹⁵ See generally *Defensor*, 201 F.3d 384. The record here is insufficient to conclude that the Petitioner has satisfied the third criterion.

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.

The Petitioner asserts that the job duties of the proffered position are specialized and complex and again describes the role of a non-specific market research analyst and not the duties of the proffered position as those duties specifically relate to its business operations. We find that the Petitioner has

¹⁵ The critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty, or its equivalent, as the minimum for entry into the occupation as required by section 214(i)(1) of the Act. According to the Court in *Defensor*, "To interpret the regulations any other way would lead to an absurd result." *Id.* at 388. If USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position – and without consideration of how a beneficiary is to be specifically employed – then any beneficiary with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. See *id.*

not sufficiently developed relative specialization and complexity as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than market research analyst positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. We also incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the position in the LCA as a Level I position (the lowest of four assignable wage-levels) relative to others within the same occupational category. Upon review of the totality of the record, it does not include probative evidence that the duties as generally described require more than technical proficiency in the marketing research field. The Petitioner has not demonstrated in the record that its proffered position is one with duties sufficiently specialized and complex 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.

As a final matter, we have considered the Petitioner's reference to an approved H-1B petition that had been previously filed on behalf of the Beneficiary. However, if the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the Director. We are not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be "absurd to suggest that [USCIS] or any agency must treat acknowledged errors as binding precedent." *Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987).

IV. CONCLUSION

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 Q-C-, Inc.*, ID# 183674 (AAO Jan. 26, 2017)