The Petitioner, a computer consulting firm, seeks to temporarily employ the Beneficiary as a “programmer 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 of the Vermont Service Center denied the petition, concluding that the record did not establish that the proffered position qualifies as a specialty occupation.\

On appeal, the Petitioner asserts that the Director erred in denying the petition.

Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), defines the term “specialty occupation” as an occupation that requires:

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

1 We hereby withdraw the Director’s statement that the position of programmer analyst is traditionally considered a specialty occupation. The Director does not cite to any authoritative or objective source to support this statement.
The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

8 C.F.R. § 214.2(h)(4)(iii)(A). We have consistently interpreted the term “degree” to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position. See Royal Siam Corp. v. Chertoff, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”); Defensor v. Meissner, 201 F.3d 384, 387 (5th Cir. 2000).

II. PROFFERED POSITION

The Petitioner provided the following information about the path of contractual succession:

Petitioner — Vender — End Client

The Petitioner stated that the Beneficiary would serve as a programmer analyst and be employed off-site at the end-client’s location.

The vender and end-client provided the following duties for the proffered position:

• Responsible for the design, development and administration of transactional and analytical data constructs/structures using Python or R, Tableau, Terradata, SAS.

2 This list of duties was endorsed by the Petitioner.
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- Included within those responsibilities are the areas of data access and delivery technologies, expertise in data quality, data organization, metadata, and data profiling.
- May provide technical support on data warehouse teams.
- Demonstrated ability to move from one sequential assignment to the next (work environment and priorities can change quickly depending on business needs).
- Demonstrated ability to move data between production systems and across multiple platforms.

They did not state that the position has any specific academic or experience requirements.

With the initial submission, the Petitioner provided the following information regarding the requirements of the position. However, we note, that there are variances as to the acceptable disciplines and additional requirements.

<table>
<thead>
<tr>
<th>Record of Proceedings</th>
<th>Educational Level</th>
<th>Disciplines</th>
<th>Additional Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Letter of Support – Nov. 3, 2015</td>
<td>bachelor’s or master’s degree</td>
<td>computer science, information systems, management, information systems, electrical/electronics, engineering, physics</td>
<td>none</td>
</tr>
<tr>
<td>Letter of Support – Oct. 31, 2016</td>
<td>bachelor’s degree</td>
<td>computer science, engineering, management/computer information systems</td>
<td>proficiency in software tools</td>
</tr>
</tbody>
</table>

Further, the Petitioner provided inconsistent information regarding the Beneficiary’s supervisor. The chart below summarized the Petitioner’s statements:

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The Petitioner stated that a degree in one of several disparate fields (e.g., management and physics) is sufficient for the position. In general, provided the specialties are closely related, a minimum of a bachelor’s or higher degree in more than one specialty is recognized as satisfying the “degree in the specific specialty (or its equivalent)” requirement of section 214(i)(1)(B) of the Act. In such a case, the required “body of highly specialized knowledge” would essentially be the same.

A minimum entry requirement of degrees in disparate fields, however, would not meet the statutory requirement that the degree be “in the specific specialty (or its equivalent),” unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required “body of highly specialized knowledge” is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added). The Petitioner has not made this showing.
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 (1) does not describe the position’s duties with sufficient detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.4

More specifically, a crucial aspect of this matter is whether the record contains sufficient information that we may discern the nature of the position. The Petitioner has not done so here. For example, the record does not provide the order of importance and/or frequency of occurrence (e.g., regularly, periodically, or at irregular intervals) with which the Beneficiary will perform the functions and tasks. Thus, the record does not specify which tasks are major functions of the proffered position.

Further, as recognized in Defensor, 201 F.3d at 387-88, it is necessary for the end-client to provide sufficient information regarding the proposed job duties to be performed at its location(s) in order to properly ascertain the minimum educational requirements necessary to perform those duties. In other words, as the employees in that case would provide services to the end-client and not to the petitioning staffing company, the Petitioner-provided job duties and alleged requirements to perform those duties were irrelevant to a specialty occupation determination. See id.

Here, the end-client described the proposed duties in terms of generic functions that do not convey substantive information to establish the relative complexity, uniqueness and/or specialization of the proffered position or its duties. The abstract level of information provided about the proffered position and its constituent duties is exemplified by the assertion that the Beneficiary “may” provide technical support, suggesting that this function is not a required task for the position. Further, providing technical support could encompass a range of responsibilities and the record lacks sufficient details on how this would translate to specific tasks.

The end-client also claimed the position involves the “demonstrated ability to move from one sequential assignment to the next” and the “demonstrated ability to move data.” The phrase “demonstrated ability” suggests that the individual should have some background with these tasks.

4 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.
However, the statements do not convey enough pertinent details as to communicate the Beneficiary’s actual role or the work that he will perform. Further, the record does not convey how a baccalaureate level of education (or higher) in a specific specialty, or its equivalent, would be required for its performance.

Thus, the responsibilities for the proffered position contained general functions without providing sufficient information regarding the particular work and the associated educational requirements into which the duties would manifest themselves in their day-to-day performance. The description of the Beneficiary’s duties lack the specificity and detail necessary to support the Petitioner’s contention that the position is a specialty occupation.

While a general description may be appropriate when defining the range of duties that are performed within an occupation, such a generic description generally cannot be relied upon when discussing the duties attached to specific employment for H-1B approval. In establishing such a position as a specialty occupation, especially one that may be classified as a staffing position or labor-for-hire, the description of the proffered position must include enough details to substantiate that the Petitioner (or, in this case, the end-client) has H-1B caliber work for the Beneficiary. Here, the job description from the Petitioner and the end-client does not sufficiently communicate: (1) the actual work that the Beneficiary would perform; (2) the complexity, uniqueness or specialization of the tasks; or (3) the correlation between that work and a need for a particular level of knowledge in a specific specialty.

Importantly, the record lacks sufficient substantive documentation from the end-client regarding what it may or may not have specified with regard to the educational credentials of persons to be assigned to its project. Moreover, the Petitioner provided inconsistent information about the position’s requirements.

The Petitioner, thus, has not established the substantive nature of the work to be performed by the Beneficiary, which 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 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.

Moreover, the Petitioner does not directly assert eligibility or provide sufficient evidence in support of the regulatory criteria. Thus, the present record does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A).
IV. CONCLUSION

For the reasons discussed above, we find that the Petitioner has not established eligibility for the benefit sought.

ORDER: The appeal is dismissed.

Cite as Matter of S-P-S-, Inc., ID# 441768 (AAO July 27, 2017)