



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

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

MATTER OF W- INC.

DATE: JUNE 1, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an information technology consulting firm, seeks to temporarily employ the Beneficiary as a "computer 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 California Service Center denied the petition, concluding that the evidence of record does not establish that the proffered position qualifies as a specialty occupation.

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

- (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

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as “computer programmer analyst.”¹ In addition, the Petitioner stated that the Beneficiary will be working for the end-client [REDACTED] located at [REDACTED] in [REDACTED] California. In its support letter, the Petitioner stated that the proffered position requires a bachelor’s degree in computer science, engineering, or information technology.

In response to the Director’s request for evidence (RFE), the Petitioner submitted a letter from the end-client, which provided the following job duties for the position:²

[The Beneficiary] will maintain computer programs or software packages to handle specific jobs such as tracking inventory, storing or retrieving data, or controlling other equipment; write, analyze, review, and rewrite programs, using workflow chart and diagram, and applying knowledge of computer capabilities; and analyze and evaluate existing and proposed systems & devices, computer programs and systems as well as related procedures to process data and program.

In addition, the Petitioner provided a work order from the end-client that states that the position requires a bachelor’s degree.³

¹ Public records indicate that the Petitioner’s business address is zoned as a residential family home.

² We observe that the wording of the duties provided by the end-client for the proffered position is taken almost verbatim from the Occupational Information Network (O*NET) OnLine Summary Report’s list of tasks associated with the occupational category “Computer Programmers.” For additional information, see O*NET OnLine, available at <https://www.onetonline.org/link/summary/15-1131.00> (last visited May 31, 2017).

Moreover, the Petitioner submitted its own description of the Beneficiary's job duties for the proffered position, along with the approximate percentage of time the Beneficiary will spend on each duty.⁴ The Petitioner stated that the position requires a bachelor's degree in computer technology, or its equivalent.

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.⁵ 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.⁶

A. Labor Condition Application

We turn first to the labor condition application (LCA) submitted in support of the H-1B petition, in which the Petitioner designated the proffered position under the occupational category "Computer Programmers" corresponding to the Standard Occupational Classification (SOC) code 15-1131. On appeal, the Petitioner states that the proffered position is "parallel to the occupation of a software engineer, which is an occupation that is now classed as a software developer."

While these occupational categories may have some general duties in common, they are distinct and separate occupational categories. When the duties of the proffered position involve more than one occupational category, the U.S. Department of Labor (DOL) provides guidance for selecting the most relevant Occupational Information Network (O*NET) code classification. The "Prevailing Wage Determination Policy Guidance" by DOL states the following:

In determining the *nature of the job offer*, the first order is to review the requirements of the employer's job offer and determine the appropriate occupational classification. The O*NET description that corresponds to the employer's job offer shall be used to identify the appropriate occupational classification If the employer's job opportunity has worker requirements described in a combination of O*NET occupations, the [determiner] should default directly to the relevant O*NET-SOC occupational code for the highest paying occupation. For example, if the employer's job offer is for an engineer-pilot, the [determiner] shall use the education, skill and

³ The end-client does not claim that the position requires a degree in a specific specialty. Thus, it does not require the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as the minimum requirement for entry into the occupation, as required by the Act. Section 214(i)(1) of the Act.

⁴ The Petitioner's job duties are significantly different from the end-client's job description listed above.

⁵ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

⁶ 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.

experience levels for the higher paying occupation when making the wage level determination.

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.

Thus, if the Petitioner believed its position was described as a combination of occupations, then according to DOL guidance, the Petitioner should have chosen the relevant occupational code for the highest paying occupation. The Level I prevailing wage for "Computer Programmers" is significantly lower than the Level I prevailing wage for "Software Developers, Applications" and "Software Developers, Systems Software." For instance, at the time the Petitioner's LCA was certified, the Level I prevailing wage for "Software Developers, Applications" in the area of intended employment was \$79,498 per year and for "Software Developers, Systems Software" in the area of intended employment was \$85,342 per year, while the Level I prevailing wage for "Computer Programmers" in the area of intended employment was \$54,059 per year. Moreover, it is important to note that the offered wage of \$60,000 per year to the Beneficiary is less than the prevailing wages of \$79,498 per year and \$85,342 per year for the "Software Developers, Applications" and "Software Developer, Systems Software" occupational categories.

Under the H-1B program, a petitioner must offer a beneficiary wages that are at least the actual wage level paid by the Petitioner to all other individuals with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application. *See* section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A).

As such, the Petitioner has not established (1) that it submitted a certified LCA that properly corresponds to the claimed occupation and duties of the proffered position; and (2) that it would pay the Beneficiary an adequate salary for his work, as required under the Act, if the petition were granted. These issues preclude the approval of the petition.

B. Position Requirements

Furthermore, the Petitioner has provided inconsistent information regarding the minimum requirements for the proffered position. The Petitioner initially stated that the proffered position requires a bachelor's degree in computer science, engineering, or information technology. However, in response to the RFE, the Petitioner stated that the position requires a bachelor's degree in computer technology. In addition, the Petitioner provided a copy of its Internet job posting for the proffered position, which states that the position requires a bachelor's degree in computer science, or its equivalent, and five years of programming experience. The Petitioner also submitted a work order from the end-client that states that the position requires a bachelor's degree, without a specific specialty or field of study. The Petitioner did not provide an explanation for the variances in the requirements.

C. Job Description

Moreover, 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 employees nurses 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, we find that the end-client's job description is recited virtually verbatim from O*NET OnLine Summary Report's list of duties associated with a computer programmer. The description of the Beneficiary's duties, as provided by the Petitioner and the end-client, 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 by the Petitioner 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 sufficient details to substantiate that the Petitioner has H-1B caliber work for the Beneficiary. Here, the job descriptions from the Petitioner and the end-client do 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.

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.

Nevertheless, assuming, for the sake of argument, that the proffered duties as described in the record would in fact be the duties to be performed by the Beneficiary, we will analyze them and the evidence of record to determine whether the proffered position as described qualifies as a specialty occupation pursuant to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

D. 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 DOL's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁷

As previously discussed, on the LCA,⁸ the Petitioner designated the proffered position under the occupational category "Computer Programmers" corresponding to the Standard Occupational Classification code 15-1131.⁹ Thus, we reviewed the *Handbook's* subchapter entitled "How to Become a Computer Programmer," which states, in pertinent part: "Most computer programmers have a bachelor's degree in computer science or a related subject; however, some employers hire workers with an associate's degree." Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Computer Programmers (2016-17 ed.). Thus, the *Handbook* does not support the Petitioner's assertion that a bachelor's degree is required for entry into this occupation. The *Handbook* reports that the occupation accommodates a wide spectrum of educational credentials, including less than a bachelor's degree in a specific specialty.

In the instant matter, the Petitioner has not provided documentation from a probative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

⁷ All of our references are to the 2016-17 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.

⁸ 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, 545-546 (AAO 2015).

⁹ 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://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.*

E. Second Criterion

The second criterion presents two alternative prongs: “The degree requirement is common to the industry in parallel positions among similar organizations *or, in the alternative*, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree[.]” 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong casts its gaze upon the common industry practice, while the alternative prong narrows its focus to the Petitioner’s specific position.

1. First Prong

To satisfy the 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.

In determining whether there is such a common degree requirement, factors we often consider 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)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or another authoritative source, reports a requirement for at least a bachelor’s degree in a specific specialty, or its equivalent. We incorporate by reference the previous discussion on the matter.

In support of this criterion, the Petitioner provided a letter from a company discussing its opinion regarding the requirements of a computer programmer analyst position. The company states that it is comparable to the Petitioner; however, the letter lacks sufficient information regarding the company to conduct a meaningfully substantive comparison of its business operations to the Petitioner. The Petitioner did not provide any supplemental information to establish that the organization is similar to the Petitioner.

In addition, the company states that “the minimum and mandatory requirements for the position of a Computer Programmer/Analyst is a Bachelor’s degree or its equivalent in a related field” and that, based on a review of the duties of the proffered position, “only an individual with at least the equivalent of a bachelor’s degree in Computer or engineering related field would be qualified.” While the company states that it only employs individuals who have the required qualifications and experience associated with the position, it does not provide the number of people who have held the position or describe their specific credentials. The letter is not supported by evidence or sufficient information that this organization “routinely employ[s] and recruit[s] only degreed individuals.” See *id.*

The Petitioner also submitted copies of job announcements placed by other employers. However, upon review of the documents, we find that the Petitioner's reliance on the job announcements is misplaced. First, we note that some of the job postings do not appear to involve organizations similar to the Petitioner. For example, the Petitioner is a 20-person, information technology consulting and software development company, whereas one of the postings is for an engineering company seeking electrical engineers. Furthermore, some of the advertisements provide little or no information regarding the hiring employers, but instead provide a wide range of general characteristics, such as having "1 to 50" employees, revenue of less than \$1 million, or revenue between \$1 million and \$5 million. The Petitioner did not supplement the record of proceedings to establish that these advertising organizations are similar to the Petitioner.

When determining whether the Petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the Petitioner to claim that an organization is similar and in the same industry without providing a basis for such an assertion.

Moreover, many of the advertisements do not appear to be for parallel positions. For example, some of the positions appear to be for more senior, experienced employment than the proffered position.¹⁰ Some of the postings do not include the duties and responsibilities for the advertised positions. Thus, it is not possible to determine important aspects of the jobs, such as the day-to-day responsibilities, complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Therefore, the Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

In addition, some of the postings do not indicate that at least a bachelor's degree in a directly related specific specialty (or its equivalent) is required.¹¹ The job postings suggest, at best, that although a bachelor's degree is sometimes required for computer programmer analyst positions, a bachelor's degree in a *specific specialty* (or its equivalent) is not.¹²

¹⁰ For instance, the advertisement for [REDACTED] requires a degree and "5+ years of experience in technical leadership role" involving various platforms and applications. In addition, the posting for [REDACTED] requires a degree and a "[m]inimum of 4 years IT/programming experience." However, according to the Petitioner, the proffered position is an entry-level position (as indicated by the wage level on the LCA).

¹¹ As discussed, the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but a bachelor's degree in a specific specialty that is directly related to the duties of the position. See section 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). Further, a *preference* for a degree in a field is not necessarily an indication of a minimum *requirement*.

¹² It must be noted that even if all of the job postings indicated that a requirement of a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the Petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even

As the documentation does not establish that the Petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary.¹³ That is, not every deficit of every job posting has been addressed.

Without more, the Petitioner has not provided sufficient evidence to establish that a bachelor's degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations. Thus, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

2. Second Prong

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the Petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

While the Petitioner may believe that the position meets this prong of the regulations, we note, however, the record lacks evidence supporting the Petitioner's claim. For example, as discussed, the Petitioner designated the proffered position as an entry-level position within the occupational category by selecting a Level I wage.¹⁴ This designation, when read in combination with the evidence presented and the *Handbook's* account of the requirements for this occupation, suggests that the particular position is not so complex or unique that the duties can only be performed by an individual with bachelor's degree or higher in a specific specialty, or its equivalent.¹⁵

Also, 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, while the Petitioner claims that the position involves focusing on requirement gathering, analysis, and the design and

if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

¹³ The Petitioner did not provide any independent evidence of how representative the job postings are of the particular advertising employers' recruiting history for the type of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the actual hiring practices of these employers.

¹⁴ The Petitioner's designation of this position as a Level I, entry-level 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.

¹⁵ The evidence of record does not establish that this position is significantly different from other positions within the occupational category such that it refutes the *Handbook's* information to the effect that some courses are advantageous to obtaining such a position, but not specifying that the degree must be in a specific specialty.

testing of software, the Petitioner does not demonstrate how the computer programmer analyst's duties 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.

For instance, the Petitioner initially stated that the proffered position requires a bachelor's degree in computer science, engineering, or information technology. However, the end-client listed on its work order that a bachelor's degree is the minimum requirement for the position but did not identify a specific specialty or field of study. Consequently, while the Petitioner identified certain fields which may be beneficial, or even essential, in performing certain duties of a computer programmer analyst position, the Petitioner has not demonstrated how an established curriculum of the related courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is ultimately required to perform the duties of the proffered position.

The Petitioner claims that the Beneficiary is well qualified for the position, and references his qualifications. 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. 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. Accordingly, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

F. Third Criterion

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position.

The Petitioner included a list of employees in similar positions, along with degree certificates and recent pay stubs, as evidence that it normally requires a bachelor's degree for the position. However, the evidence that the Petitioner provided does not establish that these individuals were hired into computer programmer analyst positions that are the same or similar to the one offered to the Beneficiary. Based on a review of the quarterly wage reports that the Petitioner provided, it appears that several of the individuals are paid a significantly higher salary than the one offered to the Beneficiary. Thus, this strongly suggests that these individuals are employed in a more senior position than the proffered position. The Petitioner did not provide an explanation for the variances in the wages.

Further, the Petitioner did not provide the job duties and day-to-day responsibilities for these individuals. The Petitioner also did not submit any information regarding the complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Accordingly, it is unclear whether the duties and responsibilities of these individuals are the same or similar to the proffered position.

In addition, the Petitioner provided a copy of its own advertisement for the position of computer programmer analyst. While the advertisement generally states that a bachelor's degree in computer science or a related field is required, it also requires five years of programming experience. Given the advertised position requires five years of experience; it appears that the advertised position is for a more senior position than that of the proffered position. Again, the Petitioner has designated the proffered position as a Level I, entry-level position that only requires a basic understanding of the occupation, which is in contrast to the position advertised that is for a more senior position. As such, we cannot determine that the proffered position is the same or similar to the advertised position such that we can conclude that the Petitioner normally requires a bachelor's degree in a specific specialty, or its equivalent for this position.

Upon review of the record, we conclude that the Petitioner did not provide sufficient documentary evidence to support the assertion that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, directly related to the duties of the position. The Petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

G. 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.

In response to the Director's RFE, the Petitioner submitted a letter from [REDACTED] a professor of computer science and computer engineering at [REDACTED] based his opinion on his education and his professional and academic experience working in the academic setting.

[REDACTED] analyzes the Petitioner's duties of the proffered position and opines that the position requires a bachelor's degree in computer science, computer information systems, or a related degree. [REDACTED] concludes that "[t]he duties of the Computer Programmer Analyst are both complex and specialized."

Upon review of the opinion letter, we find that [REDACTED] characterization of the proffered position as involving "specialized and complex" duties that require a bachelor's degree in computer science, computer information systems, or a related degree appears inconsistent with the Petitioner's designation of the position as a Level I, entry-level position. It is unclear if [REDACTED] was informed of the Petitioner's attestation on the LCA that the proffered position was a Level I wage position. The omission of any discussion of the entry wage designation diminishes the evidentiary value of this opinion as the opinion does not appear to be based on a complete understanding of the proffered position.

Moreover, the record does not include evidence that [REDACTED] has published, conducted research, run surveys, or engaged in any enterprise, pursuit, or employment - academic or otherwise regarding the minimum education requirements for the performance of the duties of the proffered position. While he may have anecdotal information regarding recruitment by employers for students who study computer science and computer engineering, the record does not include any relevant research, studies, surveys, or other authoritative publications as part of his review or as a foundation for his opinion.

For the reasons discussed, we find that Mr. Spillman's opinion letter lends little probative value to the matter here. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988) (The service is not required to accept or may give less weight to an advisory opinion when it is "not in accord with other information or is in any way questionable.").

Although the Petitioner claims that the Beneficiary is performing complex and specialized duties, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than other positions in the occupational category that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. We also reiterate our earlier comments and findings regarding the implications of the position's wage level designation on the LCA. Thus, 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).

IV. CONCLUSION

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.

ORDER: The appeal is dismissed.

Cite as *Matter of W- Inc.*, ID# 404076 (AAO June 1, 2017)