



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

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

MATTER OF E-E-C-, LLC

DATE: JUNE 21, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an environmental company, seeks to temporarily employ the Beneficiary as a part-time "executive administrative assistant" 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 Petitioner did not establish, as required, that the proffered position is a specialty occupation.

On appeal, the Petitioner submits additional evidence and contends that the petition should be approved.

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

The Petitioner stated in the H-1B petition that the Beneficiary will serve as an “executive administrative assistant.” In its support letter, the Petitioner stated that the Beneficiary would perform the following duties (note: errors in the original text have not been changed):

- Perform our accounts receivables and accounts payables.
- Compile and manage reports for storm water and the [REDACTED]
- Handle and manage all of our certificate of insurances and keep all clients up to date with current paperwork.
- Conduct research on projects and prepares estimates for bidding at local and state level.
- Provide clerical support to the manager/President. Work closely with the President/CEO to keep him well informed of upcoming commitments and responsibilities, following up appropriately.
- Handle all the companies’ memos, letters, and customer’s financial statements.
- Translate documents as well as job orders from Spanish speaking employees. Liaison for any Spanish translations, and correspondence.
- Draft acknowledgement letters, personal correspondence, and other tasks that facilitate the CEO’s ability to effectively lead the company.

The Petitioner submitted an expanded description of the proffered position's duties in its response to the Director's request for additional evidence.

On appeal, the Petitioner states that the proffered position requires "someone with a bachelor's degree."

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.¹ Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.²

Before addressing the specialty-occupation criteria contained at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)-(4), we will briefly discuss an issue which precludes a finding that the proffered position is a specialty occupation.

As noted, the Petitioner indicates that a bachelor's degree in any field of study would adequately prepare an individual to perform the duties of the proffered position.³ However, that claim is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. There must be a close correlation between the required specialized studies and the position; thus, the mere requirement of a degree, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility."). Thus, while a general-purpose bachelor's degree may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *Royal Siam Corp.*, 484 F.3d at 147.

The Petitioner asserts that its minimum requirement for the proffered position is only a bachelor's degree, without further requiring that the degree be in any specific specialty.⁴ Without more, the

¹ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

² 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.

³ The Petitioner addresses the educational requirements of the proffered position for the first time on appeal. Previously, the Petitioner had addressed these requirements only by referencing the Beneficiary's bachelor's degree. 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.

⁴ That the Petitioner finds acceptable the Beneficiary's bachelor's degree in "general studies" indicates further that a bachelor's degree in a specific specialty, or the equivalent, is not required.

Petitioner's statement alone indicates that the proffered position is not in fact a specialty occupation. The Director's decision must therefore be affirmed and the appeal dismissed on this basis alone. Though this issue precludes approval of this H-1B petition, we will nonetheless review the evidence of record in light of the four specialty-occupation criteria contained at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)-(4) for the purpose of performing a more comprehensive analysis.

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 U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁵

On the labor condition application (LCA)⁶ submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Executive Secretaries and Executive Administrative Assistants" corresponding to the Standard Occupational Classification code 43-6011.⁷ The *Handbook's* chapter entitled "How to Become a Secretary or Administrative Assistant" states in pertinent part: "Executive secretaries usually need several years of related work experience For executive secretary positions, employers increasingly prefer to hire those who have taken some college courses or have a bachelor's degree." Bureau of Labor Statistics, U.S.

⁵ 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.

⁶ 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).

⁷ 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 she will be closely supervised and her work closely monitored and reviewed for accuracy; and (3) that she 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.*

Dep't of Labor, *Occupational Outlook Handbook*, Secretaries and Administrative Assistants (2016-17 ed.).

These findings do not indicate that a bachelor's degree in a specific specialty, or the equivalent, is normally required for these positions. An "increasing preference" does not necessarily equate to a normal minimum recruiting and hiring standard, and having "taken some college classes" is not necessarily synonymous with the attainment of a bachelor's degree. Nor does the *Handbook* indicate that when a bachelor's degree is "preferred," employers prefer the degree to be in any specific specialty. Whether considered separately or collectively, these statements do not indicate that a bachelor's degree in a specific specialty, or the equivalent, is normally required for these positions.

In addition, when comparing the duties of the proffered position to those of other positions located within this occupational category, we note that the Petitioner stated on the LCA that it will pay the Beneficiary a Level I wage, which indicates that it is an entry-level position. Given the *Handbook's* implication that a bachelor's degree in a specific specialty, or the equivalent, is not normally required for these positions, it seems unlikely that an entry-level position possessing these characteristics would carry such a requirement.

The Petitioner submits information from several other sources for our consideration under this criterion, including DOL's Occupational Information Network (O*NET), the *Dictionary of Occupational Titles (DOT)*, and CareerOneStop. Upon review, we find none of these sources persuasive.

O*NET assigns these positions a "Job Zone Three" rating, which groups it among occupations for which "most . . . require training in vocational schools, related on-the-job experience, or an associate's degree." A requirement for vocational training, on-the-job experience, or an associate's degree is not equivalent to a requirement for a bachelor's degree in a specific specialty, or the equivalent, and O*NET therefore does not establish the proffered position as a specialty occupation.

The *DOT* is similarly unpersuasive. Its rating system – the Specific Vocational Preparation (SVP) rating – is not probative of the proffered position being a specialty occupation, as these ratings are meant to indicate only the total number of years of training required for a particular position and do not describe how those years are to be divided among training, formal education, and experience, and do not specify the particular type of degree, if any, that a position would require.⁸

⁸ In any event, we observe that the *DOT* assigns an SVP of 6 to less than 7 to these positions, thereby indicating that fewer than four years of preparation are required. The *DOT* emphasizes that this "training may be acquired in a school, work, military, institutional, or vocational environment." The *DOT* states that this training may have been gained from a variety of sources, including while in high school, technical school, in the military, in apprenticeship training, and in-plant training. Thus, a requirement for four years of this type of training would not necessarily equate to a bachelor's degree in a specific specialty, or the equivalent, and this information therefore does not establish the proffered position as a specialty occupation.

Likewise, the information from [REDACTED] does not establish the proffered position as a specialty occupation, as it does not state that a bachelor's degree in a specific specialty or the equivalent is required.

Nor does the position evaluation the Petitioner submits meet its burden. According to Professor [REDACTED] a bachelor's degree "business studies" would adequately prepare an individual to perform the duties of the proffered position. However, a requirement for a bachelor's degree in "business studies" is inadequate to establish that a position qualifies as a specialty occupation. As explained above, we interpret the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. We have consistently stated that, although a general-purpose bachelor's degree, such as a degree in business, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *Royal Siam Corp.*, 484 F.3d at 147. For this reason alone, Professor Fisher's evaluation does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A).

However, even if we set that foundational deficiency aside we would still find that Professor [REDACTED] evaluation did not satisfy the first criterion. First, Professor [REDACTED] does not discuss the Petitioner's business operation beyond his four-sentence summarization. Nor does he describe the duties of the proffered position in any meaningful detail beyond a bullet-pointed narrative provided by the Petitioner, and he does not describe them within the context in which they actually be performed within the Petitioner's specific business operation. Moreover, he does not reference the Petitioner's Level I wage-level designation, and we question whether he was aware that the proffered position is an entry-level position. Considered collectively, we find that these shortcomings indicate an incomplete review of the proffered position.

We may, in our discretion, use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Id.* Consistent with *Caron Int'l*, we find that this evaluation does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) and, for the sake of efficiency, hereby incorporate this finding into our analysis of the remaining specialty-occupation criteria.

We turn finally to the Petitioner's assertions and citations on appeal pertaining to the definition of the terms "profession" and "professional." However, those definitions are not relevant here, as they relate to immigrant visa petitions and whether the beneficiaries of those petitions were members of the professions as defined in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32). The issue before us is whether the Petitioner's proffered position qualifies as a nonimmigrant H-1B specialty occupation – not whether it is a profession.⁹

For more information about SVP ratings, see O*NET Online Help Specific Vocational Preparation (SVP), <https://www.onetonline.org/help/online/svp> (last visited June 19, 2017).

⁹ The primary difference between qualifying as a profession and qualifying as a specialty occupation is that specialty

For all of these reasons, we find that the Petitioner has not established that the proffered position is located within an occupational category for which the *Handbook*, or any other relevant, authoritative source, indicates that the normal minimum entry requirement is at least a bachelor's degree in a specific specialty, or the equivalent. Consequently, the evidence of record does not support a finding that the particular position proffered here, a part-time, entry-level position located within the "Executive Secretaries and Executive Administrative Assistants" occupational category, would normally have such a minimum specialty degree requirement, or the equivalent. The Petitioner therefore 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 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 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.

We generally consider the following sources of evidence to determine if there is such a common degree requirement: 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 establish 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)(considering these "factors" to inform the commonality of a degree requirement)).

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. 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. Furthermore, the Petitioner did not submit

occupations require the U.S. bachelor's or higher degree to be in a specific specialty, or its equivalent. Thus, while an occupation may be specifically identified as qualifying as a profession as defined in section 101(a)(32) of the Act, it would not necessarily qualify as a specialty occupation unless it met the definition of that term at section 214(i)(1) of the Act.

any letters or affidavits from similar firms or individuals in the industry to establish that such firms “routinely employ and recruit only degreed individuals.”

The record contains two job vacancy announcements for our consideration under this prong. To be relevant for this consideration, the positions advertised in these job vacancy announcements must involve “parallel positions,” and the announcements must have been placed by organizations that (1) conduct business in the Petitioner’s “industry” and (2) are otherwise “similar” to the Petitioner. Upon review, we find that none of these vacancy announcements meet that threshold.

We will first consider whether any of the advertised job opportunities could be considered “parallel positions.” As noted, the Petitioner attested to DOL that the proffered position is a Level I, entry-level position. However, both of the advertised positions require work experience, which suggests that they are not entry-level positions and therefore do not “parallel” the one proffered here. Nor does the record contain evidence establishing that these positions were placed by companies that (1) conduct business in the Petitioner’s industry and (2) are also otherwise “similar” to the Petitioner in any essential nature. For example, one advertiser describes the work environment as “healthcare clinical setting.” Another company states that it has “over 30 year of experience in every aspect of upstream, midstream and downstream land services,” but there is no other information to determine the nature of its business to conduct a legitimate comparison to the Petitioner.

For all of these reasons, the Petitioner has not established that either of these job vacancy announcements is relevant. Even if that threshold had been met, we would find that they did not satisfy this prong of the second criterion, as they do not indicate that a bachelor’s degree *in a specific specialty*, or the equivalent, is common to the industry in parallel positions among similar organizations.¹⁰ To the contrary, one advertiser indicates that a degree in any field of study would suffice, and the other states that it would find acceptable a bachelor’s degree in business administration, with no further specialization. Again, we interpret 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.*, 484 F.3d at 147; *Defensor*, 201 F.3d 384 at 387. A bachelor’s degree in business administration is not a degree in a specific specialty. *Royal Siam Corp.*, 484 F.3d at 147.

¹⁰ In addition, the Petitioner does not demonstrate what statistically valid inferences, if any, could be drawn from the job postings with regard to the common educational requirements for entry into parallel positions in similar organizations. *See generally Earl Babbie, The Practice of Social Research* 186-228 (7th ed. 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 if the sampling unit were sufficiently large. *See id.* at 195-96 (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”).

As such, even if the job vacancy announcements supported the finding that the position requires a bachelor’s or higher degree in a specific specialty, or its equivalent, it could not be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not normally require at least a baccalaureate degree in a specific specialty, or its equivalent, for entry into the occupation in the United States.

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.

We find that the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. In other words, the Petitioner has not demonstrated how the duties of the proffered position as described in the record 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 example, the Petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and establish how such a curriculum would be necessary to perform the duties it believes are so complex and unique. While a few related courses may be beneficial, or even required, in performing certain duties of the position, we find that 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.

The *Handbook* does not indicate that a bachelor's degree in a specific specialty, or the equivalent, is normally required for positions located within the occupational category designated by the Petitioner. The Petitioner's implications that the knowledge and associated entry requirements associated with the proffered position exceed those of other positions located within the occupational category are acknowledged. For example, the Petitioner emphasizes the complex nature of the position and its constituent duties throughout the petition. On appeal, the Petitioner indicates that the Beneficiary would be responsible for training and supervising lower-level staff. However, the Petitioner's Level I wage designation undercuts any claim that it satisfies this criterion.¹¹ In other words, if typical positions located within the occupational category do not require a bachelor's degree in a specific specialty, or the equivalent, then it is unclear how a position with the Level I characteristics described above would, regardless of these assertions.

¹¹ 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.

The Petitioner claims that the Beneficiary is well-qualified for the position, and references her qualifications repeatedly. However, as discussed, 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. We find that Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position, and that 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).

C. 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 record must establish that a petitioner's stated degree requirement is not a matter of preference for high-caliber candidates but is necessitated instead by performance requirements of the position. *See Defensor*, 201 F.3d at 387-88. If we were limited solely to reviewing the Petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the Petitioner created a token degree requirement. *Id.* Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner's past recruitment and hiring practices, as well as information regarding employees who previously held the position.

The record contains information regarding the individual the Petitioner claims previously performed the duties proposed for the Beneficiary. However, this information does not satisfy the third criterion. First, there is no indication that this individual possesses a bachelor's degree in a specific specialty, or the equivalent. Nor is it apparent that this individual's position was the same entry-level position proffered here. Specifically, this individual's 2015 Form W-2 indicated that she earned a significantly higher wage than the one offered to the Beneficiary, even after taking into account the possibility that this individual may have been employed on a full-time basis.

Without more, the Petitioner has not provided sufficient evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Therefore, it has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

We acknowledge the Petitioner's assertions regarding the specialization and complexity of the position's duties. However, as above, those claims are undermined by the Petitioner's Level I wage

designation. Again, in classifying the proffered position at a Level I (entry-level) wage, the Petitioner effectively attested to DOL that the Beneficiary would perform routine tasks that require limited, if any, exercise of judgment, that she would be closely supervised and her work closely monitored and reviewed for accuracy, and that she would receive specific instructions on required tasks and expected results.¹² The DOL guidance referenced above states that an employer should consider a Level I wage designation when the job offer is for a research fellow, a worker in training, or an internship.

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.

IV. CONCLUSION

The Petitioner has not established that the proffered position is a specialty occupation.¹³

ORDER: The appeal is dismissed.

Cite as *Matter of E-E-C-, LLC*, ID# 407045 (AAO June 21, 2017)

¹² Again, 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*.

¹³ Because this issue precludes approval of the petition we will not address any of the additional issues we have observed in our *de novo* review of this matter.