



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

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

MATTER OF S-, LLC

DATE: JUNE 27, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a [REDACTED] restaurant franchise, seeks to temporarily employ the Beneficiary as a “sales manager” 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 that the proffered position qualifies as a specialty occupation.

On appeal, the Petitioner submits a brief, asserting that it has 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). 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 a sales manager and described the duties of the position. In a letter of support submitted with the petition, the Petitioner provided the following overview of the proffered position:

A Sales Manager with [the Petitioner] applies a broad range of skills to perform the management responsibilities and ensure the growth of [the Petitioner]. Performance of job duties typically entails:

- Plan, direct and coordinate activities involving sales of [the Petitioner’s] products or services and review operational records and reports to project sales and determine profitability (20%).
- Set goals, analyze internal processes and recommend and implement procedural changes to improve sales such as control budgets for equipment and supplies and plan the use of materials and human resources (20%).
- Expand the client base of [the Petitioner] by monitoring that the Sales remain safe, secure, and well-maintained and oversee the maintenance and repair of machinery, equipments, and electrical systems to ensure that [the Petitioner] meets environmental, health, security standard, and comply with government regulations (15%).

- Determine sales staff requirements, maintain proper staffing levels through the quality selections, manage training for new sales employees, prepare work schedules and assign work shifts (10%).
- Plan and direct activities such as sales promotions, determine goods and services to be sold, resolve customer complaints regarding sales and services, set prices, discount rates and credit terms based on customer demand (15%).
- Co-ordinate with distributors and management, determine sales potential and inventory requirements of products (10%).
- Monitor customer preferences to determine the focus of sales efforts, analyze sales statistics and advise sales staff on ways to improve sales performance (10%).

The Petitioner stated that “[it] requires, at a minimum, a bachelor’s of Business Administration or Management or a related field, or the equivalent combination of education, training, and/or experience.”

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

As a preliminary matter, the Petitioner’s claim that a bachelor’s degree in business administration is a sufficient minimum requirement for entry into the proffered position 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. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, 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).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor’s or higher degree in a specialized field of study or its equivalent. As discussed, 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. Although a general-purpose bachelor’s degree, such as a degree in business administration, 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.

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

Again, the Petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. Without more, this assertion 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.

Moreover, it also cannot be found that the proffered position is a specialty occupation because the Petitioner has not satisfied any of the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.²

A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), 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 determine whether a particular position normally requires a baccalaureate or higher degree in a specific specialty, or its equivalent, as the minimum requirement for entry into the particular position, 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.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 "Sales Managers," corresponding to the Standard Occupational Classification code 11-2022.⁵

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 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.

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, 545-546 (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

In pertinent part, the *Handbook* states that “[m]ost sales managers have a bachelor’s degree, although some have a master’s degree. Educational requirements are less strict for job candidates who have significant work experience. Courses in business law, management, economics, accounting, finance, mathematics, marketing, and statistics are advantageous.”⁶

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 “[m]ost sales managers have a bachelor’s degree,” it does not state whether the bachelor’s degree must be in a *specific specialty*. In addition, the *Handbook* states that courses in a wide range of subjects including business law, management, and economics are “advantageous.” However, the *Handbook* does not state that such courses are *required*, or that these courses cumulatively lead to a bachelor’s degree in a specific specialty.

The Petitioner references the DOL’s Occupational Information Network (O*NET) summary report for “Sales Managers” listed as SOC code 11-2022.01. Contrary to the Petitioner’s assertions, the information found in the summary report for the sales managers occupational classification (a copy of which the Petitioner submitted) does not establish that the proffered position satisfies this criterion either. Specifically, O*NET makes no mention of the specific field of study from which a degree must come. In other words, although O*NET indicates that most, but not all, of these positions require at least a bachelor’s degree (through its Job Zone Four rating), it does not indicate whether these bachelor’s degrees come from a *specific specialty*.⁷ Similarly, the occupation’s 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, but 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

Further, the summary report provides the educational requirements of “respondents,” but does not account for 100% of the “respondents.” The respondents’ positions within the occupation are not distinguished by career level (e.g., entry-level, mid-level, senior-level). Additionally, the graph in the summary report does not indicate that the “education level” for the respondents must be in a specific specialty.

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.*

⁶ Bureau of Labor Statistics, U.S. Dep’t of Labor, *Occupational Outlook Handbook*, Sales Managers (2016-17 ed.).

⁷ For more information about Job Zone ratings, see O*NET Online Help Job Zones, <https://www.onetonline.org/help/online/zones> (last visited June 26, 2017).

⁸ 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 26, 2017).

In light of the above, 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 contemplates 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 of at least a bachelor’s degree in a specific specialty, or its equivalent. Rather, the Petitioner continues to assert that a degree in a specific specialty is not required. Thus, we incorporate by reference the previous discussion on the matter.

Although the Petitioner did not submit any information from a professional association, the Petitioner submitted several letters from individuals in the Petitioner’s industry on appeal. The Petitioner submitted letters from three [REDACTED] restaurant owners, stating that [REDACTED] “encourages” the hiring of sales managers, and claiming that the need for degreed sales managers is apparent. Two owners claim to occupy the role of sales manager themselves, and both submit documentation demonstrating that they hold foreign degrees in commerce. One owner states that he seeks to hire a sales manager with a bachelor’s degree in business administration.

These letters do not establish an industry-wide requirement for a degree in a specific specialty for the proffered position. Rather, two of the three letters indicate that the owners themselves, who may or may not hold the U.S. equivalent of a bachelor’s degree (as no evaluation of their foreign credentials is submitted) are performing the duties of the proffered position. At best, these letters indicate a

preference in the [REDACTED] franchise to hire an individual with a bachelor's degree, but there is no indication that such a degree must be in a specific specialty.

The petitioner also submitted several job announcements posted by other companies to assert that "an industry-wide standard to require a bachelor's degree for the position of Sales Manager" exists. We do not find these advertisements to be persuasive.

First, a number of the companies placing the advertisements do not appear to conduct business in the same industry as the Petitioner, which may be demonstrated by factors such as the nature or type of organization, 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 corroborating evidence. The Petitioner must support its assertion with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Here, the Petitioner submits advertisements from companies such as [REDACTED] a "leading provider of energy savings to utility clients," and [REDACTED], which "operates a portfolio of mobile home residential communities." The Petitioner also submits advertisements from a luxury chain hotel, a golf course, a steakhouse chain, a packaged bakery goods producer, a producer of natural /alternative food and nutritional products, and a restaurant point-of-sale software company. None of the companies appear similar to the Petitioner, a fast-food restaurant with 10 employees.

Nor is it clear that these positions are "parallel" to the proffered position. For example, many of them require work experience. However, the Petitioner designated the proffered position as an entry-level position, which does not require prior work experience.

Finally, most of the postings state a general requirement for a bachelor's degree, either without specification or in a variety of disparate fields, or simply that a general bachelor's degree is "preferred." There is no evidence demonstrating that these companies require a bachelor's degree in a specific specialty.

Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, 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). If a sales manager can hold a wide variety of degrees in disparate fields then this indicates that the proffered position does not require a degree in a specific

specialty and, therefore, the requirement of a bachelor's or higher degree in a specific specialty is not common to the industry in parallel positions among similar organizations.⁹

The Petitioner has not, therefore, satisfied the criterion of 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 sales manager positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

The record does not credibly demonstrate relative complexity or uniqueness as aspects of the proffered position. Specifically, it is unclear how the proffered position, as described, necessitates the theoretical and practical application of a body of highly specialized knowledge such that a person who has attained a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. Rather, we find, that, as reflected in this decision's earlier quotation of duty descriptions from the record of proceedings, the evidence of record does not distinguish the proffered position from other positions falling within the "Sales Managers" occupational category, which, the *Handbook* indicates, do not necessarily require a person with at least a bachelor's degree in a specific specialty or its equivalent to enter those positions.

To begin with, 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 duties such as planning and coordinating

⁹ 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 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").

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.

activities involving the sale of the Petitioner's products, maintaining proper staffing levels, and resolving customer complaints, the Petitioner does not demonstrate how the Beneficiary's proposed 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 stated that the proffered position requires a bachelor's degree in business administration, management, or a related field. As previously discussed, a general-purpose bachelor's degree, such as a degree in business administration, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation.¹⁰

This is again further evidenced by the LCA, which indicates that, relative to other positions located within the "Sales Managers" occupational category, the Beneficiary would perform only routine tasks that require limited, if any, exercise of judgment; that his work will be monitored and reviewed for accuracy; and he will receive specific instructions on required tasks and expected results. Without further evidence, the evidence does not demonstrate that the proffered position is so complex or unique that it would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position.¹¹ For example, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems." The evidence of record does not establish that this position is significantly different from other positions in the occupational category such that it refutes the *Handbook's* information that a bachelor's degree in a specific specialty, or its equivalent, is not required for the proffered position.

On appeal, the Petitioner submitted an expert opinion letter authored by [REDACTED], Professor/Principal Credential Evaluator, [REDACTED]. [REDACTED] opined that the position "is specialized in nature, requiring the ability to apply the knowledge associated with the attainment of a bachelor's level degree in business law, management, economics, accounting, finance, mathematics, marketing and statistics or a closely related field." [REDACTED] explored the duties of

¹⁰ A general degree requirement does not necessarily preclude a proffered position from qualifying as a specialty occupation. For example, an entry requirement of a bachelor's or higher degree in business administration with a concentration in a specific field, or a bachelor's or higher degree in business administration combined with relevant education, training, and/or experience may, in certain instances, qualify the proffered position as a specialty occupation. In either case, it must be demonstrated that the entry requirement is equivalent to a bachelor's or higher degree in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp.*, 484 F.3d at 147.

¹¹ 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, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), such a 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 consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

the proffered position as presented by the Petitioner and reviewed the documentation regarding the Beneficiary's education and work experience, and indicated their importance and how they relate to the duties of the proffered position. ██████████ concluded by stating that the roles of the proffered position "are complex in nature" and thus require the attainment of a "bachelor's level degree in business law, management, economics, accounting, finance, mathematics, marketing and statistics or a closely related field combined with progressive hands on professional work experience and specialized training."

However, ██████████ evaluation does not discuss the Petitioner's designation of this position as requiring only a Level I wage. As noted above, a Level I wage rate denotes an entry-level position, where the Beneficiary would perform only routine tasks that require limited, if any, exercise of judgment; close supervision of work, monitored and reviewed for accuracy; and the receipt of specific instructions on required tasks and expected results. This is contrary to ██████████ findings and opinion of the proffered position's advanced level within the Petitioner's organization.

For these reasons, we do not find the opinion sufficient to support a finding that the proffered position is a specialty occupation. 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.* In this instance, the opinion of ██████████ has little probative value in establishing the proffered position as a specialty occupation.

Finally, although the Petitioner submits an affidavit from the Beneficiary, attesting to his claimed duties and the claimed complexity of those tasks, this document is unpersuasive based on the numerous deficiencies surrounding the position as discussed above. While the Beneficiary may be qualified to perform the duties of the position, this self-serving statement will not satisfy the burden of proof in this matter. Further, 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. 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 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.

Although we acknowledge the submission of a June 2015 job advertisement posted by the Petitioner for the position of sales manager, which states that a bachelor's degree in business administration, management, or a related field, or the equivalent combination of education, training, and experience, is required, the Petitioner indicated that there was no response to this advertisement. Moreover, the Petitioner makes no assertion and provides no evidence to demonstrate that it has previously hired specialty-degreed individuals for the proffered position.

The Petitioner submitted a declaration from its owner, stating that he "does not have time to perform Sales Manager duties" for his store. He claims that this lack of time forced him to hire a talented and qualified manager with a bachelor's degree in business administration or management, and further claims that the Beneficiary satisfied these requirements.

We find this declaration unpersuasive, particularly since the owner indicates that he himself would perform the duties of the proffered position if he "had the time." There is no indication that the declarant holds a bachelor's degree in a specific specialty, such that he would otherwise be qualified to perform the sales manager tasks if time permitted. Moreover, the preference to hire the Beneficiary based on his academic achievements does not equate to a standard hiring practice.

Finally, we incorporate by reference our discussion of the letters submitted by other [REDACTED] restaurant owners in support of the assertion that the franchise routinely requires a bachelor's degree in a specific specialty. As discussed previously, these letters are insufficient to demonstrate a standard hiring practice implemented by the Petitioner and related restaurant franchises.

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.

Here, the Petitioner continually cites to its specialized and complex business franchise, and claims that the duties of the proffered position are precise and complex; however, the duties and requirements of the position as described in the record of proceedings do not indicate that this

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particular position proffered by the Petitioner is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry.

We also incorporate our earlier discussion and analysis regarding the designation of the position as a Level I position.

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

The Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.

ORDER: The appeal is dismissed.

Cite as *Matter of S-, LLC*, ID# 430568 (AAO June 27, 2017)