



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

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

MATTER OF K- LLC

DATE: MAR. 2, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a news and search engine portal company, seeks to temporarily employ the Beneficiary as a "bilingual Persian/English website programmer" 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, Vermont Service Center, initially approved the petition on August 12, 2015. The Director then revoked the approval of the petition on August 10, 2016. The Director concluded that the Petitioner did not establish that the proffered position qualifies as a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred in denying the petition.

Upon *de novo* review, we will dismiss the appeal.

**I. REVOCATION**

We may revoke the approval of an H-1B petition, on notice and an opportunity to rebut, pursuant to 8 C.F.R. § 214.2(h)(11)(iii), which states the following:

- (A) Grounds for revocation. The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:
  - (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as specified in the petition; or
  - (2) The statement of facts contained in the petition was not true and correct, inaccurate, fraudulent, or misrepresented a material fact; or

- (3) The petitioner violated terms and conditions of the approved petition; or
  - (4) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or
  - (5) The approval of the petition violated paragraph (h) of this section or involved gross error.
- (B) Notice and decision. The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

The Director's statements in the notice of intent to revoke (NOIR) regarding the evidence that the proffered position is not a specialty occupation were adequate to notify the Petitioner of the intent to revoke the approval of the petition in accordance with the provision at 8 C.F.R. § 214.2(h)(11)(iii)(A)(5).

As will be evident in the discussion below, we find that, fully considered in the context of the entire record of proceedings, the Petitioner has not established that the proffered position qualifies as a specialty occupation.

## II. SPECIALTY OCCUPATION

### A. 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:

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

B. Proffered Position

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as a “bilingual Persian/English website programmer.” In addition, the Petitioner stated that the Beneficiary will work at [REDACTED] in [REDACTED] Pennsylvania.<sup>1</sup> On the H Classification Supplement, the Petitioner stated that the “Beneficiary will help the Business develop bilingual Persian/English Website pages and databases for News, Events and marketing/advertising packages.”<sup>2</sup>

<sup>1</sup> A review of public records reveals that the [REDACTED] Pennsylvania address is zoned as a residential apartment home. Further, the Petitioner has provided inconsistent information regarding the Beneficiary’s work site. For instance, on the Form I-129 at page 4, the Petitioner stated that the Beneficiary would not work off-site. However, on the Form I-129 at page 19, the Petitioner indicated that the Beneficiary would work off-site. No explanation for this variance was provided.

<sup>2</sup> The Form I-129, Petition for a Nonimmigrant Worker, was not completely signed by the Petitioner. More specifically, a section on page 14 of the Form I-129 was left blank by the Petitioner. This section of the form reads as follows:

By filing this petition, I agree to, and will abide by, the terms of the labor condition application (LCA) for the duration of the beneficiary’s authorized period of stay for H-1B employment. I certify that I will maintain a valid employer-employee relationship with the beneficiary at all times. If the beneficiary is assigned to a position in a new location, I will obtain and post an LCA for that site prior to reassignment.

I further understand that I cannot charge the beneficiary the ACWIA fee, and that any other required

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On appeal, the Petitioner submits its own job advertisement for a position titled [REDACTED] and states in its reference table that this is a “copy of the official job advertisement with detailed job duties and degree skills requirement” for the proffered position. The advertisement describes the job duties as follows:

- Update and extend existing blocks and codes
- Work closely with the team members and managers
- Write proper unit tests with provided technologies
- Use IDEs such as Netbeans and IntelliJ idea to create and test codes
- Maintain the code repository and prepare daily commits
- Write periodic technical documentation and reports
- Find and Use suitable code libraries to preserve time
- Be able to catch tight deadlines and capability to work under pressure

The same job advertisement lists the degree requirement as a bachelor’s degree or higher in computer science and/or engineering.

C. Analysis

For the reasons set out below, we have determined that the proffered position does not qualify as a specialty occupation. Specifically, the record (1) does not describe the position’s duties with sufficient detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.<sup>3</sup>

A crucial aspect of this matter is whether the Petitioner has sufficiently described the duties of the proffered position such that we may discern the nature of the position and whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge attained through at least a baccalaureate degree in a specific discipline. We find that the Petitioner has not done so.

For example, the Petitioner did not provide any information with regard to the order of importance and/or frequency of occurrence with which the Beneficiary will perform the functions and tasks. Thus, the record does not specify which tasks are major functions of the proffered position. Moreover, the evidence does not establish the frequency with which each of the duties will be performed (e.g., regularly, periodically, or at irregular intervals).

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reimbursement will be considered an offset against wages and benefits paid relative to the LCA.

Thus, the petition has not been properly filed.

<sup>3</sup> 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.

Furthermore, the Petitioner described the proposed duties in terms of generalized and generic functions that did not convey sufficient substantive information to establish the relative complexity, uniqueness, or specialization of the proffered position or its duties. The abstract level of information provided about the proffered position and its constituent duties is exemplified by the Petitioner's assertion that the Beneficiary will "[u]pdate and extend existing blocks and codes" and "[w]ork closely with the team members and managers." However, the statements do not provide any insight into the Beneficiary's actual duties, nor do they include sufficient information regarding the specific tasks that the Beneficiary will perform.

Further, the Petitioner claimed in pertinent part that the Beneficiary will "[w]rite proper unit tests with provided technologies" and "[m]aintain the code repository and prepare daily commits." Notably, the Petitioner did not demonstrate how the performance of these duties, as described in the record, would require the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent.

The Petitioner also claimed the Beneficiary will "[w]rite periodic technical documentation and reports." The Petitioner's statement does not convey any pertinent details as to the actual work involved in this task. The Petitioner did not convey how a baccalaureate level of education (or higher) in a specific specialty, or its equivalent, would be required to perform this task. Thus, the overall responsibilities for the proffered position contained generalized functions without providing sufficient information regarding the particular work and the associated educational requirements into which the duties would manifest themselves in their day-to-day performance within the Petitioner's business operations.

Such generalized information does not in itself establish a necessary correlation between any dimension of the proffered position and a need for a particular level of education, or educational equivalency, in a body of highly specialized knowledge in a specific specialty. It is not evident that the proposed duties as described in this record of proceedings, and the position that they comprise, merit recognition of the proffered position as a specialty occupation. To the extent that they were described, the proposed duties did not provide a sufficient factual basis for conveying the substantive matters that would engage the Beneficiary in the actual performance of the proffered position for the entire 3-year period requested, so as to persuasively support the claim that the position's actual work would require the theoretical and practical application of any particular educational level of highly specialized knowledge in a specific specialty directly related to the duties and responsibilities of the proffered position.

The Petitioner has not provided sufficient details regarding the nature and scope of the Beneficiary's employment or substantive evidence regarding the actual work that the Beneficiary would perform. Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The tasks as described do not communicate: (1) the actual work that the Beneficiary would perform; (2) the complexity, uniqueness and/or specialization of the

tasks; and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty.

Nevertheless, assuming, for the sake of argument, that the Petitioner had adequately and accurately described the duties of the proffered position, we will now discuss the proffered position in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).<sup>4</sup>

#### 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.<sup>5</sup>

On the LCA<sup>6</sup> submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Computer Programmers" corresponding to the Standard Occupational Classification code 15-1131.<sup>7</sup>

The *Handbook* states the following with regard to the educational qualifications necessary for entrance into positions located within this occupational category:

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<sup>4</sup> Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

<sup>5</sup> 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 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.

<sup>6</sup> The Petitioner is required to submit a certified LCA to us to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the "area of employment" or the actual wage paid by the employer to other employees with similar experience and qualifications who are performing the same services. See *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542, 545-46 (AAO 2015).

<sup>7</sup> The Petitioner classified the proffered position at a Level II wage. 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 II wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have attained, either through education or experience, a good understanding of the occupation, but who will only perform moderately complex tasks that require limited judgment. 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](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.*

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. Most programmers specialize in a few programming languages.

### **Education**

Most computer programmers have a bachelor's degree; however, some employers hire workers who have an associate's degree. Most programmers get a degree in computer science or a related subject. Programmers who work in specific fields, such as healthcare or accounting, may take classes in that field to supplement their degree in computer programming. In addition, employers value experience, which many students gain through internships.

Most programmers learn a few computer languages while in school. However, a computer science degree gives students the skills needed to learn new computer languages easily. During their classes, students receive hands-on experience writing code, testing programs, fixing errors, and doing many other tasks that they will perform on the job.

To keep up with changing technology, computer programmers may take continuing education and professional development seminars to learn new programming languages or about upgrades to programming languages they already know.

### **Licenses, Certifications, and Registrations**

Programmers can become certified in specific programming languages or for vendor-specific programming products. Some companies require their computer programmers to be certified in the products they use.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., Computer Programmers, available at <http://www.bls.gov/ooh/computer-and-information-technology/computer-programmers.htm#tab-4> (last visited Feb. 28, 2017).

Upon review of the educational requirements for a computer programmer as reported in the *Handbook*, the *Handbook* indicates at most that a bachelor's or higher degree in a computer science field may be common, but not a standard occupational, entry requirement. In fact, this chapter notes that some employers hire workers with only an associate's degree. *See id.* Thus, the *Handbook's* report is insufficient to conclude that simply by virtue of its occupational classification the position qualifies as a specialty occupation.

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)(I).

## 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.

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

Here and as already discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative source) reports an industry-wide requirement for at least a bachelor’s degree in a specific specialty or its equivalent. Thus, we incorporate by reference the previous discussion on the matter.

In support of its assertion that the degree requirement is common to the Petitioner’s industry in parallel positions among similar organizations, the Petitioner submitted copies of two advertisements for positions entitled full stack developer. One of the advertisements requires a bachelor’s degree in software engineering or computer science and at least 3 years of experience, or equivalent demonstrable work experience in place of education. The other advertisement simply states that it requires a bachelor’s degree and generally 5 years of professional experience.

Here, although both advertisements require a bachelor’s degree, one states that experience may substitute education and the other does not identify a specific specialty for the degree.<sup>8</sup> Further, both

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<sup>8</sup> 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 if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that “[r]andom selection is the key to [the]



advertisements require experience in addition to the bachelor's degree. Thus, the positions appear to be for more senior positions than the proffered position. The Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

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.<sup>9</sup> 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.

In this matter, the evidence of record does not distinguish the proffered position as unique from or more complex than other bilingual website programmer positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. 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 "Computer Programmers" 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 Petitioner has not provided a clear description of the job duties for the proffered position. The record does not include sufficient information relevant to a detailed course of study leading to a specialty degree and the Petitioner has not established how such a curriculum is necessary to perform the duties it claims are so complex. While a few related courses may be

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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").

<sup>9</sup> 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.

beneficial in performing certain duties of the position, the Petitioner has not demonstrated how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position.

Furthermore, on appeal, the Petitioner submits a letter authored by [REDACTED] Java Expert Consultant. [REDACTED] states that he reviewed the Petitioner's job advertisement for Java full-stack developer and the *Handbook's* position description for computer programmers. [REDACTED] opined that the position "require[es] a minimum of a bachelor's degree in Computer Science or related fields, plus at least 4 years of hand on experience in middle- or senior- level Java programming." [REDACTED] also briefly evaluated the Beneficiary's qualifications for the position. However, [REDACTED] evaluation does not discuss the Petitioner's designation of this position as requiring only a Level II wage. As noted above, a Level II wage rate is commensurate with moderately complex tasks that require the Beneficiary's limited exercise of judgment. A Level II wage designation is indicative of someone who will receive instructions on required tasks and expected results. Such a position would not include supervisory or advanced tasks. This is contrary to [REDACTED] findings and opinion of the proffered position's advanced level within the Petitioner's organization. For this reason, we do not find the opinion sufficient to support the Petitioner's assertion that the proffered position requires a bachelor's degree in a specific specialty, or its equivalent, and thus qualifies as 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.*

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).

### 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.

On appeal, the Petitioner states that it previously hired someone for this position who had attained a bachelor's degree in information and communication technology. The Petitioner submitted a copy of his resume,<sup>10</sup> but did not submit any evidence that he was actually employed by the Petitioner

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<sup>10</sup> Notably, the Petitioner did not submit the academic credentials of this individual, e.g. copies of diplomas and transcripts. The Petitioner should note that the evidentiary weight of a resume is generally insignificant as it represents a

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(e.g., pay statements, tax documents). The Petitioner also submitted an e-mail from the [REDACTED] stating that the Petitioner's job posting for website programmer had been approved. However, the Petitioner has not provided any context for this position and how it relates to the proffered position here.

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.

The Petitioner asserts that the job duties of the proffered position are specialized and complex. We refer to our earlier comments and findings with regard to the implication of the Petitioner's designation of the proffered position in the LCA as a Level II wage, and hence one not likely distinguishable by relatively specialized and complex duties.<sup>11</sup> We have also reviewed the Petitioner's description of duties for the proffered position. While we understand that the Beneficiary must have technical knowledge in order to perform these duties, the Petitioner has not sufficiently explained how these duties require the theoretical and practical application of a body of highly specialized knowledge, and the 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 record does not include probative evidence that the duties require more than technical proficiency in the bilingual website programming field. The Petitioner has not demonstrated in the record that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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claim by an individual, rather than evidence to support that claim. In the instant case, no further documentation was submitted of the individual's asserted credentials.

<sup>11</sup> Nevertheless, a low wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a high wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level II 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.

### III. 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. The Petitioner has not overcome the basis for revocation. Accordingly, the appeal will be dismissed.

The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of K- LLC*, ID# 225307 (AAO Mar. 2, 2017)