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

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

MATTER OF N-Y-F-&D-Q-B-, INC.

DATE: MAR. 2, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a [REDACTED] restaurant franchise holding company, seeks to temporarily employ the Beneficiary as a "budget analyst" under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director of the Vermont Service Center denied the petition concluding that the 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. 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” 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).

## II. PROFFERED POSITION

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as a “budget analyst.” In response to the Director’s request for evidence (RFE), the Petitioner provided the following job duties for the position:

	Job Duties	Percentage Spend on the task each week
1	Provides analytical support to Senior Management, develops reports, identifies problem areas, makes recommendation, works with Senior Management as needed during budget process providing support and or information as required.	60
2	Prepares monthly financial management reports (in accordance with a prepared corporate schedule) which monitor and track budget variances.	10
3	Prepares annual cost allocation report for submission to Senior Management.	1
4	Assures that all financial transactions (both capital and operating) are within budget and have been properly coded. Coordinates with responsible department managers on both	5

	budgeted and actual accounts.	
5	Prepares monthly reports for department managers regarding budgeted, actual and projected expenditures.	5
6	Assures that all financial transactions (both capital and operating) are supported by and are consistent with supplier contracts and or quotes. Submits required contract/quote documentation to Accounting department.	1
7	Participates in the oversight of Spending Authorization Forms and Capital Requisitions ensuring accuracy, timeliness and completeness of these transactions. Records and posts all approved SAFs against the operating budget to ensure accurate spending projections.	10
8	Maintains files and databases for Capital Purchase Orders.	0.5
9	Prepares Financial Report Correction Forms for task orders and capital projects to ensure that expenses are processed accurately on a monthly basis.	1
10	Assist with the review of monthly accrual reporting as accruals pertain to budgeted, but not yet incurred expenses.	1
11	Arranges budget meetings with every department and subsidiary to discuss budget and review business status and make possible recommendations to help control expenses.	2
12	Attends monthly accounting meetings and communicates information and policy changes presented at these meetings to relevant staff.	1
13	Reviews IT outsourcing contract monthly invoices, prepares monthly invoice/wire transfer for payment on a timely basis, analyses invoice and prepares monthly variance reporting regarding budgeted verses actual expenses for this contract. Maintains file for monthly outsourcing invoice and all supporting documentation.	2
14	Works on special projects as assigned by the Senior Management.	0.5

According to the Petitioner, the position requires a bachelor's degree in accounting or a related field.

### III. ANALYSIS

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

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

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>3</sup>

On the labor condition application (LCA)<sup>4</sup> submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Budget Analysts" corresponding to the Standard Occupational Classification code 13-2031.<sup>5</sup>

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

A bachelor's degree is typically required to become a budget analyst, although some employers prefer candidates with a master's degree.

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<sup>2</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.

<sup>3</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>4</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, 545-546 (AAO 2015).

<sup>5</sup> The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). We will consider this selection in our analysis of the position. The "Prevailing Wage Determination Policy Guidance" issued by the DOL provides a description of the wage levels. A Level I wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. This wage rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that he will be closely supervised and his work closely monitored and reviewed for accuracy; and (3) that he will receive specific instructions on required tasks and expected results. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://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.*

### Education

Employers generally require budget analysts to have at least a bachelor's degree. However, some employers may require candidates to have a master's degree. Because developing a budget requires strong numerical and analytical skills, courses in statistics or accounting are helpful. Federal, state, and local governments have varying requirements, but usually require a bachelor's degree in one of many areas, such as accounting, finance, business, public administration, economics, statistics, political science, or sociology.

Sometimes, budget-related or finance-related work experience can be substituted for formal education.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., Budget Analysts, <http://www.bls.gov/ooh/business-and-financial/budget-analysts.htm#tab-4> (last visited Feb. 28, 2017).

The *Handbook* indicates that the occupational category accepts a wide variety of degrees for entry in to the occupation, including disparate fields such as public administration, political science, and sociology. It also indicates that sometimes, related work experience can be substituted for a formal education. The *Handbook*, therefore, does not support a claim that "Budget Analysts" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

Accordingly, in certain instances, the *Handbook* is not determinative. When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the Petitioner to provide persuasive evidence that the proffered position more likely than not satisfies this or one of the other three criteria, notwithstanding the absence of the *Handbook*'s support on the issue. In such case, it is the Petitioner's responsibility to provide probative evidence (e.g., documentation from other objective, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation.

In that regard, we have reviewed the Petitioner's reference to the Occupational Information Network (O\*NET) OnLine's assignment of a Job Zone "Four" rating to the budget analysts occupation, which groups it among occupations for which "most . . . require a four-year bachelor's degree, but some do not." O\*NET OnLine Summary Report for "13-2031.00 – Budget Analysts," <http://www.onetonline.org/link/summary/13-2031.00> (last visited Feb. 28, 2017). However, O\*NET OnLine does not indicate that 4-year bachelor's degrees that may be required by Job Zone Four occupations must be in a specific specialty directly related to the occupation. Therefore, the O\*NET OnLine information is not probative of the proffered position being a specialty occupation.

In response to the RFE, the Petitioner cited to a recent district court case, *Raj and Company v. U.S. Citizenship and Immigration Services*, 85 F. Supp. 3d 1241 (W.D. Wash. 2015), and claims that it is relevant here.<sup>6</sup> In the district court case, the employer designated the position as a “Marketing Analyst & Specialist” position.<sup>7</sup> We reviewed the decision; however, there is no indication that aspects of the work such as the duties and responsibilities, level of judgment, complexity of the job duties, supervisory duties, independent judgment required, or the amount of supervision received, are analogous to the proffered position here.<sup>8</sup> Accordingly, there is no indication that the positions are similar.

Further, in *Raj*, the court stated that a specialty occupation requires the attainment of a bachelor’s degree or higher in a specific specialty, or its equivalent. The court confirmed that this issue is well-settled in case law and with our reasonable interpretation of the regulatory framework. In the decision, the court noted that “permitting an occupation to qualify simply by requiring a generalized bachelor degree would run contrary to congressional intent to provide a visa program for specialized, as opposed to merely educated, workers.” The court stated that the regulatory provisions do not restrict qualifying occupations to those for which there exists a single, specifically tailored and titled degree program; but rather, the statute and regulations contain an equivalency provision.<sup>9</sup>

In *Raj*, the court concluded that the employer met the first criterion. We must note, however, that the court stated that “[t]he first regulatory criterion requires the agency to examine the generic position requirements of a market research analyst in order to determine whether a specific bachelor’s degree or its equivalent is a minimum requirement for entry into the profession.” Thus, the decision misstates the regulatory requirement. That is, the first criterion requires a petitioner to establish that a baccalaureate or higher degree (in a specific specialty) or its equivalent is normally the minimum requirement for entry into the particular position.

Consequently, if the court meant to suggest that any position classified under the occupational category “Market Research Analysts” would, as it stated, “come within the first qualifying criteria” –

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<sup>6</sup> In contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge’s decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.* at 719.

<sup>7</sup> It is important to note and distinguish within the court’s decision that “Marketing Analyst & Specialist” refers to the employer’s particular position, whereas “Market Research Analysts” refers to a general occupational category.

<sup>8</sup> We note that the service center director’s decision was not appealed to our office. Based on the district court’s findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision in our *de novo* review of the matter.

<sup>9</sup> We agree with the court that a specialty occupation is one that requires the attainment of a bachelor’s or higher degree in a specific specialty, or its equivalent. We further note that a petitioner must also demonstrate that the position requires the theoretical and practical application of a body of highly specialized knowledge in accordance with section 214(i)(1)(B) of the Act and 8 C.F.R. § 214.2(h)(4)(ii), and satisfy one of the four criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

we must disagree.<sup>10</sup> The occupational category designated by a 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. However, to satisfy the first criterion, 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. That is, to determine whether a particular job qualifies as a specialty occupation, we do not simply rely on a position's title or designated occupational category. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. We must examine the ultimate employment of the beneficiary, and determine whether the position qualifies as a specialty occupation. *See generally Defensor*, 201 F.3d at 384.

Nevertheless, it is important to note that the court in *Raj* determined that the evidence in the record demonstrated that the particular position proffered required a bachelor's degree in market research, or its equivalent, as a minimum for entry. Further, the court noted that "[t]he patently specialized nature of the position sets it apart from those that merely require a generic degree." The position in *Raj* can, therefore, be distinguished from the instant position. Here, the Petitioner continually cites to its specialized and complex business franchised restaurants 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 proceeding do not indicate that this 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.

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

#### 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.

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<sup>10</sup> In *Raj*, the court quoted a brief excerpt from the *Handbook*; however, the quotation is from the 2012-2013 edition rather than the current 2016-2017 edition (which contains several revisions). Further, we observe that the court did not address the section of the *Handbook* indicating that there are no specific degree requirements to obtain the Professional Researcher Certification credential – and therefore to work as a market research analyst.

*Matter of N-Y-F-&D-Q-B-, Inc.*

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 the proffered position is one for which the *Handbook* (or other independent, authoritative sources) 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 addition, there are no submissions from the industry’s professional association indicating that it has made a degree a minimum entry requirement.

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 a letter from [REDACTED] the financial controller of [REDACTED]. The letter states that “it is a norm to require a Budget Analyst in business like ours to have a bachelor’s degree in Accounting or related field.” The letter also states that it is a similar organization to the Petitioner with similar requirements for its budget analysts. However, it does not provide any information to demonstrate how the organizations are similar or how the budget analyst positions are similar between the two organizations. Thus, the record does not demonstrate that it is similar in type, scope, and size to this Petitioner.

While the letter states that it generally requires a bachelor’s degree in accounting or a related field, it does not differentiate between entry-level positions and more senior or leadership positions within the organization. The Petitioner here has designated the proffered position as an entry level position on the LCA. Here, it remains unknown whether the letter references entry-level budget analyst positions or more senior positions. As such, we cannot conclude that a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent, is common to parallel positions within organizations that are in the Petitioner’s industry and otherwise similar to the Petitioner.

For these reasons, the Petitioner has not 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 budget analyst 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 the duty description from the record of proceeding, the evidence of record does not distinguish the proffered position from other positions falling within the "Budget Analysts" 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, while the Petitioner claims that the position involves focusing on "assisting [its] accounting team to provide business analysis for process improvements, cost savings opportunities, risk assessment and trade-offs to assure [its] budget will achieve short term and long term cost targets and drive toward solid financial health of [its] organization," the Petitioner does not demonstrate how the budget analyst's duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them.

For instance, the Petitioner stated that the proffered position requires a bachelor's degree in accounting or a related field. In response to the RFE, the Petitioner identified specific skills in various subjects, including budgeting, accounting principles, financial reporting, accounting theories and models, auditing, and business management, that it claims are acquired through a bachelor's degree in accounting, as providing the Beneficiary with the "theoretical knowledge" to carry out her duties as its budget analyst. While these skills or courses may be beneficial, or even essential, in performing certain duties of a budget analyst 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.

This is further evidenced by the LCA submitted by the Petitioner in support of the instant petition. Again, the LCA indicates that, relative to other positions located within the "Budget Analysts" occupational category, 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. Without further evidence, the evidence does not demonstrate that the proffered position is so complex or unique as such a position falling under this occupational category would likely be classified at a higher-level, such as a Level

III (experienced) or Level IV (fully competent) position.<sup>11</sup> 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 Petitioner claims that the Beneficiary is well-qualified for the position, and references her 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.

In response to the RFE, the Petitioner stated that it previously hired one employee to perform the duties of the budget analyst who also had a bachelor of science degree in accounting. The Petitioner submitted a copy of its previous employee’s bachelor of science degree and a pay stub, dated March 25, 2016, as evidence of her employment with the Petitioner. However, the pay stub does not indicate the employee’s title with the Petitioner and the degree certificate does not specify a degree in accounting. The Petitioner did not submit any evidence pertaining to its previous employee’s duties, such as a position description or her resume reflecting her title and the duties she performed for the Petitioner during her employment. As such, we cannot determine that the previous employee had a bachelor’s degree in accounting or that she was employed in the same or similar position to the proffered position such that we can conclude that the Petitioner normally requires a bachelor’s degree in a specific specialty, or its equivalent, for this position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).<sup>12</sup>

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<sup>11</sup> 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.

<sup>12</sup> While a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were we limited solely to reviewing a 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 employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher

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 I wage, and hence one not likely distinguishable by relatively specialized and complex duties. We have also reviewed the Petitioner's description of duties for the proffered position, including the Petitioner's expanded version of the description submitted in response to the RFE. While we understand that the Beneficiary must have some 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 budget analyst 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).

IV. CONCLUSION

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation. 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 N-Y-F-&D-Q-B-, Inc.*, ID# 194619 (AAO Mar. 2, 2017)

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degree in the specific specialty, or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree, or its equivalent, to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").