



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

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

MATTER OF I- INC

DATE: OCT. 25, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a computer consulting company, seeks to temporarily employ the Beneficiary as a “user psychology marketing consultant” 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 record did not establish that the proffered position qualifies as a specialty occupation.

On appeal, the Petitioner 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” 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. THE PROFFERED POSITION

The Petitioner seeks to employ the Beneficiary as a user psychology marketing consultant. In response to the Director’s request for evidence (RFE), the Petitioner stated the Beneficiary would perform the following job duties in the proffered position:

| Job Description & Role | Frequency (%) |
|--|---------------|
| Design marketing psychology research projects and tests | 40% |
| Apply psychological research and analysis to marketing campaign and implement | 30% |
| Maintain communication with necessary parties | 20% |
| Continue to monitor the competitive market landscape and invest in understanding and keeping up with marketing psychology developments | 10% |

The Petitioner included additional tasks for each listed duty, along with the required education or experience needed to complete the tasks associated with each duty and the Beneficiary's related education and experience.

According to the Petitioner, the proffered position requires a bachelor's degree in psychology.

III. ANALYSIS

Upon review, we have determined that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.¹ Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.²

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 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.³

On the labor condition application (LCA),⁴ the Petitioner designated the proffered position under the occupational category "Market Research Analysts and Marketing Specialists" corresponding to the Standard Occupational Classification (SOC) code 13-1161.⁵

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

² The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

³ 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.

⁴ The Petitioner is required to submit a certified LCA to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the "area of employment" or the actual wage paid by the employer to other employees with similar experience and qualifications who are performing the same services. See *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542, 545-46 (AAO 2015).

⁵ 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

The *Handbook* subchapter entitled “How to Become a Market Research Analyst” states, in pertinent part, that market research analysts typically need a bachelor’s degree in market research or a related field.⁶ According to the *Handbook*, some individuals have degrees in fields such as statistics, math, computer science, business administration, the social sciences, or communications.⁷ The *Handbook* also reports that “[t]he Marketing Research Association offers the Professional Researcher Certification (PRC) for market research analysts.”⁸

The *Handbook* reports that market research analysts have degrees and backgrounds in a wide-variety of disparate fields. The *Handbook* further identifies various courses as essential to this occupation, including statistics, research methods, and marketing and further elucidates that courses in communications and social sciences (such as economics, psychology, and sociology) are also important. Therefore, although the *Handbook* indicates that market research analysts typically need an advanced degree, it also indicates that degrees and backgrounds in various fields are acceptable for jobs in this occupation – including computer science and the social sciences, as well as statistics and communications.⁹

Here, although the *Handbook* indicates that a bachelor’s or higher degree is required, it also indicates that baccalaureate degrees in various fields are acceptable for entry into the occupation. In addition to recognizing degrees in disparate fields, i.e., social science and computer science as acceptable for entry into this field, the *Handbook* also states that “[o]thers have backgrounds in business administration.”¹⁰ Although a general-purpose bachelor’s degree, such as a degree in

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*, Market Research Analysts (2016-17 ed.).

⁷ *Id.*

⁸ *Id.*

⁹ In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor’s or higher degree in more than one specialty is recognized as satisfying the “degree in the specific specialty (or its equivalent)” requirement of section 214(i)(1)(B) of the Act. In such a case, the required “body of highly specialized knowledge” would essentially be the same. Since there must be a close correlation between the required “body of highly specialized knowledge” and the position, however, 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.⁹ Section 214(i)(1)(B) of the Act (emphasis added).

Whether read with the statutory “the” or the regulatory “a,” both readings denote a singular “specialty.” Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. This also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

¹⁰ Bureau of Labor Statistics, U.S. Dep’t of Labor, *Occupational Outlook Handbook*, Market Research Analysts (2016-17 ed.).

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. Therefore, the *Handbook*'s recognition that a general, non-specialty "background" in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not a standard, minimum entry requirement for this occupation.

The narrative of the *Handbook* further reports that some employees obtain professional certification to demonstrate a level of professional competency. It continues by outlining the requirements for market research analysts to achieve PRC, and states that candidates qualify based upon their experience and knowledge. According to the *Handbook*, the PRC is granted by the Marketing Research Association, now known as the Insights Association,¹¹ to those who pass an exam and have at least three years of experience working in market research.¹²

We reviewed the Insights Association's website, which confirms the *Handbook*'s statement regarding the requirements for the PRC (i.e., passage of an exam and three years of relevant industry experience), and further specifies that the "education" necessary to apply for PRC is "12 industry-related education hours within the two preceding years." The website includes information regarding "How to Enter the Industry" which lists a variety of possible degrees, such as business administration, liberal arts, computer science and communications, and a variety of "helpful skills," including "attention to detail," and "basic computer skills."¹³ It does not indicate that a market research analyst position has any specific minimum academic requirement for entry, nor does it state that it requires any particular level of education to be identified as qualified and possessing a level of expertise or competence. Instead, the Insights Association's website highlights the importance of professional experience and industry-related professional courses (through conferences, seminars, and webinars). Thus, the *Handbook* and the Insights Association website therefore do not support the claim that the occupational category "Market Research Analysts" is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent.

On appeal, the Petitioner cites 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.¹⁴ In the district court case, the employer designated the position as a "Marketing Analyst &

¹¹ The Marketing Research Association merged with the Council of American Survey Research Organizations in 2017 to become the Insights Association. See <http://www.insightsassociation.org/about> (last visited Oct. 24, 2017). The Insights Association is therefore the successor to the Marketing Research Association.

¹² The Insights Association website states that it "strives to effectively represent, advance, and grow the research profession and industry." For additional information, see <http://www.insightsassociation.org/about> (last visited Oct. 24, 2017).

¹³ We note that the Petitioner provided a printout of this website.

¹⁴ 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*

Specialist” position.¹⁵ 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.¹⁶ Accordingly, aside from the claimed job title and occupational category, 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 U.S. Citizenship and Immigration Services’ (USCIS) 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.¹⁷

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” – we must disagree.¹⁸ The occupational category designated by a petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly

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.

¹⁵ 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.

¹⁶ 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.

¹⁷ 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).

¹⁸ In *Raj*, the court quoted a brief excerpt from the *Handbook*; however, the quotation is from the 2012-2013 edition rather than the 2014-2015 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.

reviews 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, USCIS does 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. USCIS 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 duties and requirements of the position as described in the record of proceedings 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 matter, the record lacks sufficient evidence to support a finding that the position, as described, is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. 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.

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 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 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 this criterion, the Petitioner submitted copies of job announcements placed by other employers. However, upon review of the documents, we find that the Petitioner’s reliance on the job announcements is misplaced.

First, we note that the job postings do not appear to involve organizations similar to the Petitioner. For example, the Petitioner is an information technology consulting firm, with 12 employees, whereas: one of the advertisements is for a company with over 300,000 employees; a second advertisement is for a data, insight, and consultancy company with 30,000 employees and clients in 100 countries; and a third advertisement is for a healthcare-focused company with over 1,600 employees worldwide and the distribution of its products in over 100 countries. The Petitioner did not supplement the record of proceedings to establish that these advertising organizations are similar to it. Rather, on appeal, the Petitioner conceded that the size and scope of the companies in the advertisements are not similar to itself but that the advertised positions are parallel to the position proffered here.

Second, the advertisements do not appear to be for parallel positions. For instance, some of the postings do not include sufficient information about the duties and responsibilities for the advertised positions. Thus, it is not possible to determine important aspects of the jobs, such as the day-to-day responsibilities, complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Therefore, the Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

Third, some of the postings do not indicate that at least a bachelor’s degree in a directly related specific specialty (or its equivalent) is required.¹⁹ For instance, some report that a bachelor’s degree is required, but they do not specify that any particular discipline is required. Therefore, it appears that a degree in any field (or a general degree) is sufficient for these positions. Further, some report that a bachelor’s degree is required and list several specialties as preferred.²⁰ Overall, the job

¹⁹ As discussed, the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor’s or higher degree, but a bachelor’s degree in a specific specialty that is directly related to the duties of the position. See section 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

²⁰ We note that a “preference” for a degree in a specific specialty is not indicative of a requirement.

postings suggest, at best, that a bachelor's degree is sometimes required for market research analyst positions, but a bachelor's degree in a *specific specialty* (or its equivalent) is not.²¹

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.²² That is, not every deficit of every job posting has been addressed.

In response to the RFE, the Petitioner also submitted an article from the American Psychological Association website. The article provides information regarding the author; however, the article does not address the educational requirements for user psychology marketing consultant positions (or parallel positions).

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.

We reviewed the Petitioner's statements regarding the proffered position; however, the Petitioner does not assert that it satisfies this prong of the second criterion. Further, the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. Thus, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

²¹ 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] 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").

²² 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.

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 submitted its job advertisement for the proffered position. The posting states that the proffered position requires a bachelor's degree in psychology, marketing, or business administration. As previously discussed, 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.

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. In support of the petition, the Petitioner provided information regarding the proffered position and stated that the primary responsibility is to research, analyze, and study how consumers think, feel, reason, and make selections between alternative brands, products, and retailers. However, the Petitioner has not distinguished the proffered position as more specialized or complex from other positions within the same occupation that can be performed by persons without such a degree. While a few related skills and techniques may be 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.

Further, the Petitioner has designated the proffered position as a Level II position on the LCA.²³ This designation, when read in combination with the Petitioner's statements, the evidence presented, and the

²³ The issue here is that the Petitioner's designation of this position as a Level II position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. 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 an advanced 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

Handbook's account of the requirements for this occupation, suggests that the particular position is not likely distinguishable by relatively specialized and complex duties. While we understand that the Beneficiary must have some skills and technical knowledge in order to perform these duties, the Petitioner has not sufficiently explained how these tasks 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. The record does not include probative evidence that the duties require more than technical proficiency in the field.

The Petitioner claims that the Beneficiary is well-qualified for the position, and references the Beneficiary's 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.

Upon review of the totality of the record, the Petitioner has not established that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. For the reasons discussed above, the evidence of record does not satisfy the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

IV. CONCLUSION

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation.

ORDER: The appeal is dismissed.

Cite as *Matter of I- Inc*, ID# 875829 (AAO Oct. 25, 2017)

relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.