



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

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

MATTER OF E- LLC

DATE: SEPT. 13, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a healthcare software and services company, seeks to temporarily employ the Beneficiary as a “computer systems engineer” 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 California Service Center denied the petition, concluding that the Petitioner had not established that (1) the proffered position qualifies as a specialty occupation; or (2) the Beneficiary was qualified to perform the services of a specialty occupation.

On appeal, the Petitioner submits additional evidence and asserts that the Director erred in the decision.

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

### I. LEGAL FRAMEWORK

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

## II. PROFFERED POSITION

In its support letter, the Petitioner described itself as a “leading Healthcare software and Services Company that offers a fully integrated and comprehensive [electronic medical records] EMR and practice management systems.” The Petitioner stated that it seeks to employ the Beneficiary in a full-time computer systems engineer position, and described the duties of the position.

In response to the Director’s request for evidence (RFE), the Petitioner provided the following overview of the proffered position:

**Communicate with staff / clients to understand specific system requirements. – 40%**

- Will be responsible for interacting with our client medical practice and training them on the [Petitioner’s] EMR Software. In this process, he will use his knowledge of MYSQL, MS Office, computer networking, and insurance based physician billing to understand and analyze client systems and develop workflows accordingly. Other key duties [the Beneficiary] will be responsible for are Staff augmentation for practice to assist with practice-side project deliverables during implementation phase(s).
- Conduct practice-specific workflow analysis design and key decision-making including gap analysis.

- Consult with the steering committee or project leads in making key decisions in defining new / updating current goals / workflows for usage of [REDACTED] efficiently in the practice environment.
- Execute implementation tasks for assigned practices following the standard implementation procedures.
- Document [REDACTED] workflows for unique scenarios of the practice.
- Identify workflow / setup related red flags to the project and support teams and provides regular status reports to key Program Manager and end users.
- Drive resolution to end user issues. Works with all parties to prioritize issues and offer solutions.
- Provide group training and supports appropriate use of the application, utilizing expert knowledge of the physician clinical workflows.
  - Work with physicians, business staff and other clients to understand and research customization requests.
  - Provides on-site go live support and works with the support team to provide guidance on Helpdesk best practices.
  - Establishes and monitors KPI (Key Performance Indicators) to establish success criteria and also measure practice competency for Meaningful Use.

**Provide advice on project costs, design concepts, or design changes. – 5%**

Will assess and evaluate the client's usability (ease of use-learnability, degree to which a software can be used by specified consumers to achieve quantified objectives with effectiveness, efficiency, and satisfaction in a quantified content of use) and speed of the application (Delays in clicks, speed or effectiveness of a computer, network, software program or device). Based on his individual assessment and discussions with the client, he could assist in making template / design changes.

**Document design specifications, installation instructions, and other system-related information. – 5%**

Will be train the client practice in system build items such as Patient Lookup & Demographics, messaging and actions, telephone encounters, P2P, administrative

setup, patient portal setup and [REDACTED] setup. He will be responsible for documenting this through checklists and scorecards.

**Verify stability, interoperability, portability, security, or scalability of system architecture. – 5%**

Will ensure that [REDACTED] is installed on the practice server and on the portal and that all staff / physicians have been registered and synced to the server. Staff is trained how to opt in / out a patient on [REDACTED] and on how to send e-referrals. Will be responsible for ensuring the scalability and customization of the existing software for specialty practices like Ambulatory Surgical Centers, Dental, Dermatology, Rheumatology, Ophthalmology, OB and different medical billing set-ups like FQHC, RHC & AHC centers.

**Collaborate with engineers or software developers to select appropriate design solutions or ensure the compatibility of system components. – 5%**

Will analyze any software / system issues at the client site and report them to the product development team to get a resolution. He will be integral to the process of making key improvements in the software based on client feedback and suggestions.

**Evaluate current or emerging technologies to consider factors such as cost, portability, compatibility, or usability. – 5%**

Will keep himself updated with new, emerging trends in healthcare and nursing industry to understand and analyze complex workflows and ensure maximum customer satisfaction Will Perform an onsite survey to understand current-state processes / workflows. Will assist in identification of applicable program(s) that the customer can qualify for, he will assist in identification of relevant standards / measures / factors that the customer can apply for. In addition to this he will identify gaps in existing processes / workflow based on program requirements. Will help in developing strategic goals, objectives & timelines for program application. Will identify key operational needs, system needs, clinical & business needs.

Will also create customized system build & workflow documents. He will identify and educate customer on the reports needed for application. He will work with the [REDACTED] team to develop / customize any necessary reports. This will include identifying additional end-user training needs for the customer. Develop training curriculum as needed and work with [REDACTED] trainers to execute successful training sessions. Part of this is assisting in the creation of policy and process documents needed for the programs.

**Provide technical guidance or support for the development or troubleshooting of systems. – 25%**

- Will participate in all aspects of project implementation, training, and support as well as assist clients with troubleshooting items before they go-live and transition to a full-fledged account management team. Will utilize knowledge of engineering science and technology in order to trace and correct faults in the clients' systems and apply the appropriate principles, techniques, and procedures in order to correct any design faults with the custom EMR system.
- Provide technical guidance over project implementation using life cycle support. Will plan and implement integration between proposed development and existing systems in terms of hardware and software platform.
- Will Identify system data, hardware, or software components required to meet user needs and will Develop systems engineering planning and standards documents needed for each program / project.
- Will be responsible for Identifying measures or indicators of system performance and the actions needed to improve or correct performance, relative to the goals of the system and determine how a system should work and how changes in conditions, operations, and the environment will affect outcomes.

**Provide guidance for implementing secure systems to customers or installation teams. – 5%**

Will train the clients in use of security settings and authentication settings to help them comply with the laws governing health information privacy and portability.

**Monitor system operation to detect potential problems. – 5%**

While at the client site, [the Beneficiary] will monitor the software application and report on its speed, usability and potential issues, if any so that they can be resolved by the implementation and support teams.

The Petitioner indicated that the proffered position requires a bachelor's degree in computer science, engineering, information science, management information systems (MIS), biomedical engineering or closely related field, or its equivalent.

### III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position satisfies any of the criteria at 8 C.F.R.

§ 214.2(h)(4)(iii)(A) and, therefore, qualifies as a specialty occupation. Specifically, the record (1) provides inconsistent information regarding the position; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.

Preliminarily, we find that the Petitioner has not established the availability of specialty occupation work for the Beneficiary for the requested validity period. While the Petitioner asserts that the Beneficiary will be employed in-house, the Petitioner's work appears to be dependent on contracts with clients. Specifically, in the overview of the Beneficiary's duties, the Petitioner states that he will "analyze any software/system issues at the client site," "create customized system build & workflow documents," and "assess and evaluate the client's usability." Contrary to the Petitioner's assertions in the petition and the labor condition application (LCA), where it claims that the Beneficiary will work in-house at the Petitioner's location in Massachusetts, it appears from the description of the proffered position that the key elements of the proffered position require the Beneficiary to develop customized solutions based on client needs, and require his presence at client locations to do so.

The record of proceedings, however, does not contain work orders valid for any client assignments for the requested period of employment for the Beneficiary. The Petitioner did not submit contracts or any other documents evidencing the existence of work for the Beneficiary that list the proffered position or the Beneficiary, or even the proffered position title, and that are valid for the duration of the Beneficiary's requested employment period. Without further information regarding specific projects to which the Beneficiary would be assigned that covers the duration of the period of employment requested, we are not able to ascertain what the Beneficiary would do, where the Beneficiary would work, as well as how this would impact circumstances of her relationship with the Petitioner. U.S. Citizenship and Immigration Services (USCIS) regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978).<sup>1</sup>

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<sup>1</sup> The agency made clear long ago that speculative employment is not permitted in the H-1B program. A 1998 proposed rule documented this position as follows:

Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. *See* section 214(i) of the Immigration and Nationality Act (the "Act"). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis

Furthermore, the record contains discrepancies that undermine the Petitioner's claims regarding the proffered position. On the LCA<sup>2</sup> submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Computer Occupations, All Other" corresponding to the Standard Occupational Classification (SOC) code 15-1199, which includes "Computer Systems Engineers/Architects," SOC code 15.1199.02. However, throughout the record, the Petitioner asserts that the proffered position is similar in scope to that of a software engineer, and repeatedly equates the position to this other occupational category while simultaneously claiming that the proffered position is that of a computer systems engineer. The Petitioner did not provide an explanation for this discrepancy, and instead repeatedly maintains that the two occupations are similar.<sup>3</sup>

Moreover, the wage level designated for the proffered position appears inconsistent with the job description. The Petitioner designated the proffered position at a Level I, entry-level wage.<sup>4</sup> The U.S. Department of Labor (DOL) guidance states that wage levels should be determined only after selecting the most relevant occupational code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation. The determining factors of a wage level for a position include the complexity of the job duties, as well as the levels of judgment, supervision, and understanding required to perform the job duties.

DOL guidance states that a Level I (entry) 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

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and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

63 Fed. Reg. 30419, 30419 - 30420 (June 4, 1998). While a petitioner is certainly permitted to change its intent with regard to non-speculative employment, e.g., a change in duties or job location, it must nonetheless document such a material change in intent through an amended or new petition in accordance with 8 C.F.R. § 214.2(h)(2)(i)(E).

<sup>2</sup> The Petitioner is required to submit a certified LCA to USCIS to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the "area of employment" or the actual wage paid by the employer to other employees with similar experience and qualifications who are performing the same services. See *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542, 545-546 (AAO 2015).

<sup>3</sup> We will briefly note that the DOL's guidance states that when the position is a combination of occupations, the Petitioner should select the occupation with the higher wage. 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). The occupational category "Software Developers, Systems Software" under which "software engineers" may fall under, has higher prevailing wages than "Computer Occupations, All Other." For more information, see <http://www.flcdatacenter.com/OesQuickResults.aspx?area= &code=15-1132&year=18&source=1> (last visited Sept. 12, 2017).

<sup>4</sup> 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.*

and reviewed for accuracy; and (3) that he will receive specific instructions on required tasks and expected results.<sup>5</sup> A Level I wage should be considered for research fellows, workers in training, or internships.

However, the job position indicates that the Beneficiary will “drive resolution to end user issues,” “be integral to the process of making key improvements in the software,” “utilize expert knowledge,” and be involved in making key decisions. The level of responsibility does not appear to be reflected in the wage level chosen on the LCA.<sup>6</sup> Consequently, we must question the nature of the proffered position, as well as the accuracy of the information provided by the Petitioner on the LCA.<sup>7</sup>

Due to the discrepancies in the record, we cannot conclude that the petition and LCA accurately reflect the substantive nature of the work to be performed by the Beneficiary. We are therefore precluded from finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

While these deficiencies preclude approval of the petition, for the purpose of providing a comprehensive analysis, we will perform a complete specialty occupation analysis under each of the four, alternative criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) assuming that the Beneficiary will be employed as a computer systems engineer as certified on the LCA.<sup>8</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.

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<sup>5</sup> *Id.*

<sup>6</sup> A petitioner must distinguish its proffered position from others within the occupation through the proper wage level designation to indicate factors such as complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. Through the wage level, the Petitioner reflects the job requirements, experience, education, special skills, or other requirements and supervisory duties.

<sup>7</sup> USCIS must ensure that the LCA supports and corresponds to the H-1B petition filed on behalf of the Beneficiary. 20 C.F.R. § 655.705(b).

<sup>8</sup> Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.



We often look to the DOL's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>9</sup> However, there are some occupations for which occupational profiles have not been developed, such as for the occupational category "Computer Occupations, All Other."<sup>10</sup> Since the *Handbook* does not provide sufficient information regarding the designated occupational category for the proffered position, it is incumbent upon the Petitioner to provide probative evidence (e.g., documentation from other objective, authoritative sources) that supports a finding that the particular position qualifies as a specialty occupation.

The Petitioner submits information from several resources for our consideration under this criterion, including O\*NET Online (O\*NET), Study.com, RobertHalf.com, and Wikipedia. However, none of this information establishes the Petitioner's eligibility under the first criterion.

We will first address O\*NET's summary report for 15-1199.02 – Computer Systems Engineers/Architects.<sup>11</sup> The summary report provides general information regarding the occupation; however, it does not support the Petitioner's assertion regarding the educational requirements for these positions. The O\*NET assigns this occupational category a Job Zone "Four" rating, which states only that most but not all of the occupations within it require a bachelor's degree. Further, O\*NET does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty directly related to the occupation. Therefore, the O\*NET information is not probative of the proffered position qualifying as a specialty occupation.

Further, the summary report provides the educational requirements of "respondents," but does not account for 100% of the "respondents." The respondents' positions within the occupation are not distinguished by career level (e.g., entry-level, mid-level, senior-level). Additionally, the graph in

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<sup>9</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. 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.

<sup>10</sup> Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Employment Statistics: Occupational Employment and Wages, May 2016* Computer Occupations, All Other, <https://www.bls.gov/oes/current/oes151199.htm> (last visited Sept. 12, 2017).

<sup>11</sup> Although the Petitioner also submits the Summary Report for Software Developers, Systems Software, SOC Code 15-1133.00, this document will not be considered. The Petitioner affirmatively selected the classification of Computer Systems Engineers, SOC Code 15-1199.02, for the proffered position. Throughout the record, the Petitioner repeatedly submits evidence pertaining to Software Engineers, asserting that the two occupations have similar duties and requirements, and thus should be considered interchangeably when evaluating the petition and the duties of the proffered position. We are not persuaded by the Petitioner's assertions, as the two occupations have separate and distinct SOC codes, which also mandate different academic requirements and wages based on the position requirements and the metropolitan statistical area certified in the LCA. Our analysis will be restricted to the evaluation of the proffered position under the category of computer systems engineers, the occupational classification selected by the Petitioner and certified on the LCA.

the summary report does not indicate that the “education level” for the respondents must be in a specific specialty.

Nor do the excerpts from [REDACTED] or Wikipedia establish eligibility under the first criterion. The articles from [REDACTED] and [REDACTED] appear to be research articles, but do not identify the author or any sources upon which the conclusions set forth in the articles were based. Moreover, the article from [REDACTED] discusses the occupations of software engineers and systems engineers interchangeably, thereby raising additional question with regard to what position the article is intended to represent. While each article opines that degrees in computer science, electrical engineering, informational technology, computer engineering, or related field are generally required for the occupation of computer systems engineer, there is no citation to source material or other references to support these conclusion.

Similarly, the article submitted from Wikipedia holds no probative value. Wikipedia is self-described as the “free encyclopedia that anyone can edit,”<sup>12</sup> thereby establishing that the opinions and statements contained therein cannot reasonably be verified.

For all of these reasons, we find that the Petitioner has not provided sufficient documentation to substantiate its assertion regarding the minimum requirement for entry into this particular position. The Petitioner therefore 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.

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

<sup>12</sup> See [https://en.wikipedia.org/wiki/Main\\_Page](https://en.wikipedia.org/wiki/Main_Page) (last visited Sept. 12, 2017).

(D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989) (considering these “factors” to inform the commonality of a degree requirement)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or another authoritative source, reports a requirement for at least a bachelor’s degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry’s professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner’s industry to establish that such firms “routinely employ and recruit only degreed individuals.”

The record contains job vacancy announcements for our consideration under this prong. We will first consider whether any of the advertised job opportunities could be considered “parallel positions.” As noted, the Petitioner attested to DOL that the proffered position is a Level I, entry-level position. However, all of the advertised positions, except one, require experience – some significant. In addition, many of the job vacancy announcements contain terms that seem to be at odds with a Level I designation (e.g., “provide technical leadership to guide the development of customer solutions,” “work and communicate independently with the clients implementation team on a regular basis,” “takes a leadership role in query performance optimization and application performance,” “ability to work independently,” etc.). These factors indicate that the advertised positions are not Level I positions, and that they therefore are not “parallel positions” to the one proffered here.

While the record contains one positing for an entry-level systems engineer position, this single advertisement does not establish the existence of an industry-wide hiring standard. Moreover, we note that this posting, advertised by [REDACTED] will accept a bachelor’s degree in a variety of fields, including CIS, MIS, IS, computer science, engineering, and business administration.<sup>13</sup>

Nor does the record contain documentary evidence sufficient to establish that any of these job vacancy announcements were placed by companies that (1) conduct business in the Petitioner’s industry and (2) are also “similar” to the Petitioner. For example, though the Petitioner submitted job vacancy announcements placed by several health care management systems and medical facilities, the Petitioner also provided postings from an Internet publishing and broadcasting and web search portals company, a scientific research and development laboratory, a cognitive computing company, a national laboratory for healthcare transformation, and the Petitioner does not sufficiently explain how any of them meet either requirement.

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<sup>13</sup> A general degree requirement does not necessarily preclude a proffered position from qualifying as a specialty occupation. For example, an entry requirement of a bachelor’s or higher degree in business administration with a concentration in a specific field (in the case of this posting, it requires “emphasis” in information systems), or a bachelor’s or higher degree in business administration combined with relevant education, training, and/or experience may, in certain instances, qualify the proffered position as a specialty occupation. In either case, it must be demonstrated that the entry requirement is equivalent to a bachelor’s or higher degree in a specific specialty that is directly related to the proffered position. See *Royal Siam Corp.*, 484 F.3d at 147.

For all of these reasons, the Petitioner has not established that any of these job vacancy announcements are relevant. Even if that threshold had been met, we would find that they did not satisfy this prong of the second criterion, as they do not indicate that a bachelor's degree in a specific specialty, or the equivalent, is common to the industry in parallel positions among similar organizations.<sup>14</sup>

Consequently, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

## 2. Second Prong

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the Petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

We find that the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. In other words, the Petitioner has not demonstrated how the duties of the proffered position as described in the record require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For example, the Petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and establish how such a curriculum would be necessary to perform the duties it believes are so complex and unique. While a few related courses may be beneficial, or even required, in performing certain duties of the position, we find that the Petitioner has not demonstrated how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position.

As discussed, the *Handbook*, O\*NET, and the alternative resources submitted by the Petitioner do not establish that a bachelor's degree in a specific specialty, or the equivalent, is normally required for positions located within this occupational category. We acknowledge the Petitioner's general

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<sup>14</sup> In addition, the Petitioner does not demonstrate what statistically valid inferences, if any, could be drawn from the job postings with regard to the common educational requirements for entry into parallel positions in similar organizations. See generally *Earl Babbie, The Practice of Social Research* 186-228 (7th ed. 1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-96 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

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

indications regarding the knowledge and associated entry requirements associated with the proffered position. However, the Petitioner's wage-level designation undercuts any claim that it satisfies this criterion.<sup>15</sup>

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. We find that 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. The Petitioner did not submit any evidence of previous or current employees in the same position as the Beneficiary's proffered position.

The Petitioner states in response to the RFE that it requires all of its computer systems engineers to have at least a minimum of a bachelor's degree in computer science, engineering, information science, management information systems, biomedical engineering, or closely related field. In support of this assertion, the Petitioner submits copies of educational credentials and pay stubs for 10 individuals it claims have been or currently are employed as computer systems engineers.

While the submission of these documents is noted, the Petitioner does not submit any evidence substantiating the claim that these individuals were employed in the same position as the one offered to the Beneficiary. For example, there is no offer of employment letter or employment agreement substantiating the nature of the positions held by these individuals, and no statement of duties or other such evidence demonstrating that these individuals performed the same duties articulated by the Petitioner as being required for the proffered position. Moreover, the Petitioner was established in 1999 and currently employs 1,395 employees among six offices in the United States. The Petitioner does not articulate how many computer systems engineers it has employed. Moreover, we

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<sup>15</sup> 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, a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level 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.

note that the educational credentials for the individuals holding foreign degrees are not accompanied by an academic evaluation equating these degrees to a U.S. degree in a specific specialty, or the equivalent.

Therefore, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

#### 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.

Again, as previously mentioned, the Beneficiary's duties were general tasks that were not specific to proposed assignments with any end-client. Further, 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.

The Petitioner has not demonstrated that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

#### IV. BENEFICIARY'S QUALIFICATIONS

The Director also found that the Beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. However, a beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the Petitioner has not established that the proffered position qualifies as a specialty occupation. Therefore, we need not and will not address the Beneficiary's qualifications further.

#### V. CONCLUSION

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

**ORDER:** The appeal is dismissed.

Cite as *Matter of E- LLC*, ID# 537308 (AAO Sept. 13, 2017)