



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

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

MATTER OF N- CORP.

DATE: SEPT. 21, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

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

The Director of the Vermont Service Center denied the Form I-129, Petition for a Nonimmigrant Worker, concluding that the record did not establish the Beneficiary’s qualifications to occupy a specialty occupation. On appeal, the Petitioner submits additional evidence and argues that the record demonstrates eligibility.

We conduct *de novo* review on appeal, and we must resolve a threshold matter before we may address the merits of the Director’s decision and the Petitioner’s appeal. Specifically, a beneficiary’s credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As we will discuss, the record does not establish that the proffered position requires a baccalaureate or higher degree in a specific specialty, or its equivalent. Accordingly, we will remand the matter to the Director to further review the record and to issue a new decision.

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 offered position must meet one of the following criteria to qualify as a specialty occupation:

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

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

II. PROFFERED POSITION

In the petition, the Petitioner stated that the Beneficiary will serve as an in-house “computer programmer” assigned to a project for an end-client. In response to the Director’s request for evidence (RFE), the Petitioner provided the following job duties:

- Design and create an eight node Hadoop cluster for data storage and process using Apache Hadoop.
- Design the Hadoop architecture to support Data Injection - Using Sqoop & Flume, Data storage - Using HDFS, Data processing - Using Map Reduce, Data Extraction - Using Hive.
- Oozie workflow was created to schedule all the Hadoop jobs that are mentioned above.
- Work on setting up the Hadoop cluster for the dev, test and prod Environment.
- Work on pulling the data from SQL server into the hadoop cluster using the sqoop import.
- Involve in the Analysis, Design, Coding and testing of user requirements to develop HADOOP HDFS Framework.
- Write the Map Reduce & PIG scripts to process the HDFS data.

- Create Hive tables to store the processed results in a tabular format.
- Assist with performance tuning and monitoring using Ganglia.
- Support code/design analysis, strategy development and project planning.
- Create reports for the BI team using Sqoop to export data into HDFS and Hive.
- Responsible for import and export of data using Sqoop from HDFS to databases (MySQL, HBase) and vice—versa.
- Develop multiple MapReduce jobs in Java for data cleaning and pre- processing.
- Installing, configuring Storm and Kafka for real time data process.
- Coordinate with onsite team for requirement gathering.
- Analyzing the functional specifications as per the requirements.
- Various performance tests for verifying the efficacy of Hadoop ecosystem in various modes.
- Involve in Agile Software Development to deliver the tasks on each sprint not missing deadlines.
- Involve in the day to day discussions with the Business team and develop the application as per team guidelines.
- Participate in Design and Code Reviews for better quality code and defect free application.
- Review the QA test cases, integrate the modules and bug fixing.
- Requirements study, software development specification, development and Unit and Integration testing use of MRUnit, PigUnit.
- Use web technologies HTML/XHTML, CSS3, XML, XSLT, JavaScript JQuery and AngularJS.¹

According to the Petitioner, the proffered position requires a bachelor's degree in computer science, engineering, mathematics, physical or life sciences, business or commerce, or a related field, as well as relevant experience as an information technology professional.²

III. ANALYSIS

For the reasons discussed below, we have determined that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.³ Specifically, we find that the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.⁴

¹ The Petitioner also provided a weekly schedule of the proposed duties but did not express a high level of confidence in the schedule's accuracy stating that it was very difficult to describe a typical week for the Beneficiary because the demands vary, project requirements change continuously, and the work requirement change.

² Within the record, the Petitioner also claims that the position requires a bachelor's or higher degree in a computer related field. The Petitioner did not explain why the claimed requirements vary significantly within the record, and we are unable to reconcile the statements.

³ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

⁴ The Petitioner submitted documentation to support the petition, including evidence regarding the position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

A. Petitioner's Degree Requirements

First, the Petitioner stated that a degree in one of several disparate fields (e.g., computer science, engineering, mathematics, physical or life sciences, business, or commerce) is sufficient for the position. In general, provided the specialties are closely related, 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.

A minimum entry requirement of degrees in disparate fields, however, 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.⁵ Section 214(i)(1)(B) of the Act (emphasis added). The Petitioner has not made this showing and has therefore, not demonstrated how it has satisfied the statutory degree requirements. *Id.*

Second, the Petitioner reported that a general degree (such as physical or life sciences⁶ or business) is suitable to perform the duties of the position. The requirement of a general bachelor's degree is inadequate to establish that a position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. The requirement of a degree with a generalized title without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988). Although a general-purpose bachelor's degree 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.

Finally, the Petitioner has provided inconsistent information regarding the minimum requirements for the proffered position. The table below summarizes the variances in the educational requirements.

⁵ While the statutory "the" and the regulatory "a" both denote a singular "specialty," 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. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

⁶ For example, the term "science" is defined as "1a. The observation, identification, description, experimental investigation, and theoretical explanation of natural phenomena. . . . 2. Methodological activity, disciplines, or study <culinary science> 3. An activity that appears to require study and method." Webster's II New College Dictionary 1012 (2008). Furthermore, *U.S. News and World Report's* guide for colleges designates science programs into various subcategories, including biological sciences, chemistry, earth sciences, math, physics, statistics, as well as social science programs such as criminology, economics, English, history, political science, psychology, and sociology. See *U.S. News and World Report*, available at <https://www.usnews.com/best-graduate-schools/top-science-schools> (last visited Aug. 30, 2017).

Record of Proceedings	Acceptable Fields of Study
Petitioner's Initial Support Letter	computer science, engineering, mathematics, physical or life sciences, business or commerce, or a related field
Petitioner's Second RFE Response	bachelor's degree or higher in a computer-related field
opinion letter, a professor at	1) advanced post-secondary educational programs or through progressively responsible work experience in the field of computer science, computer information systems, or a closely related field (page 6) 2) bachelor's degree in computer science, computer information systems, engineering, technology, mathematics, business, or a closely related field (page 7)

The Petitioner did not provide an explanation for the variances in the requirements. For these reasons, the Petitioner cannot be approved.

B. Labor Condition Application

Further, in the labor condition application (LCA)⁷ submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Computer Programmers" corresponding to the Standard Occupational Classification (SOC) code 15-1131 at a Level II. However, many of the duties are that of a software developer.⁸

While these occupational categories may have some general duties in common, they are distinct and separate occupational categories. When the duties of the proffered position involve more than one occupational category, the U.S. Department of Labor (DOL) provides guidance for selecting the most relevant Occupational Information Network (O*NET) code classification. The "Prevailing Wage Determination Policy Guidance" by DOL states the following:

In determining the *nature of the job offer*, the first order is to review the requirements of the employer's job offer and determine the appropriate occupational classification. The O*NET description that corresponds to the employer's job offer shall be used to identify the appropriate occupational classification If the employer's job opportunity has worker requirements described in a combination of O*NET occupations, the [determiner] should default directly to the relevant O*NET-SOC occupational code for the highest paying occupation. For example, if the employer's job offer is for an engineer-pilot, the [determiner] shall use the education, skill and

⁷ 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, 545-546 (AAO 2015).

⁸ See O*NET OnLine, available at <https://www.onetonline.org/link/details/15-1132.00> (last visited Sept. 20, 2017).

experience levels for the higher paying occupation when making the wage level determination.

DOL, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

Thus, if the Petitioner believed its position was described as a combination of occupations, then according to DOL guidance, the Petitioner should have chosen the relevant occupational code for the highest paying occupation. The prevailing wage for "Computer Programmers" is lower than the prevailing wage for "Software Developers, Applications."

Occupational Category	Prevailing Wage:	New Jersey
Computer Programmers	\$74,090	
Software Developers, Applications	\$82,805	

Under the H-1B program, a petitioner must offer a beneficiary wages that are at least the actual wage level paid by the petitioner to all other individuals with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application. See section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A).

As such, the Petitioner has not established (1) that it submitted a certified LCA that properly corresponds to the claimed occupation and duties of the proffered position; and (2) that it would pay the Beneficiary an adequate salary for his work, as required under the Act, if the petition were granted. These issues preclude the petition's approval.

C. First Criterion

We now turn 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. We recognize 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.⁹ As discussed, the Petitioner classified the proffered position under the occupational title "Computer Programmers."

The chapter of the *Handbook* titled "How to Become a Computer Programmer"¹⁰ provides, in pertinent part, that "some employers hire workers with an associate's degree." *Handbook*, Computer

⁹ We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. 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/OCO/>.

¹⁰ Without explanation, the Petitioner references the 1994-95 and 1996-97 editions of the *Handbook* in response to the Director's second RFE. We note that these versions are now obsolete, and it is our practice to review the most recent

Programmers (2016-17 ed.). Thus, the current version of the *Handbook* does not support the Petitioner's assertion that a bachelor's degree is required for entry into this occupation.

The Petitioner also references DOL's O*NET summary report for "Computer Programmers." 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. For example, the Specialized Vocational Preparation (SVP) rating cited within O*NET's Job Zone designates this occupation as 7 < 8. An SVP rating of 7 to less than ("<") 8 indicates that the occupation requires "over 2 years up to and including 4 years" of training. While the SVP rating indicates the total number of years of vocational preparation required for a particular position, it is important to note that it does not describe how those years are to be divided among training, formal education, and experience – and it does not specify the particular type of degree, if any, that a position would require.¹¹

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

In this matter, the Petitioner has not provided sufficient 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).

D. 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 concentrates on 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.

version (i.e., 2016-2017) for insights into the *current requirement* for occupations.

¹¹ For additional information, see the O*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

We generally consider the following factors to determine whether 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)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or other 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 in the industry attesting that such firms "routinely employ and recruit only degreed individuals."

The Petitioner provided a March 2017 opinion letter from [REDACTED] along with [REDACTED] curriculum vitae. After carefully evaluating [REDACTED] assertions, we conclude that his opinions lend little probative value to the Petitioner's claims. In [REDACTED] letter, he (1) describes the credentials that he asserts qualify him to opine upon the nature of the proffered position and claims that he is considered a "recognized expert"; (2) lists the duties proposed for the Beneficiary that the Petitioner provided at the time it filed the petition; (3) states that the duties he lists require at least a bachelor's degree in information technology, engineering, science, mathematics, or a closely related field; and (4) claims that these qualifications represent a common standard for parallel positions among similar organizations.

A preliminary review reveals that [REDACTED] has not provided sufficient information to establish his expertise on the practices of organizations seeking to hire computer programmers. While his curriculum vitae reflects some experience in information systems, this is insufficient to demonstrate his expertise in current industry hiring practices. Without further clarification, it is unclear how his education, training, skills, or experience translate to expertise regarding the current recruiting and hiring practices of an enterprise engaged in "software consulting and development" (as designated by the Petitioner in the petition) or similar organizations for computer programmers (or parallel positions).

[REDACTED] states that he based his assessment on the Petitioner's description of the company and the offered position. While [REDACTED] provides a brief, general description of the Petitioner's business activities, he does not demonstrate in-depth knowledge of its operations or how the duties of the position would actually be performed in the context of its business enterprise. Accordingly, we find the record does not demonstrate that [REDACTED] is a "recognized expert" on the current requirements for computer programmer positions, as he claims.

Further, although he asserts his abundant experience issuing credential evaluations for our purposes, [REDACTED] opinion letter does not cite specific instances in which his past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that he has

conducted any research or studies pertinent to the educational requirements for such positions (or parallel positions) in the Petitioner's industry for similar organizations, and no indication of recognition by professional organizations that he is an authority on those specific requirements. His curriculum vitae does not reflect that he has published any works on the academic/experience requirements for computer programmers (or related issues).

Even assuming [REDACTED] possessed expertise on degree requirements for computer programmers, his written testimony does not substantiate his conclusions, such that we can conclude that the Petitioner has shouldered its burden of proof.

First, [REDACTED] does not provide sufficient evidence or information to support his conclusions. For example, he provided "summaries" of two job postings; however, the documentation is not persuasive. To begin, it is unclear why [REDACTED] did not submit true copies of the job postings rather than his own "summaries." They do not provide any information about the advertising companies (e.g., identity of the company, size, industry). When determining whether the Petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient to claim that these organizations are similar and in the same industry as the Petitioner without providing a legitimate basis for such an assertion. The evidence here does not establish that the organizations posting the advertisements are similar to the Petitioner.

Second, the requirements stated in the advertisements are not consistent with each other or with the disciplines that are acceptable to the Petitioner. [REDACTED] briefly references the O*NET summary report for "Computer Programmers" but for the reasons already discussed, the report is not persuasive in this matter. He does not reference, cite, or discuss any other studies, surveys, industry publications, authoritative publications, or other sources of empirical information which he may have consulted to complete his evaluation.

Third, [REDACTED] does not discuss the duties of the proffered position in any substantive detail. In fact, [REDACTED] listed position duties the Petitioner initially provided rather than discussing the updated duties submitted in the first request RFE response. As a result, he based his opinion on duties that are not representative of the position's actual responsibilities as amended. Third, the record does not indicate whether [REDACTED] was aware that, as indicated by the Level II¹² wage on the LCA, the Petitioner considered the proffered position to be one that involves moderately complex tasks that require limited judgment. [REDACTED] indicated that the proffered position consists of numerous responsibilities to include planning and coordinating key project phases, which is inconsistent with

¹² In general, a petitioner must distinguish its proffered position from others within the same occupation through the proper wage level designation to indicate factors such as the relative 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. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

its designation of a Level II wage rate. In other words, the Petitioner has not demonstrated that [REDACTED] possessed the requisite information to adequately assess the nature of the position and appropriately determine parallel positions based upon the job duties and level of responsibilities.

Not only is [REDACTED] statement that the proffered position requires a bachelor's degree in a specific specialty refuted by the *Handbook*, but we also note unsubstantiated information and inconsistencies within his letter. [REDACTED] states that the Beneficiary has a bachelor's degree with dual majors in mathematics and computer information systems. [REDACTED] indicated that he based this statement on the Beneficiary's transcripts. A review of the Beneficiary's bachelor's degree transcripts reflect a focus on mathematics and other general subjects; however, only two courses pertaining to computer information systems are represented in his bachelor's degree transcripts.¹³ While the Beneficiary's "statement of marks" document contains several codes generated by the educational institution, the Petitioner did not submit evidence establishing the meaning of the codes. As a result, the Petitioner has not offered sufficient evidence that the Beneficiary possesses a bachelor's degree majoring in computer information systems to corroborate [REDACTED] assertions. Such statements made without supporting documentation are of limited probative value and are insufficient to satisfy the Petitioner's burden of proof.

We further note [REDACTED] inconsistent determinations on the types of degrees required for computer programmers. For instance, [REDACTED] letter contains several instances in which he states the minimum degree requirements for the proffered position are in "information technology, engineering, science, mathematics or a closely related field," while other portions of the letter signify that a business degree is also acceptable. [REDACTED] statements are also incongruent with the Petitioner's degree requirements listed in the initial filing in which it indicated that a degree in commerce was acceptable. Neither the Petitioner nor [REDACTED] provides an explanation for the inconsistent degree requirements. The Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Furthermore, [REDACTED] misstates the position's title as a software developer at least one time in his opinion letter.

Consequently, we find that [REDACTED] opinion letter lends little probative value. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988) (The service is not required to accept or may give less weight to an advisory opinion when it is "not in accord with other information or is in any way questionable."). Without more, the Petitioner has not provided sufficient evidence to satisfy the first 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

¹³ The Petitioner has not demonstrated that completing two computer information system courses constitutes the Beneficiary majoring in this subject.

performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

In support of its assertion that the proffered position qualifies as a specialty occupation, the Petitioner described the proffered position and its business operations. We reviewed the documentation, but the evidence does not establish the complexity or uniqueness of the position. The information does not show that the position is more complex or unique than other computer programmer positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. The claim that the 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 also appears to be incongruent with the Petitioner designating the position at a Level II wage rate; e.g., one that involves moderately complex tasks that require limited judgment.¹⁴ The Petitioner claims that the Beneficiary is well-qualified for the position, and references his qualifications. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent.

The Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position. Accordingly, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

E. Third Criterion

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position.

The record must establish that a petitioner's stated degree requirement is not a matter of preference for high-caliber candidates but is necessitated instead by performance requirements of the position. *See Defensor v. Meissner*, 201 F.3d at 387-88. Were we limited solely to reviewing the Petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the Petitioner created a token degree requirement. *Id.* Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner's past recruitment and hiring practices, as well as information regarding employees who previously held the position.

¹⁴ Nevertheless, a low wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a high wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level II position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty, or its equivalent. That is, a position's wage-level designation may be a relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

The Petitioner stated that it has employed over 100 computer programmers, and [REDACTED] asserts that the Petitioner requires a baccalaureate or higher degree in a specific specialty. However, the Petitioner did not offer evidence to support this assertion. 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 at 8 C.F.R. § 214.2(h)(4)(iii)(A).

F. 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.

While the Petitioner provided a more detailed job description in response to the RFE, the description does not establish that the duties are more specialized and complex in comparison to other computer programmer positions. We also incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a Level II position relative to others within the occupational category, which is appropriate for a position that involves moderately complex tasks that require limited judgment. Such a designation by the Petitioner, does not support its assertion that the position is also "so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree." Thus, the Petitioner has submitted insufficient evidence to satisfy the criterion at 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. CONCLUSION

As the Petitioner was not previously accorded the opportunity to address the deficiencies in the record regarding the specialty occupation nature of the proffered position, we will remand the record for further review of this issue. The Director may request any additional evidence considered pertinent to the new determination.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of N- Corp.*, ID# 645196 (AAO Sept. 21, 2017)