



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

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

MATTER OF T-S-ITG- LLC

DATE: SEPT. 29, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an IT consulting services firm, seeks to employ the Beneficiary as a “programmer analyst” under the H-1B nonimmigrant classification for specialty occupations. *See* section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 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 evidence of record did not establish that the proffered position qualifies as a specialty occupation position. Specifically, the Director found that no credible position was available for the Beneficiary, and that the labor condition application (LCA) did not support the petition.

On appeal, the Petitioner submits additional evidence and asserts that the Director erred denying the petition.

Upon *de novo* review, we will dismiss the appeal.¹

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

¹ We follow the preponderance of the evidence standard as specified in *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). A petitioner must show that what it claims is “more likely than not” or “probably” true. To determine whether a petitioner has met its burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r 1989).

- (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

The Petitioner stated that the proffered position is a programmer analyst position. Although the Petitioner's address is in [REDACTED] New Hampshire, the Form I-129, Petition for a Nonimmigrant Worker, states that the Beneficiary would work at [REDACTED] in [REDACTED] Montana. Other evidence in the record indicates that this is a location of [REDACTED] (end-client), and that the Beneficiary would be working on a project identified as “[REDACTED]”.

In a letter of support, the Petitioner identified the following as the requirements of the proffered position:

[The Beneficiary] as a Programmer Analyst will be responsible for developing and enhancing code unit testing as well as generating test reports. He will be involved in creating high level and low level design as well as data-modeling for change request. He will be actively co-coordinating with the database and software configuration management team to ensure smooth execution of the project.

Below are a breakdown of [the Beneficiary's] specific job duties and the percentage of time spent on each of the activities totaling to 100%.

The Beneficiary will spend 30% of his time on the following Job Duties on Module 2, Module 3, Module 4, Module 6, Module 7 and Module 9:

- Analyze and modify all J2EE applications and define technical, operational and data analysis requirements
- Prepare all documents for designs and develop all J2EE requirements for businesses
- Data translation and data conversion algorithms for data packaging
- Coordinate with all business analysts and application architects to maintain knowledge on all functional requirements and ensure compliance to all architecture standards.
- Develop and implement all software models for all software systems and analyze all business requirements for all processes.

The Beneficiary will spend 45% of his time on the following Job Duties on Module 2, Module 3, Module 4, Module 6, Module 7 and Module 9:

- Business process and workflow extraction from existing system of record
- Design all advance applications with help of various JavaScript technologies and prepare all associate Java components according to same pattern and maintain high quality production for all software
- Assist in development for various applications and maintain quality for same; integrate it with other software
- Develop real time visibility dashboards that provide line level visibility and enable line level utilization
- Developing a real time process tracking engine and API to get real time updates and alerts on the processes and potential deviances on processes
- Enhancing of existing architecture to support various languages from Java, C#, C++ etc. and develop generic rendering engine to deal with varied content from HTML, AJAX, JavaScript, JSON, XML, etc. in a unified way
- Developing and enhancing load balancing algorithm for effective node utilization to improve and optimize the system resources
- Analysis and QA of data collected to ensure it is of high quality and complete
- Development of tools for log analysis and effective root causing of production issues
- Maintaining and troubleshooting Webserver nodes

The Beneficiary will spend 25% of his time on the following Job Duties on Module 2, Module 3, Module 4, Module 6, Module 7 and Module 9:

- Prepare all documents for project standards and maintain accuracy in same and manage all technical resources to meet all requirements and perform tests on various processes in coordination with development teams
- Administer all project issues and identify all risks and ensure mitigation within required timeframe and develop and perform tests on all JAVA and BPEL applications and design all J2EE applications according to business requirements
- Perform troubleshoot to resolve all application issues
- Develop all logical and physical models and deploy all applications and provide excellent documents for all processes.
- Provide technical support to all production systems and perform various tests on all application codes and design new codes for all design specifications.

The Petitioner stated that it requires the incumbent to possess “at least a Bachelor’s degree in Computer Science, Engineering, Information Technology, Management Information Systems, Engineering, Electronics/Electrical, Mathematics, or a closely related field.”

III. ANALYSIS

Preliminarily, we find that the documentation contained in the record does not sufficiently establish that specialty occupation work is available for the duration of the Beneficiary’s requested employment period. Specifically, the evidence of record is insufficient to demonstrate that the duties of the proffered position are in fact associated with a specialty occupation. The Petitioner asserts that the Beneficiary will be employed as a programmer analyst on the [REDACTED] project for the end-client, which it claims is specifically tailored to create a technology infrastructure, namely, a suite of web-based software programs for Native American communities. In support of this assertion, the Petitioner submitted a 51-page document entitled “[REDACTED] (project document), which it claims is the overview of the intended project upon which the Beneficiary will work. The Petitioner also submitted a copy of its Independent Contractor Supplier Agreement (ICSA) with the end-client, along with a Statement of Work (SOW), indicating the Beneficiary would be responsible for “Java / J2EE and Adobe CQ Development” in accordance with the ICSA.

The project document, however, contains no references to the Beneficiary or to the proffered position. In fact, this 51-page document merely provides an overview of the research conducted regarding the digital divide, and the proposed solutions to be implemented by way of a technology infrastructure created by the end-client. The project document, which addresses “[REDACTED] of the proposed project, contains no schedule for completion, no timeline for deliverables, and contains no list of the required positions and employees needed to complete the project.

Moreover, even if it were established that the Beneficiary will be assigned to the [REDACTED] project, the evidence still does not sufficiently describe the duties to be performed by the Beneficiary. That

is, while the Petitioner submitted a lengthy list of job duties in its initial support letter, the SOW submitted in support of the petition states simply that the Beneficiary will be responsible for “Java / J2EE and Adobe CQ Development” in accordance with the ICSA. This vague, abbreviated statement of duties is insufficient to establish that the proffered position qualifies as a specialty occupation.

As recognized by the court in *Defensor*, where the work is to be performed for entities other than the petitioner, evidence of the client companies’ job requirements is critical. *See Defensor*, 201 F.3d at 387-388. The court held that the former Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary’s services. *Id.* at 384. Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

Here, the Petitioner asserts that the Beneficiary will be employed offsite at the end-client’s offices. The record of proceedings, however, is devoid of sufficient information from the end-client regarding the nature of the Beneficiary’s proposed position and the duties associated therewith. While the record contains a list of duties provided by the Petitioner in its letter of support, as well as an identical list of the same duties in a letter from the end-client submitted in response to the Director’s request for evidence, the only formal statement of duties from the end-client pertaining to the [REDACTED] project is the brief statement in the SOW, which does little to shed light on the actual requirements of the proposed position. Simply stating that the Beneficiary will be responsible for “Java / J2EE and Adobe CQ Development,” which are generic IT duties that are not project specific, does little to support the Petitioner’s claim that the proffered position is a specialty occupation. The job duties, as presently stated, do not adequately convey the actual tasks the Beneficiary will perform within the context of the [REDACTED] project, the complexity of such tasks, and the knowledge necessary to perform them.

Consequently, we find that the evidence of record does not demonstrate the substantive nature of the proffered position and its constituent duties.² The Petitioner has not established the substantive nature of the work to be performed by the Beneficiary, which therefore precludes a 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 entry into 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.

² Further, without full disclosure, we are unable to determine whether the requisite employer-employee relationship with exist between the Petitioner and the Beneficiary.

Nevertheless, we will analyze the evidence of record to determine whether the proffered position as described qualifies as a specialty occupation pursuant to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 LCA⁴ submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Computer Programmers," corresponding to the Standard Occupational Classification code 15-1131 at a Level I wage.⁵ Thus, we reviewed the *Handbook's* subchapter entitled "How to Become a Computer Programmer," which states, in pertinent part: "Most computer programmers have a bachelor's degree; however, some employers hire workers who have an associate's degree." Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Computer Programmers (2016-17 ed.).

On appeal, the Petitioner asserts that the *Handbook's* language supports an industry-wide standard for a degree in this occupation. However, the *Handbook* does not support the Petitioner's assertion that a bachelor's degree is required for entry into this occupation. Instead, the *Handbook* reports that the occupation accommodates a wide spectrum of educational credentials, including less than a bachelor's degree in a specific specialty.

³ All of our references are to the 2016-17 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 U.S. Citizenship and Immigration Services (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).

⁵ A Level I wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. This wage rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that he will be closely supervised and his work closely monitored and reviewed for accuracy; and (3) that he will receive specific instructions on required tasks and expected results. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf. 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.*

The Petitioner also references the O*NET OnLine 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 the occupation. For example, the Specialized Vocational Preparation (SVP) rating cited within O*NET’s Job Zone designates this occupation as 7 < 8. That SVP rating indicates the occupation requires “over 2 years up to and including 4 years” of training. Further, 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.⁶

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.

The Petitioner also submits two new expert opinion evaluations on appeal in support of the assertion that a bachelor’s degree in a specific specialty is required for the proffered position.

The first position evaluation is from [REDACTED] of [REDACTED], which stated that “the specialized duties assigned to the position of Programmer Analyst demand a level of education that can only be attained through completion of a Bachelor’s –level program in Computer Science, Computer Information Systems, or a closely related field”

We carefully evaluated [REDACTED] assertions but, for the following reasons, determined his opinions are of little probative value. First, [REDACTED] does not reference, cite, or discuss any studies, surveys, industry publications, authoritative publications, or other sources of empirical information which he may have consulted to complete his evaluation. Second, [REDACTED] does not discuss the duties of the proffered position in any substantive detail. To the contrary, he simply listed the tasks in bullet-point fashion without discussion. Third, the record does not indicate whether [REDACTED] was aware that, as indicated by the Level I wage on the LCA, the Petitioner considered the proffered position to be an entry-level position for a beginning employee who has only a basic understanding of the occupation. In other words, the Petitioner has not demonstrated that [REDACTED] possessed the requisite information to adequately assess the nature of the position. As such, we find that [REDACTED] opinion letter lends little probative value.

We have also reviewed the opinion letter authored by [REDACTED] of [REDACTED] based his opinion on his education and his professional and academic experience working in the academic setting and with various companies.

⁶ For additional information, see the O*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

repeats the Petitioner's overview of the duties of the proffered position and opines that "the described job duties are of a professional nature and require preparation at the level of a Bachelor's Degree (or higher) in Computer Science or a directly related area." He further states that "the nature of these specific responsibilities and duties is so specialized and complex that knowledge required to perform these duties is usually associated with the attainment of a Bachelor's Degree in this field." concludes that the duties as described "are not those of a lower-level employee performing tasks such as those duties performed by a Technologist or an IT-support employee, but rather those of a professional employee with a strong background in computer science concepts and principles, and a much greater level of responsibility within the company."

Upon review of the opinion letter, we find that characterization of the proffered position as "specialized and complex" and one of "a much greater level of responsibility" appears inconsistent with the Petitioner's designation of the position as a Level I (entry-level) wage position. It is unclear if was informed of the Petitioner's attestation on the LCA that the proffered position was a Level I wage position. As with letter, the omission of any discussion of the wage designation diminishes the evidentiary value of this opinion as the opinion does not appear to be based on a complete understanding of the proffered position.

For the reasons discussed, we find that both and opinion letters lend little probative value to the matter here. *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."). For efficiency's sake, we hereby incorporate the above discussion regarding the letters into our analysis of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

B. Second Criterion

The second criterion presents two alternative prongs: "The degree requirement is common to the industry in parallel positions among similar organizations *or, in the alternative*, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree[.]" 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong casts its gaze upon the common industry practice, while the alternative prong narrows its focus to the Petitioner's specific position.

1. First Prong

To satisfy the 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 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. We incorporate by reference the previous discussion on the matter.

On appeal, the Petitioner submits copies of job announcements placed by the claimed end-client as well as 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 Petitioner did not establish that the advertising organizations are similar to the Petitioner. For example, the advertisements provide little or no information regarding the hiring employers. The Petitioner did not supplement the record of proceedings to establish that these advertising organizations are similar to it.

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). Upon review, some of the employers for which the job postings are submitted include a university and a benefits management company, entities that cannot be considered to be within the same industry as the Petitioner. It is not sufficient for the Petitioner to claim that an organization is similar and in the same industry without providing a basis for such an assertion.

Moreover, the advertisement by [REDACTED] does not appear to be for a parallel position. This posting requires a programmer analyst with five years of experience in addition to the stated educational requirements. However, the Petitioner indicated that the proffered position is an entry-level position (on the LCA). Further, the Petitioner has not sufficiently established that the primary duties and responsibilities of this advertised position is parallel to the proffered position.

Finally, not every posting requires a minimum of a bachelor's degree in a specific specialty for entry into the occupation of programmer analyst. For example, the posting by [REDACTED] indicates that it will accept an associate's degree and four years of related work experience, or a high school diploma with six years of related work experience.

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.⁷ That is, not every deficit of every job posting has been addressed.⁸

Without more, the Petitioner has not provided sufficient evidence to establish that a bachelor's degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations. Thus, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

2. Second Prong

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

In support of its assertion that the proffered position qualifies as a specialty occupation, the Petitioner described the proffered position and its business operations. In its letter of support, the Petitioner asserted that the "job duties for the proffered position are complex and unique" requiring a bachelor's degree. However, the Petitioner designated the proffered position as an entry-level position within the occupational category (by selecting a Level I wage).⁹ This designation, when read in combination with the Petitioner and the end-client's job descriptions, further suggests that the particular position is not so complex or unique that the duties can only be performed an individual with bachelor's degree or higher in a specific specialty, or its equivalent. While related courses may

⁷ 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.

⁸ 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").

⁹ The Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, unique, and specialized 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 I, entry-level 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.

be beneficial in performing certain duties of the position, the Petitioner has not demonstrated how an established curriculum of 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.

The Petitioner claims that the Beneficiary is well-qualified for the position, and references his qualifications. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position, and it did not identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. Accordingly, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

C. Third Criterion

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

The Petitioner claims that it routinely hires specialty-degreed individuals for the position of programmer analyst, and provides a list of names of the individuals it claimed held this position in the past. The Petitioner provided copies of their educational credentials and evaluations of these credentials, along with copies of paystubs or Forms W-2, Wage and Tax Statements. However, the Petitioner did not submit sufficient information regarding the duties and positions of these employees. For example, there is no evidence establishing the position titles they held or the duties they performed during their employment with the Petitioner. Absent additional evidence regarding these individuals, we cannot determine whether they held positions similar to that of the one proffered in the instant petition.

The record does not establish that the Petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, directly related to the duties of the position. 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.

In the instant case, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. The Petitioner does not establish how the generally described duties elevate the proffered position to a specialty occupation. We again refer to

our comments regarding the implications of the Petitioner's designation of the proffered position at a Level I wage level.

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. LCA

We also find that the Petitioner did not demonstrate that the certified LCA corresponds to the petition.

While the DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL-certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements for H-1B visa classification.

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the Beneficiary. Here, as discussed, the Petitioner has not sufficiently established that specialty occupation work exists for the Beneficiary in the position and work location identified on the LCA. Therefore, the Petitioner has not submitted a valid LCA that corresponds to the petition.

V. CONCLUSION

Here, the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation or that the LCA corresponds to the petition.

ORDER: The appeal is dismissed.

Cite as *Matter of T-S-ITG- LLC*, ID# 590174 (AAO Sept. 29, 2017)