



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: NOV 29 2013

OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the Vermont Service Center on October 9, 2012. In the Form I-129 visa petition, the petitioner describes itself as an IT solutions provider established in 2002. In order to employ the beneficiary in what it designates as a technical recruiter position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to 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 director denied the petition on January 22, 2013, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that it satisfied all evidentiary requirements.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

For the reasons that will be discussed below, the AAO agrees with the director that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed. The petition will be denied.

In this matter, the petitioner stated in the Form I-129 that it seeks the beneficiary's services as a technical recruiter to work on a full-time basis at a salary of \$49,000 per year. In the letter of support dated October 2, 2012, the petitioner provided the following description of the duties of the proffered position:

- Interview information technology applicants to obtain information on technical work history, training in technical skills, education in information technology, and job skills in information technology development and services.
- Responsible for the full life cycle recruitment activities in technical fields which include sourcing, screening, scheduling interviews and managers, making employment offers and compiling weekly and monthly reports detailing recruitment activities.
- Perform searches and analysis for qualified technical candidates according to relevant job criteria, using computer databases, networking, Internet recruiting resources, cold calls, media, recruiting firms, and employee referrals.

- Consult with the CEO, Account Managers, Hiring Managers, and Human Resources personnel of major clients to determine technology hiring needs, issues, agendas, and goals and research job sites for suiting profiles, perform initial email and phone screening as well as search the company database to identify suitable candidates.
- Contact applicants for technical professional, specialty occupation jobs etc to inform them of IT employment possibilities, consideration, and selection.
- Utilize various staffing tools to manage multiple requirements to meet the need of staffing IT projects successfully and on time under tight budgets and he will participate in weekly recruitment update meetings with the Sales Executives and Account Manager where he will provide status updates, identify obstacles and provide recommendations.
- Inform potential applicants about facilities, operations, benefits, and job or career opportunities in technology, information systems, functional software, IT etc.
- Perform research and analyze current industry practices in comparison with the petitioner company on hiring trends in the information technology industry and assist in providing recommendations to the company for best hiring practices in information technology.
- Articulate and negotiate technology job offers with candidates and clearly communicate all aspects of the offer including salary, benefits, bonuses and relocation.
- Assist HR Management in hiring and recruitment practices, establishing recruiting resources, and maintaining a system for inventory tracking and tracking of skill development/training programs to provide an internal source of recruitment.

Further, the petitioner stated that this position requires "an individual with a bachelor's degree in computer science, computer information systems, management information systems, business administration, Human Resources, or [a] related field and/or relevant experience." The AAO observes that the petitioner also indicated that the beneficiary has been employed with the company since November 17, 2011 as a programmer analyst, but "has shown tremendous interest to perform a Technical Recruiter job again and pursue his career in the Technical Recruiter job based on his dual occupational experience." With the petition, the petitioner provided documentation regarding the beneficiary's credentials. Specifically, the petitioner provided a copy of the beneficiary's Master of Science degree in Computer Science and transcript from [REDACTED]. In addition, the petitioner submitted copies of the beneficiary's foreign academic credentials, along with a credential evaluation from [REDACTED]. The evaluation indicates that the beneficiary's foreign

education is equivalent to a "Master of Science Degree in Computer Science from an accredited college or university in the United States.

Furthermore, in the support letter, the petitioner referred to the beneficiary as "an alien of distinguished merit and ability who will be performing services in a specialty occupation." Based upon the petitioner's statement, it is not clear that the petitioner understands the applicable statutory and regulatory provisions for H-1B classification. More specifically, prior to April 1, 1992, the H-1B category applied to persons of "distinguished merit and ability." The standard of "distinguished merit and ability" was defined in the regulations as "one who is a member of the professions or who is prominent in his or her field." On October 1, 1991, the *Immigration Act of 1990* ("IMMACT 90") deleted the term "distinguished merit and ability" from the general H-1B description; however, the implementation of this change was delayed until April 1, 1992. The *Miscellaneous and Technical Immigration and Naturalization Amendments of 1991* ("MTINA"), which was enacted on December 12, 1991, restored the standard of "distinguished merit and ability" to the H-1B category, but only as the qualifying standard for fashion models. There is no evidence in the record of proceeding that the proffered position is for a fashion model.

The petitioner also submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The AAO notes that the LCA designation for the proffered position corresponds to the occupational classification of "Human Resource, Labor Relations and Training Specialists, All" – SOC (ONET/OES Code) 13-1078, at a Level II (qualified).

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on October 17, 2012. The AAO notes that the director specifically requested the petitioner submit probative evidence to establish that the proffered position is a specialty occupation. The petitioner was requested to submit evidence highlighting the nature, scope, and activity of the petitioner's business to establish that the beneficiary will be employed in the proffered position. The director outlined the specific evidence to be submitted.

In response to the RFE, counsel for the petitioner provided a brief and additional evidence. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The director denied the petition on January 22, 2013. The petitioner submitted an appeal of the denial of the H-1B petition.

In the appeal brief, counsel states that "the petitioner respectfully submits that the Service Center may have not applied preponderance of evidentiary standard in adjudicating the underlying H-1B petition and the responsive information and documents submitted."

The AAO notes that with respect to the preponderance of the evidence standard, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010), states in pertinent part the following:

Except where a different standard is specified by law, a petitioner or applicant in

administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

* * *

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case.

* * *

Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Thus, in adjudicating the petition pursuant to the preponderance of the evidence standard, USCIS examines each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. The "preponderance of the evidence" standard does not relieve the petitioner from satisfying the basic evidentiary requirements set by regulation. The standard of proof should not be confused with the burden of proof. Specifically, the petitioner bears the burden of establishing eligibility for the benefit sought. A petitioner must establish that it is eligible for the requested benefit at the time of filing the petition. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. As will be discussed, in the instant case, that burden has not been met.

The issue before the AAO is whether the petitioner has provided sufficient evidence to establish that it would employ the beneficiary in a specialty occupation position. The AAO will first discuss some findings that are material to this decision's application of the H-1B statutory and regulatory framework to the proffered position as described in the record of proceeding.

When determining whether a position is a specialty occupation, the AAO must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, USCIS looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency

can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

For H-1B approval, the petitioner must demonstrate a legitimate need for an employee exists and to substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition. It is incumbent upon the petitioner to demonstrate it has sufficient work to require the services of a person with at least a bachelor's degree in a specific specialty, or the equivalent, to perform the duties at a level that requires the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty for the period specified in the petition.

In response to the RFE, counsel stated the following as some of the highlights of the petitioner's company:

- 10 year old company
- Over 11 [m]illion [d]ollars company
- Consistent growth every year except recession
- About 70 employees in total as of 12/18/2012 (numbers will change from time to time)
- 10 Administrative Positions (numbers will change from time to time)
- About 90 IT contractors recruited on projects (numbers will change time to time)
- Relationship with [s]everal [d]istrict [c]lients
- Pays prevailing wage or higher at all times
- Has few software products
- Relationship with [s]everal major vendors
- Use best efforts in immigration and hiring practices[,] etc[.]

Counsel provided the following documents in support:

- Company brochure.
- Document entitled "[The petitioner's] Core Competencies," which include technology expertise, turnaround time for delivery, average years of experience for consultants...etc.
- U.S. Corporation Income Tax Return 2011. Gross income is shown as \$11 million. Salaries and wages paid are listed as \$608,568.
- Document entitled "Visa Report by Employee" as of 12/18/2012. The list contains 70 employees.

- List of administrative positions. The list contains 3 individuals as technical recruiters including the beneficiary.
- Organizational chart

Counsel stated that 10 out of 70 employees that the petitioner currently employs hold administrative positions within the company. Counsel further claimed that "[o]n top of it, about 90 IT contractor positions are currently recruited on petitioner's and/or third party projects by the petitioner company." In addition, counsel asserted that "the petitioner needs technical recruiters to keep up with the current level of operations and to expand technical operations and/or projects in the immediate future." As noted, the petitioner claims to currently employ two individuals, Ms. [REDACTED], as technical recruiters.

On appeal, counsel claims that the director "arbitrarily decided that a company with over \$11 million in revenues and about 70 employees [on] their [pay]rolls[sic] and about 180 consultants on their IT projects doesn't need a technical recruiter." Counsel asserted "[g]iven the dynamic nature of the business, they need more technical recruiters to seek technology workers for the job positions they intend to fill."

However, the AAO finds that counsel failed to provide evidence to support its assertions. For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position.¹ Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998). 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). USCIS regulations affirmatively require a petitioner to

¹ The agency made clear long ago that speculative employment is not permitted in the H-1B program. For example, 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 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.

establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1).

Specifically, in response to the RFE dated January 3, 2013, counsel indicated that "about 90 IT contractor positions are currently recruited on petitioner's and/or third party projects by the petitioner company." However, the petitioner did not include any evidence of contractor positions or evidence of third party projects to establish a need for continuous recruitment. Moreover, the AAO notes inconsistencies in the petitioner's claim regarding the number of consultants or contractors. While counsel claimed that as of January 2013, the petitioner had about 90 IT contractor positions, counsel indicated in the appeal brief that the petitioner is "a company with over \$11 million in revenues and about 70 employees on their [pay]rolls[sic] and about 180 consultants on their IT projects." It appears that just in three months, the number of consultants doubled from 90 to 180, but there is no explanation or documentary evidence to substantiate the increase. Further, the AAO finds that the only financial document in the record is the corporation income tax return from 2011. The tax return indicates while the gross income is \$11 million, the petitioner paid only \$608,568 in salary and wages. However, \$608,568 does not appear to be sufficient to pay wages and salaries for 70 employees and 90-180 consultants. No explanation was provided. The AAO notes that it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Upon review of the record, the AAO finds that the petitioner has provided insufficient probative documentation to substantiate its claims regarding its business activities and the actual work that the beneficiary will perform to establish eligibility for this benefit. That is, there is a lack of substantive, documentary evidence substantiating the petitioner's claims regarding its business operations and that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition. The petitioner has not sufficiently established that it would employ the beneficiary in the capacity specified in the petition and it has not established that the statement of facts contained in the petition is accurate.

Although the petitioner requested the beneficiary be granted H-1B classification for a three-year period, the evidence does not establish that the petitioner would be able to sustain an employee performing the duties of a technical recruiter at the level required for the H-1B petition to be granted for the entire period requested. The petitioner has not substantiated how the duties the petitioner claims that the beneficiary will perform will manifest themselves in their actual performance within the petitioner's business operations. Furthermore, the petitioner has not established that the beneficiary's overall day-to-day duties, for the entire period requested, would require at least a baccalaureate degree in a specific specialty or its equivalent, as required for classification as a specialty occupation.

Without further clarification by the petitioner, it appears that the beneficiary may be employed in a lesser capacity or serving in a different position. The record of proceeding lacks (1) evidence corroborating that the petitioner has work that exists as an ongoing endeavor generating definite employment for the beneficiary's services; and (2) evidence that the beneficiary's duties ascribed

would actually require the theoretical and practical application of at least a baccalaureate level of a body of highly specialized knowledge in a specific specialty, as required by the Act. Without further information, the petitioner has failed to credibly convey how it would be able to sustain an employee performing the duties at the level required for the H-1B petition to be granted for the entire period requested.

A position may be awarded H-1B classification only on the basis of evidence of record establishing that, at the time of the filing, definite, non-speculative work would exist for the beneficiary for the period of employment specified in the Form I-129. The record of proceeding does not contain such evidence. 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. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Further, upon review of the record of proceeding, the AAO notes that the petitioner's claim that a bachelor's degree in "business administration" is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed 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. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To demonstrate that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).²

² Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

The AAO will now address the director's basis for denial of the petition, namely that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes a specialty occupation.

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

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) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must also meet one of the following criteria:

- (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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), USCIS consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered 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"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO now turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO will first review the record of proceeding in relation 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.

The petitioner stated that the beneficiary would be employed in a technical recruiter position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, the specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The AAO recognizes 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.³ As previously discussed, the petitioner asserts in LCA that the proffered position falls under the occupational category "Human Resource, Labor Relations and Training Specialists, All." Counsel further claimed that the proffered position is most akin to the *Handbook's* description of "Human Resources Specialists."

The AAO reviewed the chapter of the *Handbook* entitled "Human Resources Specialists," including the sections regarding the typical duties and requirements for this occupational category. For additional information regarding human resources specialist positions, *see* U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., Human Resources Specialists, on the Internet at <http://www.bls.gov/ooh/Business-and-Financial/Human-resources-specialists.htm#tab-1> (last visited November 25, 2013). The AAO hereby incorporates into the record of proceeding the excerpt from the *Handbook* regarding the occupational category "Human Resources Specialists." However, the *Handbook* does not indicate that "Human Resources Specialists" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

The subsection entitled "What Human Resources Specialists Do" states the following about the duties of this occupation:

Human resources specialists recruit, screen, interview, and place workers. They also may handle human resources work in a variety of other areas, such as employee relations, payroll and benefits, and training.

Duties

Human resources specialists typically do the following:

³ All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

- Consult with employers to identify employment needs and preferred qualifications
- Interview applicants about their experience, education, training, and skills
- Contact references and perform background checks on job applicants
- Inform applicants about job details, such as duties, benefits, and working conditions
- Hire or refer qualified candidates for employers
- Conduct or help with new employee orientation
- Keep employment records and process paperwork

Many specialists are trained in all human resources disciplines and do tasks throughout all areas of the department. In addition to recruiting and placing workers, these specialists help guide employees through all human resources procedures and answer questions about policies. They often administer benefits, process payroll, and handle any associated questions or problems. They also ensure that all human resources functions comply with federal, state, and local regulations.

The following are types of human resources specialists:

Employment interviewers work in an employment office and interview potential applicants for job openings. They then refer suitable candidates to employers for consideration.

Human resources generalists handle all aspects of human resources work. They may have duties in all areas of human resources including recruitment, employee relations, payroll and benefits, training, and administration of human resources policies, procedures, and programs.

Labor relations specialists interpret and administer a labor contract, regarding issues such as wages and salaries, employee welfare, healthcare, pensions, and union and management practices. They also handle grievance procedures, which are a formal process through which employees can make complaints.

Placement specialists match employers with qualified jobseekers. They search for candidates who have the skills, education, and work experience needed for jobs, and they try to place those candidates with employers. They also may help set up interviews.

Recruitment specialists, sometimes known as **personnel recruiters**, find, screen, and interview applicants for job openings in an organization. They search for job applicants by posting job listings, attending job fairs, and visiting college campuses. They also may test applicants

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., Human Resources Specialists, on the Internet at <http://www.bls.gov/ooh/Business-and-Financial/Human-resources-specialists.htm#tab-2> (last visited November 25, 2013).

The subchapter of the *Handbook* entitled "How to Become a Human Resources Specialist" states, in pertinent part, the following about this occupation:

Most positions require that applicants have a bachelor's degree. However, the level of education and experience required to become a human resources specialist varies by position and employer.

Education

Most positions require a bachelor's degree. When hiring a human resources generalist, for example, most employers prefer applicants who have a bachelor's degree in human resources, business, or a related field.

Although candidates with a high school diploma may qualify for some interviewing and recruiting positions, employers usually require several years of related work experience as a substitute for education.

Some positions, particularly human resources generalists, may require work experience. Candidates often gain experience as human resources assistants, in customer service positions, or in other related jobs.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., Human Resources Specialists, on the Internet at <http://www.bls.gov/ooh/Business-and-Financial/Human-resources-specialists.htm#tab-4> (last visited November 25, 2013).

In the instant case, the AAO notes that the petitioner designated the position as a Level II position (out of four assignable wage-levels).⁴ A Level II position is indicative that the beneficiary is

⁴ The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels. A Level II wage rate is described by DOL as follows:

Level II (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O*NET Job Zones.

See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf.

expected to have a good understanding of the occupation but that he will only perform moderately complex tasks that require limited judgment.

The *Handbook* does not state that a baccalaureate or higher degree, in a specific specialty, or its equivalent is normally the minimum requirement for entry into the occupation. This passage of the *Handbook* indicates that a variety of educational backgrounds, including a high school diploma and several years of work experience, are sufficient minimum education for entry into the occupation, particularly those positions that include interviewing and recruiting duties such as the position proffered in this matter. *See id.* The *Handbook* reports that "the level of education and experience required to become a human resources specialist varies by position and employer." *Id.* As previously discussed, the petitioner's own claimed standards as stated in the record do not indicate that it requires a bachelor's degree in a specific specialty or its equivalent.

Further, the petitioner has characterized the proffered position as a Level I entry-level position. The *Handbook* states that most human resources specialists need at least a bachelor's degree; however, this statement does not support the view that *any* job in the field qualifies as a specialty occupation. "Most" is not indicative that a particular position within the wide spectrum of human resources specialist jobs normally requires at least a bachelor's degree in a specific specialty, or its equivalent.⁵ More specifically, "most" is not indicative that a particular position normally requires at least a bachelor's degree in a specific specialty, or its equivalent, (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)), or that a particular position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)).

Further, although the *Handbook* states that "most positions require that applicants have a bachelor's degree," the *Handbook* does not indicate that such a degree need be in a *specific specialty*. The *Handbook* notes that, for some positions, employers "prefer applicants who have a bachelor's degree in human resources, business, or a related field." A *preference* for a particular degree does not indicate a *requirement* for the same. *See Bob Huddleston State Farm Insurance Agency v. Holder*, No. 2:10-cv-02257-MMD-PAL, 2013 Dist. WL 1195519 (D. Nev. March 22, 2013) (upholding a denial of an H-1B petition, noting in part that the *Handbook's* indication that a baccalaureate degree may be *preferred* does not indicate that it is *required*). Even if the *Handbook* stated that such a degree was required (which it does not), the AAO again notes that a general

⁵ For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of the positions require at least a bachelor's degree in a specific specialty, it could be said that "most" of the positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a *normal minimum entry requirement* for that occupation, much less for the *particular position* proffered by the petitioner (which as noted above is designated as a Level I entry position in the LCA). Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "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." Section 214(i)(1) of the Act.

degree in "business" is not considered to be a degree in a specific specialty. As previously discussed, although a general-purpose bachelor's degree, such as a degree in business or business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a baccalaureate or higher degree in a specific specialty or its equivalent that is directly related to the proposed position. Again, since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business or business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558. Accordingly, as the *Handbook* indicates that working as a human resources specialist does not normally require at least a bachelor's degree in a specific specialty, or its equivalent, for entry into the occupation, it does not support the proffered position as qualifying as a specialty occupation.

In response to the RFE, counsel claimed that the *Handbook* is not the only guideline, but the director must consider other DOL sources such as the O*NET. Counsel asserted that "Human Resources Specialists' occupation is classified under Job Zone Four, SVP [Specific Vocational Preparation] Range (7.0 < 8.0) and Education requirement as 'most of these occupations require a four-year bachelor's degree.'" However, contrary to counsel's assertion, the O*NET Summary Report does not establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor's degree in a specific specialty, or its equivalent. Under the subsection entitled "Education," O*NET states that "[m]ost of these occupations require a four-year bachelor's degree, but some do not." As previously discussed, "most" is not indicative that a position normally requires at least a bachelor's degree, or its equivalent, in a specific specialty. Furthermore, O*NET does not state that a degree must be in a *specific specialty*. Thus, a designation of Job Zone Four does not demonstrate that at least a bachelor's degree in a *specific specialty* is normally the minimum requirement for entry, and does not, therefore, demonstrate that a position so designated is in a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

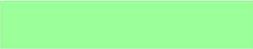
Furthermore, the AAO finds that the assignment of an SVP rating of (7.0 < 8.0) is not indicative of a specialty occupation. This is obvious upon reading Section II of the *Dictionary of Occupational Title (DOT)*'s Appendix C, Components of the Definition Trailer, which addresses the Specialized Vocational Preparation (SVP) rating system.⁶ The section reads:

II. SPECIFIC VOCATIONAL PREPARATION (SVP)

Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

This training may be acquired in a school, work, military, institutional, or vocational

⁶ Section II of the *DOT*'s Appendix C, Components of the Definition Trailer, can be found on the Internet at the website http://www.occupationalinfo.org/appendxc_1.html#II.



environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

Specific vocational training includes training given in any of the following circumstances:

- a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);
- b. Apprenticeship training (for apprenticeable jobs only);
- c. In-plant training (organized classroom study provided by an employer);
- d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);
- e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

Level	Time
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month
3	Over 1 month up to and including 3 months
4	Over 3 months up to and including 6 months
5	Over 6 months up to and including 1 year
6	Over 1 year up to and including 2 years
7	Over 2 years up to and including 4 years
8	Over 4 years up to and including 10 years
9	Over 10 years

Note: The levels of this scale are mutually exclusive and do not overlap.

Upon review of the above noted information, the AAO observes that an SVP rating of 7 to less than (" $<$ ") 8 does not indicate that at least a four-year bachelor's degree is required for an occupational category that has been assigned such a rating or, more importantly, that such a degree must be in a specific specialty directly related to the occupation. Rather, the SVP rating simply indicates that the occupation requires over 2 years up to and including 4 years of training of the wide variety of forms

of preparation described above, including experiential training.⁷ Therefore, the information provided in the printout is not probative of the proffered position qualifying as a specialty occupation.

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding by the petitioner do not indicate that the position is one for which a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO reviews the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Thus, the AAO incorporates by reference the previous discussion on the matter. The petitioner did not submit documentation from the industry's professional association indicating that it has made a degree a minimum entry requirement.

In support of the H-1B petition, the petitioner provided several job announcements. The AAO reviewed the job advertisements. On appeal, counsel claims that the director "imposed undue burden on the petitioner to prove the size of the 'similar organizations.'" Counsel asserts "[w]hat is important is whether an organization is in the similar business and whether they have sought technical recruiter positions and whether such positions required a bachelor's degree."

However, for the petitioner to establish that an organization is similar under this criterion of the regulations, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such information, evidence submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the organization share the same

⁷ An SVP rating of "7 to < 8" is less than 8 and, thus, does not include "[o]ver 4 years up to and including 10 years."

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 for the petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

In the Form I-129, the petitioner stated that it is an IT solutions provider with approximately 61 employees. The petitioner also reported its gross annual income as approximately \$11 million and its net annual income as \$363,000 for 2011.⁸ The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 541511.⁹ The AAO notes that this NAICS code is designated for "Custom Computer Programming Services." The U.S. Department of Commerce, Census Bureau website describes this NAICS code by stating the following:

This U.S. industry comprises establishments primarily engaged in writing, modifying, testing, and supporting software to meet the needs of a particular customer.

See U.S. Dep't of Commerce, U.S. Census Bureau, 2007 NAICS Definition, 541511-Custom Computer Programming Services, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last viewed November 25, 2013).

Notably, the petitioner and counsel did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers' recruiting history for the type of jobs advertised. Further, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices. Upon review of the documents, the AAO finds that the petitioner's reliance on the job announcements is misplaced.

The petitioner submitted the following job postings:

- A job posting for Object Information Service for a senior technical recruiter. The employer indicated that it is a fast growing IT consulting and recruiting firm. The employer also stated that it has been in business over 16 years and has a presence throughout the U.S. However, the posting lacks sufficient information regarding the advertising employer's business operations to conduct legitimate comparison to the petitioner. In the instant case, the

⁸ The 2011 U.S. Corporation Income Tax Return indicates gross income as \$11 million and total income as \$2 million.

⁹ According to the U.S. Census Bureau, the North American Industry Classification System (NAICS) is used to classify business establishments according to type of economic activity and, each establishment is classified to an industry according to the primary business activity taking place there. See <http://www.census.gov/eos/www/naics/> (last viewed November 25, 2013).

petitioner failed to supplement the record of proceeding to establish that the employer is similar to it. That is, the petitioner has not provided sufficient information regarding to determine which aspects or traits (if any) it shares with the advertising organization.

Moreover, it appears that the advertised position may be a more senior position than the proffered position and it does not appear to be parallel to the proffered position. The advertised position is a senior technical recruiter and requires 5 years of technical recruiting experience.

Furthermore, the employer requires a bachelor's degree, but does not indicate that a degree in a specific specialty is required for the position. Thus, contrary to the purpose for which the advertisement was submitted, the posting does not indicate that a bachelor's degree in a *specific specialty* that is directly related to the occupation is required. Thus, further review of the advertisement is not necessary.

- An advertisement for a technical recruiter for [REDACTED]. The employer describes itself as a nationwide consulting firm providing professional staffing in a broad range of industries. The AAO notes that a part of the advertisement is cut off and the details of the company overview cannot be deciphered. The advertisement lacks sufficient information regarding the organization's business operations to conduct a legitimate comparison of the organization to the petitioner. The petitioner did not provide additional information to establish that the advertising company and the petitioner share the same general characteristics, as well as information regarding which aspects or traits (if any) it shares with the advertising organization.

Contrary to the purpose for which the advertisement was submitted, the posting does not establish that at least a bachelor's degree in a specific specialty, or its equivalent, is required for the position. The advertisement states that "a Master's degree or foreign equivalent in Computer Science, Business Administration, Business Management, or Management." The advertising employer's statement does not indicate that a bachelor's degree in a *specific specialty* that is directly related to the occupation is required. As discussed, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp.*, 484 F.3d at 147 (1st Cir. 2007).

- A posting for an IT technical recruiter for [REDACTED]. The employer describes itself as the largest pure-play SAP Partner in the United States. The advertisement does not contain sufficient information regarding the organization's business operations to conduct a legitimate comparison of the organization to the petitioner. The petitioner did not provide any additional information to establish that the advertising company and the petitioner share the same general characteristics, as well as information regarding which aspects or traits (if any) it shares with the advertising organization.

Furthermore, the employer requires a bachelor's degree, but does not indicate that a degree in a specific specialty is required for the position. Thus, contrary to the purpose for which the advertisement was submitted, the posting does not indicate that a bachelor's degree in a *specific specialty* that is directly related to the occupation is required. Thus, further review of the advertisement is not necessary.

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

The advertisements provided establish, at best, that a bachelor's degree is often required, but not at least a bachelor's degree or the equivalent in a *specific specialty*. It must be noted that even if all of the job postings indicated that a bachelor's degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations (which they do not), the petitioner fails to demonstrate what inferences, if any, can be drawn from three 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).

As such, even if the job announcements supported the finding that the position required a bachelor's or higher degree in a specific specialty, or its equivalent (for organizations in the same industry that are similar to the petitioner), it cannot be found that such a limited number of postings that appear to have been consciously selected outweigh 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.

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO 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.

The AAO finds that the petitioner failed to establish that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant case, the record of proceeding contains documentation regarding the petitioner's business operations, including the following: (1) a two-page company brochure; (2) a description of core competencies; (3) the 2011 U.S. Corporation Income Tax Return; (4) lists of employees; (5) a chart for services; (6) an organization structure chart; (7) a printout of corporate overview presentation; (8) a lease agreement; (9) photographs of the facility; and (10) related evidence. The AAO reviewed the record in its entirety and finds that even in the context of the evidence provided, the petitioner has not provided sufficient documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, the LCA indicates a wage level based upon the occupational classification "Human Resources, Labor Relations, and Training Specialists, All Other" at a Level II wage. In accordance with the relevant DOL explanatory information on wage levels, a Level II position is indicative that, relative to other positions falling under the occupational category, the beneficiary is expected to have a good understanding of the occupation but that he will only perform moderately complex tasks that require limited judgment. Without further evidence, it is simply not credible that the petitioner's proffered position is complex or unique as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage. For example, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."¹⁰ The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions in the same occupation that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

The petitioner fails to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of a technical recruiter. More specifically, the petitioner failed to demonstrate how the duties of a technical recruiter 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 instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While related courses may be beneficial, or even required, in performing a few duties of the proffered

¹⁰ For additional information on wage levels, see 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.

position, the petitioner has failed to demonstrate 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 particular position here.

The AAO observes that the petitioner has indicated that the beneficiary is well qualified for the position. In addition to his educational background, including two masters' degrees in computer related fields, the petitioner claims that the beneficiary has over three years of technical recruiter employment experience from India. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. Consequently, as the petitioner fails to demonstrate 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, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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 AAO usually reviews the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

To satisfy this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. In the instant case, the record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

While a petitioner may believe or otherwise assert that a proffered position requires a specific degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The petitioner stated in the Form I-129 petition that it has approximately 61 employees and that it was established in 2002 (ten years prior to the H-1B submission). In response to the RFE, counsel submitted the petitioner's job posting for the proffered position posted on October 12, 2012. However, the posting does not indicate that a bachelor's degree in a specific specialty is required for

the position. Instead, the posting indicates "3+ years experience recruiting in the Information Technology field," "excellent interpersonal skills," "strong technical aptitude" "strong computer skills" and "strong Internet research skills." Therefore, the posting does not establish that the petitioner normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position.

Further, in the January 3, 2013 letter, submitted in response to the RFE, counsel claimed that the petitioner employs two technical recruiters, [REDACTED]. In addition, counsel stated that the petitioner previously employed [REDACTED] as a technical recruiter. Counsel submitted copies of the academic credentials and earning statements of the employees.¹¹ Mr. [REDACTED] holds a master's degree in business administration, Ms. [REDACTED] possesses a three-year degree in degree in English, Ms. [REDACTED] possesses a degree in engineering. As previously discussed, 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. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 147. Thus, the evidence does not support the assertion that the petitioner requires at least a bachelor's degree in a field directly related to the duties of the position.

Furthermore, while counsel claims that the petitioner employs technical recruiters, the petitioner and counsel failed to provide the job duties and day-to-day responsibilities of the employees that it claims serve in the position that is the same as the proffered position. The petitioner and counsel did not provide any information regarding the complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Accordingly, aside from the job title, the petitioner has failed to establish that the duties and responsibilities of these individuals are the same or similar to the proffered position.

On appeal, counsel submitted a list of the petitioner's employees, which includes their job titles and the highest degree earned. However, the educational level of individuals who hold positions that are not the proffered position is not relevant to the instant issue of whether the proffered position qualifies as a specialty occupation. Moreover, the list indicates that some, but not all of the technical recruiters have advanced degrees. Further, while the list indicates that level of education achieved for these employees, it does not provide any information as to the field of study or discipline. The AAO here reiterates that the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a *specific specialty* that is directly related to the specialty occupation claimed in the petition.

In addition, counsel states that "[t]he petitioner recruited [a] few technical recruiters (a couple of them or so are at a higher level) recently." Counsel provided resumes of seven of the employees.

¹¹ It must be noted for the record that the foreign diploma and transcript submitted on behalf of [REDACTED] indicates that they were issued to an [REDACTED]. For the first time on appeal, counsel claims that [REDACTED] are the same person. In support of his assertion, counsel submits a name change document. An evaluation of [REDACTED] credentials indicates that she possesses the equivalent of a bachelor's degree in business administration.

The AAO observes that the petitioner did not submit the academic credentials of these individuals, e.g., copies diplomas, transcripts. The petitioner should note that the evidentiary weight of a resume is insignificant.¹² It represents a claim by an individual, rather than evidence to support that claim. In the instant case, no further documentation was submitted of the individuals' asserted credentials. As previously mentioned, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

Upon review of the record, 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. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

Upon review of the record of the proceeding, the AAO notes that the petitioner has not provided probative evidence to satisfy this criterion of the regulations. In the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than similar positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent.

In the instant case, the petitioner has not presented the proposed duties with sufficient specificity and substantive content to even establish relative specialization and complexity as distinguishing characteristics of those duties, let alone that they are at a level that would require knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or its equivalent. Thus, also, the proposed duties have not been described with sufficient specificity to establish their nature as more specialized and complex than the nature of the duties of other positions in the pertinent occupational category whose performance does not require the application of knowledge requiring attainment of at least a bachelor's degree in a specific specialty, or its equivalent. Furthermore, although the petitioner submitted various documents (including evidence regarding its business operations), the documentation is insufficient to satisfy this criterion of the regulations.

Moreover, the AAO incorporates its 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 (out of four assignable wage-levels) relative to others within the occupational category, and hence one not likely distinguishable by relatively specialized and complex duties. Without further evidence, it is not credible that the petitioner's proffered position is one with specialized and

¹² Moreover, the evidence does not support the petitioner's statement that the position requires "an individual with a bachelor's degree in computer science, computer information systems, management information systems, business administration, Human Resources, or [a] related field and/or relevant experience."

complex duties as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a substantially higher prevailing wage. As previously discussed, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems" and requires a significantly higher wage.

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the nature of the specific duties of the position 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. The AAO, therefore, concludes that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.