



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **JUL 07 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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)

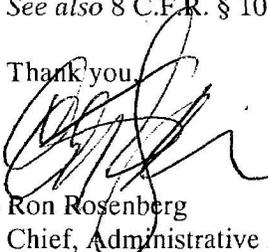
ON BEHALF OF PETITIONER:

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 California Service Center on April 8, 2013. In the Form I-129 visa petition, the petitioner describes itself as a software development and support services company that was established in 2000. In order to employ the beneficiary in what it designates as a sales engineer 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 November 4, 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, counsel for the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements.

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

For the reasons that will be discussed below, we agree with the director that the petitioner has not established eligibility for the benefit sought. Accordingly, the appeal will be dismissed.¹

I. FACTUAL AND PROCEDURAL HISTORY

In this matter, the petitioner stated in the Form I-129 that it seeks the beneficiary's services as a sales engineer on a full-time basis. In the March 22, 2013 letter of support, the petitioner provided the following description of the proffered position:

- Prepare and deliver technical presentations that explain services to existing and prospective customers;
- Design, architect and implement proof of concepts, software solutions based on client requirements and budgetary constraints;
- Sell and market company services requiring extensive technical expertise and support for client deployment;
- Provide systems marketing expertise for the day-to-day management of projects in the development pipeline;

¹ The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

- Manage client expectations and develop long term strategy for cooperative and collaborative development of software products;
- Work and confer with clients, to define, establish and understand client business and technical requirements and provide sales and technical support;
- Develop, present, or respond to proposals for specific customer requirements, including request for proposal responses and SOW for customer engagements industry-specific solutions;
- Plan, modify and/or customize company product/services to meet client's needs as well as future market requirements;
- Keep informed and up to date on industry news, trends, products, services and competitors, relevant information in regards to legacy, existing, and emerging technologies, and the latest product-line developments;
- Confer with customers and engineers to assess hardware needs and to determine system requirements;
- Coordinate between the primary technical team of the customers and the field technical team.

The petitioner did not provide any further information with regard to the order of importance and/or frequency of occurrence with which the beneficiary will perform the functions and tasks. Thus, the petitioner failed to specify which tasks were major functions of the proffered position, nor did it establish the frequency with which each of the duties would be performed (e.g., regularly, periodically or at irregular intervals). As a result, the petitioner did not establish the primary and essential functions of the proffered position.

In addition, the petitioner stated that "[t]he offered position clearly marks it as specialty occupation, one requiring a person of distinguished merit and ability."² The petitioner further asserted that the position requires "at least a Bachelor's degree or its foreign equivalent in engineering, Marketing, IT, Computer Information Systems or related field or related IT experience." The petitioner submitted an educational evaluation report indicating that the beneficiary's combined education in India is the equivalent of a U.S. Master of Science degree in Computer Information Systems. The petitioner also submitted copies of the beneficiary's foreign diplomas and academic transcripts.

Further, the petitioner submitted a Labor Condition Application (LCA) in support of the instant

² The petitioner states that the proffered position requires "a person of distinguished merit and ability." However, to clarify, we note that the term "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." See 8 C.F.R. § 214.2(h)(4) (1991). The *Immigration Act of 1990* ("IMMACT 90") deleted the term "distinguished merit and ability" from the general H-1B description and replaced it with the requirement that the position be a "specialty occupation." Pub. L. No. 101-649, 104 Stat. 4978, 5020. The implementation of this change occurred on April 1, 1992. The *Miscellaneous and Technical Immigration and Naturalization Amendments of 1991* ("MTINA"), which was enacted on December 2, 1991, modified the H-1B definition to include fashion models of distinguished merit and ability. Pub. L. No. 102-232, 105 Stat. 1733. While the term "distinguished merit and ability" is still used with regard to fashion models, it must be noted that the term has not been applicable to the general H-1B classification ("specialty occupations") for over 20 years.

H-1B petition. The LCA designation for the proffered position corresponds to the occupational category "Sales Engineer" – SOC (ONET/OES Code) 41-9031, at a Level I (entry level) wage.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on June 11, 2013. The director noted that the evidence submitted was insufficient to establish eligibility for the benefit sought. The director further outlined the specific evidence to be submitted.

On August 29, 2013, counsel responded to the RFE. The director reviewed the information provided by the petitioner and counsel. 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 November 4, 2013. Counsel submitted an appeal of the denial of the H-1B petition.³

II. THE DIRECTOR'S DECISION

A. The Law

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.

³ On appeal, counsel asserts that the standard of proof in H-1B cases is the preponderance of evidence, and that "the evidence presented was more than enough to meet the burden of persuasion." 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. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* 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.

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 result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, 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), the U.S. Citizenship and Immigration Services (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.

B. The Specialty Occupation

The petitioner stated that the beneficiary would be employed in a sales engineer position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. 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.

When determining whether a position is a specialty occupation, we 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."

That is, 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 its equivalent, to perform 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.

The petitioner has failed to establish the substantive nature of the proffered position. As mentioned, the petitioner did not provide information with regard to the order of importance and/or frequency of occurrence with which the beneficiary will perform the functions and tasks. The petitioner failed to specify which tasks were major functions of the proffered position. It also did not establish the frequency with which each of the duties would be performed (e.g., regularly, periodically or at irregular intervals). As a result, the petitioner did not establish the primary and essential functions of the proffered position.

The petitioner provided inconsistent information about the nature of the proffered position, which undermines the petitioner's credibility with regard to the services the beneficiary will perform, as well as the actual nature and requirements of the proffered position. When a petition includes numerous discrepancies, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions.

For example, in the itinerary filed in support of the Form I-129, the petitioner provided the following additional duties for the beneficiary:

- Establish and maintain strong relationships throughout the sales cycle with technical teams as well with customers.
- Responsible for actively driving and managing the technology evaluation stage of the sales process, working in conjunction with the technical team as the key technical advisor and product advocate. Articulate positioning to both business and technical users, and be able to identify all technical issues of assigned accounts to assure complete customer satisfaction through all the stages of the sales process.
- Develop global marketing plan and budget for [the petitioner]
- Responsible for lead generation and company branding
- Develop and execute programs/campaigns and other activities based on marketing plan
- Collaborate with Global Sales, Practice Directors, Program Managers, Delivery and Inside Sales Teams to drive marketing activities
- Contribute to practice strategy-offerings, target market, differentiators, messaging
- Identify new offerings and geographies for the company (Mobile/Cloud/Big Data)
- Responsible for company's corporate website
- Drive development/update for any required collateral, e.g. white papers, success stories, brochures, etc., either internally and externally
- Build campaign elements that can be used by all verticals.
- Work with field sales and track programs/campaign effectiveness through reporting and analysis of marketing plan metrics, e.g. number of leads, audience attendance, etc.
- Increase [the petitioner]'s internal awareness for its products and services through development of communications-newsletters, flyers, service

announcements.

- Run the competitive intelligence and research program for the company
- Understanding of the IT product and services landscape, especially in North America and India

In addition, the document also included a detailed itinerary for the beneficiary as follows:

Period of Service	Service Engagement Details	Project/Location
Oct 01, 2013 to July 31, 2016	<p>1. Strategic Marketing Planning and Team Management activities</p> <p>Design the marketing strategy for the organization in consultation with the management team, sales directors, practice directors, delivery managers and finance team. The strategy will then be converted to the annual marketing plan and activities calendar and as well as annual budget.</p> <p>He will also mentor and manage a team of marketing professionals, designers and website engineers. This involves setting up their goals, regular feedback and training, and performance review at the end of each appraisal cycle. Also an individual development plan will be created for each team member.</p> <p>Regular reporting to management and on-budget tracking is also part of his job role.</p> <p>2. Customer Relationship</p>	<p>Project Name:</p> <p>Global Marketing and Business Development</p> <p>Work Location:</p> 

	<p>Management</p> <p>He manages the customer relationship with all existing customers globally. He is responsible for measuring and reporting customer satisfaction, managing regular touch-point programs with them, visit management to our offices, quarterly business review program and the executive connect program.</p> <p>3. Analyst, Media, and Influencer and Public Relations</p> <p>Responsible for relationship with the trade media; analysts from [REDACTED] and others; public relations and point of contact for all media queries.</p> <p>4. Lead generation and Pre-sales Activities</p> <p>He oversees all Lead generation and pre-sales activities. His team organizes tradeshow and conference sponsorship and participation, running of online and offline campaigns, inbound lead generation efforts, webinar and round tables as well as the bid desk that responds to client RFIs and RFPs.</p> <p>5. Branding and Company</p>	
--	---	--

	<p>Positioning</p> <p>He is responsible for identifying the company positioning based on 360 degree feedback from management team, employees, customers and analysts.</p> <p>6. Organizational development, inter team coordinations and company's summits.</p> <p>Is responsible to improve company ranking in employer surveys, retention and internal communication; He is an integral part of the leadership & strategy meetings & off-sites.</p>	
--	---	--

The duties provided in the detailed itinerary appear to differ from the proposed duties described in the support letter dated March 22, 2013. It is further noted that the duties described in the detailed itinerary is almost verbatim from the beneficiary's letter of employment from [REDACTED] which indicates that the beneficiary has been working as a senior manager marketing since June 1, 2010. The letter of employment describes the beneficiary's current employment as a senior manager marketing in India as follows:

1. Strategic Marketing Planning and Team Management activities 35%
Designed the marketing strategy for the organization in consultation with the management team, sales directors, practice directors, delivery managers and finance team. The strategy was then converted to the annual marketing plan and activities calendar and as well as annual budget was prepared. He also mentored and managed a team of marketing professionals, designers and website engineers. This involved setting up their goals, regular feedback and training, and performance review at the end of each appraisal cycle. Also an individual development plan was created for each team member. Team management is done using the tool Asana and performance management using HR Connect (HRMS). Regular reporting to management and on-budget tracking was also part of his job role.
 He also plans, modifies, and/or customizes company offerings to meet clients'

needs as well as future market requirements.

[The beneficiary] demonstrated his strategic planning capabilities to come up with an innovative marketing plan and then execute on it.

2. Customer Relationship Management-20%

He manages the customer relationship with all our existing customers globally. He is responsible for measuring and reporting customer satisfaction, managing regular touch-point programs with them, visit management to our offices, quarterly business review program and the executive connect program.

The CSAT survey is executive using surveymonkey.com and newsletter is distributed using cmampaignmonitor.com.

3. Lead Generation and Pre-Sales Activities-20%

He oversees all Lead generation and pre-sales activities. His team organizes tradeshow and conference sponsorship and participation, running of online and offline campaigns, lead generation efforts, webinar and round tables as well as the proposal/bid desk that responds to client RFIs and RFPs.

He also prepares and delivers technical presentations that explain offerings to existing and prospective customers.

He sells and markets company services requiring extensive technical expertise and support for client deployment.

He keeps up to date on industry news, trends, products, services and competitors, relevant information in regards to legacy, existing, and emerging technologies and the latest service-line developments.

He uses [REDACTED] for research, prospecting and list building, [REDACTED] for leads tracking, and [REDACTED] for Nurturing campaigns.

He also uses [REDACTED] to track website visitors, track and improve website SEO, run SEM/PPC campaigns.

He also manages PPC campaigns on [REDACTED]

4. Analyst, Media, Influencer and Public Relations-15%

Responsible for relationship with the trade media; analysts from [REDACTED] and others; public relations and point of contact for all media queries. He has handled briefings with [REDACTED]

5. Branding and Company Positioning-5%

He was responsible for identifying the company positioning based on 360 degree feedback-from management team, employees, customers and analysts. He managed a project to identify the key brand elements and redefine the vision and mission statement of the company.

6. Organizational development, inter team co-ordinations and company's summits-5%

Proposed and implemented various innovative techniques to **improve company ranking in employer surveys, retention and internal communication**; Promoted team outings and team development; identified, prepared and delivered trainings for co-workers and helped them acquire required skills; mentoring the team members; appreciated and rewarded the team for their efforts; helped in preparing a comprehensive cross cultural training plan for India employees traveling abroad and trained them through classroom sessions. **He is an integral part of the leadership & strategy meetings and off-sites.**

(Emphasis added).

By providing inconsistent description of the duties and failing to establish primary and essential duties for the proffered position, we find that the petitioner did not provide sufficient details regarding the nature and scope of the beneficiary's employment or any substantive evidence regarding the actual work that the beneficiary would perform to establish eligibility for the benefit sought. Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The tasks as described fail to communicate (1) the complexity, uniqueness and/or specialization of the tasks, and/or (2) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty. The petitioner's assertions with regard to the position's educational requirement are conclusory and unpersuasive, as they are not supported by the job description or substantive evidence.

Further, it is noted that the petitioner's statements regarding the requirements for the position are inadequate to establish that the proposed position qualifies as a specialty occupation. The petitioner stated that the position "requires the application of technology and principles that can only be gained through attainment of at least a Bachelor's degree or its foreign equivalent in engineering, Marketing, IT, Computer Information Systems or related field or related IT experience."

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as

specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Again, the petitioner claims that the duties of the proffered position can be performed by an individual with a bachelor's degree in engineering, Marketing, IT, Computer Information Systems or related field or related IT experience. The issue here is that the field of engineering is a broad category that covers numerous and various specialties, some of which are only related through the basic principles of science and mathematics, e.g., nuclear engineering and aerospace engineering. Therefore, it is not readily apparent (1) that a general degree in engineering or one of its other sub-specialties, such as chemical engineering or nuclear engineering, is closely related to computer science and management (i.e., that engineering, computer science and management are closely related fields); or (2) that any and all engineering specialties are directly related to the duties and responsibilities of the particular position proffered in this matter. Absent this evidence, it cannot be found that the particular position proffered in this matter has a normal minimum entry requirement of a bachelor's or higher degree in a specific specialty or its equivalent under the petitioner's own standards. Accordingly, as the evidence of record fails to establish a standard, minimum requirement of at least a bachelor's degree *in a specific specialty*, or its equivalent, for entry into the particular position, it does not support the proffered position as being a specialty occupation and, in fact, supports the opposite conclusion.

On appeal, counsel cites to *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), for the proposition that "[t]he knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge."

We agree with the aforementioned proposition that "[t]he knowledge and not the title of the degree is what is important." However, for the aforementioned reasons, the petitioner did not establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those duties.

In any event, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*.⁴ We also note that, in contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters

⁴ It is noted that the district judge's decision in that case appears to have been based largely on the many factual errors made by the service center in its decision denying the petition. We further note that the service center director's decision was not appealed to us. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by us in its *de novo* review of the matter.

arising even within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Nevertheless, we 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.

We reviewed the chapter of the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (hereinafter the *Handbook*) entitled "Sales Engineers," including the sections regarding the typical duties and requirements for this occupational category.⁵ However, the *Handbook* does not indicate that "Sales Engineers" 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.

The subchapter of the *Handbook* entitled "How to Become a Sales Engineer" states the following about this occupational category:

A bachelor's degree is typically required to become a sales engineer. Successful sales engineers combine technical knowledge of the products or services they are selling with strong interpersonal skills.

Education

Sales engineers typically need a bachelor's degree in engineering or a related field. However, a worker without a degree, but with previous sales experience as well as technical experience or training, sometimes holds the title of sales engineer. Workers who have a degree in a science, such as chemistry, or in business with little or no previous sales experience, also may be called sales engineers.

University engineering programs generally require 4 years of study. They vary in content, but all programs include courses in math and the physical sciences. In addition, most programs require developing strong computer skills.

Some programs offer a general engineering curriculum; students then specialize on the job or in graduate school. Most programs, however, require students to choose an area of specialization. The most common majors are electrical, mechanical, or civil engineering, but some programs offer additional majors, such as chemical, biomedical, or computer hardware engineering.

⁵ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online. We hereby incorporate into the record of proceeding the chapter of the *Handbook* regarding "Sales Engineers."

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Sales Engineers, on the Internet at <http://www.bls.gov/ooh/sales/sales-engineers.htm#tab-4> (last visited July 2, 2014).

When reviewing the *Handbook*, we must note that the petitioner designated the proffered position under this occupational category at a Level I on the LCA.⁶ This designation is indicative of a comparatively low, entry-level position relative to others within the occupation and signifies that the beneficiary is only expected to possess a basic understanding of the occupation and will perform routine tasks that require limited, if any, exercise of judgment. In accordance with the relevant DOL explanatory information on wage levels, the beneficiary will be closely supervised and his work closely monitored and reviewed for accuracy. Furthermore, he will receive specific instructions on required tasks and expected results. DOL guidance indicates that a Level I designation is appropriate for a research fellow, a worker in training, or an internship. This designation suggests that the beneficiary will not serve in a high-level or leadership position relative to others within the occupational category.

The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into this occupation. Rather, the occupation accommodates other paths for entry, including less than a bachelor's degree in a specific specialty. The *Handbook* specifically states that while sales engineers typically need a bachelor's degree in engineering or a related field, a worker without a degree, but with previous sales experience as well as technical experience or training, sometimes holds the title of sales engineer. The *Handbook* does not report that previous sales experience as well as technical experience or training must be the equivalent of a bachelor's degree in a specific specialty. Moreover, workers who have a degree in a science, such as chemistry, or in business with little or no previous sales experience, also may be called sales engineers. In addition, the *Handbook* indicates that sales engineers typically need a bachelor's degree in engineering or a related field. As mentioned, the field of engineering is a broad category that covers numerous and various specialties. Consequently,

⁶ The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is described as follows:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

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.

the *Handbook* does not conclude that normally the minimum requirement for entry into sales engineer positions is a baccalaureate (or higher degree) in a specific specialty, or its equivalent.

In response to the RFE, counsel refers to the Occupational Information Network (O*NET) Summary Report to state that for the proffered position the "Job Zone Classification is four (4) and the SVP Range is (7.0 to < 8.0). Counsel asserts that "a zone four occupation states that: 'Job Zone Four: Considerable Preparation Needed, 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." Further, the term "most" is not indicative that a particular position within the wide spectrum of sales engineer jobs normally requires at least a bachelor's degree.⁷ Moreover, 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 qualifies as a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

Furthermore, we find 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.⁸ 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 environment. It does not include the orientation time required of a fully qualified

⁷ 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.

⁸ 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.

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, we observe 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.⁹ Therefore, the information

⁹ 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

provided in the printout is not probative of the proffered position qualifying as a specialty occupation.

In response to the RFE, counsel submitted an advisory opinion from Dr. [REDACTED], Professor of Computer Science department at [REDACTED]. However, as discussed below, the letter from Dr. [REDACTED] is not persuasive in establishing the proffered position as a specialty occupation position.¹⁰

Dr. [REDACTED] stated that the attorney for the petitioner "provided a file of documentation which [he] [has] reviewed and referenced in forming his opinion" but that he is in "no position to authenticate any of these documents" and that he is "simply forming an opinion based on the assumption that the documents are accurate." Upon review of Dr. [REDACTED] opinion letter, there is no indication that he possesses any knowledge of the petitioner's proffered position beyond this information. He does not demonstrate or assert in-depth knowledge of the petitioner's specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise. There is no evidence that Dr. [REDACTED] has visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. His opinion does not relate his conclusion to specific, concrete aspects of this petitioner's business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue.

In the letter, Dr. [REDACTED] reviews both the *Handbook's* description of "Sales Engineers" and the job description provided by the petitioner in the support letter. He states the proffered position "incorporates a large and diverse group of responsibilities that correlate very well with the duties and responsibilities of a Sales Engineer position within the information systems field as outlined in the [*Handbook*]." He further claims that the position requires "strong expertise in computer information systems," and also "sales and marketing, managing client expectations, and providing marketing expertise for others in the [petitioner's] project team." He also notes that the petitioner also has "large-scale enterprise-class businesses, which have highly complex forms of business operations and management and require advanced expertise for a consultant/sales engineer." Dr. [REDACTED] concludes that "all these areas of expertise are substantial and complex and is a clear indication that this [the petitioner's] 'Sales Engineer' position is a more advanced, experienced position and not an entry-level position."

However, it must be noted that there is no indication that the petitioner and counsel advised Dr. [REDACTED] that the petitioner characterized the proffered position as a low, entry-level, for a beginning employee who has only a basic understanding of the occupation (as indicated by the wage-level on

years."

¹⁰ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. 8 C.F.R. § 214.2(h)(4)(ii). A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. *Id.*

the LCA). The wage-rate indicates that the beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results. It appears that Dr. [REDACTED] would have found this information relevant for his opinion letter. Moreover, without this information, the petitioner has not demonstrated that Dr. [REDACTED] possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately determine parallel positions based upon job duties and responsibilities.

Dr. [REDACTED] further states that "the nature of this position is so specialized and complex that only an individual possessing the detailed theoretical and practical knowledge associated with at least Bachelor's Degree in a computer related field such as Engineering, Marketing, IT, Computer Information Systems, or a related field, and that has a strong background in information systems, business systems, and business sales and marketing processes would be able to perform the job duties." He states that "in the information systems and software industry, this Bachelor's degree requirement for advanced technical positions such as an information systems sales engineer, computer systems analyst, or project manager is common to the industry in parallel positions among similar organizations that develop software solutions or provide software consulting and outsourcing services, and firms similar to [the petitioner] with these positions routinely recruit and employ only degreed individuals with these specialties.

Dr. [REDACTED] asserts a general industry educational standard for organizations similar to the petitioner, without referencing any supporting authority or any empirical basis for the pronouncement. Likewise, he does not provide a substantive, analytical basis for his opinion and ultimate conclusion. Accordingly, the very fact that he attributes a degree requirement to such a generalized treatment of the proffered position undermines the credibility of his opinion. Importantly, his statements are not supported by copies or citations of research material that may have been used. He has not provided sufficient facts that would support the contention that the proffered position requires at least a bachelor's degree in a specific specialty. We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

Here, Dr. [REDACTED] letter does not cite specific instances in which his past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that he has published any work or conducted any research or studies pertinent to the educational requirements for such positions (or parallel positions) in the petitioner's industry for similar organizations, and no indication of recognition by professional organizations that he is an authority on those specific requirements. He claims to possess expertise in the field of computer science, but he did not identify the specific elements of his knowledge and experience that he may have applied in reaching his conclusions here.

In summary, for the reasons discussed above, we conclude that the opinion letter rendered by Dr. [REDACTED] is not probative evidence to establish the proffered position as a specialty occupation. The conclusions reached by Dr. [REDACTED] lack the requisite specificity and detail and are not supported by

independent, objective evidence demonstrating the manner in which he reached such conclusions. Therefore, we decline to defer to Dr. [REDACTED] findings and ultimate conclusions, and further finds that his opinion letter is not probative evidence towards satisfying any criterion of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook* (or other objective, authoritative source) indicates that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. 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)(I).

Next, we will review 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. 1095, 1102 (S.D.N.Y. 1989)).

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

We acknowledge that the record of proceeding contains an opinion letter from Mr. [REDACTED]. However, as previously discussed in detail, we find that the opinion letter does not merit probative weight towards satisfying any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) or establishing the proffered position as a specialty occupation.

In support of the H-1B petition, the petitioner provided several job announcements. However, upon review of the evidence, we find that the petitioner's reliance on the job announcement is misplaced.

In the Form I-129, the petitioner stated that it is a software development and support company with 72 employees. The petitioner also reported its gross annual income as approximately \$32 million. Although requested on the Form I-129, the petitioner did not provide its net annual income. The

petitioner designated its business operations under the North American Industry Classification System (NAICS) code 541511.¹¹ 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, 2012 NAICS Definition, 541511-Custom Computer Programming Services, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last viewed July 2, 2014).

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 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 of the documentation, the petitioner fails 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.

For example, the record includes an advertisement from a staffing firm [REDACTED] for which little or no information regarding the employer is provided. In addition, the petitioner submitted a job posting from [REDACTED], which "employs approximately 3,000 people in 19 countries." Without further information, the advertisements appear to be for organizations that are not similar to the petitioner and the petitioner has not provided any probative evidence to suggest otherwise. Consequently, the record is devoid of sufficient information regarding the advertising organizations to conduct a legitimate comparison of the organizations to the petitioner. That is, the petitioner did not provide sufficient information to establish that the advertising companies and the petitioner share the same general characteristics, as well as information regarding which aspects or traits (if any) it shares with the advertising organizations.

In addition, contrary to the purpose for which the advertisements were submitted, they do not establish that at least a bachelor's degree in a specific specialty, or its equivalent, is required for the

¹¹ 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 July 2, 2014).

positions. For example, two of the job postings (specifically, [REDACTED]) indicate that a degree in a wide variety of disciplines is acceptable for the advertised positions. Again, since there must be a close correlation between the required "body of highly specialized knowledge" and the position, a minimum entry requirement of a degree in disparate fields would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added). Thus, upon review, the advertisements do not indicate that a bachelor's degree in a *specific specialty* that is directly related to the duties of the position is required.

Further, some of the advertised positions do not appear to be for parallel positions. For instance, [REDACTED] requires "a minimum 7 years of relevant sales and business development experience within the semiconductor industry." As previously discussed, the petitioner designated the proffered position on the LCA as a Level I (entry) position in comparison to others within the occupation. The advertised position appears to be for a more senior position than the proffered position.

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.¹² That is, not every deficit of every job posting has been addressed.¹³

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).

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

¹² 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.

¹³ It must be noted that even if all of the job postings indicated that a requirement of a bachelor's degree in a specific specialty (or its equivalent) is common to the industry in parallel positions among similar organizations (which they do not), the petitioner fails to demonstrate 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").

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

As discussed previously, the petitioner itself does not require at least a baccalaureate degree in a specific specialty, or its equivalent, for the proffered position. Rather a degree in a range of disciplines (i.e., engineering, marketing, IT, computer information systems or related field) is acceptable for the proffered position. Although the petitioner asserts that a bachelor's degree is required to perform the duties of the proffered position, it has not demonstrated that the duties require the theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent).

We acknowledge that in response to the RFE, counsel claims that the proffered position involves complex and/or unique duties. In the instant case, the petitioner provided information regarding the proffered position and evidence regarding its business operations. We reviewed the record in its entirety and note that while the petitioner provides some insights into the proffered position and its business activities, the evidence does not establish that the proffered 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. Further, it must be noted that it is not the volume of documentation that establishes eligibility for the benefit sought, but rather the relevance, probative value, and credibility of the documentation – both individually and within the context of the totality of the evidence.

In addition, the petitioner and counsel 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 that counsel claims are so complex or unique. While a few related courses may be beneficial, or even required, in performing certain duties of the position, the petitioner has not demonstrated how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position.

In the record of proceeding, counsel relies on Dr. [REDACTED] opinion letter to assert that "the nature of this position is so specialized and complex that only an individual possessing the detailed theoretical and practical knowledge associated with at least Bachelor's Degree in a computer related field" and "that has a strong background in information systems, business systems, and business sales and marketing process would be able to perform the job duties." We incorporate our earlier discussion and analysis regarding the opinion letter, and again note that the letter does not establish that the proffered position qualifies as a specialty occupation under any of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In response to the RFE, counsel asserts that the proffered position "has strategic importance for the company." Counsel claims that "[i]t is critically essential for [the petitioner]'s business to employ a Sales Engineer in order to make sound business decisions and to grow in its competitive industry." However, the LCA indicates a Level I (entry level) wage. As previously mentioned, the wage level of the proffered position indicates that the beneficiary is only required to have a basic understanding of the occupation; that he will be expected to perform routine tasks that require limited, if any,

exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results. Without further evidence, it is 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 III (experienced) or 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."¹⁴

In summary, 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. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. The petitioner has not demonstrated that this position, which the petitioner characterized in the LCA as an entry-level position relative to other positions in the occupation, is so complex or unique that it can be performed only by an individual with at least a baccalaureate degree in a specific specialty, or its equivalent.

The petitioner indicates that the beneficiary's academic credentials and experience qualify him to serve in the proffered position. However, the test to establish a position as a specialty occupation is not the credentials and skills of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent). Upon review of the record of proceeding, we find that the petitioner has failed to establish the proffered position as satisfying the second prong of the criterion at 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. We usually review the petitioner's past recruiting and hiring practices, as well as any other information provided by the petitioner in support of the petition.

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.

On appeal, counsel claimed that the petitioner "has never employed anyone not possessing at least a Bachelor's Degree for this position." While a petitioner may assert that a proffered position requires a specific degree that opinion alone without corroborating evidence cannot establish the position qualifies 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

¹⁴ For additional information regarding the 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.

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 72 employees and that it was established in 2000 (approximately 13 years prior to the H-1B submission). In support of the petition, the petitioner submitted two internal job announcements. The job posting from its website indicates that it requires "a bachelor's degree or foreign equivalent in Engineering (any), Marketing, Management, Management Information Systems or related field." As discussed, the field of engineering is a broad category that covers numerous and various specialties. Further, 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 position. Another job posting on [REDACTED] lists multiple openings for various positions, and does not contain sufficient information regarding the duties and requirements for the position. For "Sales Engineer," the posting only states "Sell IT services." Further, the posting states "some positions req. Master/Foreign equiv; some positions req. Bachelor/foreign equiv.," and that "Edu/Exp. Requirements vary depending on position level/type."

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.

The petitioner provided information regarding the proffered position and its business operations. While the evidence provides some insights into the petitioner's business activities, the documents do not establish that the nature of the specific duties of the proffered position 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 response to the RFE, counsel asserts that the "position requires the development, implementation, and evaluation of strategies for sales, marketing, customer relations and business development" and that this "particular position of Sales Engineer for [the petitioner] is so complex and unique that it can be performed only by an individual with a bachelor's degree."

However, in the instant case, we note that relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. We incorporate the earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a Level I 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, the petitioner has not established that the proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level III (experienced) or 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. We, therefore, conclude 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.

III. CONCLUSION AND ORDER

An application or petition that fails to comply with the technical requirements of the law may be denied by us even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of our enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative 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.