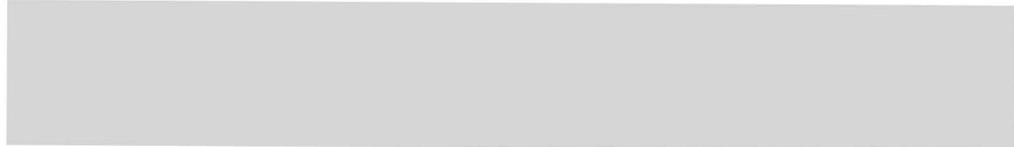




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUL 10 2015

PETITION RECEIPT#: 

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)

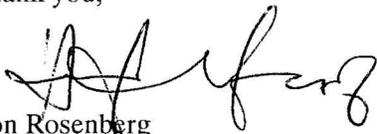
ON BEHALF OF PETITIONER:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition and affirmed her decision denying the petition after granting a subsequent motion. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

I. INTRODUCTION

On the Form I-129 visa petition, the petitioner describes itself as a 37-employee bank established in [REDACTED]. In order to employ the beneficiary in what it designates as a loan officer position at a salary of \$24 per hour,¹ 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, concluding that the evidence of record did not establish that the proffered position qualifies as a specialty occupation.

The record of proceeding before us contains the following: (1) the Form I-129 and supporting documentation; (2) the Director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the Director's letter denying the petition; (5) the Form I-290B, Notice of Appeal or Motion, and supporting documentation submitted in support of the motion; (6) the Director's letter granting the motion and affirming her previous decision denying the petition; and (7) the Form I-290B and supporting documentation submitted in support of the appeal.

Upon review of the entire record of proceeding, we find that the evidence of record does not overcome the Director's basis for denying this petition.² Accordingly, the appeal will be dismissed, and the petition will be denied.

II. SPECIALTY OCCUPATION

A. Legal Framework

To meet the petitioner's burden of proof in establishing the proffered position as a specialty occupation, the evidence of record must establish that the employment the petitioner is offering to the beneficiary meets the following statutory and regulatory requirements.

¹ The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for use with a job prospect within the "Loan Officers" occupational classification, SOC (O*NET/OES) Code 13-2072, and a Level I (entry-level) prevailing wage rate, the lowest of the four assignable wage-levels.

² In the exercise of our administrative review in this matter, as in all matters that come within our purview, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010), unless the law specifically provides that a different standard applies.

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 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), 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 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.

B. Analysis

A baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position

To make our determination as to whether the employment described above qualifies as a specialty occupation, we turn first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied by establishing that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of the petition.

In its support letter, the petitioner describes the duties of the proffered position and indicates the percentages of time the beneficiary would spend on its various tasks as follows:

Duties/Responsibilities	Hours Spent on Duty Each Week	% of Time on Duty Each Week
<ul style="list-style-type: none"> • Interview loan applicants to provide advisory services as to the satisfaction of bank lending requirements[.] • Advise clients on financial performance guidance, including action-step with real time analysis and risk mitigation. • Read data, analyze, and present cogent advice based on analysis[.] 	16 hours	40%
<ul style="list-style-type: none"> • Review all relevant financial/credit/collateral information[.] • Conduct a comprehensive analysis of financial data to recommend approval/denial of requested credit including tax return, income statements, profit and loss spreadsheets and cash flow historical reports and forecasts[.] • Review all collateral requirements, perform due diligence on those assets as well as seeking asset valuations, title reports, lien searches, escrow documents and other asset related documentations[.] • Perform underwriting and report preparation for bank managers[.] 	12 hours	30%
<ul style="list-style-type: none"> • Manage [REDACTED] existing loan portfolio[.] • Assist branch manager in soliciting business[.] • Attend staff meetings as well as branch manager meetings or loan decisions[.] 	10 hours	25%
<ul style="list-style-type: none"> • Keep abreast with market and trends[.] • Be aware with culture sensitivity[.] 	2 hours	5%

The petitioner also stated that the loan officer position requires a minimum of a "Bachelor's degree in Business, Finance, or related field."

The Director found the initial evidence insufficient to demonstrate that the proffered position was a specialty occupation and requested further evidence. In its RFE response letter, the petitioner stated that three of the principal responsibilities of the proffered position - the financial forensics, the advisory services, and the underwriting and report preparation - are associated with a college

degree, and indicated which courses the beneficiary had completed satisfied the requirements of those duties.

We recognize the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (the *Handbook*) as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.³ As noted above, the LCA that the petitioner submitted in support of this petition was certified for a job offer falling within the "Loan Officers" occupational category.

The *Handbook* states the following with regard to the educational requirements necessary for entrance into this field:

Most loan officers need a bachelor's degree and receive on-the-job training. Mortgage loan officers must be licensed.

Education

Loan officers typically need a bachelor's degree, usually in a field such as business or finance. Because commercial loan officers analyze the finances of businesses applying for credit, they need to understand general business accounting, including how to read financial statements.

Some loan officers may be able to enter the occupation without a bachelor's degree if they have related work experience, such as in sales, customer service, or banking.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Loan Officers," available at <http://www.bls.gov/ooh/business-and-financial/loanofficers.htm#tab-4> (last visited July 8, 2015).

The *Handbook* does not support the assertion that a minimum of a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for these positions. In fact, it states that with related work experience, some loan officers may enter the occupation without a bachelor's degree. Thus, the *Handbook* does not support the claim that the occupational category of loan officers is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent. Even if it did, the record lacks sufficient evidence to support a finding that the particular position proffered here, an entry-level loan officer position, would normally have such a minimum, specialty degree requirement or its equivalent.

Furthermore, in its support letter, the petitioner stated that the proffered position normally requires at least a bachelor's degree or higher in business, finance, or a related field. However, the

³ The *Handbook*, which is available in printed form, may also be accessed online at <http://www.stats.bls.gov/oco/>. Our references to the *Handbook* are from the 2014-15 edition available online.

requirement of a bachelor's degree in business is inadequate to establish that a position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly 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 prove 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. As explained above, 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. USCIS has consistently stated that, 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).

Again, the petitioner 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. Without more, this assertion alone indicates that the proffered position is not in fact a specialty occupation.

The duties and requirements of the position as described in the record of proceeding do not indicate that this particular position proffered by the petitioner 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 evidence of the record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The requirement of a baccalaureate or higher degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations

Next, we will review the record of proceeding 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 for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

Here and as already discussed, the evidence of record does not establish that the petitioner's proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

While the assertions of [REDACTED] with regard to an industry-wide recruiting and hiring standard are acknowledged, the record contains insufficient evidence to support their assertions. 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) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Furthermore, these individuals do not state that loan officers must hold at least a bachelor's degree *in a specific specialty*. Therefore, these letters do not support the assertion that the proffered position is a specialty occupation.

We will next address the job advertisements submitted by the petitioner. The record of proceeding contains copies of eight job advertisements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. However, upon review of the documents, we find that the petitioner's reliance on the job advertisements is misplaced.

In the Form I-129 petition, the petitioner describes itself as a 37-employee bank established in [REDACTED]. The petitioner states that its gross annual income is \$11,308,386 and reports its net annual income as \$3,854,279.

For the petitioner to establish that an organization in its industry is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, documentation 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 advertising organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

Although the advertisements appear to be from entities in the banking business, the petitioner did not state which aspects or traits it shares with the advertising companies. Without further information, we are unable to determine whether these companies are similar to the petitioner and the petitioner did not supplement the record of proceeding to establish that the advertising organizations are similar to it.

Moreover, these advertisements do not appear to be for parallel positions. More specifically, the position with [REDACTED] requires four or more years of experience; the position with [REDACTED] requires a minimum of five years of experience; the position at the unidentified company requires a minimum of three years of experience; the position with [REDACTED] requires a minimum of seven years of underwriting experience; the position with [REDACTED] requires a minimum of three years of experience; the position with [REDACTED] requires a minimum of five years of experience; the position with [REDACTED] requires 5-7 years of experience; and the position with [REDACTED] requires a prior experience. The petitioner designated the proffered position on the LCA through the wage

level as a Level I, entry-level position. Individuals occupying positions at this wage level are expected to have only a basic understanding of the occupation, and they perform routine tasks that require limited, if any, exercise of judgment. The advertised positions appear to be for more senior positions than the proffered position. More importantly, the petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to 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. That is, as the evidence does not establish that similar organizations in the same industry routinely require at least a bachelor's degree in a specific specialty, or its equivalent, for parallel positions, not every deficit of every job posting has been addressed.

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 is common to the industry in parallel positions among similar organizations (which they do not), the evidence of the record does not 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").

Thus, based upon a complete review of the record, we find that the petitioner has not established that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner. Thus, 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 particular position is so complex or unique that it can be performed only by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent

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

In the instant case, the evidence of record does not credibly demonstrate relative complexity or uniqueness as aspects of the proffered position. Specifically, it is unclear how the loan officer position, as described, necessitates the theoretical and practical application of a body of highly

specialized knowledge such that a person who has attained a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. More specifically, the petitioner did not demonstrate how the duties described 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 essential, in performing certain duties of a data analyst position, the petitioner did not 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 petitioner's proffered position.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, the LCA indicates that the position is a low-level (entry-level) position relative to others within the occupation.⁴ Based upon the wage rate, the beneficiary is only required to perform routine tasks that require limited, if any, exercise of judgment. Accordingly, given the *Handbook's* indication that typical positions located within the "Loan Officers" occupational category do not require at least a bachelor's degree in a specific specialty, or the equivalent, for entry, it is not credible that an entry-level position involving limited exercise of judgment would contain such a requirement.

Without further evidence, it is simply not credible that the petitioner's proffered position is complex or unique relative to other positions within the occupational category, 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 instance, 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." Even a position involving a Level II wage, which would exceed the complexity of the one proposed by the petitioner, would involve only "moderately complex tasks that require limited judgment."

Finally, we observe that the petitioner has indicated that the beneficiary's experience and his educational background make him qualified for the proffered position. 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

⁴ The issue here is that the petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), an entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty or its equivalent. That is, a position's wage level designation may be a consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. In the instant case, the petitioner does not establish which of the proposed duties, if any, would render the proffered position so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. Again, the petitioner did not 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.

For all of these reasons, it cannot be concluded that the evidence of record satisfies the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The employer normally requires a baccalaureate or higher degree in a specific specialty, or its equivalent, for the position

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

To merit approval of the petition under this criterion, the record must establish that the imposition of a degree requirement by the petitioner is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. The record contains insufficient evidence demonstrating the petitioner's prior hiring history.

The petitioner claims repeatedly that the duties of the proffered position can only be performed by a degreed individual. While a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, 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 employer 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 387. In other words, if a petitioner's degree requirement is only symbolic and 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* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). The record does not contain sufficient documentary evidence demonstrating a hiring history of the petitioner for the proffered position. As the record of proceeding does not demonstrate that the petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the proffered position, it does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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 in a specific specialty, or its equivalent

Next, we find that the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered position's 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 the specific specialty or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position's duties. In other words, the proposed duties have not been described with sufficient specificity to show that their nature is more specialized and complex than loan officer positions whose duties are not of a nature so specialized and complex that their performance requires knowledge usually associated with a degree in a specific specialty. With regard to the specific duties of the position proffered here, we find that the record of proceeding lacks sufficient, credible evidence establishing that they are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a bachelor's degree in a specific specialty, or the equivalent.

We reiterate our earlier discussion regarding the petitioner's designation of the proffered position in the LCA as a Level I position (the lowest of four assignable wage-levels) relative to others within the occupational category. Without more, the position is one not likely distinguishable by relatively specialized and complex duties. That is, without further evidence, the petitioner has not demonstrated that its 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.⁵

Although the petitioner asserts that the nature of the specific duties is specialized and complex, the record lacks sufficient evidence to support this claim. Thus, the petitioner has not satisfied the criterion of the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has not established 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.⁶

III. CONCLUSION AND ORDER

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.

⁵ 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" and requires a significantly higher wage.

⁶ As the grounds discussed above are dispositive of the petitioner's eligibility for the benefit sought in this matter, we will not address and will instead reserve our determination on the additional issues and deficiencies that we observe in the record of proceeding with regard to the approval of the H-1B petition.

(b)(6)



NON-PRECEDENT DECISION

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ORDER: The appeal is dismissed. The petition is denied.