



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUL 17 2015**

PETITION RECEIPT #: [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:

NO REPRESENTATIVE OF RECORD

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

I. PROCEDURAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a four-employee "Hispanic Wholesale Foods Distributor" established in [REDACTED]. In order to employ the beneficiary in what it designates as a "Distribution & Logistics Manager" 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, finding the evidence insufficient to establish that the proffered position qualifies for classification as a specialty occupation position. On appeal, the petitioner asserts that the Director's basis for denial was erroneous and contends that the petitioner satisfied all evidentiary requirements.

We base our decision upon our review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the Director's denial letter; and (5) the Form I-290B and the petitioner's other submissions on appeal.¹

II. THE PROFFERED POSITION

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a Logistics and Distribution Manager position, and that it corresponds to Standard Occupational Classification (SOC) code and title 11-3071, Transportation, Storage, and Distribution Managers, from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a wage Level I position.

In a letter dated April 1, 2014, [REDACTED], signing as the petitioner's president, stated:

The [beneficiary] will be responsible for a variety of tasks including, but not limited to, the following:

- Resolving problems involving transportation and logistics, both with respect to suppliers and customers.
- Integrating the logistical functions of our company with its other functions, including manufacturing, sales, accounting, and finance.
- Maintain records of, and report on, and develop relevant metrics for, customer service issues and delivery issues.

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

- Supervising logistics and transportation personnel.
- Directing transportation and warehouse activities.
- Negotiating and coordinating with both suppliers and customers to maximize the efficiency of our logistical supply chain.
- Overseeing the productivity, accuracy, and timeliness of distribution functions.
- Analyze the operational and financial aspects of logistical issues including routing of deliveries and sourcing of supplies.
- Establish logistical operation policies and standards.
- Resolving customer and supplier complaints regarding shipping issues.
- Collaborate with personnel in other departments of the company to formulate policies, procedures, goals and objectives so that the logistical and distribution functions of the company are efficiently interfaced with the functions of other departments.
- Analyze financial and expenditure information regarding logistics and distribution to establish logistics and distribution plans, budgets and policies which minimize expenditures and maximize profits.
- Oversee spending on logistics and distribution to assure conformity with approved budgets.

[Verbatim.]

As to the educational requirement of the proffered position, Mr. [REDACTED] stated:

Petitioner requires all candidates for the proffered position to have a Bachelor Degree in Industrial Engineer or a related field that is Business oriented, from an accredited institution of higher education.

[Verbatim.]

In the RFE, the service center observed that the petitioner had indicated that the proffered position is supervisory, and asked the petitioner to identify the workers the beneficiary would supervise. In response, the petitioner provided an organizational chart that shows that the beneficiary would supervise warehouse workers and drivers. In a letter dated July 8, 2014, also submitted in response to the RFE, Mr. [REDACTED] stated that the beneficiary would supervise those positions at the beneficiary's warehouse/distribution centers in [REDACTED] Mississippi and [REDACTED] Georgia.

In that letter, Mr. [REDACTED] provided the following revised duty description:

1	Programming/scheduling delivery providers for the arrival and unloading of products.	16.00%
2	Assign routes to drivers, control and monitoring deliveries [sic]	14.00%
3	Assign tasks according to the Business requirements.	12.00%

4	Troubleshooting with vendors for goods and correction of misdelivery	8.00%
5	Daily Report to Administrative President regarding logistics activity	7.00%
6	Review and analysis of returns	8.00%
7	Planning logistics and distribution activities by period (Weekly, Monthly, Semi-Annual, Annual).	6.00%
8	Managing inventory	8.00%
9	Assign the storage location (in the distribution centres) of the goods delivered by suppliers	9.00%
10	Assigning delivery routes based upon orders received for products	7.00%
11	Prepare daily reports of the logistical flow of the distribution centres	5.00%

[Verbatim.]

III. SPECIALTY OCCUPATION

The issue is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position.

A. Legal Framework

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) 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), 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. Analysis

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.

The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 11-3071.00, Transportation, Storage, and Distribution Managers, from O*NET. The O*NET Summary Report pertinent to those positions states:

This title represents a group of more specific occupations. For additional information, please select one of the specific occupations below.

11-3071.01 Transportation Managers

11-3071.02 Storage and Distribution Managers

11-3071.03 Logistics Managers

Occupational Information Network (O*NET) Summary Report for 11-3071.00, Transportation, Storage, and Distribution Managers, <http://www.onetonline.org/link/summary/11-3071.00> (last visited July 15, 2015).

The O*NET duty description pertinent to 11-3071.03, Logistics Managers, describes the following duties:

- Resolve problems concerning transportation, logistics systems, imports or exports, or customer issues.
- Collaborate with other departments to integrate logistics with business systems or processes, such as customer sales, order management, accounting, or shipping.
- Maintain metrics, reports, process documentation, customer service logs, or training or safety records.
- Supervise the work of logistics specialists, planners, or schedulers.
- Direct inbound or outbound logistics operations, such as transportation or warehouse activities, safety performance, or logistics quality management.
- Direct or coordinate comprehensive logistical or reverse logistical functions for product life cycles, including acquisition, distribution, internal allocation, delivery, recycling, reuse, or final disposal of resources.
- Negotiate with suppliers or customers to improve supply chain efficiency or sustainability.

- Direct distribution center operation to ensure achievement of cost, productivity, accuracy, or timeliness objectives.
- Negotiate transportation rates or services.
- Analyze the financial impact of proposed logistics changes, such as routing, shipping modes, product volumes or mixes, or carriers.

Occupational Information Network (O*NET) Summary Report for 11-3071.03 Logistics Managers, <http://www.onetonline.org/link/summary/11-3071.03> (last visited July 15, 2015).

We observe that the duties of the proffered position as described in Mr. [REDACTED] April 1, 2014 letter are largely a paraphrase of duties described in the O*NET report on logistics managers. This is a generalized description of the range of duties that may be performed within the occupational category, rather than of the substantive work that the beneficiary will perform within the petitioner's business operations. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities the beneficiary would perform in the context of the petitioner's business operations; however, Mr. [REDACTED] April 1, 2014 letter contained a generic description of the duties of logistics managers in general. That duty description will be largely disregarded, therefore, and the more specific duty description included in Mr. [REDACTED] July 8, 2014 letter will be accorded vastly more weight.

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

Turning to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), we will first discuss 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 recognize the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² The petitioner asserted that the *Handbook* addresses the proffered position in its Logistician chapter and that the *Handbook* supports the proposition that the proffered position is a specialty occupation position. The *Handbook's* chapter on logisticians states the following about the educational requirements of those positions, in pertinent part:

Logisticians may qualify for positions with an associate's degree. However, as logistics becomes increasingly complex, more companies prefer to hire workers who have at least a bachelor's degree. Many logisticians have a bachelor's degree in business, industrial engineering, process engineering, or supply chain management.

² The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online.

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

The *Handbook* makes explicit that an associate's degree is a sufficient educational qualification for some logistician positions. That "more" employers now "prefer" logisticians with at least a bachelor's degree does not indicate that any logistician positions require a bachelor's degree, as a preference is not a minimum requirement. Further, even as to those positions that may require a bachelor's degree, the *Handbook* does not indicate that the requisite degree must be in any specific specialty. In fact, the *Handbook* indicates that a degree in business is a sufficient educational qualification for some logistician positions, and a degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. Cf. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). For all of those reasons, the *Handbook* does not indicate that logistician positions require a minimum of a bachelor's degree in a specific specialty or its equivalent.

In certain instances, the *Handbook* is not determinative. When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the petitioner to provide persuasive evidence that the proffered position more likely than not satisfies this or one of the other three criteria, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other objective, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation.

In order to satisfy this criterion, the petitioner also cited O*NET, stating that it indicates that most logistics manager positions require a bachelor's degree. Contrary to the petitioner's assertion, O*NET does not state a requirement for a bachelor's degree for most logistics manager positions. Rather, it assigns logistics managers a Job Zone "Four" rating, which groups them among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, the O*NET does not indicate that the four-year bachelor's degrees required by some Job Zone Four occupations must be in a specific specialty closely related to the requirements of that occupation. Therefore, the O*NET information is not probative of the proffered position's being a specialty occupation.

The *Handbook* does not support the claim that the occupational category of logisticians 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 (which it does not), the record lacks sufficient evidence to support a finding that the particular position proffered here, an entry-level logistics and distribution manager position (as indicated on the LCA), would normally have such a minimum, specialty degree requirement or its equivalent. 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 petitioner has not satisfied 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 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: (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) 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)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative source) reports an 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. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the petitioner did not submit any letters or affidavits from similar firms or individuals in the petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals."

The petitioner did provide several vacancy announcements posted by other companies. Those vacancy announcements are for positions entitled Distribution Logistics Manager, Logistics Specialist, Director of Logistics I, and Logistics Manager and were apparently intended to satisfy this criterion.

Two of those vacancy announcements state that the positions they announce require a bachelor's degree, but not that the degree must be in any specific specialty. Those vacancy announcements do not contain a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Another of the announcements states that a bachelor's degree in a supply chain management discipline is preferred for the position it announces, but that ten years of experience in distribution

or manufacturing management may be substituted for that preferred degree. Ten years of experience has not been demonstrated to be equivalent to a bachelor's degree. As such, that vacancy announcement does not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, the petitioner stated, on the LCA, that the proffered position is a wage Level I position, that is, an entry-level position for an employee who has only a basic understanding of the occupation. 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. However, the vacancy announcements provided all state an experience requirement, and some state a requirement of a considerable amount of very specific experience.³ The vacancy announcements provided have not been shown to be for positions parallel to the proffered position.

Finally, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and each required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from those few announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.⁴

Thus, the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to positions parallel positions with organizations that are in the petitioner's industry and otherwise similar to the petitioner. The petitioner has not, therefore, satisfied the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

³ One of the vacancy announcements provided states that the position it announces requires three years of experience in supply chain functions. Another states that the position it announces requires three years of frozen food experience, three years of vendor management experience, and three years of bid management experience.

⁴ USCIS "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." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). As just discussed, the petitioner has not established the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the petitioner still would not have demonstrated what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

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

The evidence of record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." A review of the record indicates that the petitioner did not credibly demonstrate that the duties that comprise the proffered position entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner did not demonstrate how the duties that collectively constitute the proffered position 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 a few related courses may be beneficial, or even required, in performing certain duties of the proffered 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 particular position here.

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a wage Level I position, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of such positions.⁵ This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree, especially as the *Handbook* suggests that some logistician positions do not require such a degree.

The evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for such positions, including associate's degrees and degrees that

⁵ 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.

are not in a specific specialty directly and closely related to the position. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner did not demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The 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. To this end, we usually review the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

The petitioner has not expressly asserted eligibility nor submitted evidence under this criterion. Further, in his July 8, 2014 letter, Mr. [REDACTED] stated that the petitioner has never employed anyone in the proffered position.

While a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, it is unclear how an employer that has never recruited and hired for the position would be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position. We cannot conclude that the petitioner has satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

The 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

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a 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. The duties of the proffered position, such as scheduling deliveries, assigning routes to drivers, correcting misdirected deliveries, reviewing and analyzing return shipments, managing inventory, assigning storage locations, etc., contain insufficient indication of a nature so specialized and complex that they require knowledge usually associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, as was noted above, the petitioner filed the instant visa petition for a wage Level I position, a position for a beginning-level employee with only a basic understanding of such positions. This does not support the proposition that the nature of the specific duties of the proffered position is so specialized and complex that their performance is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, directly related to the duties of a logistician, especially as the *Handbook* indicates that some logistician positions require no such degree.

Overall, the evidence of record is inadequate to establish that the duties of the position are 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. Therefore, the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The evidence of record does not satisfy 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.

IV. CONCLUSION

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.