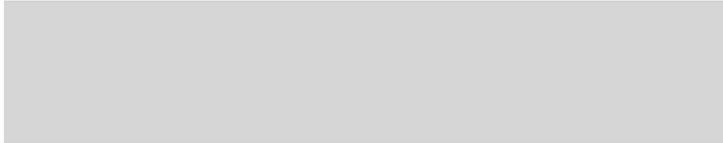




U.S. Citizenship
and Immigration
Services

(b)(6)



JUN 02 2015

DATE:

PETITION RECEIPT #:



IN RE:

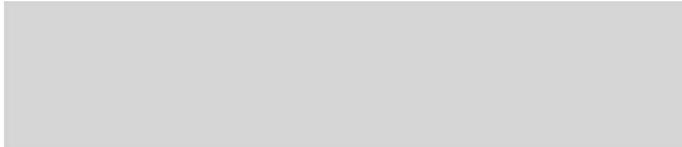
Petitioner:

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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

I. PROCEDURAL BACKGROUND

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the California Service Center on April 1, 2014. On the Form I-129 visa petition, the describes itself as an enterprise established in [REDACTED] providing software and Web 2.0 applications development services with 16 employees. In order to employ the beneficiary in what it designates as a solutions architect, 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 found the initial evidence insufficient to establish eligibility for the benefit sought, and issued a Request for Evidence (RFE). Thereafter, the petitioner responded to the director's RFE. The director denied the petition, finding that the petitioner did not establish that it would employ the beneficiary in a specialty occupation position. On appeal, the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that it satisfied all evidentiary requirements.

The record of proceeding before us contains: (1) the Form I-129 and supporting documentation; (2) the director's RFE; (3) the petitioner's response to the RFE; (4) the director's notice of decision; and, (5) the Notice of Appeal or Motion (Form I-290B) and supporting documentation. We reviewed the record in its entirety before issuing our decision.¹

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

II. PROFFERED POSITION

The petitioner indicated on the Form I-129 that it seeks the beneficiary's services as a solutions architect to work on a full-time basis for an annual salary of \$80,000 per year.

In a letter of support dated March 13, 2014, the petitioner stated that the beneficiary will be responsible for the following duties:

- Design and implement the suite of tools and frameworks that form the base for the products and technologies that [the petitioner] works on.
- Develop next generation tools and products using JAVA, J2EE and other

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

internet technologies.

- Provide architectural guidance and direction to the QA Automation project teams.
- Evaluate and provide technical guidance and analysis for the automation projects.
- Execute manual and automation testing of products.
- Mentor QA Automation Engineers.

The petitioner also stated that the solutions architect "requires at least a Bachelor's degree or equivalent in Engineering or a related field." The petitioner submitted an evaluation of academic credentials from [REDACTED] for the beneficiary. The beneficiary's credentials were found to be the equivalent of a Master of Science in Computer Science from an accredited institution of higher education in the United States. The petitioner submitted copies of the beneficiary's degrees.

The petitioner also submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The LCA designation for the proffered position corresponds to the occupational classification of "Computer Occupations, All Other" – SOC (ONET/OES) Code 15-1199, at a Level II (qualified) wage. The LCA also indicated that the beneficiary will work at the petitioner's office in [REDACTED] California.

In response to the RFE, the petitioner provided a more detailed description of the duties to be performed by the beneficiary as follows:

Time	Work to be Performed	Specific Tasks	Reason Degree Needed
10%	Reviewing Projects & Prioritizing	Review the feature set, target system goals and prioritize the projects accordingly based A] The value that the project can bring in. B] Technology or Business reasons on why it is needed and in what	Reviewing and prioritizing needs a thorough understanding of the technology and business. Demonstrated the ability to work with other technical personnel and understand complex concepts.
10%	Researching Solutions & Alternatives	Once a set of projects are agreed upon, there is a need to understand the various products & solutions	Demonstrated the ability to research solutions and document the results, assumptions & pros-

		available in the market and take decisions of Buy vs Build. Showcase knowledge of various applications and programming languages and ability to communicate options, risks, timeframes for delivery etc.	cons of a given solution/product, and technology stack that needs to be used. This forms the base for all future activities and needs a well-trained hand.
10%	Build a Plan	Work with all the technical teams like QA, Develops, Design, Production Support, 3 rd parties [if needed] involved to make a plan of the tasks that need to be completed. Bring out the dependencies & integration touch points that need to be taken care of. Give a timeline for when the business can expect the solution to be in place.	Demonstrated the ability to sequence a set of activities that form the roadmap of executing the project in a smooth fashion.
40%	Develop Solutions	Build the solution using Java/J2EE Technologies, Continuous Integration with Jenkins, Unit Testing with JUnit, Static code scanning tools like SONAR, Checking Performance, Reliability, Usability etc.	Learned & Mastered Java/J2EE over a number of years and gained expertise to build complex web solutions that are needed for today's demanding customers.
20%	Develop Testing Plan	Understand the various testing needs	Demonstrated ability to write a plan and

10%	Support Applications	<p>like Functional Testing, Regression Testing, Performance Testing, Load Testing, User Acceptance Testing etc. Work with the QA teams as they do the testing of the application and fix any issues that come up.</p> <p>Troubleshoot issues reported by the end users of our solutions. Coordinate with other experts if the issue is due to another aspect of the solution such as data integration or system. Work with the clients to ensure that the solution fixes their issue.</p>	<p>execute a successful test strategy.</p> <p>Demonstrated ability to troubleshoot custom code, find solutions, work with other technical experts and communicate with other technical disciplines.</p>
-----	----------------------	---	---

III. SPECIALTY OCCUPATION

The issue here is whether the petitioner demonstrated by a preponderance of the evidence that it will employ the beneficiary in a specialty occupation position.

A. The Law

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.

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

To determine whether the proffered position qualifies as a specialty occupation, we now turn to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) 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 (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.² As noted above, the LCA corresponds to the occupational classification "Computer Occupations, All Other"-SOC(ONET/OES) code 15-1799, at a Level II (qualified) wage.

² The *Handbook*, which is available in printed form, may also be accessed online at <http://www.bls.gov/ooh>. The references to the *Handbook* are from the 2014-15 edition available online.

We reviewed the *Handbook* regarding the occupational category "Computer Occupations, All Other." However, the *Handbook* does not provide a detailed narrative account nor does it provide summary data for this occupational category. More specifically, the *Handbook* does not provide the typical duties and responsibilities for "Computer Occupations, All Other." It also does not provide any information regarding the academic and/or professional requirements for these positions. Thus, the *Handbook* does not support the claim that the occupational category here is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent.

We note that there are occupational categories which are not covered in detail by the *Handbook*, as well as occupations for which the *Handbook* does not provide any information. The *Handbook* states the following about these occupations:

Although employment for hundreds of occupations are covered in detail in the *Occupational Outlook Handbook*, this page presents summary data on additional occupations for which employment projections are prepared but detailed occupational information is not developed. For each occupation, the Occupational Information Network (O*NET) code, the occupational definition, 2012 employment, the May 2012 median annual wage, the projected employment change and growth rate from 2012 to 2022, and education and training categories are presented.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Data for Occupations Not Covered in Detail," <http://www.bls.gov/ooh/About/Data-for-Occupations-Not-Covered-in-Detail.htm> (last visited May 20, 2015).

Thus, the narrative of the *Handbook* indicates that there are many occupations for which only brief summaries are presented and that detailed occupational profiles for these occupations are not developed.³ The *Handbook* suggests that for at least some of the occupations, little meaningful information could be developed.

Accordingly, 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 the statutory and regulatory provisions, including 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

³ We note that occupational categories for which the *Handbook* only includes summary data includes a range of occupations, including for example, postmasters and mail superintendents; agents and business managers of artists, performers, and athletes; farm and home management advisors; audio visual and multimedia collections specialists; clergy; merchandise displayers and window trimmers; radio operators; first-line supervisors of police and detectives; crossing guards; travel guides; agricultural inspectors, as well as others.

probative evidence (e.g., documentation from other objection, 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 response to the RFE, the petitioner indicated that according to the Occupational Information Network (O*NET), the occupational category "Computer Occupations, All Other" encompasses multiple occupations, including "Computer Systems Engineers/Architects." The petitioner claimed that "Computer Systems Engineers/Architects" is the most relevant occupational category for the proffered position. However, the petitioner did not clarify how the duties and responsibilities of "Computer Systems Engineers/Architects" are similar to the proffered position as a solutions architect. The petitioner also claimed that according to O*NET, a Bachelor's degree is the standard minimum requirement for "Computer Systems Engineers/Architects" positions. However, 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." Moreover, O*NET does not state that a degree must be in a *specific specialty*. As was noted previously, we interpret 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. Although a general-purpose bachelor's degree may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

Upon review of the totality of the evidence in the entire record of proceeding, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is normally required for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the particular position that is the subject of this petition 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 did not satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

- 2a. A requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations

Next, the petitioner has not satisfied 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 sharing all three characteristics of being (1) within 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* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Nor are there any submissions from a professional association in the petitioner's industry stating 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. Nor has the petitioner submitted any letters or affidavits from firms or individuals in the industry attesting that such firms "routinely employ and recruit only degreed individuals.

Next, we find that the job-vacancy announcements submitted by the petitioner also do not satisfy this alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). That is, neither the job-vacancy announcements themselves, nor any other evidence within the record of proceeding, establish that those advertisements pertain to positions that meet all of the criterion's elements of being in the petitioner's industry, in organizations similar to the petitioner, and also parallel to the proffered position, as required for evidence to merit consideration under this first alternative prong. In this regard, we make several specific findings.

In the Form I-129 and supporting documentation, the petitioner stated that it is an enterprise established in 2012, providing software and Web 2.0 applications development services, with 16 employees and an annual gross income of \$1.4 million. The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 541511 – "Custom Computer Programming Services"⁴ The U.S. Department of Commerce, Census Bureau website describes this NAICS code as follows:

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

⁴ 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 U.S. Dep't of Commerce, U.S. Census Bureau, NAICS, on the Internet at <http://www.census.gov/eos/www/naics/> (last visited May 20, 2015).

Computer Programming Services on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited May 20, 2015).

For the petitioner to establish that an organization is similar, it must demonstrate that 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). 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.

We reviewed the job advertisements submitted by the petitioner. Notably, the petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employer's recruiting history for the type of job advertised. Further, as they are only solicitations for hire, they are not evidence of what qualifications were ultimately required for the positions. Moreover, upon review of the documents, we find that they do not establish that a requirement for a bachelor's degree, in a specific specialty, is common to the petitioner's industry in similar organizations for parallel positions to the proffered position.

For example, the advertisements include positions with [REDACTED] which employs more than 200 professionals, and [REDACTED] which is founded by [REDACTED], a publicly traded company. The petitioner also submitted a job posting from [REDACTED] but the posting did not have sufficient information regarding its business operations. 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 lacks sufficient information regarding the advertising employer to conduct a legitimate comparison of the organization to the petitioner.

Further, the petitioner has not established that the advertisements are for parallel positions. Specifically, the advertised positions appear to be for more senior positions than the proffered position. For example, the position with [REDACTED] requires a "[m]inimum 10 years software systems work with extensive experience on large scale internet based systems and at least 5 years of technical team leadership." The position with [REDACTED] requires "12+ years of experience in software design and development." The two positions with [REDACTED] require a "[m]inimum of 10 years enterprise IT application experience that includes at least 2 years on hands-on software development" for the senior solutions architect position and "7+ years design/implementation/consulting experience with distributed applications," for the Solutions Architect position. As mentioned, the petitioner designated the proffered position on the LCA through the wage level as a Level II where the beneficiary is expected to perform moderately complex tasks that require limited judgment.

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.⁵

Thus, the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as 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 for positions sharing all three characteristics of being (1) within the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

2b. The 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

Next, the evidence of record does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

In support of its assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted various documents including printouts from its parent company, photographs, lease agreement, and tax returns. However, the petitioner did not explain how the documents relate to the beneficiary's duties, and the evidence does not establish the relative complexity or uniqueness of the proffered position.

On appeal, the petitioner states for the first time that the beneficiary "will perform architecture and development services for the product." The petitioner asserts that the beneficiary will "play a critical role in the ongoing development and enhancement of this product offering." The petitioner further claims that "[b]ecause the customization aspect of the product is essential to its success, the beneficiary's role as a Solutions Architect will be critical to the Petitioner's success going forward."

⁵ It must be noted that even if all of the job postings indicated that a bachelor's degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations (which they do not), the petitioner does not demonstrate what inferences, if any, can be drawn from these advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

As such, even if the job announcements supported the finding that the position required a bachelor's or higher degree in a specific specialty, or its equivalent (for organizations in the same industry that are similar to the petitioner), it cannot be found that such a limited number of postings that appear to have been consciously selected outweigh the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not normally require at least a baccalaureate degree in a specific specialty, or its equivalent, for entry into the occupation in the United States.

However, the LCA submitted by the petitioner in support of the instant petition indicates a wage a Level II wage. In accordance with the relevant DOL explanatory information on wage levels, a Level II position is indicative that, relative to other positions falling under the occupational category, the beneficiary is expected to have a good understanding of the occupation but that he will only perform moderately complex tasks that require limited judgment. Without further evidence, it is not credible that the petitioner's proffered position is complex or unique as such a position falling under this occupational category 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."⁶ Thus, the wage level designated by the petitioner in the LCA for the proffered position is not consistent with claims that the beneficiary "will play a critical role to the petitioner's success going forward" and that the position would entail any particularly complex or unique duties or that the position itself would be so complex or unique as to require the services of a person with at least a bachelor's degree in a specific specialty.

Consequently, as the petitioner did not demonstrate how the proffered position is so complex or unique relative to other director of operations positions that can be performed by a person without at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

3. The petitioner normally requires a bachelor's degree in a specific specialty, or its equivalent for the position

We turn next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires the employer to demonstrate 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 information regarding employees who previously held the position.

To satisfy this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered 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.

⁶ For additional information regarding wage levels as defined by DOL, 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.

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 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 assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position 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 did not provide evidence of its hiring history.

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).

4. 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 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.

The petitioner provided information regarding the proffered position and its business operations, including the documentation previously outlined. 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.

We hereby incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a Level II position (out of four assignable wage-levels) relative to others within the occupational category, and hence one not likely distinguishable by relatively specialized and complex duties. Without further evidence, it is not credible that the petitioner's proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a substantially higher prevailing wage. As previously discussed, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems" and requires a significantly higher wage. The petitioner has submitted inadequate probative evidence to satisfy the criterion of the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For all of these reasons, the evidence in the record of proceeding does not establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).⁷

IV. 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

ORDER: The appeal is dismissed.

⁷ As the identified grounds of ineligibility are dispositive of the petitioner's appeal, we need not address additional issues in the record of proceeding