



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAR 26 2015** OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

I. FACTUAL AND PROCEDURAL HISTORY

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner states it is a “wholesale and incentives” business established in [REDACTED] with 35 employees, and an annual income of \$102 million. The petitioner seeks to hire the beneficiary as a nonimmigrant “wholesale purchasing agent” and classify that position as 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 petitioner failed to demonstrate that the proffered position qualifies as a specialty occupation. 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 contains the following: (1) the Form I-129 and supporting documentation; (2) the director’s request for evidence (RFE); (3) the petitioner’s response to the RFE; (4) the notice of decision; and (5) the Notice of Appeal or Motion (Form I-290B) and supporting materials. We reviewed the record in its entirety before issuing our decision.²

Upon review of the entire record of proceeding, we find that the evidence of record supports the director's decision to deny the petition for its failure to establish the proffered position as a specialty occupation. Accordingly, the appeal will be dismissed, and the petition will be denied.

II. SPECIALTY OCCUPATION

A. The Law

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

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term “specialty occupation” as one 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.

² We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The term “specialty occupation” is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires [(1)] 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 requires [(2)] 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, the position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

As noted above, the petitioner stated that it is a “wholesale and incentives” business. In its July 22, 2014 RFE response, the petitioner states that the position will include the following duties:

- Contacting U.S. suppliers & manufacturers and identifying products to purchase. 10%
- Negotiating with suppliers and manufacturers. 15%
- Finding and contacting overseas wholesalers and distributors. 10%
- Negotiating with overseas wholesalers & distributors. 15%
- Investigate and assess cost of U.S. products to purchase. 15%
- Analyze and assess logistics and exchange rate costs. 20%
- Identify and assess the viability and financial solvency of overseas distributors & wholesalers. 15%

In the letter of support provided with the Form I-129, the petitioner states that the position requires an employee with a bachelor’s degree in accounting or banking and finance. The petitioner also provided a Labor Condition Application (LCA), which indicates that the proffered position corresponds to the occupational classification “Wholesale and Retail Buyers, Except Farm Products” - SOC (ONET/OES) code [REDACTED] at a Level I (entry level) wage.

We will now discuss the application of each supplemental, alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

We will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), 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. As noted, 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 proposed position.

USCIS recognizes 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 that it addresses.³ As discussed, the petitioner provided an LCA that indicates that the proffered position falls under the occupational category "Wholesale and Retail Buyers, Except Farm Products," which is discussed under the *Handbook's* section on "Purchasing Managers, Buyers, and Purchasing Agents." The section regarding the duties of these occupations states the following regarding wholesale and retail buyers:

Wholesale and retail buyers purchase goods for resale to consumers. Examples of these goods are clothing and electronics. Purchasing specialists who buy finished goods for resale are commonly known as *buyers* or *merchandise managers*. Buyers who work for large organizations usually specialize in one or two lines of merchandise (for example, men's clothing or women's shoes or children's toys). Buyers who work for small stores may be responsible for buying everything the store sells.

In regards to the educational requirements, the *Handbook* states:

Although educational requirements for buyers and purchasing agents may vary by the size of the organization and the type of product, extensive on-the-job training is typically provided. Purchasing managers need a bachelor's degree and work experience as a buyer or purchasing agent.

Education

Educational requirements usually vary with the size of the organization. A high school diploma is enough at many organizations for entry into the purchasing agent occupation, although large stores and distributors may prefer applicants who have completed a bachelor's degree program and have taken some business or accounting classes. Many manufacturing firms put an even greater emphasis on formal training,

³ All references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>. Excerpts of the *Handbook* regarding the duties and requirements of the referenced occupational category are hereby incorporated into the record of proceeding.

preferring applicants who have a bachelor's or master's degree in engineering, business, economics, or one of the applied sciences.

Purchasing managers usually have at least a bachelor's degree and some work experience in the field. A master's degree may be required for advancement to some top-level purchasing manager jobs.

Training

Buyers and purchasing agents typically get on-the-job training for more than 1 year. During this time, they learn how to perform their basic duties, including monitoring inventory levels and negotiating with suppliers.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Purchasing Managers, Buyers, and Purchasing Agents on the Internet at <http://www.bls.gov/ooh/business-and-financial/purchasing-managers-buyers-and-purchasing-agents.htm#tab-4> (last visited March 24, 2015).

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

The *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into this occupation. Rather, the *Handbook* states that educational requirements usually vary with the size of the organization and extensive on-the-job training is typically provided. It further states that purchasing agents may be employed with a high school diploma but large stores and distributors *prefer* applicants with a bachelor's degree who have taken some business or accounting classes. We note that a preference for a particular type of preparation is not a requirement for the same. Further, the *Handbook* does not indicate that a degree in a *specific specialty* is required.

Further, the petitioner provided a printout from <http://www.ehow.com> that provides a job description for purchasing agents. According to this website "most employers require their purchasing agents to have a degree in business, economics, engineering, or a related field." The petitioner provides no explanation of the methodology or data relied upon by this website in making this determination, or why it is more authoritative than the *Handbook*. That said, even if this website was accurate and authoritative, it does not establish that a particular course of study is the

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

The petitioner also provided a printout from another website called <http://www.jobdescriptions.net>. Here again, the petitioner provides no explanation of the methodology or data relied upon by this website in making this determination, or why it is more authoritative than the *Handbook*. We note that the job description for purchasing agent duties and responsibilities is very brief and generalized. According to this website, an aspiring purchasing agent must have at least a bachelor's degree in business administration. Since there must be a close correlation between the required specialized studies and the position, the requirement of a general-purpose degree (or a degree with a generalized title such as business or business administration, without further specification) does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose degree (including 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 at 147.⁴ For the above reasons, we decline to rely on the printout from this website.

⁴ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

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

On appeal, the petitioner asserts that the director erred by relying solely on the *Handbook's* description of the occupational category "purchasing agents." The petitioner claims that while "the proffered position carries the title of Wholesaler Purchasing Agent, the duties outlined in [its] documents are not those of the average purchasing agent as described in the [*Handbook*]." The petitioner further claims that some of the beneficiaries' duties closely relate to the positions of "market research analyst" and "contractors administrator."⁵

We note that on appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

However, assuming *arguendo*, that the proffered position is that of a "market research analyst" and "contracts administrator," we find that the *Handbook* does not establish that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry for both occupational categories.

Id.

⁵ Notably, DOL's "Prevailing Wage Determination Policy Guidance" states that "[i]f the employer's job opportunity has worker requirements described in a combination of O*NET occupations, the [determiner] should default directly to the relevant O*NET-SOC occupational code for the highest paying occupation."

For this matter, if the proffered position is a combination of occupational categories purchasing agent, market research analyst, and administrative services manager (or contracts administrator), then the petitioner should have selected the occupational category for the highest paying occupational here; which, in this case, is administrative services managers. Specifically, a search of the Foreign Labor Certification Data Center Online Wage Library reveals that the prevailing wage for "Administrative Services Managers" SOC (O*NET/OES) Code [REDACTED] for [REDACTED] NJ) at a Level I is \$71, 718, which is higher than the beneficiary's proffered wage of \$43,000 per year.

Under the H-1B program, a petitioner must offer a beneficiary wages that are at least the actual wage level paid by the petitioner to all other individuals with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the LCA.⁵ *See* section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A); *Patel v. Boghra*, 369 Fed. Appx. 722, 723 (7th Cir. 2010). The LCA serves as the critical mechanism for enforcing section 212(n)(1) of the Act, 8 U.S.C. § 1182(n)(1). *See* 65 Fed. Reg. 80110, 80110-80111 (indicating that the wage protections in the Act seek "to protect U.S. workers' wages and eliminate any economic incentive or advantage in hiring temporary foreign workers" and that this "process of protecting U.S. workers begins with [the filing of an LCA] with [DOL]").

The subchapter of the *Handbook* entitled "How to Become a Market Research Analyst" states the following about this occupational category:

Most market research analysts need at least a bachelor's degree. Top research positions often require a master's degree. Strong math and analytical skills are essential.

Education

Market research analysts typically need a bachelor's degree in market research or a related field. Many have degrees in fields such as statistics, math, and computer science. Others have backgrounds in business administration, the social sciences, or communications.

Courses in statistics, research methods, and marketing are essential for these workers. Courses in communications and social sciences, such as economics, psychology, and sociology, are also important.

Some market research analyst jobs require a master's degree. Several schools offer graduate programs in marketing research, but many analysts complete degrees in other fields, such as statistics and marketing, and/or earn a Master of Business Administration (MBA). A master's degree is often required for leadership positions or positions that perform more technical research.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Market Research Analysts, on the Internet at <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-4> (last visited March 24, 2015).

The *Handbook* does not state that a baccalaureate or higher degree in a specific specialty, or its equivalent is normally the minimum requirement for entry into the occupation. This passage of the *Handbook* reports that market research analysts have degrees and backgrounds in a wide-variety of disparate fields. The *Handbook* states that employees typically need a bachelor's degree in market research or a related field, but the *Handbook* continues by indicating that many market research analysts have degrees in fields such as statistics, math, or computer science. According to the *Handbook*, other market research analysts have a background in fields such as business administration, one of the social sciences, or communications. The *Handbook* notes that various courses are essential to this occupation, including statistics, research methods, and marketing. The *Handbook* states that courses in communications and social sciences (such as economics, psychology, and sociology) are also important. As discussed, since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized

knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

Here, although the *Handbook* indicates that an advanced degree is typically needed for these positions, it also indicates that baccalaureate degrees in various fields are acceptable for entry into the occupation. In addition to recognizing degrees in disparate fields and backgrounds (i.e., social science and computer science) as acceptable for entry into this occupation, the *Handbook* also states that "others have a background in business administration." Again, 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 at 147. Therefore, the *Handbook's* recognition that a general, non-specialty "background" in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not normally the minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that working as a market research analyst does not normally require at least a bachelor's degree in a specific specialty, or its equivalent, for entry into the occupation, it does not support the proffered position as qualifying as a specialty occupation.

Likewise, we find that the *Handbook* also does not indicate that "contracts administrators" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. The occupational category "contracts administrators" is described in the section of the *Handbook* regarding the occupational category "Administrative Service Managers," which states that this position "handle[s] buying, storing, and distribution equipment and supplies" and that "[t]hey also oversee getting rid of surplus or unclaimed property."

The subchapter of the *Handbook* entitled "How to Become an Administrative Services Manager" states, in part:

Educational requirements vary by the type of organization and the work they do. They must have related work experience.

Education

A high school diploma or a General Educational Development (GED) diploma is typically required for someone to become an administrative services manager. However, some administrative services managers need at least a bachelor's degree. Those with a bachelor's degree typically study business, engineering, or facility management.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Administrative Services Managers, on the Internet at <http://www.bls.gov/ooh/management/administrative-services-managers.htm#tab-4> (last visited March 24, 2015).

The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into this occupation. The *Handbook* indicates that the educational requirements for the occupational category vary by the type of organization and the work performed. According to this passage of the *Handbook*, employees in this occupation must have related work experience.

Furthermore, the *Handbook* states that a high school diploma or a General Educational Development (GED) diploma is typically required for this occupation. Thus, the *Handbook* indicates that less than a bachelor's degree is acceptable for entry into this occupation. Moreover, the *Handbook* indicates that while some administrative services managers need at least a bachelor's degree, it continues by stating that employees study subjects in a range of fields—typically business, engineering, or facility management. The fact that only some employees in this occupation need a bachelor's degree (and that a range of disparate disciplines is acceptable) is not sufficient to establish that a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry.

As the evidence in the record of proceeding does not establish that at least a baccalaureate degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of this petition, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we find that 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 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.

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 at 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or any other authoritative resource, reports an industry-wide requirement of 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.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organization, the petitioner provided several job advertisements. However, upon review of the evidence, we find that the petitioner's reliance on the job announcements is misplaced.

For the petitioner to establish that an organization 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.

In the Form I-129 and supporting documentation, the petitioner stated that it is a "wholesale and incentives" business established in [REDACTED], with 35 employees. The petitioner stated its gross annual income is \$102 million and net annual income is \$575,000.

Upon review of the documents, we find that the advertisements do not establish that a requirement for a bachelor's degree in a specific specialty, or its equivalent, is common to the petitioner's industry in similar organizations for parallel positions to the proffered position.⁶ For example, the petitioner has submitted advertisements for organizations that do not appear to be similar to the petitioner. More specifically, the advertisements include positions with the following employers:

- [REDACTED] (glass and glazing systems supplier);
- [REDACTED] (development and manufacturing of computer-based automotive service equipment);
- [REDACTED] (consumer packaged goods manufacturing);
- [REDACTED] (information technology); and
- [REDACTED] (manufacturer of home improvements products and services).

The record also contains advertisements from staffing companies, [REDACTED] and also from [REDACTED]; however, the advertisements do not provide information regarding the employers. The petitioner did not supplement the record of proceeding with additional information or state which aspects or traits (if any) it shares with the advertising organizations. Without further information, the advertisements appear to be for organizations that are not similar to the petitioner.

Further, the petitioner has not established that the advertisements are for parallel positions. On appeal, the petitioner asserts that the duties of some advertised positions are similar to the proffered position. In support, the petitioner discusses some of the duties of certain selected positions to state

⁶ Moreover, the petitioner did not provide any independent evidence of how representative the job postings are of the particular advertising employers' recruiting history for the type of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the actual hiring practices of these employers.

that the duties are similar. However, we find that the petitioner did not sufficiently establish that the primary duties and responsibilities of the advertised positions are parallel to the proffered position. Specifically, the advertisements generally lack information to establish that the selected duties being discussed are the primary duties and responsibilities of the advertised positions. Moreover, based upon the information provided in the job postings, the advertised positions appear to be for more senior positions than the proffered position. For example, the position with [REDACTED] requires "2+ to 5 years" of experience, and [REDACTED] requires "5+ to 7+ years" of experience. As previously discussed, the petitioner designated the proffered position on the LCA through the wage level as a Level I (entry level) position relative to others within the occupation.

In addition, contrary to the purpose for which the advertisements were submitted, some job postings do not indicate that a bachelor's degree in a directly related specific specialty is required. For example, [REDACTED] and [REDACTED] require a 4-year degree, but do not indicate a specific specialty. As discussed, the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a specific specialty that is directly related to the specialty occupation claimed in the petition.

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.

Therefore, the petitioner has not satisfied the first of the two alternative prongs described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish a requirement for at least 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.

Next, we find that the petitioner did 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."

In support of its assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted various documents, including evidence regarding its business operations such as its brochures, incentive programs, wire transfer receipts from clients, and more. We reviewed the record in its entirety and find that the petitioner has not provided sufficient documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent.

Specifically, we incorporate by reference and reiterate our earlier discussion that the LCA indicates that the position is a low-level, entry position relative to others within the occupation. Based upon the Level I wage rate, the beneficiary is only required to have a basic understanding of the occupation. Moreover, the wage rate indicates that the beneficiary will perform routine tasks that

require limited, if any, exercise of independent judgment; his work will be closely supervised and monitored; he will receive specific instructions on required tasks and expected results; and his work will be reviewed for accuracy. Without further evidence, it is not credible that the petitioner's proffered position is complex or unique as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage.

The petitioner failed to demonstrate how the duties of the proffered position as described in the record require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it may believe are so complex and unique. While a few related courses may be beneficial, or even required, in performing certain duties of the position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position. The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

The petitioner has indicated that the beneficiary's educational background and work experience will assist him in carrying out the duties of the proffered position. On appeal, the petitioner asserts that the beneficiary's "broad range of experience with the global cosmetics industry coupled with his cross-cultural education in business and finance...has uniquely equipped him to fulfill 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 qualifies as a specialty occupation. The petitioner fails to demonstrate that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent. Consequently, as it has not been shown that the particular position for which this petition was filed is so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We turn next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which entails an employer demonstrating that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

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

While a petitioner may assert that a proffered position requires a specific degree that opinion alone without corroborating evidence cannot establish the position qualifies as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the 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").

In response to the RFE and also on appeal, the petitioner states that it has three employees working in this occupation and also an independent contractor. The petitioner asserts that one holds a master's degree, and the other three hold bachelor's degrees. In support, the petitioner submitted a Master of Arts degree in social sciences and W-2 Form for its signatory, [REDACTED]. The petitioner also submitted a Bachelor of Arts degree for [REDACTED] and W-2 Form for [REDACTED]. However, the degrees do not indicate the specific field of study completed, and the petitioner did not provide a job description for these individuals to establish that their positions are the same or similar to the proffered position.

As the record of proceeding does not present a history of recruiting and hiring only individuals with a bachelor's degree, or the equivalent, in a specific specialty for the proffered position, it does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, we find that the petitioner has not satisfied 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 specialty.

The petitioner provided information regarding the proffered position and its business operations. While the evidence provides some insights into the petitioner's business activities, the documents do not establish that the nature of the specific duties of the proffered position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

In the instant case, we note that relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. We incorporate 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 I position (out of four assignable wage-levels) relative to others within the occupational category, and hence one not likely distinguishable by relatively

specialized and complex duties. Without further evidence, the petitioner has not established that the proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a substantially higher prevailing wage. As previously noted, 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.

For these reasons, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the petitioner has not satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

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.

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