



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF U- LLC

DATE: NOV. 4, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a convenience store and gas station, seeks to temporarily employ the Beneficiary as a "Sales Manager" under the H-1B nonimmigrant classification. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the petition, concluding that the evidence of record did not establish that the proffered position qualifies as a specialty occupation. The Petitioner now files this appeal, asserting that the Director's decision was erroneous.

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 Director's request for evidence (RFE); (3) the Petitioner's response to the RFE; (4) the Director's letter denying the petition; and (5) the Petitioner's appeal and submissions on appeal.¹

As will be discussed below, we find that the evidence of record does not establish that the proffered position qualifies as a specialty occupation. For this reason, the appeal will be dismissed, and the petition will be denied.

I. THE PROFFERED POSITION

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position corresponds to Standard Occupational Classification (SOC) code and occupation

¹ We conduct appellate review on a *de novo* basis. *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015); *see also* 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

Also, in light of the Petitioner's references, on appeal, to the requirement that U.S. Citizenship and Immigration Services (USCIS) apply the "preponderance of the evidence" standard, we affirm that, in the exercise of our appellate review in this matter, as in all matters that come within our purview, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

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title 11-2022, “Sales Managers,” from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

In a letter submitted with the petition, the Petitioner described itself as a 10-employee company established in [REDACTED]. The Petitioner stated that it currently owns three convenience stores and gas stations located in [REDACTED] and [REDACTED], Rhode Island. The Petitioner stated that it wishes to employ the Beneficiary as a part-time sales manager “to manage the three Rhode Island stores.” The Petitioner explained that in the past, it had station managers who were “responsible for his own station but there was no overall coordination between the stations or anyone to actually look out and supervise the station managers.”

In response to the Director’s RFE, the Petitioner provided a list of job duties for the proffered position with the percentages of time spent on each duty, as follows:

- Manage store managers – schedule, hiring, train, allocate responsibilities within each store and supervise, evaluate employees (5%)
- Assist in developing strategic sales plan by analyzing financial reports (10%)
- Resolve customer complaints to improve customer service; set store protocols and procedures for resolving complaints (10%)
- Oversee upkeep and maintenance of the stores in compliance with company standards and [REDACTED] (5%)
- Research prices of retail goods – Negotiate with vendors (10%)
- Assist in preparing budgets, estimate and forecast inventory requirements (20%)
- Research local competition and gas prices to improve stores competitive edge (10%)
- Cash reconciliation per store (5%)
- Assure stores are in compliance with local, state and federal regulations (5%)
- Research business community for possible expansion (20%)

In addition, the Petitioner stated its minimum educational requirement for the proffered position as “at least a Bachelor’s degree in business administration.”

II. SPECIALTY OCCUPATION

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. Fed. 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 individuals 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 individual, 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 or 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

1. Substantive Nature of the Proffered Position

In establishing the position as a specialty occupation, the Petitioner must describe the specific duties and responsibilities to be performed by the Beneficiary in the context of the Petitioner’s business operations. USCIS looks at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer, as described in the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, and other salient aspects of the proposed employment.

Thus, a crucial aspect of this matter is whether the Petitioner has adequately described the duties of the proffered position, such that USCIS may discern the nature of the position and whether the position indeed requires the theoretical and practical application of a body of highly specialized

knowledge attained through at least a baccalaureate degree in a specific discipline. We find that the Petitioner has not done so here.

The Petitioner has described the duties comprising the proffered position in relatively abstract and undefined terms. That is, the descriptions lack sufficient detail and concrete explanation to establish the substantive nature of the work to be performed. For example, the Petitioner stated that the Beneficiary would spend 20% of his time on “[a]ssist in preparing budgets, estimate and forecast inventory requirements,” and another 10% of his time on “[a]ssist in developing strategic sales plan by analyzing financial reports.” However, the Petitioner did not further clarify what it meant by the broad term “[a]ssist,” or explain in detail the specific tasks the Beneficiary would perform in furtherance of these broadly-termed job duties. Nor has the Petitioner identified who the Beneficiary would assist, i.e., which of the Petitioner’s 10 employees are responsible for preparing budgets, forecasting inventory, and developing sales plans and financial reports. As another example, the Petitioner stated that the Beneficiary would spend another 20% of his time on the duty of “[r]esearch business community for possible expansion.” However, the Petitioner did not explain in detail what specific tasks the Beneficiary would perform in conducting his “[r]esearch.”

Of critical importance in this matter, the Petitioner has not sufficiently explained and documented its staffing and organizational structure in order to support its descriptions of the proffered position. For example, the evidence of record does not contain a detailed description of the positions and job duties that are performed by the Petitioner’s ten total employees at its three separate locations (each of which consists of a convenience store and a gas station). Without additional information regarding the Petitioner’s actual staffing and organizational structure, we cannot find that the Petitioner has sufficient support to employ the Beneficiary in the manner asserted, and to relieve him from performing non-qualifying duties. It is reasonable to assume that the size of an employer’s business has or could have an impact on the claimed duties of a particular position. *See EG Enters., Inc. v. Dep’t of Homeland Sec.*, 467 F. Supp. 2d 728 (E.D. Mich. 2006).

To illustrate, the Petitioner submitted an LCA corresponding to the O*NET SOC code and occupation title 11-2022, “Sales Managers.” According to O*NET, the duties of sales managers include “establish[ing] training programs for sales representatives” and “[analyzing] sales statistics gathered by staff.” O*NET OnLine Summary Report for the occupation “Sales Managers,” <http://www.onetonline.org/link/summary/11-2022.00> (last visited Oct. 29, 2015). Similarly, according to the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)* subchapter on “What Sales Managers Do,” sales managers “direct organizations’ sales teams” and “develop training programs for organizations’ sales representatives.”² U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., “Sales Managers,” <http://www.bls.gov/ooh/management/sales-managers.htm#tab-2> (last visited Oct. 29, 2015). However, it is not readily apparent from the limited evidence of record that the Petitioner’s ten employees actually include a “sales team” or “sales representatives,” in addition to the employees

² The *Handbook* may be accessed online, and is also available in printed form. Our references to the *Handbook* are from the 2014-15 edition available online.

who perform the day-to-day operational functions required to run three convenience stores and gas stations. Accordingly, the evidence of record is insufficient to establish that the Petitioner will actually employ the Beneficiary as a sales manager who will perform duties consistent with the "Sales Managers" occupational classification selected here.³

The Petitioner has not provided sufficient details regarding the nature and scope of the Beneficiary's employment or substantive evidence regarding the actual work that the Beneficiary would perform. Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The tasks as described fail to communicate (1) the substantive nature and scope of the Beneficiary's employment; (2) the actual work that the Beneficiary would perform; (3) the complexity, uniqueness and/or specialization of the tasks; and/or (4) the correlation between that work and a need for a particular educational level of highly specialized knowledge in a specific specialty (or its equivalent). Consequently, this lack of evidence prohibits a determination that the Petitioner's proffered position qualifies as a specialty occupation under the pertinent statutory and regulatory provisions.

The Petitioner has not established the substantive nature of the work to be performed by the Beneficiary, which therefore precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for entry into the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4. Thus, the evidence of record does not establish that the proffered position is a specialty occupation under the applicable provisions.

The material deficiencies in the record regarding the actual duties of the proffered position require the dismissal of this appeal. However, assuming for the sake of argument that the proffered position is a sales manager position as the Petitioner claimed in the LCA, we will continue our analysis pursuant to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

³ We withdraw the Director's comment that "[c]ompanies comparable to [the Petitioner] in nature would normally contract out for the services of a sales manager on an as-needed basis." The Director has not explained the factual basis or cited to any authoritative source to support such a comment. Thus, we find it unnecessary to address the Petitioner's emphasis regarding the part-time nature of the position (as opposed to being a full-time position). Again, we find the evidence of record insufficient to establish that the Petitioner will actually employ the Beneficiary as a sales manager who will perform duties consistent with the "Sales Managers" occupational classification, whether this position is part-time or full-time.

2. Analysis Pursuant to the Criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)

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

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 in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position that is the subject of the petition.

We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses. The *Handbook* states the following with regard to the educational requirements necessary for entrance into the “Sales Managers” occupational group:

Most sales managers have a bachelor’s degree and work experience as a sales representative.

Education

Most sales managers have a bachelor’s degree: some have a master’s degree. Educational requirements are less strict for job candidates who have significant experience as a sales representative. Courses in business law, management, economics, accounting, finance, mathematics, marketing, and statistics are advantageous.

U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., <http://www.bls.gov/ooh/management/sales-managers.htm#tab-4> (last visited Oct. 21, 2015).

The *Handbook* does not indicate that a bachelor’s degree *in a specific specialty*, or the equivalent, is normally required for entry into this occupation. That is, while the *Handbook* states that “[m]ost sales managers have a bachelor’s degree,” it does not state whether the bachelor’s degree must be in a *specific specialty*, and if so, which 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. In addition, the *Handbook* states that courses in a wide range of subjects including business law, management, and economics are “advantageous.” However, the *Handbook* does not state that such courses are *required*, or that these courses cumulatively lead to a bachelor’s degree in a specific specialty. As such, the *Handbook* does not support the Petitioner’s eligibility under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

When reviewing the *Handbook*, it also must be noted that the Petitioner designated the proffered position as a Level I (entry level) position on the LCA. The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is described as follows:

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

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.

Thus, in designating the proffered position at a Level I wage, the Petitioner has indicated that the proffered position is a comparatively low, entry-level position relative to others within the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the Beneficiary is only required to have a basic understanding of the occupation and carries expectations that the Beneficiary perform routine tasks that require limited, if any, exercise of judgment; that he would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results. As noted above, according to DOL guidance, a statement that the job offer is for a research fellow, worker in training or an internship is indicative that a Level I wage should be considered.

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.

We have also reviewed the information found in O*NET for the sales managers occupational classification; however, it, too, is insufficient to establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor's degree in a specific specialty, or its

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equivalent.⁴ O*NET is not particularly useful in determining whether a baccalaureate degree *in a specific specialty*, or its equivalent, is a requirement for a given position, as O*NET makes no mention of the specific field of study from which a degree must come. In other words, although O*NET indicates that a majority of employers require at least a bachelor's degree, it does not indicate whether these employers also require that the bachelor's degree be in any specific specialty. See O*NET OnLine Summary Report for the occupation "Sales Managers," <http://www.onetonline.org/link/summary/11-2022.00> (last visited Oct. 29, 2015). Similarly, the SVP rating of 7.0 to < 8.0 accorded to the sales managers occupational classification is not probative of the proffered position being a specialty occupation. SVP ratings are meant to indicate only the total number of years of training required for a particular position, and do not describe how those years are to be divided among training, formal education, and experience, and do not specify the particular type of degree, if any, that a position would require. For all of these reasons, O*NET does not support the Petitioner's eligibility under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).⁵

We have also reviewed the evaluation of the proffered position prepared by [REDACTED] Ph.D., the Director of Graduate Studies and Senior Lecturer in the [REDACTED] at the [REDACTED]. Consistent with the Petitioner, [REDACTED] concludes that the proffered position requires a minimum of a bachelor's degree in business administration with no further specification. Even if established by the evidence of record, the requirement of a bachelor's degree in business administration is inadequate to establish that a position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988). In addition to demonstrating that a job requires the theoretical and practical application of a body of specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must also establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, USCIS interprets 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

⁴ Although the Petitioner expressly cites to O*NET to support eligibility under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), we find it appropriate to consider O*NET under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

⁵ We also withdraw the Director's comment under this criterion that "USCIS recognizes that the position of a sales manager is normally considered professional." The Director has not explained the factual basis or cited to any authoritative source to support such a comment.

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Although [REDACTED] indicated that he “reviewed the position in detail,” he did not discuss the duties of the proffered position in any substantive detail. Further, while he noted that the Petitioner runs multiple convenience stores/gas stations, he did not demonstrate or assert in-depth knowledge of the specific business operations of the Petitioner itself or how the duties of the position would actually be performed in the context of the Petitioner’s business enterprise. For instance, there is no evidence that [REDACTED] visited the Petitioner’s business, observed the Petitioner’s employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job.

[REDACTED] asserted a general industry educational standard for sales manager positions without referencing any supporting authority or any empirical basis for the pronouncement. Likewise, he did not provide a substantive, analytical basis for his conclusion. He did not relate his conclusion to specific, concrete aspects of the Petitioner’s business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue. Accordingly, the very fact that he attributes a degree requirement to such a generalized treatment of the proffered position undermines the credibility of his opinion.

Furthermore, there is no indication that the Petitioner advised [REDACTED] that the Petitioner characterized the proffered position as a low, entry-level sales manager position, for a beginning employee who has only a basic understanding of the occupation (as indicated by the wage-level on the LCA) relative to other positions within the occupational category.⁶ It appears that [REDACTED] would have found this information relevant for his opinion letter. Moreover, without this information, the Petitioner has not demonstrated that [REDACTED] possessed the requisite information necessary to adequately assess the nature of the Petitioner’s position and appropriately determine parallel positions based upon job duties and responsibilities.

In summary, and for each and all of the reasons discussed above, we conclude that the opinion letter rendered by [REDACTED] does not establish that the proffered position qualifies as a specialty occupation. The conclusion reached by [REDACTED] is not supported by independent, objective evidence demonstrating the manner in which he reached such conclusions. There is an inadequate factual foundation established to support the opinion and we find that the opinion is not in accord with other information in the record. We may, in our discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm’r 1988). As a reasonable exercise of our discretion, we find that the professor’s opinion letter does not satisfy any criterion of

⁶ In designating the proffered position at a Level I wage, the Petitioner has indicated that the proffered position is a comparatively low, entry-level position relative to others within the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the Beneficiary is only required to have a basic understanding of the occupation and carries expectations that the Beneficiary perform routine tasks that require limited exercise of judgement.

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the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A).⁷ For efficiency's sake, we hereby incorporate the above discussion and analysis regarding the opinion letter into each of the bases in this decision for dismissing the appeal.

The record lacks sufficient evidence to support a finding that the particular position proffered here, an entry-level sales manager position (as indicated on the LCA), 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 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 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 the proffered position is one for which the *Handbook* or another authoritative source reports an industry-wide requirement for at least a bachelor's degree in a specific specialty, or its equivalent. Nor are there submissions from professional associations, firms, or individuals in the Petitioner's industry. The evidence of record is insufficient to establish eligibility under the first alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

⁷ In any event, ██████████ conclusion does not support the proposition that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. That is, ██████████ stated that the proffered position requires a minimum of a bachelor's degree in business administration. That conclusion does not assert that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. As was explained above, a requirement of a degree in business administration, with no further specificity, is not a requirement of a bachelor's degree in a specific specialty.

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 baccalaureate or higher degree in a specific specialty, or its equivalent.

We find that the Petitioner has not sufficiently developed relative complexity or uniqueness as aspects of the proffered position. In this regard, we refer to our earlier discussion and findings about the record's generalized descriptions of the proffered position and its proposed duties, which we incorporate by reference into our analysis here. The Petitioner's broad and generalized descriptions of the position are insufficient to distinguish the proffered position from other positions in the sales managers occupational group that can be performed by persons without at least a bachelor's degree in a specific specialty, or the equivalent.

As the evidence of record therefore does not establish how the proffered position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent, the Petitioner has not satisfied the second alternative prong at 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 or submitted evidence under this criterion. In fact, the Petitioner has acknowledged that this is its first time hiring for the proffered position, stating that "[t]his is the first time that we have in our employ a sales manager" and that it has "not previously employed anyone in this or any similar 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. The evidence is therefore insufficient to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).⁸

⁸ Moreover, while a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any

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

We find that the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the Petitioner to establish that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specific specialty or its equivalent.

As reflected in this decision's earlier discussion and findings regarding the Petitioner's generalized duty descriptions which we hereby incorporate into this present analysis, the duties as described in the record of proceeding do not show the level of specialization and complexity required to satisfy this criterion. That is, the duties of the proposed position are not presented with sufficient detail and explanation to distinguish from the nature of the duties for the sales managers occupational group whose performance does not require the application of knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or its equivalent.

The Petitioner stated that its business is "complex and multi-faceted" because it gets near-daily shipments of gasoline, frequent deliveries of merchandise, and conducts thousands of transactions per week worth approximately \$27,000 per day between its three gas stations. The Petitioner submitted "voluminous documentation as to the nature scope and activity of [its] business," including business licenses, invoices, store closing sheets, and other financial-related documentation. However, the Petitioner has not submitted a more detailed explanation establishing the significance of this documentation in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). For instance, the Petitioner did not explain or submit documentary evidence establishing how the nature of the Petitioner's business in the gas station/convenience store industry, or its gross annual income of approximately \$10 million, renders the proffered duties more specialized and complex than the duties of sales managers in other businesses or industries, the performance of which does not require a bachelor's degree in a specific specialty, or its equivalent.⁹ Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these

individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

⁹ The *Handbook's* subchapter regarding the work environment for sales managers indicates that the retail trade and wholesale trade industries employ approximately 40% of sales manager occupations. U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., <http://www.bls.gov/ooh/management/sales-managers.htm#tab-3> (last visited Oct. 29, 2015).

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proceedings. *In re Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l. Comm'r 1972)).

In addition, the Petitioner highlighted that it is a part of the [REDACTED] brand, and that as a result, it does not advertise or promote its stores individually. The Petitioner further stated that it relies on national advertising that is done on its behalf by [REDACTED] through national marketing programs. Again, however, the Petitioner has not submitted a more detailed explanation establishing the significance of these aspects of its operations.

For the reasons discussed above, we conclude that the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), as the evidence of record has not established that the duties of the proffered position are 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.

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 for classification as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

III. CONCLUSION

Based upon a complete review of the record of proceeding, we find that the evidence does not establish that the proffered position, as described, more likely than not constitutes a specialty occupation.¹⁰ Accordingly, the appeal will be dismissed and the petition will be denied.

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.

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¹⁰ Since the identified basis for denial is dispositive of the Petitioner's appeal, we will not address other grounds of ineligibility we observe in the record of proceeding.