



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

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

MATTER OF L-5S-D-C- LLC

DATE: NOV. 23, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a limousine transportation business, seeks to temporarily employ the Beneficiary as a “management analyst” 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, California Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. ISSUE

The issue before us is whether the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.¹

II. SPECIALTY OCCUPATION

For an H-1B petition to be granted, the Petitioner must provide sufficient evidence to establish that it will employ the Beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the Petitioner must establish that the employment it is offering to the Beneficiary meets the applicable statutory and regulatory requirements.

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

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).

- (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. The Proffered Position

On the Form I-129, the Petitioner indicated that it is seeking the Beneficiary’s services as a management analyst on a full-time basis. In addition, the Petitioner provided a brief job description for the proffered position.

In response to the RFE, the Petitioner provided a revised job description, along with the approximate percentage of time the Beneficiary will spend performing each duty, as follows:

Job Duties	Percent age of time spent	Level of respo nsibility	Hour s per wee k	Minimu m educati on	Training	Experience necessary
Conduct organizational	15%	High	5	Bachel or’s	The person should have	Bachelor’s degree or

<p>studies and evaluations. . . . [The Beneficiary] will be tasked with contacting and working with information technology developers to create an application for our company and he will advise management on most cost effective and efficient options to develop the mobile technology. He will conduct studies of the options available, market needs and make evaluations of available avenues for [the Petitioner] to develop the technology.</p>				Degree	analytical skills, ability to accomplish tasks at hand, training in Java Programming or other programming languages, [and] training on Windows systems.	higher, at least one year in a management position or management analyst position.
<p>[The Petitioner] has two innovative projects which management needs assistance of [the Beneficiary]. . . . [The Beneficiary] will be tasked with advising management on detailing, and analyzing bay area potential market segment demand for different needs to transportation.</p>	20%	Very High	5	Bachelor's Degree	The person should have analytical skills, ability to complete tasks at hand, [and] training in market analysis, [and] economics.	Bachelor's degree or higher, at least one year in a management position or management analyst position.

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Design systems and procedures [for the Petitioner] to adopt new technologies such as mobile application for convenient ordering of limousine services, [REDACTED] or [REDACTED] project. [The Beneficiary] will design systems to implement projects into current operations of [the Petitioner].	5%	Very High	5	Bachelor's Degree	The person should have analytical skills, ability to implement tasks at hand, [and] training in market analysis, [and] economics.	Bachelor's degree or higher, at least one year in a management position or management analyst position.
Conduct work simplification and measurement studies for current operations of [the Petitioner] to make ordering of services easy for customers and efficient for limousine drivers to take orders.	5%	High	4	Bachelor's Degree	The person should have analytical skills, training in accounting systems, information technology systems, [and] understanding of economics principals.	Bachelor's degree or higher, at least one year in a management position or management analyst position.
Prepare operations and procedures manuals to assist [the Petitioner's] management in operating more efficiently and effectively.	5%	High	5	Bachelor's Degree	The person should have analytical skills, [and] training in accounting systems, [and] information technology systems.	Bachelor's degree or higher, at least one year in a management position or management analyst position.
Gather and organize information on	10%	Very High	5	Bachelor's Degree	The person should have analytical	Bachelor's degree or higher, at

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problems or procedures with [the Petitioner] currently experiences such as retention of drivers and driver incentive and motivation processes to avoid losing drivers to [redacted] and other competitors.					skills, [and] training in accounting systems, [and] information technology systems.	least one year in a management position or management analyst position.
Analyze data gathered and develop solutions or alternative methods of proceeding to retain and incentivize [the Petitioner's] drivers.	5%	High	2	Bachelor's Degree	The person should have analytical skills, [and] training in accounting systems, [and] information technology systems.	Bachelor's degree or higher, at least one year in a management position or management analyst position.
Assist management in communicating with [the Petitioner's] personnel about systems (such as mobile applications) and services (such as [redacted] and [redacted] attractions tour services) to be implemented to ensure successful functioning of newly implemented systems or procedures[.]	5%	High	2	Bachelor's Degree	The person should have analytical skills, [and] training in accounting systems, [and] information technology systems.	Bachelor's degree or higher, at least one year in a management position or management analyst position.
Develop and implement records	15%	High	2	Bachelor's	The person should have	Bachelor's degree or

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management program for filing, protection, and retrieval of records of current management systems.				Degree	analytical skills, [and] training in accounting systems, [and] information technology systems.	higher, at least one year in a management position or management analyst position.
Document findings of study and prepare recommendations for implementation of new systems such as such as [sic] [redacted] and [redacted] attractions tour services, procedures, and organizational appropriate company changes[.]	5%	High	3	Bachelor's Degree	The person should have analytical skills, [and] training in accounting systems, [and] information technology systems.	Bachelor's degree or higher, at least one year in a management position or management analyst position.
Prepare manuals and train workers in use of new forms, reports, procedures or equipment, according to organizational policy when implementing new services and improving existing services.	10%	High	2	Bachelor's Degree	The person should have analytical skills, [and] training in accounting systems, [and] information technology systems.	Bachelor's degree or higher, at least one year in a management position or management analyst position.
Total:	100%		30-35			

(Verbatim. Column formatting has been adjusted.)

The Petitioner also stated in response to the RFE that “[a]t least a Bachelor’s degree is required of the candidate in business or related field.”

(b)(6)

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C. Analysis

As previously discussed, the issue before us is whether the Petitioner has provided sufficient evidence to establish that it would employ the Beneficiary in a specialty occupation position.

The Petitioner's claim that "[a]t least a Bachelor's degree is required of the candidate in business or related field" is inadequate to establish that the proposed 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, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558, 560 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, 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 bachelor's degree, such as a degree in business, 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 at 147.

Again, the Petitioner claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business. Without more, this assertion alone indicates that the proffered position is not in fact a specialty occupation. The Director's decision must therefore be affirmed and the appeal dismissed on this basis alone.

In addition, we find that there are inconsistencies in the record with regard to the proffered position. For instance, on the Form I-129 and the Labor Condition Application (LCA), the Petitioner asserted that the Beneficiary will serve as a management analyst. However, on appeal, the Petitioner submitted printouts from [REDACTED] which show the Beneficiary as a business manager for the Petitioner. In addition, the Petitioner submitted printouts from the website of the Better Business Bureau indicating that the Beneficiary is the owner of the petitioning company. No explanation for these inconsistencies was provided.

Moreover, the Petitioner has provided inconsistent information regarding its number of employees. For example, on the Form I-129, the Petitioner indicated that it has no employees, but 12 contractors. However, on appeal, the Petitioner states that it has a receptionist. No explanation for this variance

was provided. Also, the Petitioner did not address how the Beneficiary would be relieved from performing non-qualifying duties.²

For an H-1B petition to be granted, the Petitioner must provide sufficient evidence to establish that it will employ the Beneficiary in a specialty occupation position. “[I]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence.” *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92.

While these issues alone preclude approval of the petition, we will nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, discuss 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

To make our determination as to whether the employment described above qualifies as a specialty occupation, we turn first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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 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.³ In the instant case, the Petitioner provided an LCA in support of the petition stating that the occupational classification for the proffered position is “Management Analysts.”

We reviewed the chapter of the *Handbook* entitled “Management Analysts,” including the sections regarding the typical duties and requirements for this occupational category.⁴ The subchapter of the

² When reviewing the record, we find that it is reasonable to assume that the size of an employer’s business has or could have an impact on the duties of a particular position. See *EG Enters., Inc. v. DHS*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). Thus, the size of a petitioner may be considered as a component of the nature of the petitioner’s business, as the size impacts upon the duties of a particular position. In matters where a petitioner’s business is relatively small, we review the record for evidence that its operations, are, nevertheless, of sufficient complexity to indicate that it would employ the Beneficiary in a position requiring the theoretical and practical application of a body of highly specialized knowledge that may be obtained only through a baccalaureate or higher degree in a specific specialty, or its equivalent. Additionally, when a petitioner employs relatively few people, it may be necessary for the petitioner to establish how the beneficiary will be relieved from performing non-qualifying duties.

³ The *Handbook*, which is available in printed form, may also be accessed online at <http://www.stats.bls.gov/oco/>. Our references to the *Handbook* are from the 2014-15 edition available online. We hereby incorporate into the record of proceeding the excerpt from the *Handbook* regarding the occupational category “Management Analysts.”

⁴ For additional information regarding the occupational category “Management Analysts,” see U.S. Dep’t of Labor,

Handbook entitled “How to Become a Management Analyst” states the following about this occupation:

Most management analysts have at least a bachelor’s degree. The Certified Management Consultant (CMC) designation may improve job prospects.

Education

A bachelor’s degree is the typical entry-level requirement for management analysts. However, some employers prefer to hire candidates who have a master’s degree in business administration (MBA).

Few colleges and universities offer formal programs in management consulting. However, many fields of study provide a suitable education because of the range of areas that management analysts address. Common fields of study include business, management, economics, political science and government, accounting, finance, marketing, psychology, computer and information science, and English.

Analysts also routinely attend conferences to stay up to date on current developments in their field.

Licenses, Certifications, and Registrations

The Institute of Management Consultants USA (IMC USA) offers the Certified Management Consultant (CMC) designation to those who meet minimum levels of education and experience, submit client reviews, and pass an interview and exam covering the IMC USA’s Code of Ethics. Management consultants with a CMC designation must be recertified every 3 years. Management analysts are not required to get certification, but it may give jobseekers a competitive advantage.

Work Experience in a Related Occupation

Many analysts enter the occupation with several years of work experience. Organizations that specialize in certain fields typically try to hire candidates who have experience in those areas. Typical work backgrounds include management, human resources, and information technology.

U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Management Analysts, <http://www.bls.gov/ooh/business-and-financial/management-analysts.htm#tab-4> (last visited Nov. 17, 2015).

The *Handbook* reports that management analysts are not required to get certification, but it may give jobseekers a competitive advantage. According to the *Handbook*, the Institute of Management

Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Management Analysts, <http://www.bls.gov/ooh/business-and-financial/management-analysts.htm#tab-1> (last visited Nov. 17, 2015).

Consultants USA (IMC USA) offers the Certified Management Consultant (CMC) designation to those who meet minimum levels of education and experience, submit client reviews, and pass an interview and exam covering the IMC USA's Code of Ethics. There is no indication that the Petitioner requires the Beneficiary to have obtained the CMC designation or any other professional designation to serve in the proffered position.

Here, the *Handbook* indicates that baccalaureate degrees in various fields are acceptable for entry into the occupation. In addition to recognizing degrees in disparate fields (i.e., business, management, economics, political science and government, accounting, finance, marketing, psychology, computer and information science, and English), the *Handbook* states that a degree in business is acceptable. As previously noted, although a general-purpose bachelor's degree, such as a degree in business, 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 degree in business is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not normally the minimum requirement for entry into this occupation.⁵

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.

The *Handbook* does not support the claim that the occupational category of management analysts is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent. Even if it did, the record lacks sufficient evidence to support a finding that the particular position proffered here, an entry-level management analyst position (as indicated on the LCA), would normally have such a minimum, specialty degree requirement or its equivalent. The duties and requirements of the position as described in the record of proceeding do not indicate that this particular position proffered by the Petitioner is one for which a baccalaureate

⁵ 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. It is the Petitioner's responsibility to provide 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.

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)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other authoritative source) reports a standard industry-wide requirement for at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter.

The Petitioner submitted copies of job advertisements in support of the assertion that the claimed degree requirement is common to the Petitioner's industry in parallel positions among similar organizations. However, upon review of the documents, we find that the Petitioner's reliance on the job announcements is misplaced.

On the Form I-129, the Petitioner stated that it is a limousine transportation business with no employees and 12 contractors. The Petitioner also reported its gross annual income as \$514,747.76, and its net annual income as \$78,245.76. The Petitioner designated its business operations under the North American Industry Classification System (NAICS) code 48532.⁶ This NAICS code is designated for "Limousine Service."⁷ The U.S. Department of Commerce, Census Bureau website describes this NAICS code by stating, "This industry comprises establishments primarily engaged in providing an array of specialty and luxury passenger transportation services via limousine or luxury

⁶ According to the U.S. Census Bureau, the North American Industry Classification System (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 <http://www.census.gov/eos/www/naics/> (last visited Nov. 17, 2015).

⁷ A search of the code 48532 results in the description for "Limousine Service" listed under the code 485320.

sedans generally on a reserved basis. These establishments do not operate over regular routes and on regular schedules.” U.S. Dep’t of Commerce, U.S. Census Bureau, 2012 NAICS Definition, 485320 – Limousine Service, available at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited Nov. 17, 2015).

Although the Petitioner submitted job postings that appear to be for positions in the Petitioner’s industry, the advertisements do not appear to involve parallel positions. For example, one of the postings states that the marketing program manager position requires a degree, plus three years of experience in a design or merchandising capacity and two years of experience in a program management role. The Petitioner also submitted an advertisement for the position of retention operations manager that requires a degree, plus four years of management experience and two years of experience in an operational role.” The Petitioner designated its proffered position as a wage level I (entry level) position on the LCA.⁸ The advertised positions therefore appear to involve more senior positions than the proffered position. More importantly, the Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to those of the proffered position.

Moreover, the postings do not indicate that at least a bachelor’s degree in a directly related specific specialty (or its equivalent) is required.⁹ For instance, the postings state that a degree is necessary, but they do not state that a specific specialty is required. Thus, the job postings suggest, at best, that

⁸ The “Prevailing Wage Determination Policy Guidance” issued by DOL provides a description of the wage levels. A Level I wage rate is described by DOL 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.

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.

⁹ 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 a degree in a specific specialty that is directly related to the duties of the position. See section 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

In addition, since there must be a close correlation between the required “body of highly specialized knowledge” and the position, a minimum entry requirement of a degree in disparate fields would not meet the statutory requirement that the degree be “in *the* specific specialty,” 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).

a bachelor's degree is sometimes required for such positions, but not at least a bachelor's degree in a *specific specialty* (or its equivalent).¹⁰

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.¹¹ That is, not every deficit of every job posting has been addressed.

The Petitioner also submitted printouts from Uber's website regarding its employees. However, the Petitioner does not demonstrate that the individuals are employed in management analyst positions, and therefore, the documentation is irrelevant to the instant matter.

Thus, based upon a complete review of the record, the Petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the Petitioner's industry in positions that are (1) in the Petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the Petitioner. For the reasons discussed above, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The particular position is so complex or unique that it can be performed only by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent

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

In support of its assertion that the proffered position qualifies as a specialty occupation, the Petitioner described the proffered position and its business operations. Upon review, we find that the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the

¹⁰ 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.

¹¹ 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.

proffered position. 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 in performing certain duties of the position, the Petitioner has not demonstrated how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the 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.¹²

The record does not establish which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. The evidence of record does not establish that this position is significantly different from other positions in the occupational category such that it refutes the *Handbook's* information that a bachelor's degree in a specific specialty, or its equivalent, is not required for the proffered position.

The Petitioner claims that the Beneficiary is well qualified for the position, and references his qualifications. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. To this end, we review the Petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position, and any other documentation submitted by a petitioner in support of this criterion of the regulations.

¹² Again, the Petitioner designated the proffered position on the LCA at a Level I (entry level) wage level, which is the lowest of four assignable wage-levels. This designation indicates that the proffered position is a low-level, entry position relative to others within the "Management Analysts" occupational category.

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

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

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the Petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any individual with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

In response to the RFE, the Petitioner stated that it enclosed its advertisements for the proffered position. However, the advertisements were not provided. Upon review of the record of proceeding, we find that the Petitioner has not established a prior history of recruiting and hiring for the proffered position persons with at least a bachelor's degree in a specific specialty, or its equivalent.

The Petitioner has not provided probative evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Thus, the Petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that 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 Petitioner claims that the nature of the specific duties of the position in the context of its business operations 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 reviewed the Petitioner's statements regarding duties of the proffered position and its business operations. However, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent.

We further 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 (of the lowest of four assignable wage-levels) relative to others within the occupational category. Without more, the position is one not likely distinguishable by relatively specialized and complex duties. That is, without further evidence, the Petitioner has not demonstrated that its proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a substantially higher prevailing wage.¹³

Although the Petitioner asserts that the nature of the specific duties is specialized and complex, the record lacks sufficient evidence to support this claim. Thus, the Petitioner has submitted inadequate probative evidence to satisfy the criterion of the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied.

¹³ 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 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.

(b)(6)

Matter of L-5S-D-C- LLC

III. EMPLOYER-EMPLOYEE

Since the identified bases for denial are dispositive of the Petitioner's appeal, we need not address another ground of ineligibility we observe in the record of proceeding. Nevertheless, we will briefly note and summarize it here with the hope and intention that, if the Petitioner seeks again to employ the Beneficiary or another individual as an H-1B employee in the proffered position, it will submit sufficient independent objective evidence to address and overcome this additional ground in any future filing.

As previously discussed, the Petitioner submitted documentation that indicates that the Beneficiary is the owner of the petitioning company, which leaves unanswered questions as to whether or not he would be an "employee" having an "employer-employee relationship" with a "United States employer." See 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "United States employer" and requiring the Petitioner demonstrate that it will have an employer-employee relationship with the Beneficiary). Further, although we sent an RFE to the Petitioner to clarify the Beneficiary's role, the Petitioner did not submit all of the requested evidence, such as an organizational chart and its U.S. Federal Tax Return for 2014.¹⁴ Based on the evidence of record, it does not appear that the Petitioner will have the requisite employer-employee relationship with the Beneficiary.

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.

Cite as *Matter of L-5S-D-C- LLC*, ID# 12635 (AAO Nov. 23, 2015)

¹⁴ In response to our RFE, the Petitioner submitted a copy of its [REDACTED] business license certificate. Notably, the document includes an entry for the identity of the owner, but that entry is blank. In addition, the Petitioner provided a Form 1099 for the "owner and CEO," which classifies him as a "nonemployee." Notably, his last name is misspelled in the document. In addition, the Petitioner submitted a copy of the "owner and CEO's" driver's license, which was issued on November 1, 2007, and expired on September 8, 2012, three years prior to the RFE response. "Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the [petition]." 8 C.F.R. § 103.2(b)(14).