



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

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

MATTER OF U-S- INC.

DATE: OCT. 2, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an information technology firm, seeks to employ the Beneficiary in what it designates as a “Business Analyst” position. The Petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation. *See* 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The record of proceeding includes: (1) the Form I-129 and supporting documentation; (2) the Director’s request for evidence (RFE); (3) the Petitioner’s response to the RFE; (4) the notice of decision; and (5) the Form I-290B, Notice of Appeal or Motion, the Petitioner’s brief and additional documentation.

The Director, Vermont Service Center, denied the petition determining that the record did not establish that the proffered position qualifies as a specialty occupation. The matter is now before us on appeal. We find that the evidence of record does not overcome the Director’s grounds for denying this petition.¹ Accordingly, the appeal will be dismissed.

I. THE PROFFERED POSITION

The Petitioner attested on the required Labor Condition Application (LCA) that the occupational classification for the position is “Computer Systems Analysts,” SOC (ONET/OES) Code 15-1121, at a Level I (entry) wage.²

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

Also, in light of the Petitioner’s references 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, 375-376 (AAO 2010).

² *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.

In a March 31, 2014 letter, the Petitioner stated that the Beneficiary's duties and responsibilities included, but are not limited to, the following:

- Analyze user requirements, procedures, and problems to automate or improve existing systems and review computer system capabilities, workflow, and scheduling limitations.
- Responsible for analysis of current SAP system for system configuration, system testing and performance issues.
- Assess risk through evaluation of programs and provide recommendations for program effectiveness.
- Create flow charts and work flow diagrams using MS Visio.
- Configure settings for Controlling Area and Operating Concern, maintain Versions. Create Cost Element Groups, maintain Cost Element Attributes, Costing Sheet etc[.]
- Perform other activities like Cost Updates, Newly Costed Items, Final Cost Load, and Export Item Costs and add new changes as per new transformations.
- Configure business transactions for AP and AR including the Automatic payment.

[Verbatim.]

The Petitioner also further stated: "Because of the technical nature of the job duties, a qualified applicant must have at a minimum, a bachelor's degree in computer science, engineering, Mathematics, Statistics, applied science, business or related field."

In response to the RFE, the Petitioner described the typical responsibilities of a SAP Functional Analyst as well as revising and re-grouping the above list of duties and listing the percentage of time to be spent on the responsibilities as follows:

- Perform Business Analysis, GAP Analysis, Requirement Gathering – 25%
- Analyze the business requirements and integrate, configure, customize them into the SAP System to address business needs – 20%
- Create flow charts and work flow diagrams – 10%
- Configure settings for Controlling Area and Operating Concern, maintain Versions. Create Cost Element Groups, maintain Cost Element Attributes and Costing Sheet. Perform other activities like Cost Updates, Newly Costed Items, and Final Cost Load. Export Item Costs and add new changes as per new transformations. Configure business transactions for AP and AR including the Automatic payment – 40%
- Report and track defects/bugs identified during testing – 5%

The Petitioner stated further that "[d]ue to the complex nature of the job duties, the position of Business Analyst (SAP Functional) requires a Bachelor's Degree or foreign equivalent plus two to three years of work experience." The record, in response to the RFE, also included the Petitioner's advertisement for "Programmer Analysts, Software Developers, Systems Analysts, Business Analysts, Application Server Admins & Database Admins." The listed qualification on the

advertisement is a bachelor's degree in "Science/Engineering/IT/Business Related" and "1 to 2 years of experience in relevant technologies."

On appeal, the Petitioner asserts that "[t]he offered position is not an entry level position" and that the "job duties and function of the position are indicative of an advanced level, and the established requirements clearly arise from business and operational necessity."

II. SPECIALTY OCCUPATION

The principle issue in this matter is whether the proffered position qualifies as a 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. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires

the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

B. Analysis

As a preliminary matter, the Petitioner claims that a qualified applicant must have a bachelor's degree and lists a number of disciplines that would prepare the applicant to perform the job duties, including a degree in business, a degree of general application. However, if a bachelor's degree in "business" is sufficient to prepare the Beneficiary for entry into the proffered position, the position does not qualify 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 Assocs.*, 19 I&N Dec. 558 (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 administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).³

The Petitioner also claims that the proffered position requires a bachelor's degree plus two to three years of work experience and also that the "[t]he offered position is not an entry level position" and that the "job duties and function of the position are indicative of an advanced level" position. However, the Petitioner designated the proffered position as a Level I (entry level) position on the

³ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

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

Id.

LCA.⁴ The wage levels are defined in the Department of Labor's (DOL) "Prevailing Wage Determination Policy Guidance."⁵ 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. Based upon the Petitioner's designation of the proffered position as a Level I (entry) position, it does not appear that the Beneficiary will be expected to serve in a senior or leadership role or work at an advanced level. 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.

⁴ Wage levels should be determined only after selecting the most relevant O*NET code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.

⁵ Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

Fundamentally, it appears that (1) the Petitioner previously claimed to DOL that the proffered position is a Level I (entry) position to obtain a lower required wage; and (2) the Petitioner is now claiming to USCIS that the position is a higher-level and more complex position in order to support its claim that the position qualifies as a specialty occupation. The Petitioner cannot have it both ways. Either the position is more advanced and complex (based on a comparison of the employer's job requirements to the standard occupational requirements) and thereby necessitates a higher required wage, or it is an entry-level position for which the lower wage offered to the Beneficiary in this petition is acceptable. To permit otherwise would be directly contrary to the U.S. worker protection provisions contained in section 212(n)(1)(A) of the Act and its implementing regulations.

Here, the Petitioner's claim that the proffered position's minimum entry requirements may be satisfied with a general bachelor's degree or a general bachelor's degree in business, among other disparate degrees, is tantamount to an acknowledgment that the position is not a specialty occupation. The Petitioner's added claim, in response to the RFE, that the position also requires two to three years of work experience and its claim on appeal that the position is not an entry level position, conflict with its designation of the position as position requiring only a Level I (entry) position. Doubt cast on any aspect of the Petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

That being said and with the understanding that we are incorporating these comments and findings as part of our analysis of each of the criterion at 8 C.F.R. § 214.2(h)(4)(iii), we shall now separately address each of those criteria.

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 address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). This criterion requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. We recognize the DOL's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁶

The Petitioner attests on the LCA that the duties of the proffered position fall within the parameters of the occupational category of a computer systems analyst. A review of the *Handbook* does not indicate that, simply by virtue of its occupational classification, such a position qualifies as a specialty occupation. More specifically, the information on the educational requirements in the "Computer Systems Analysts" chapter of the 2014-2015 edition of the *Handbook* indicates at most that a bachelor's or higher degree in a computer or information science field may be a common

⁶ All of the references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>. The excerpt of the *Handbook* regarding the duties and requirements of the referenced occupational category is hereby incorporated into the record of proceeding.

preference, but not a standard occupational, entry requirement. See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Computer Systems Analysts," <http://www.bls.gov/ooh/Computer-and-Information-Technology/Computer-systems-analysts.htm#tab-4> (last visited Sept. 28, 2015). In fact, this chapter reports that many computer systems analysts may only have liberal arts degrees and programming or technical experience. See *id.* The *Handbook* also notes that many analysts have technical degrees but does not specify a degree level (e.g., associate's degree, baccalaureate) for these technical degrees. Moreover, the *Handbook* specifically states that such a degree is not always a requirement. Thus, the *Handbook* does not support the claim that the proffered position falls under an occupational group for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent.

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

We have reviewed the Occupational Information Network (O*NET) Summary Report for "Computer Systems Analysts" and find that O*NET does not state a requirement for a bachelor's degree for this occupation. Rather, it assigns this occupation a Job Zone "Four" rating, which groups it among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, O*NET does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty directly related to the occupation. Therefore, O*NET information is not probative of the proffered position being a specialty occupation.

The *Handbook* does not support the claim that the occupational category of computer systems 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 computer systems 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 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)(I).

*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 its proffered position is one for which the *Handbook* (or other independent, authoritative source) reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals."

The Petitioner submitted copies of several online job announcements. However, this documentation does not establish that the proffered position qualifies as a specialty occupation. We note that the Petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers' recruiting history for the type of jobs advertised. Further, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices.

Additionally, for the Petitioner to establish that an organization is similar, it must demonstrate that it shares the same general characteristics with the advertising organization. Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the Petitioner. When determining whether the Petitioner and the advertising organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the Petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion. In this matter, the Petitioner notes on appeal the difficulty of obtaining information on the

annual revenues or number of employees of other companies and asserts that it has “made reasonable efforts to only include information of companies engaged in similar kind of business (IT Solutions and Service providers).”

On the Form I-129, the Petitioner stated that it is an information technology company established in 2000. The Petitioner designated its business operations under the North American Industry Classification System (NAICS) code 541511 on the LCA and Form I-129. According to the U.S. Census Bureau, 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 Sept. 28, 2015). The NAICS code specified by the Petitioner is designated for “Custom Computer Programming Services,” and is defined by the U.S. Department of Commerce, Census Bureau as follows:

This U.S. industry comprises establishments primarily engaged in writing, modifying, testing, and supporting software to meet the needs of a particular customer.

U.S. Dep’t of Commerce, U.S. Census Bureau, 2012 NAICS Definition, 541511 – Custom Computer Programming Services, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited Sept. 28, 2015).

Even if considering that the advertising organizations are in the same industry, Custom Computer Programming Services, there is still insufficient information in the record regarding the advertising organizations to establish that the advertising organizations are similar to the Petitioner. Additionally, contrary to the purpose for which the advertisements were submitted, the postings do not establish that at least a bachelor’s degree in a *specific specialty*, or its equivalent, is required for the positions. For example, of the 11 advertisements submitted, one requires only a general bachelor’s degree, one requires an undefined technical degree, one requires an undefined degree in a “related field,” and four accept a bachelor’s degree in the general field of business as minimum educational requirements. Again general-purpose degrees may be a legitimate prerequisite for a particular position, however, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007). Thus, advertisements that request or require only a general-purpose degree are not probative to the issue of whether the Petitioner’s proffered position requires a degree in a *specific specialty*.

Additionally, the majority of the advertised positions appear to be more senior than the proffered position as they list between five and ten years of required experience in addition to a degree. As previously noted, the Petitioner characterized the proffered position as a Level I (entry) position on the LCA, even though it claimed the position required experience.⁷ Upon review, the job advertisements do not establish that similar organizations to the Petitioner routinely employ

⁷ DOL guidance states that Level I positions are appropriate for a worker-in-training or an individual performing an internship.

individuals with degrees in a specific specialty, in parallel positions in the petitioner's industry. Further, even if all of the job postings indicated that a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations, the Petitioner does not demonstrate what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations.⁸

The evidence of record does not establish that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is (1) common to the Petitioner's industry (2) in parallel positions (3) among organizations similar to the Petitioner. Thus, 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

A review of the record of proceeding indicates that the Petitioner has not credibly demonstrated that the duties the beneficiary will be responsible for or perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty, or its equivalent. Even when considering the Petitioner's description of duties, the Petitioner has not established why a few related courses or industry experience alone is insufficient preparation for the proffered position. While a few related courses may be beneficial, or even required, 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. Rather, the duties as described appear to incorporate tasks that can be performed by any individual with experience and/or the appropriate certifications in SAP functionality. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

This is further evidenced by the LCA submitted by the Petitioner in support of the instant petition. As noted above, the Petitioner attested on the submitted LCA that the wage level for the proffered position is a Level I (entry) wage. Such a wage level which only requires a basic understanding of the occupation; the performance of routine tasks that require limited, if any, exercise of judgment;

⁸ See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

close supervision and work closely monitored and reviewed for accuracy; and the receipt of specific instructions on required tasks and expected results, is contrary to a position that requires the performance of complex duties.⁹

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for such positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the evidence of record does not demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the Petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

The Petitioner has included information for the record to demonstrate it has employees who perform the duties of a SAP Functional Analyst and who have been approved for H-1B classification. However, the record does not include evidence of the specific duties these individuals provide to the Petitioner or to its clients. Additionally, although the Petitioner submits degree certificates, resumes, recent pay stubs, and IRS Forms W-2 to demonstrate that it employs individuals with degrees, the record does not include the underlying evidence establishing that these individuals have bachelor's degrees in a specific discipline directly related to those duties.¹⁰

Furthermore, 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 degree or even a degree in a specific specialty, such statements without corroborating evidence cannot establish the position as a specialty

⁹ 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.

¹⁰ While the Petitioner's list of employees identifies individuals that have been approved for H-1B classification, the record does not include the records underlying those approvals. Accordingly, we cannot examine the evidence to determine if those approvals were made in error, or not.

occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's 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"). Here, the evidence of record is insufficient to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on the Petitioner's normal hiring practices.

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 Petitioner in this matter has not submitted a job description that persuasively supports the claim that the position's day-to-day job responsibilities and duties would require the theoretical and practical application of a particular educational level of highly specialized knowledge in a specific specialty directly related to those duties and responsibilities. The overall responsibilities for the proffered position contain generalized technical functions without providing sufficient information regarding the particular work, and associated educational requirements, into which the duties would manifest themselves in their day-to-day performance within the Petitioner's operations. The Petitioner has not demonstrated how the Business Analyst/SAP Functional Analyst would engage in specialized and complex duties that require the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent.

In this case, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. Based upon a complete review of the record of proceeding, we conclude that the evidence does not establish that the position, as described, more likely than not constitutes a specialty occupation. The Petitioner has not described the duties of the position in such a way that establishes that the duties require more than the technical expertise of an individual trained and certified in SAP methodology. Although the Petitioner may desire a candidate that has a bachelor's degree, the Petitioner does not explain in detail how or why the duties are so complex or specialized that they require a bachelor's degree in a specific specialty, or its equivalent. The Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Accordingly, as the evidence does not satisfy any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation.

III. CONCLUSION

As set forth above, we find that the evidence of record does not establish that the proffered position qualifies for classification as a specialty occupation. Accordingly, 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.¹¹

ORDER: The appeal is dismissed.

Cite as *Matter of U-S- Inc.*, ID# 13783 (AAO Oct. 2, 2015)

¹¹ As the identified grounds of ineligibility are dispositive of the Petitioner's appeal, we need not address the additional issues in the record of proceeding we observe that also preclude approval of the petition.