



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

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

MATTER OF I-S-, INC.

DATE: OCT. 6, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a “[s]oftware development for the travel industry” firm, seeks to employ the Beneficiary in what it designates as a “Computer System Engineer” 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, California 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, and supporting materials. We reviewed the record in its entirety before issuing our decision.¹

The Director denied the petition determining that the record did not establish that the proffered position is a specialty occupation. The matter is now before us on appeal. Upon review of the entire record of proceeding, we find that the Petitioner has not overcome the Director’s grounds for denying this petition. Accordingly, the appeal will be dismissed.

I. THE PROFFERED POSITION

On the Form I-129, the Petitioner stated that the Beneficiary will work full-time on-site. The Petitioner submitted a Labor Condition Application (LCA) for a job prospect within the occupational classification of “Computer Systems Analysts” - SOC (ONET/OES Code) 15-1121, at a Level I (entry) wage.²

In an April 1, 2014, letter submitted in support of the petition, the Petitioner stated that it “provides software development and solutions to the travel industry, including development of Computerized Reservation Systems and Global Delivery Systems (CRS/GDS) using Transaction Processing

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

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.

Facility (TPF) platforms.” The Petitioner also stated that it seeks to utilize the Beneficiary’s services on a project at its headquarters in Colorado. The Petitioner set out the duties of the proffered position as:

- Conduct, lead, and coordinate software development activities throughout the project development lifecycle, including key design decisions for the technology, infrastructure and configuration of the Petitioner’s software systems;
- Conduct code review and design reviews to ensure that product quality is maintained;
- Provide solutions to team members regarding technical issues;
- Meet development schedules and ensure that software solutions meet the Petitioner’s technical specifications and design requirements;
- Coordinate project initiations and plans with the Petitioner’s offshore team, and track project status with team members;
- Provide project updates, and resolve issues as they arise on projects;
- Coordinate the deployment of software on test servers and assist with user acceptance testing;
- Lead the design, re-design and delivery of technology enabled applications, products and services within the Petitioner’s computing system environment;
- Resolve functional software and technical questions from Business Analyst and Quality Assurance Analysts;
- Serve as the coordinator between the Petitioner’s offshore team and onshore team to ensure seamless delivery of the Petitioner’s products;
- Provide weekly status reports to the Petitioner’s project managers, highlighting any project risks and mitigation plans; and
- Provide training to the Petitioner’s end users as well as application overviews.

[Paraphrased and bullet points added for clarity.]

The Petitioner stated that the position “requires at least a Bachelor’s degree, or equivalent, in Computer Science, Electronics Engineering, or a related field.”

In response to the Director’s RFE, the Petitioner allocated the Beneficiary’s time to six different functions as follows:

- Development (60%);
- Requirement analysis (15%)
- Architecture analysis and design (10%);
- Conducting Functional Unit Test Cases (5%)
- Performing SME [subject matter expert] Activities (5%); and,
- Coordinating with the offshore team to ensure a defect-free product (5%).

The Petitioner noted:

[The Beneficiary] will coordinate project development with the client and the offshore team. She will conduct requirement gathering and prepare the necessary functional requirement documents. She will be responsible for completing the design stage, base schema for extraction, transformation, and loading of target systems. [The Beneficiary] will prepare functional and technical specifications, including Technical Mapping documents, High Level Design Documents, and Low Level Design Documents. Further, she will design ETL jobs and file validation strategies and shell scripts according to the business requirements. She will optimize and conduct performance tuning of the ETL jobs and SQL databases, as well as conduct reviews of the work completed by the offshore team.

Moreover, [the Beneficiary] will analyze system requirements, providing estimates and a detailed design of the same. She will create and maintain knowledge management systems to preserve and build knowledge, analyzing the reusable components for future projects. She will review the feasibility of the requirements given provided, in conjunction with the client and the offshore team, in order to clearly understand any gaps which may exist. She will be responsible for analyzing and documenting the requirements as per specified standards. She will prepare the project requisite standards for design and construction; ensure that the defined standards for design and construction are available for project development; and ensure the proper review of analysis, design, test documents, and user manuals are effectively carried out. Further, [the Beneficiary] will ensure all defects are removed before the project enters the design phase and that all metrics of the defects, changes, and actual data of size, schedule, and effort are tracked and recorded. She will ensure the project is recorded in the project closure report and filed in the configuration library. [The Beneficiary] will track project computer resources, teams, risks, dependencies, assumptions, and schedules in order to project accurate estimation variations of the project and will report to the Project Manager for progress of the project. Finally, she will serve as a crucial point of contact with the customer after project initiation.

The Petitioner stated further that “because the above-listed duties, comprising the role of Computer System Engineer, are highly specialized and complex, they could not be performed by anyone other than an individual holding at least a Bachelor’s degree, or foreign equivalent, in the specific field of Computer Science, Electronics Engineering, or a closely related field.”

On appeal, the Petitioner clarified that the Beneficiary will spend 60 percent of her time on software development. The Petitioner stated that this will include: “developing, creating, and modifying general computer applications software and specialized utility programs” and that “advanced technical software development activities will require her to analyze user needs, develop software solutions, design software, and customize software for client use with the aim of optimizing operational efficiency.” The Petitioner also noted, among other things, that the Beneficiary will perform “systems management and integration functions.”

II. SPECIALTY OCCUPATION

The principle issue in this matter is whether the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

A. Legal Framework

To meet its burden of proof in this regard, the Petitioner must establish that the employment it is offering to the Beneficiary meets the following statutory and regulatory requirements.

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), 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

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

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 Department of Labor's *Occupational Outlook Handbook (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 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. 29, 2015). In fact, this chapter reports that many computer systems analysts may only have liberal arts degrees and programming or technical experience. *Id.* The *Handbook* also notes that many analysts have technical degrees but does not specify a degree level (e.g., associate's, bachelor's) for these technical degrees. Moreover, the *Handbook* specifically states that such a degree is not always a requirement.

When reviewing the *Handbook*, it also must be noted that the Petitioner designated the proffered position as a Level I (entry) position on the LCA.³ The wage levels are defined in the Department of Labor's (DOL) "Prevailing Wage Determination Policy Guidance."⁴ 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

³ 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.

⁴ 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.

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 she would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she 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 role or work at an advanced level within the occupation. 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.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. 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.

⁵ 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.

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In that regard, we have also reviewed the opinion letter authored by [REDACTED] Associate Professor, Department of Computer Systems Technology – [REDACTED] which the Petitioner submits for the first time on appeal. [REDACTED] bases his opinion on his educational and professional background in the fields of computer science and software technology. He notes that he has served as a professional consultant and software developer for numerous companies and “thus has supplemented his academic experience with additional professional exposure to different positions (and their requirements) across information technology, computing and other fields.” [REDACTED] notes that he has reviewed the Petitioner’s letter submitted on appeal and paraphrases the “expanded” job duties the Petitioner described in the appeal letter. [REDACTED] opines, based on his review of these duties and his background, that the proffered position:

[R]equires the ability to employ application and system development competencies utilizing quantitative systems analytical skills to understand and examine business and functional requirements for client needs, analyze gaps in technical and functional processes, and implement innovative and effective applications to address client objectives. As such, I find that the prescribed positional duties describe a fully professional position in the IT industry with sufficiently complex design, development, architecting, and testing duties to warrant a specialty-caliber Computer System Engineer.

[REDACTED] adds that the proffered position “is a professional-level computing position entailing advanced responsibilities in software design and requirement analysis, software coding and development, application testing and defect management, and system implementation, integration, verification, and support.” [REDACTED] opines further: “the position is ‘specialty’ in nature, requiring bachelor’s-level educational training in an appropriate technical field (such as Computer Science, Information Technology, or a related engineering field), or the equivalent.” [REDACTED] concludes:

Generalized knowledge of the applicable technical, scientific, and operational concepts, alone, is not sufficient for a Computer System Engineer to handle the functional requirements for the instant position. Bachelor’s-level training in a related technical field is instead required, and would allow an individual to analyze and design the types of programs required in accordance with the position’s core responsibilities, and also to manage and maintain the technologies, resources, and infrastructures used in creating and constructing assigned project deliverables.

[REDACTED] discusses the bachelor’s-level classes in computer science, information technology or a related engineering field and asserts that it “would be impractical to employ a Computer System Engineer who lacks a bachelor’s-level educational background (or the equivalent) comprising these and/or other related bachelor’s-level subjects.” However, he does not discuss the pertinent occupational information provided in the *Handbook* on the position of a computer systems analyst, the occupation the Petitioner attested to on the certified LCA as the occupational classification that

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most closely responds to the duties of the proffered position. He does not differentiate the proffered position from those computer systems analysts positions that the *Handbook* reports are performed by persons who have only a general degree and not a baccalaureate or higher degree in a specific specialty. To the extent that the opinion suggests that a computer systems analyst position comprises an occupational class that requires a bachelor's degree in a specific specialty, or the equivalent, the opinion conflicts with the information in the *Handbook* – and does so without acknowledgement of the fact or explanation.

Upon review of [REDACTED] opinion letter and the attached curriculum vitae we do not find a sufficient basis to accord deference to his opinion with regard to the particular area, for which the Petitioner offers the opinion, namely, the minimum education requirements for the performance of the particular position that is the subject of this petition. Even considered in the aggregate, [REDACTED] resume, including his professional, academic, and educational experiences, do not show that he has published, conducted research, run surveys, or engaged in any enterprise, pursuit, or employment - academic or otherwise – to provide him with special knowledge in the particular area upon which he opines. That is, [REDACTED] does not persuasively articulate – and the documents he presents do not show – exactly how his background so recommends his knowledge of H-1B specialty occupation requirements or of the minimum educational requirements for computer systems analysts, or other computer-related occupations, such that we should accord probative value to his opinion. While [REDACTED] may have anecdotal information regarding the minimum educational requirements for computer systems analysts and other technical occupations, information not set out in the opinion or any documentation, he has not supplied any relevant research, studies, surveys, or other authoritative publications as part of his review and/or as a foundation for his opinion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Moreover, [REDACTED] does not indicate whether he visited the Petitioner's business premises or spoke with anyone affiliated with the Petitioner, so as to ascertain and base his opinions upon the substantive nature and educational requirements of the proposed duties as they would be actually performed. Significantly, [REDACTED] does not discuss the fact that the Petitioner submitted an LCA certified for a wage-level that is appropriate for a comparatively low, entry-level computer systems analyst position, relative to others within this occupation, and which signifies that the Beneficiary is only expected to possess a basic understanding of the occupation. The omission of such important information diminishes the evidentiary value of his opinion. He also does not explain the empirical basis for his implication that the minimum industry hiring standards require a bachelor's degree in a specific discipline in order to perform the duties of the proffered position. Again, he does not specify or discuss any relevant research, studies, surveys, or other authoritative publications as part of his review and or as a foundation for his opinion regarding an industry standard.

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We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron Int'l*, 19 I&N Dec. 791 (Comm'r 1988). For the reasons discussed above, we find that [REDACTED]'s opinion letter does not merit recognition or weight as an expert opinion, and the opinion letter is not probative evidence towards satisfying any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, we hereby incorporate the above discussion and analysis regarding the opinion letter into each of the bases in this decision for dismissing the appeal.

The *Handbook* does not support the claim that the occupational category of computer systems analyst 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)(1).

*The requirement of a baccalaureate or higher degree in a specific specialty,
or its equivalent, is common to the industry in parallel
positions among similar organizations*

Next, we will review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being (1) in the Petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the Petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Here and as already discussed, the Petitioner has not established that 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."

On appeal, the Petitioner provided printouts of four online job announcements. However, this documentation also 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.

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, the submitted documentation 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.

None of the submitted advertisements provide sufficient information regarding the advertising organizations to establish that the advertising organizations are similar to the Petitioner. Further, all of the advertisements provided state the duties of the advertised positions in such abbreviated terms that we are unable to ascertain if the duties are parallel to the proffered position. While we are unable to determine the duties of the advertised positions, they all appear to be more senior than the proffered position. Three of the four advertisements list between two and five years of required experience in addition to a bachelor's degree; and, one advertisement which is for a senior computer systems analyst lists one year of required experience in addition to a master's degree. As previously noted, the Petitioner has characterized the proffered position as a Level I (entry) position on the LCA, a position that would not include advanced and independent responsibilities. DOL guidance states that Level I positions are appropriate for a worker-in-training or an individual performing an internship.⁶

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, one advertisement requires only a general bachelor's degree and one advertisement requires either an associate's or bachelor's degree. Another advertisement requires a

⁶ For additional information regarding wage levels, see DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf. A complete discussion of this topic is provided in a subsequent section of this decision.

bachelor's degree in an unidentified "technical discipline." USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose degree 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). Thus, the advertisement that requests a general-purpose degree and the advertisement that requests a degree in an unidentified technical discipline are not probative to the issue of whether the Petitioner's proffered position requires a degree in a *specific specialty*.

The job advertisements do not establish that similar organizations to the Petitioner routinely employ individuals with degrees in a specific specialty, in parallel positions in the Petitioner's industry. Further, it must be noted that 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 (which they do not), 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.⁷

Based upon a complete review of the record of proceeding, the Petitioner has not established 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. For these reasons, 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 demonstrates that the Petitioner has not credibly established 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. When considering the Petitioner's descriptions of duties and the LCA designation of the position as an entry-level position computer systems analyst position, the Petitioner has not presented a credible claim that the Beneficiary would engage in duties, so complex or unique that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform them.⁸ The Petitioner has not established why a few related

⁷ See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, 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 195-96 (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").

⁸ 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

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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.

In that regard, we again examined [REDACTED] opinion submitted on appeal. [REDACTED] lists courses that would prepare an individual to perform the duties the Petitioner describes on appeal, and asserts that it “would be impractical to employ a Computer System Engineer who lacks a bachelor’s-level educational background (or the equivalent)” in fields such as computer science, information technology or a related engineering field. Again, however, [REDACTED] does not include information on particular research, surveys or other authoritative publications he conducted or reviewed in support of this assertion.

The record in this matter lacks sufficiently detailed credible information that distinguishes 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. As the evidence of record does not credibly demonstrate how the proffered position is so complex or unique relative to other computer systems analyst positions 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 computer systems analyst and who have degrees in various technologies. However, the record does not include information regarding the underlying degrees, including if the degree is a foreign degree that it has been evaluated to be the equivalent of U.S. bachelor’s degree in a specific discipline. Additionally, the record includes information that the Petitioner employs individuals in the position of computer software engineer who have varying degrees of experience; however no information regarding these employees’ academic training or evaluation of experience is included.

We also point out that 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

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.

(b)(6)

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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 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 Petitioner has not established that it normally requires a degree in a specific discipline to perform the duties of the proffered position.

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 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 Petitioner provides broad descriptions identifying 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. For example, the Petitioner's descriptions are so generalized that it appears the proffered position may primarily encompass the duties of a software developer and not the duties of a computer systems analyst, as the Petitioner attested to on the LCA.⁹ As a result, we cannot ascertain the actual primary and essential duties and functions of the proffered position.

⁹ Although we recognize that a particular position may include overlapping duties, the Petitioner must choose the relevant occupational code for the highest paying occupation, in this case, "Software Developer, Applications" - SOC (ONET/OES Code) 15-1132 or "Software Developer, Systems Software" - SOC (ONET/OES Code) 15-1133. *See* FLC Online Data Center for "Software Developer, Applications," <http://www.flcdatacenter.com/OesQuickResults.aspx?code=15-1132&area= &year=14&source=1>, and "Software Developer, Systems Software," <http://www.flcdatacenter.com/OesQuickResults.aspx?code=15-1133&area= &year=14&source=1> (last visited Sept. 29, 2015). Both of these occupations are higher paying occupations than that of a computer systems analyst position in the Colorado geographical area. *See* FLC Online Data Center for "Computer Systems Analysts," <http://www.flcdatacenter.com/OesQuickResults.aspx?code=15-1121&area= &year=14&source=1> (last visited

Moreover, we observe again that the Petitioner has designated the proffered position as a Level I position on the certified LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation.¹⁰ Thus, the Petitioner's assertion that the duties of the proffered position are specialized and complex and include advanced responsibilities conflict with its designation of the position as a Level I position. A computer systems analyst position which encompasses specialized and complex duties would likely be classified as a Level III or Level IV position, requiring a significantly higher prevailing wage. It is incumbent upon the Petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the Petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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 computer technology. Although the Petitioner may desire a candidate that has a bachelor's degree, the Petitioner does not submit sufficient probative evidence explaining 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.

Sept. 29, 2015). To permit a petitioner to present a general description that appears to include primary duties in a higher paying occupation without so designating the higher paying occupation on the LCA, would result in a petitioner paying a wage lower than that required by section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A). Under the H-1B program, a petitioner must offer a beneficiary wages that are at least the actual wage level paid by the petitioner to all other individuals with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application. *See* section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A).

¹⁰ *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.

III. CONCLUSION

As set forth above, we find that the evidence of record does not sufficiently establish that the proffered position qualifies for classification as a specialty occupation. Accordingly, the appeal will be dismissed and the petition 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.

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