



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

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

MATTER OF T-3G-, INC.

DATE: OCT. 7, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an informational technology support business, seeks to employ the Beneficiary as a bench technician and to classify him as a nonimmigrant worker in a specialty occupation. *See* Immigration and Nationality Act (the Act) § 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 Director reviewed the record of proceeding and determined that the Petitioner did not establish eligibility for the benefit sought. Specifically, the Director stated that the Petitioner had not established that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory. The Director denied the petition.

The record of proceeding contains: (1) the Petitioner's Form I-129 and supporting documentation; (2) the Director's request for evidence (RFE); (3) the Petitioner's response to the RFE; (4) the Director's decision; (5) the Form I-290B, Notice of Appeal or Motion and supporting documentation; (6) our RFE; and (7) the Petitioner's response to our RFE. We reviewed the record in its entirety before issuing our decision.¹

For the reasons that will be discussed below, we agree with the Director that the Petitioner has not established eligibility for the benefit sought. Accordingly, the Director's decision will not be disturbed. The appeal is dismissed.

I. SPECIALTY OCCUPATION

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

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

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 387. 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.

In ascertaining the intent of a petitioner, USCIS looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the Director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that “[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required

evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation.”

B. Proffered Position

In the support letter, the Petitioner stated that the Beneficiary would perform the following job duties in the proffered position:

- Diagnose and resolve computer systems issues;
- Perform Virus/Malware removal and patches;
- Phase out/replace defunct system components;
- Install and perform repairs to hardware, software, or peripheral equipment, following design or installation specifications; [and]
- Develop training materials and procedures, or train users in the proper use of hardware or software.

The Petitioner also stated that the position requires at a minimum “a Bachelor’s degree (computer science or related field) or equivalent relevant experience.”

C. Analysis

As a preliminary matter, upon review of the Petitioner’s description of the duties of the proffered position, we find that the Petitioner does not provide any information with regard to the order of importance and/or frequency of occurrence with which the Beneficiary will perform the functions and tasks. Thus, the Petitioner does not specify which tasks were major functions of the proffered position and it does not establish the frequency with which each of the duties would be performed (e.g., regularly, periodically or at irregular intervals). As a result, the Petitioner did not establish the primary and essential functions of the proffered position.

Moreover, we find that the Petitioner, in its support letter and in response to the RFE, described the proposed duties in terms of generalized and generic functions that do not convey sufficient substantive information to establish the relative complexity, uniqueness and/or specialization of the proffered position or its duties. The abstract level of information provided about the proffered position and its constituent duties is exemplified by the Petitioner’s assertion the Beneficiary will “[d]iagnose and resolve computer system issues.” However, the statement does not provide any insight into the Beneficiary’s actual duties, nor does it include any information regarding the specific tasks that the Beneficiary will perform.

In addition, the Petitioner claimed that the Beneficiary will “[p]erform Virus/Malware removal and patches” and “[p]hase out/replace defunct system components.” Notably, the Petitioner did not demonstrate how the performance of these duties, as described in the record, would require the attainment of a bachelor’s or higher degree in a specific specialty, or its equivalent.

The Petitioner further claimed the Beneficiary will “[i]ninstall and perform repairs to hardware, software, or peripheral equipment, following design or installation specifications” and “[d]evelop training materials and procedures, or train users in the proper use of hardware or software.” The Petitioner’s statements do not convey any pertinent details as to the actual work involved in these tasks. The Petitioner does not explain the Beneficiary’s specific role and how his work will be conducted and/or applied within the scope of the Petitioner’s business operations. Furthermore, the Petitioner does not convey how a baccalaureate level of education (or higher) in a specific specialty, or its equivalent, would be required to perform these tasks. Thus, the overall responsibilities for the proffered position contain generalized 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 business operations.

Such generalized information does not in itself establish a necessary correlation between any dimension of the proffered position and a need for a particular level of education, or educational equivalency, in a body of highly specialized knowledge in a specific specialty. We also observe, therefore, that it is not evident that the proposed duties as described in this record of proceeding, and the position that they comprise, merit recognition of the proffered position as a specialty occupation. To the extent that they are described by the Petitioner, we find, the proposed duties do not provide a sufficient factual basis for conveying the substantive matters that would engage the beneficiary in the actual performance of the proffered position for the entire three-year period requested, so as to persuasively support the claim that the position’s actual work would require the theoretical and practical application of any particular educational level of highly specialized knowledge in a specific specialty, or its equivalent, directly related to the demands of the proffered position.

Furthermore, the Petitioner did not provide sufficient documentation to substantiate the job duties and responsibilities of the proffered position. The petitioner did not submit any documentation to substantiate the Beneficiary’s work product, nor did the Petitioner submit any financial documentation regarding the company’s business operations. The record of proceeding lacks documentation regarding the Petitioner’s business activities and the actual work that the beneficiary will perform to substantiate the claim that the Petitioner has H 1B caliber work for the Beneficiary for the period of employment requested in the petition. For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. 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. Comm’r 1972)).

That is, for H-1B approval, the Petitioner must demonstrate a legitimate need for an employee exists and to substantiate that it has H-1B caliber work for the Beneficiary for the period of employment requested in the petition. It is incumbent upon the Petitioner to demonstrate it has sufficient work to require the services of a person with at least a bachelor’s degree in a specific specialty, or its equivalent, to perform duties at a level that requires the theoretical and practical application of at

least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty for the period specified in the petition.

The Petitioner does not provide sufficient details regarding the nature and scope of the Beneficiary's employment or substantive evidence regarding the actual work that the Beneficiary would perform. Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The tasks as described do not communicate (1) the actual work that the beneficiary would perform, (2) the complexity, uniqueness and/or specialization of the tasks, and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty. The Petitioner's assertions with regard to the position's educational requirement are conclusory and unpersuasive, as they are not credibly supported by the job descriptions or substantive evidence.

Furthermore, we note that it is reasonable to assume that the size of an employer's business has or could have an impact on the duties of a particular position. *See EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). Thus, the size of a petitioner may be considered as a component of the nature of the petitioner's business, as the size impacts upon the duties of a particular position. In matters where a petitioner's business is relatively small, we review the record for evidence that its operations, are, nevertheless, of sufficient complexity to indicate that it would employ the beneficiary in position requiring the theoretical and practical application of a body of highly specialized knowledge that may be obtained only through a baccalaureate degree or higher in a specific specialty, or its equivalent. Additionally, when a petitioner employs relatively few people, it may be necessary for the petitioner to establish how the beneficiary will be relieved from performing non-qualifying duties. In the instant case, the Director specifically noted this issue in the RFE; however, the Petitioner elected not to address or provide probative documentation as to how the Beneficiary will be relieved from performing non-qualifying duties.

Finally, it must be noted that the case law cited by counsel in his March 25, 2014 letter pertain to immigrant visa petitions and whether the beneficiaries are members of the professions as defined in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), and as interpreted at those times. The issue before us is whether the Petitioner's proffered position qualifies as a nonimmigrant H-1B specialty occupation and not whether it is a profession. Thus, the matters cited by counsel are irrelevant to the instant petition.²

² The current, primary, and fundamental difference between qualifying as a profession and qualifying as a specialty occupation is that specialty occupations require the U.S. bachelor's or higher degree in a specific specialty, or its equivalent. Thus, while a position is specifically identified as qualifying as a profession as that term is defined in section 101(a)(32) of the Act, that occupation would not necessarily qualify as a specialty occupation unless it met the definition of that term at section 214(i)(1) of the Act.

Further, counsel furnishes no evidence and makes no assertion that the facts in these decisions are analogous to the instant petition. Regardless, even if the facts of those cases were analogous to those in this matter, they are unpublished decisions and, as such, not binding on us. While 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

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

Nevertheless, we will address each criterion of the regulations for the purpose of providing a comprehensive discussion on this issue. We will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which 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.

USCIS recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³ The Petitioner asserted in the Labor Condition Application (LCA) that the proffered position falls under the "Computer User Support Specialists" occupational category.⁴ We reviewed the section of the *Handbook* regarding the "Computer Support Specialists"

³ 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 occupational category designated by a petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. However, to satisfy the first criterion, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement or its equivalent for entry. That is, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title or designated occupational category. 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 Beneficiary, and determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F.3d 384.

⁴ The Petitioner also designated the proffered position as a Level I (entry level) position. The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels. A Level I wage rate is described by DOL as follows:

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

occupational category, including the section entitled “How to Become a Computer Support Specialist,” which describes the following preparation for the occupation:

Because of the wide range of skills used in different computer support jobs, there are many paths into the occupation. A bachelor’s degree is required for some computer support specialist positions, but an associate’s degree or postsecondary classes may be enough for others.

Education

Education requirements for computer support specialists vary. Computer user support specialist jobs require some computer knowledge, but not necessarily a postsecondary degree. Applicants who have taken some computer-related classes are often qualified. For computer network support specialists, many employers accept applicants with an associate’s degree, although some prefer applicants to have a bachelor’s degree.

Large software companies that provide support to business users who buy their products or services often require a bachelor’s degree. More technical positions are likely to require a degree in a field such as computer science, engineering, or information science, but for others, the applicant’s field of study is less important.

To keep up with changes in technology, many computer support specialists continue their education throughout their careers.

U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Computer Support Specialists, available at <http://www.bls.gov/ooh/computer-and-information-technology/computer-support-specialists.htm#tab-4> (last visited September 9, 2015).

The *Handbook* does not support the assertion that at least a bachelor’s degree in a specific specialty, or its equivalent, is normally the minimum requirement for these positions. More specifically, the *Handbook* states that there are many paths into the occupation. The *Handbook* reports that a bachelor’s degree is required for some computer support specialist positions, but that an associate’s degree or postsecondary classes may be enough for others. The narrative of the *Handbook* reports that computer user support specialist jobs require some computer knowledge, but not necessarily a postsecondary degree. The *Handbook* further states that many employers accept applicants with an associate’s degree, although some prefer applicants to have a bachelor’s degree. In addition, the *Handbook* reports that large software companies that provide support to business users who buy their products or services often require a bachelor’s degree. Furthermore, the *Handbook* states that more technical positions are likely to require a degree in a field such as computer science, engineering, or information science, but for others, the applicant’s field of study is less important. Thus, the *Handbook* does not support the claim that the occupational category of computer support specialists

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 bench technician position (as indicated on the LCA), would normally have such a minimum, specialty degree requirement or its equivalent.

The Petitioner also submitted a copy of the O*NET OnLine Summary Report for the “Computer User Support Specialists” occupational category. The Summary Report states that the “Computer User Support Specialists” occupational category has a designation of Job Zone 3, which indicates that medium preparation is needed. It also states that most occupations in this zone require training in vocational schools, related on-the-job experience, or an associate’s degree. See O*NET OnLine Help Center, available at <http://www.onetonline.org/help/online/zones>, for a discussion of Job Zone 3. This submission therefore strengthens our determination that the position does not satisfy this criterion. Even if the occupation has received a Job Zone 4 or higher designation, we would still find the O*NET information insufficient to establish that the position qualifies as a specialty occupation normally requiring at least a bachelor’s degree in a specific specialty, or its equivalent. Even when it indicates that a bachelor’s degree, or its equivalent, is necessary, the O*NET does not normally specify that a bachelor’s degree in any *specific specialty* is required, and does not, therefore, demonstrate that a position so designated qualifies as a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). Therefore, despite the Petitioner’s assertion to the contrary, the O*NET is not probative evidence that the proffered position qualifies as a specialty occupation.

In the instant case, 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)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative source) reports a standard industry-wide requirement for at least a bachelor’s degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. 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.” Nor does the record of proceeding contain any other evidence for consideration under this prong. Thus, based upon a complete review of the record of proceeding, we find that the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

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

In support of its assertion that the proffered position qualifies as a specialty occupation, the petitioner described the proffered position and its business operations. Upon review, we find that the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. For instance, the Petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it may believe are so complex and unique. While a few related courses may be beneficial, or even required, in performing certain duties of the position, the Petitioner does not demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position. The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them.⁵

⁵ Again, the Petitioner designated the proffered position on the LCA at a Level I wage level. This designation indicates that the proffered position is a low-level, entry position relative to others within the “Computer Support Specialists” occupational category. Such a designation is inconsistent with a claim that the duties of the position are complex and unique as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage. For example, a Level IV (fully competent) position is designated by DOL for employees who “use advanced skills and diversified knowledge to solve unusual and complex problems. For additional information regarding wage levels as defined by DOL, see U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev.

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

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

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

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

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the

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specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

The Petitioner stated in the Form I-129 petition that it has 16 employees and was established in [REDACTED] (approximately [REDACTED] years prior to the filing of the H-1B petition). However, upon review of the record, the Petitioner did not provide any documentary evidence regarding current or past recruitment efforts for this position. Furthermore, the Petitioner did not submit any information regarding employees who currently or previously held the position. The record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

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

The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

The Petitioner claims that the nature of the specific duties of the position in the context of its business operations is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. We reviewed the Petitioner's statements regarding the proffered position and its business operations. However, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent.

We further incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a Level I position (of the lowest of four assignable wage-levels) relative to others within the occupational category.⁶ Without more, the position is one not likely distinguishable by relatively specialized and complex duties. That is, without further evidence, the Petitioner has not demonstrated that its proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a substantially higher prevailing wage.⁷

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

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

II. CONCLUSION AND ORDER

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.⁸

ORDER: The appeal is dismissed

Cite as *Matter of T-3G-, Inc.*, ID# 11987 (AAO Oct. 7, 2015)

⁶ 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.

⁷ As previously discussed, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems" and requires a significantly higher wage.

⁸ As the identified ground for denial is dispositive of the Petitioner's continued eligibility, we need not address any additional issues in the record of proceeding.