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

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

MATTER OF N-W-, INC.

DATE: OCT. 16, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an authorized retailer of [REDACTED] wireless products and services, seeks to employ the Beneficiary as an Area Retail Sales and Operations Manager and to classify him as a nonimmigrant worker in a specialty occupation. *See* section 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 denied the petition, finding that the evidence of record did not establish that the proffered position qualifies as a specialty occupation.

The record of proceeding before us contains the following: (1) the Form I-129 and supporting documentation; (2) the Director's request for additional evidence (RFE); (3) the Petitioner's response to the RFE; (4) the Director's letter denying the petition; and (5) the Form I-290B, Notice of Appeal or Motion, and supporting documentation.

Upon review of the entire record of proceeding, we find that the evidence of record does not overcome the Director's basis for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

**I. SPECIALTY OCCUPATION**

The issue is whether the evidence of record demonstrates by a preponderance of the evidence that the Petitioner will employ the Beneficiary in a specialty occupation position.<sup>1</sup>

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<sup>1</sup> The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)).

A. Legal Framework

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

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 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 (1<sup>st</sup> 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 foreign nationals 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 foreign national, 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.

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## B. The Proffered Position

In its support letter, the Petitioner provided the following information regarding the duties of the proffered position:

The part-time ARSOM's [Area Retail Sales and Operations Manager's] duties will include: business development and ensuring that the company is operating properly, directly supervising the Manager of each of the company's seven (7) retail locations, including supervising each location's marketing efforts and training the Managers as to how to train their respective new hires; liaising with [REDACTED] to ensure that new information is rolled down to each of the stores; evaluating each store's performance to determine best practices and procedures; formulating and ensuring compliance with standard operating procedures throughout the stores; advising management as to ways to later or change operating procedures and implemented and followed; assisting the Director of Sales with supervising each store's operations and sales; and, as the company continues to grow, directly supervising the District Managers, as they are hired.

The Labor Condition Application (LCA) submitted by the Petitioner in support of the petition was certified for use with a job prospect within the "Sales Managers" occupational classification, SOC (O\*NET/OES) Code 11-2022, a Level I (entry-level) prevailing wage rate, the lowest of the four assignable wage-levels

In its RFE response letter, the Petitioner compared some of the proffered position's duties to those of Sales Managers as described in the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* to show their similarities. The Petitioner stated that it requires an individual with "a bachelor's degree in business administration, with a specialization in management" for the proffered position.

## C. Analysis

Considering the totality of all of the Petitioner's duty descriptions, we find that the evidence of record does not establish the depth, complexity, or level of specialization, or substantive aspects of the matters upon which the Petitioner claims that the Beneficiary will engage. Rather, the duties of the proffered position, and the position itself, are described in relatively generalized and abstract terms that do not relate substantial details about either the position or its constituent duties.

The abstract level of information provided about the proffered position and its constituent duties is exemplified by the Petitioner's assertion that the Beneficiary will be involved in "business development" and that he will "ensure that the company operates properly." However, these statements provide no insight into the Beneficiary's actual tasks. The abstract nature of the proposed duties is further illustrated by the Petitioner's statement that the Beneficiary will "[assist] the Director of Sales with supervising each store's operations and sales." The Petitioner does not explain the Beneficiary's specific tasks involved with assisting and supervising each store. Again, the

generalized nature of the duties is exemplified by the Petitioner's statement that the Beneficiary will train managers without providing any details regarding his role in the training activities, the frequency of the training sessions, and the substance of the trainings. Notably, the Petitioner does not explain how the performance of the proffered duties, as described in the record, would require the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent. This type of generalized description may be appropriate when defining the range of duties that may be performed within an occupational category, but it does not adequately convey the substantive work that the Beneficiary will perform within the Petitioner's business operations and, thus, cannot be relied upon by the Petitioner when discussing the duties attached to specific employment.

In the instant case, the Petitioner has not described the proffered position with sufficient detail to determine that the minimum requirements are a bachelor's degree in a specialized field of study. It is incumbent on the Petitioner to provide sufficient evidence to establish that the particular position that it proffers would necessitate services at a level requiring both the theoretical and practical application of a body of highly specialized knowledge and the attainment of at least a bachelor's degree in a specific specialty, or its equivalent. When "any person makes an application for a visa or any other document required for entry, or makes an application for admission, [. . .] the burden of proof shall be upon such person to establish that he is eligible" for such benefit. Section 291 of the Act; *see also Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972).

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 assertion with regard to the educational requirement for the position is conclusory and unpersuasive, as it is not supported by the job description or probative evidence. 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)).

Nevertheless, we will analyze the duties as described and the evidence of record to determine whether the proffered position as described would qualify as a specialty occupation. To that end and to make our determination as to whether the employment described above qualifies as a specialty occupation, we turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

*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 *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>2</sup> The Petitioner asserted in the LCA that the proffered position falls under the occupational category “Sales Manager.”

The *Handbook* states the following with regard to the educational requirements necessary for entrance into this field:

### **Education**

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

### **Work Experience**

Work experience is typically required for someone to become a sales manager. The preferred duration varies, but employers usually seek candidates who have at least 1 to 5 years of experience.

Sales managers typically enter the occupation from other sales and related occupations, such as sales representatives or purchasing agents. In small organizations, the number of sales manager positions is often limited, so advancement for sales workers usually comes slowly. In large organizations, promotion may occur more quickly.

U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., “Sales Managers,” available at <http://www.bls.gov/ooh/management/sales-managers.htm#tab-4> (last visited Oct. 14, 2015).

When reviewing the *Handbook*, we must note that the Petitioner designated the proffered position under this occupational category at a Level I on the LCA.<sup>3</sup> This designation is indicative of a

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<sup>2</sup> 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 excerpts of the *Handbook* regarding the duties and requirements of the referenced occupational category are hereby incorporated into the record of proceeding.

<sup>3</sup> The wage levels are defined in DOL’s “Prevailing Wage Determination Policy Guidance.” A Level I wage rate is described as follows:

comparatively low, entry-level position relative to others within the occupation and signifies that the Beneficiary is only expected to possess a basic understanding of the occupation. This designation suggests that the Beneficiary will not serve in a high-level position relative to others within the occupational category, and undermines the Petitioner's assertions to the contrary.

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 entry into this occupational category. Rather, the *Handbook* states that while most sales managers have a bachelor's degree, it does not state that they are required to possess a bachelor's degree in a specific specialty, or the equivalent. Although the *Handbook* does make provision for work experience, it does not state that such experience must be equivalent to a bachelor's degree in a specific specialty.

The *Handbook* does not indicate that employers normally require a degree in a *specific specialty* (or its equivalent) for entry into the occupation. The *Handbook* reports that courses in business law, management, economics, accounting, finance, mathematics, marketing, and statistics are advantageous for sales manager positions. A statement that various courses are *advantageous* is not an indication that such courses are *required*.

Moreover, in general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a statement that it is advantageous to take courses in disparate fields, such as business law, management, economics, accounting, finance, mathematics, marketing, and statistics, would not meet the statutory requirement that the degree be "in *the* specific specialty."<sup>4</sup> Section 214(i)(1)(B) (emphasis added). The text suggests that a baccalaureate degree or higher may be a preference among employers of sales managers in some environments, but that some

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**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.

For additional information on wage levels, 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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf) (last visited Oct. 14, 2015).

<sup>4</sup> Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty

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employers hire employees with less than a bachelor's degree. For employers requiring a degree, it appears that a degree in any field and/or in an unrelated field is acceptable. The narrative of the *Handbook* emphasizes the importance of work experience. The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

The Petitioner submitted an advisory opinion letter from [REDACTED], an associate dean at [REDACTED]. We reviewed the opinion letter in its entirety. However, as discussed below, the letter is not persuasive in establishing the proffered position as a specialty occupation position.<sup>5</sup>

In the letter, [REDACTED] asserts that “[t]heoretical and practical knowledge in business and operations, planning, and management equivalent to at least a Bachelor’s Degree or equivalent in business administration with a concentration in management or related field is required to perform the responsibilities of this job.” He then lists six courses which he claims that would “provide the minimum requisite knowledge and skills.” [REDACTED] provided a brief description of the Petitioner’s business and a job description for the proffered position. However, there is no indication that he possesses any knowledge of the Petitioner’s proffered position beyond this information. For example, he does not discuss the duties of the proffered position in any substantive detail. To the contrary, he simply lists the tasks in bullet-point fashion, and claims that the appropriate knowledge required for these job duties would be a bachelor’s degree in business administration or a related area. He does not demonstrate or assert in-depth knowledge of the Petitioner’s specific business operations or how the duties of the position would actually be performed in the context of the Petitioner’s business enterprise. For instance, there is no evidence that [REDACTED] has visited the Petitioner’s business, observed the Petitioner’s employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. [REDACTED] opinion does not relate his conclusion to specific, concrete aspects of this Petitioner’s business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue. The very fact that he attributes a degree requirement to such a generalized treatment of the proffered position undermines the credibility of his opinion. Importantly, his statements are not supported by copies or citations of research material that may have been used. He has not provided sufficient facts that would support the contention that the proffered position requires at least a bachelor’s degree in a specific specialty.

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<sup>5</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. 8 C.F.R. § 214.2(h)(4)(ii). A recognized authority’s opinion must state: (1) the writer’s qualifications as an expert; (2) the writer’s experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. *Id.*

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Moreover, [REDACTED] assertion that the proffered position requires an applicant to hold a minimum of a bachelor's degree in business administration or a related field is inadequate to establish that a position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). In addition to demonstrating that a job requires the theoretical and practical application of a body of specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must also establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, USCIS interprets the supplemental degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

In his letter, [REDACTED] provides weblinks to three job announcements and asserts that parallel positions in organizations similar to the Petitioner "routinely recruit and employ individuals with at least a Bachelor's Degree or equivalent in business, or related field plus experience." However, the record of proceeding does not contain copies of these advertisements. In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). In any event, the Petitioner did not supplement [REDACTED] letter with evidence to demonstrate that these organizations are similar to the Petitioner. More importantly, the Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to those of the proffered position. Furthermore, [REDACTED] does not state that the advertised positions require a bachelor's degree in a specific specialty. Rather, [REDACTED] state that these positions require "at least a bachelor's degree in a related field plus experience" without specifying any degree specialty, which undermines his assertion that the proffered position is a specialty occupation. Again, USCIS interprets the supplemental degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring a degree in a specific specialty that is directly related to the proffered position.

Furthermore, [REDACTED] description of the position upon which he opines does not indicate that he considered, or was even aware of, the fact that the Petitioner submitted an LCA certified for a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation which, as discussed above, signifies that the Beneficiary is only expected to possess a basic understanding of the occupation. In any event, he nowhere discusses this aspect of the proffered position. We consider this a material omission, in that it suggests an incomplete review of the position in question and a faulty factual basis for his ultimate conclusion as to the educational requirements of the position upon which he opines. The author's omission of such an

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important factor as the LCA wage-level significantly diminishes the evidentiary value of his assertions. The Petitioner's LCA wage-level designation does not support [REDACTED] conclusion that the proffered position is "so complex and specialized."

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 International*, 19 I&N Dec. 791 (Comm'r 1988). As a reasonable exercise of our discretion we discount the advisory opinion letter as not probative of any criterion of 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.

In summary, for the reasons discussed above, we conclude that the opinion letter rendered by [REDACTED] does not establish the proffered position as a specialty occupation. The conclusions reached by [REDACTED] lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which he reached such conclusions. Therefore, we decline to defer to [REDACTED] findings and ultimate conclusions, and further find that his opinion letter is not probative evidence towards satisfying any criterion of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon review of the totality of the evidence in the entire record of proceeding, we conclude that the Petitioner has not established that the proffered position falls within an occupational category for which the *Handbook*, or other authoritative source, indicates that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is normally required for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the particular position that is the subject of this petition 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 first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

*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 of proceeding 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.

As discussed above, [REDACTED] opinion letter is insufficient to demonstrate that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that

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are identifiable as being (1) in the Petitioner's industry, (2) parallel to the proffered position, and (3) located in organizations that are similar to the Petitioner. We therefore incorporate by reference our previous discussion on the matter.

In a letter dated August 21, 2014, [REDACTED] CEO of [REDACTED] asserted that [REDACTED] like the Petitioner, is an authorized retailer of [REDACTED] products and services. He further stated that his company's "standard is to require a Bachelor of Business Administration degree in management for our District Manager position." [REDACTED] did not provide any information with regard to what constitutes the duties of the "District Manager" position. Nor did he support his assertions with independent and objective evidence. Counsel stated that for "privacy reasons," [REDACTED] did not submit the educational credentials of his company's employees. Furthermore, [REDACTED] did not provide any supporting evidence to demonstrate that [REDACTED] both conducts business in the Petitioner's industry and is also similar to it. Again, 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. at 165. Moreover, [REDACTED] provided no information to demonstrate that the duties of the district manager position in his company parallel those of the proffered position. Furthermore, as we discussed above, a requirement of a general degree such as a bachelor's degree in business administration is insufficient to demonstrate that a position is a specialty occupation. We incorporate by reference our previous discussion on the matter.

Thus, based upon a complete review of the record, we find that the Petitioner has not established that a requirement for at least a bachelor's 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. 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*

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 the instant case, the Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of area retail sales and operations manager. Specifically, the record does not demonstrate how the area retail sales and operations manager position described

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<sup>6</sup> The Florida Department of State Division of Corporations' website reveals that [REDACTED] is the Petitioner's registered agent and one of its officers.

requires the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them.

This is further evidenced by the LCA submitted by the Petitioner in support of the instant petition. The LCA indicates a wage level at a Level I (entry) wage, which is the lowest of four assignable wage levels.<sup>7</sup> Without further evidence, the evidence does not demonstrate that the proffered position is complex or unique as such a position falling under this occupational category 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.<sup>8</sup> 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."<sup>9</sup> The evidence of record does not establish that this position is significantly different from other positions in the occupational category such that it refutes the *Handbook's* information that a bachelor's degree in a specific specialty, or its equivalent is not required for the proffered position.

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

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

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

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<sup>7</sup> As previously mentioned, the wage-level of the proffered position indicates that (relative to other positions falling under this occupational category) the Beneficiary is only required to have a basic understanding of the occupation.

<sup>8</sup> 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.

<sup>9</sup> For additional information regarding wage levels as defined by DOL, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

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.

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

The record of proceeding does not establish the Petitioner's history of recruiting and hiring for the proffered position that would be necessary to satisfy that the position actually requires the theoretical and practical application of knowledge. Although the fact that a proffered position is a newly-created one is not in itself generally a basis for precluding a position from recognition as a specialty occupation, an employer that has never recruited and hired for the position cannot satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

As the record of proceeding does not demonstrate that the Petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the proffered position, it does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

*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. 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.<sup>10</sup>

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

For the reasons related in the preceding discussion, the Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed.<sup>11</sup>

## 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.

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<sup>10</sup> 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.

<sup>11</sup> As the grounds discussed above are dispositive of the Petitioner's eligibility for the benefit sought in this matter, we will not address and will instead reserve our determination on the additional issues and deficiencies that we observe in the record of proceeding with regard to the approval of the H-1B petition.

*Matter of N-W-, Inc.*

**ORDER:** The appeal is dismissed.

Cite as *Matter of N-W-, Inc.*, ID# 14084 (AAO Oct. 16, 2015)