



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

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

MATTER OF P-&S-, CTD.

DATE: SEPT. 18, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a law firm, seeks to employ the Beneficiary as a billing, cost and rate clerk 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, California 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.

I. SPECIALTY OCCUPATION

The primary issue is whether the evidence of record has demonstrated by a preponderance of the evidence that the petitioner will employ the beneficiary in a specialty occupation position.¹

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

¹ The "preponderance of the evidence" standard requires that the evidence demonstrate that the Petitioner'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)). We have accordingly examined each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence.

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 (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. The Proffered Position

In the Form I-129, the Petitioner stated that it wishes to employ the Beneficiary as a full-time billing, cost and rate clerk. In its March 24, 2014 support letter, the Petitioner provided the following information regarding the duties of the proffered position:

[The Beneficiary's] duties will include working with attorneys in structuring and compiling legal invoices and bills, compiling data, computing fees and charges and preparing final invoices for billing purposes. Monitoring attorney billing rates, submitting bills to client websites, reviewing and attending to fee and cost appeals by

clients. Also, compiling financial reports from time and billing systems and creating appropriate Excel spreadsheets. In addition, monitoring draft billing memos to ensure compliance with client guidelines and accuracy prior to billing client and conferring with firm attorneys regarding billing issues as they arise.

In the RFE response letter, the Petitioner provided the following job description²:

Issue bills timely and accurately according to client guidelines, and in compliance with firm guidelines. Attach necessary back-up or correspondence. Be familiar with and post bills to various e-billing websites. (75%)

Ensure bills are presented professionally and appropriately represent the firm.

Identify and promptly resolve e-billing issues and Adjusters and firm partners. (10%)

Review file opening forms for each new matter, insert necessary billing comments and correct billing rates. Ensure all bills meet client guidelines. Update attorney billing rates as requested. (5%)

Produce, distribute, and edit proforma [sic] bills at the beginning of each month. (5%)

Respond to information requests from lawyers, clients and secretaries pertaining to entries, reconciliations and cash receipts. Create and print the appropriate Omega reports for various inquiries. Create Excel spreadsheets as necessary to distribute information in a concise manner. (5%)

Assist attorneys with client audits and budgets.

Assist with application of unidentified cash receipts. Back up the Accounts Receivable/Collections co-ordinator [sic].

Assist timekeepers with entry issues and matter transfers. Ensure all time is entered and balanced within the month end deadline[.]

Work with the firm's Executive Committee for approval of rates, discounts and write-offs.

² We note that the percentages of time as provided exceed 100 percent, and includes duties that are not included in the percentages indicated, which detract from the probative value of the Petitioner's list. Moreover, the Petitioner stated that the listed duties were "general" and should "not be construed as an exhaustive statement of essential functions, responsibilities or requirements." As the record of proceeding does not contain all essential functions and responsibilities of the proffered position, we cannot make a determination regarding the primary and essential nature of the duties of the proffered position.

Develop and implement plans to achieve annual performance goals, monthly billing targets and deadlines.

Contribute to special projects, develop strategies to put in place innovative and efficient billing proactive to meet ever demanding needs in globally expanding legal market.

Proactively co-ordinate, assess, review and provide feedback and suggested improvements to management regarding efficiencies in work product, performance and staffing.

Ensure strict adherence to firm and office ethics and procedural policies.

Perform all other responsibilities associated with the position as may be requested by management.

All other above duties[,] (5%)

The above is intended to describe the general content and requirements of the job. It is not to be construed as an exhaustive statement of essential functions, responsibilities or requirements.

In support of the petition, the Petitioner submitted a Labor Condition Application (LCA) stating that the proffered position corresponds to the occupational category "Billing and Posting Clerk"-SOC (ONET/OES Code) 45-3021, at a Level II (qualified) wage.

C. Preliminary Findings

As discussed above, consonant with section 214(i)(1) of the Act and 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 at 147. However, while the evidence indicates that the petitioner may prefer an individual with a bachelor's degree, it does not demonstrate by a preponderance of the evidence that the petitioner requires an individual with a bachelor's degree *in a specific specialty*, or the equivalent.

For example, in its August 5, 2014, response to the Director's RFE, the Petitioner stated that the proffered position requires "a [m]inimum of a Bachelor's Degree." The Petitioner did not report a requirement that the degree be in any particular specialty. The Petitioner did not specify a requirement for a bachelor's degree in a specific specialty in its letter dated March 24, 2014, either; instead it merely reported a requirement that the individual possess a bachelor's degree "with a concentration in business and courses in accounting and computers."

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The record of proceeding also contains information regarding several of the Petitioner's other employees who are claimed to hold, or have held in the past, positions similar to the one proffered here. The degrees held by these individuals indicate that a wide spectrum of specialties would adequately prepare an individual to perform the proposed duties. For example, the evidence of record indicates that the individuals possessed bachelor's degrees in economics, English, and business/finance. These diverse educational credentials do not indicate a requirement for a bachelor's degree in a specific specialty, or the equivalent. That the Petitioner now wishes to hire the Beneficiary who, according to the submitted credentials evaluation, possesses the equivalent of a bachelor's degree in geography and history, along with one year of graduate-level study in business, indicates further that a bachelor's degree in a specific specialty, or the equivalent, is not required to perform the duties of the proffered position.

The two letters submitted by the Petitioner as expert opinions constitute further evidence that a bachelor's degree in a specific specialty, or the equivalent, is not required to perform the proposed duties. [REDACTED], a CPA, indicates that a bachelor's degree in any field would suffice, although a successful applicant would "preferably" have taken coursework in accounting, finance, and information systems. However, "preferences" do not indicate that such courses are required for the position. In similar fashion, although Dr. [REDACTED] states that a bachelor's degree is "increasingly required," he does not indicate that the degree must be in any particular specialty.³

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. There must be a close correlation between the required specialized studies and the position; thus, the mere requirement of a degree, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558 (Comm'r 1988) ("The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility."). Thus, while a general-purpose bachelor's 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 at 147.

The Petitioner asserts that its minimum requirement for the proffered position is only a bachelor's degree, without further requiring that that degree be in any specific specialty, which alone indicates that the proffered position is not in fact a specialty occupation. The Director's decision must therefore be affirmed and the appeal dismissed on this basis alone.

³ As neither of these letters indicates that a bachelor's degree *in a specific specialty*, or the equivalent, is required to perform the duties of the proffered position, they are not persuasive in establishing that the proffered position qualifies as a specialty occupation. We therefore will neither discuss these letters further nor discuss any of the additional evidentiary deficiencies we observe therein.

D. Analysis

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

We will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied by establishing that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position that is the subject of the petition. We recognize the U.S. Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.⁴

The *Handbook* discusses the duties and educational qualifications of "Billing and Posting Clerks" within the "Financial Clerks" occupational category. The *Handbook* states the following with regard to the educational credentials necessary for entrance into this field:

A high school diploma or equivalent is enough for most jobs as a financial clerk. These workers usually learn their duties through on-the-job training.

Education

Financial clerks typically need a high school diploma or equivalent to enter the occupation. Employers of brokerage clerks may prefer candidates who have taken some college courses in business or economics, and in some cases require a 2- or 4-year college degree.

Training

Most financial clerks learn how to do their job duties through on-the-job training. Some formal technical training also may be necessary; for example, gaming cage workers may need training in specific gaming regulations and procedures.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Training and Development Specialists, available at <http://www.bls.gov/ooh/office-and-administrative-support/financial-clerks.htm#tab-4> (last visited Sept. 14, 2015).

The *Handbook* reports that there are multiple pathways into this occupational category, including a high school diploma and technical training. For brokerage clerks, a two- or four-year degree may be necessary. However, the *Handbook* does not report or otherwise indicate that a bachelor's degree in a specific specialty, or the equivalent, is normally required for positions within this occupational

⁴ All references are to the 2014-2015 edition of the *Handbook*, which may be accessed online at <http://www.bls.gov/OCO/>.

category. The *Handbook*, therefore, does not support the proffered position as being a specialty occupation.

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

On appeal, the Petitioner contends that the duties of the proffered position are more complex than other positions located within this occupational category. The Petitioner asserts that it was "compelled to select Billing, Cost and Rate Clerk as no other [*Handbook*] job title came close to describing [its] job duties." The Petitioner further claims that "neither the Financial Clerk nor Billing, Cost and Rate Clerk positions nor their respective requirements as provided in the [*Handbook*] can be deemed persuasive as neither adequately cover the complexity of duties of [the Beneficiary]'s position."

The Petitioner's assertions, however, are undermined by the wage-level designated by the Petitioner on the LCA. As noted, the Petitioner designated a Level II wage, which is the second-lowest of four possible wage levels. In accordance with U.S. Department of Labor guidance on wage-level selection, a Level II wage is only appropriate for positions involving "moderately complex tasks that require limited judgment." 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 (last visited Sept. 14, 2015).

Since the proffered position involves only "moderately complex tasks that require limited judgment" relative to other positions within the occupational category, it is unclear how the proffered position and its duties are somehow more complex, unique, or specialized than other positions within the occupational category.⁵ We therefore afford these assertions little weight.

On appeal, the Petitioner asserts that according to the Occupational Information Network (O*NET), the proffered position falls under Job Zone 3. The Petitioner further points out that Job Zone 3 indicates that within occupations in this category "some may require a bachelor's degree." The Petitioner also asserts that "[the Beneficiary]'s position is one of those positions contemplated by the [O*NET], where a degree may be required."

⁵ Moreover, such an assertion calls into question the validity of the LCA.

We find that O*NET does not establish that the proffered position qualifies as a specialty occupation under the first criterion. More specifically, most occupation in Job Zone 3 “requires[s] training in vocational schools, related on-the-job experience, or an associate's degree.” See O*NET OnLine Help Center, at <http://www.onetonline.org/help/online/zones>, for a discussion of Job Zone 3. While it also states that “some may require a bachelor’s degree,” it does not indicate that a bachelor’s degree in a specific specialty is *normally* the minimum requirement for entry. Further, in general, O*NET is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a standard entry requirement for a given position, as O*NET does not mention the specific field of study from which a degree must come. Again, USCIS 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 proposed position.

On appeal, the Petitioner cited to several cases to state that USCIS erroneously interprets the term “specialty occupation.” For examples, the Petitioner cites to *Tapis Int'l v. INS*, 94 F. Supp. 2d 172 (D. Mass. 2000) to claim “USCIS’ stance that a degree must be in a specific academic major or have a specific title was explicitly rejected.” However, we note that in *Tapis Int'l v. INS*, the U.S. district court found that while the former Immigration and Naturalization Service (INS) was reasonable in requiring a bachelor's degree in a specific field, it abused its discretion by ignoring the portion of the regulations that allows for the equivalent of a specialized baccalaureate degree. According to the U.S. district court, INS's interpretation was not reasonable because then H-1B visas would only be available in fields where a specific degree was offered, ignoring the statutory definition allowing for “various combinations of academic and experience based training.” *Tapis Int'l v. INS*, 94 F. Supp. 2d at 176. The court elaborated that “[i]n fields where no specifically tailored baccalaureate program exists, the only possible way to achieve something equivalent is by studying a related field (or fields) and then obtaining specialized experience.” *Id.* at 177. In this case, the issue is not whether the beneficiary's experience is equivalent of a specialized baccalaureate degree.

The Petitioner also cites to *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), for the proposition that “[t]he knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge.”

We agree with the aforementioned proposition that “[t]he knowledge and not the title of the degree is what is important.” As discussed, 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 (or its equivalent)” 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 minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be “in *the* specific specialty (or its equivalent),” unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation

of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added). However, as discussed *supra* and *infra*, the Petitioner has not met its burden to establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those tasks. Moreover, it is important to note that in a subsequent case that was reviewed in the same jurisdiction, the court agreed with our analysis of *Residential Fin. Corp.* See *Health Carousel, LLC v. U.S. Citizenship & Immigration Services*, 2014 WL 29591 (S.D. Ohio 2014).

In any event, the Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*⁶ or *Tapis Int'l v. INS*. We also note that, in contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Finally, the Petitioner refers to unpublished decisions in which we determined that the positions proffered in those matters qualified as a specialty occupation. 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. 8 U.S.C. § 1361; see also *Matter of Treasure Craft of California*, 14 I&N Dec. at 190. Furthermore, any suggestion that USCIS must review unpublished decisions and possibly request and review each case file relevant to those decisions, while being impractical and inefficient, would also be a shift in the evidentiary burden in this proceeding from the Petitioner to USCIS, which would be contrary to section 291 of the Act, 8 U.S.C. § 1361. Accordingly, neither the Director nor our office was required to request and/or obtain a copy of the unpublished decisions cited by the Petitioner.

If a Petitioner wishes to have unpublished decisions considered by USCIS in the adjudication of a Petition, the Petitioner is permitted to submit copies of such evidence that it either obtained itself through its own legal research and/or received in response to a Freedom of Information Act request filed in accordance with 6 C.F.R. Part 5. Otherwise, "[t]he non-existence or other unavailability of required evidence creates a presumption of ineligibility." 8 C.F.R. § 103.2(b)(2)(i). In the instant case, the Petitioner did not submit copies of the unpublished decisions. As the record of proceeding does not contain any evidence of the unpublished decisions, there were no underlying facts to be

⁶ It is noted that the district judge's decision in that case appears to have been based largely on the many factual errors made by the service center in its decision denying the petition. We further note that the Director's decision was not appealed to us. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by us in our *de novo* review of the matter.

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analyzed and, therefore, no prior, substantive determinations could have been made to determine what facts, if any, were analogous to those in this proceeding. 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.

The Petitioner has not established that the proffered position falls within an occupational category for which the *Handbook*, or any other authoritative source, indicates that the normal the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. 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 within the industry that are also similar to the Petitioner.

Here and as already discussed, the evidence of record does not establish that the Petitioner's proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations in the Petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions. We acknowledge that the Petitioner submitted letters from Mr. [REDACTED] and Dr. [REDACTED]. However, as discussed, the letters do not persuasively establish that the proffered position qualifies as a specialty occupation.

We will next address the job advertisements submitted in support of the Petitioner's assertion that its claimed degree requirement is common to the Petitioner's industry in parallel positions among similar organizations within the industry. However, upon review of the documents, we find that the Petitioner's reliance on these job advertisements is misplaced.

In the Form I-129 petition, the Petitioner describes itself as a 100-employee corporation (a law firm) established in 1946. The Petitioner states that its gross annual income is over \$23 million, and that its net annual income is \$18,009.

For the Petitioner to establish that an organization in its industry is also similar to it, it must demonstrate that the Petitioner and the organization share the same general characteristics. Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the Petitioner and the advertising organization share the same

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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 that conducts business within its industry is also similar to it without providing a legitimate basis for such an assertion.

The Petitioner submitted advertisements placed by [REDACTED] (a diagnostic testing company), the [REDACTED] (a governmental entity), and [REDACTED] (digital marketing company). The Petitioner also submitted advertisements from the [REDACTED] and an unidentified employer. The record does not establish that any of these advertisements are from companies that conduct business within the same industry as the Petitioner, a law firm. These job advertisements therefore do not satisfy the first prong of this criterion. On appeal, the Petitioner asserts that the above-mentioned companies have billing departments and require billing personnel. However, without further information about the employers such as scope of operations as well as the level of revenue and staffing, we are unable to conclude that these organizations are similar to the Petitioner. The Petitioner did not supplement the record of proceeding with additional information.

The Petitioner also submitted job advertisements placed by law firms, which are in the same industry. However, the regulation compels the Petitioner to further demonstrate that these companies are also "similar" to it. The Petitioner made no such demonstration. It is not sufficient for the Petitioner to simply claim that an organization within its industry is "similar" to it without providing a legitimate basis for such an assertion. 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. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r 1972)).

Further, the Petitioner has not established that the advertisements are for parallel positions. Specifically, some positions appear to be more senior positions. For example, [REDACTED] requires 3-5 years of supervisory experience and 2-4 years of financial/accounting experience. An unnamed boutique firm in [REDACTED] requires 5+ years of legal billing experience. As previously discussed, the Petitioner designated the proffered position as a Level II wage on the LCA, which is indicative that while the Beneficiary is expected to have a good understanding of the occupation, he will only perform moderately complex tasks that require limited judgement. Moreover, the Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position. For example, the duties for [REDACTED] include "ordering supplies" and "performing data entry as needed." The position advertised by the [REDACTED] entails duties such as "perform[ing] general clerical duties to include but not limited to: photocopying, faxing, mailing, and filing."

Moreover, some law firms do not require a bachelor's degree. For example, [REDACTED] states that it requires a high school diploma or equivalent, while a bachelor's degree in accounting, finance or a related field is preferred. Similarly, [REDACTED] also states that college degree is preferred or equivalent work experience. However, a preference is not synonymous with a requirement for a bachelor's degree in a specific specialty. Further, many of the advertised positions

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do not require a bachelor's degree in a specific specialty, or the equivalent. For example, [REDACTED] and the [REDACTED] require a Bachelor's degree, but do not state that a specific specialty is required. Likewise, [REDACTED] requires a Bachelor's degree but do not indicate a specific specialty.

As the documentation does not establish that the Petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, as the evidence does not establish that similar organizations in the same industry routinely require at least a bachelor's degree in a specific specialty, or its equivalent, for parallel positions, not every deficit of every job posting has been addressed.⁷

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 in its industry that are also 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

The record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its normal is so complex or unique that it can be performed only by an individual with a degree."

Although the Petitioner claims that the proffered position's duties are complex and unique, the Petitioner does not demonstrate how the duties described require 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. 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 claims are so complex and unique. While a few courses in accounting and computers may be beneficial in performing the proposed duties, the Petitioner has not demonstrated how an established curriculum of such courses

⁷ It must be noted that even if all of the job postings indicated that a requirement of 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. *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 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

leading to a baccalaureate 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. Again, the LCA indicates a wage level based upon the occupational classification "Billing, Cost and Rate Clerk" at a Level II wage. In accordance with the relevant DOL explanatory information on wage levels, a Level II position is indicative that, relative to other positions falling under the occupational category, the beneficiary is expected to have a good understanding of the occupation but that he will only perform moderately complex tasks that require limited judgment. Without further evidence, it is not credible that the Petitioner's 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.⁸ 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."⁹

Consequently, as the Petitioner does not demonstrate how the proffered position is so complex or unique relative to other billing, cost and rate clerk 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 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).

⁸ The issue here is that the Petitioner's designation of this position as a Level II 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 II 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.

⁹ 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.

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 the 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 contains resumes of individuals the Petitioner claims to employ or to have previously employed. However, as discussed, the individuals possess degrees in a range of discipline, including English, business/finance, and economics. One person did not earn a college degree but claims to have its equivalent. These diverse educational credentials do not indicate that the Petitioner normally requires a degree in a specific specialty, or its equivalent. Further, the fact that the Petitioner wishes to hire the Beneficiary who, according to the submitted credentials evaluation, possesses the equivalent of a bachelor's degree in geography and history, along with one year of graduate-level study in business, indicates further that a bachelor's degree in a specific specialty, or its equivalent, is not normally required to perform the duties of the proffered position.

The Petitioner also submitted a copy of its job posting for a billing coordinator position. However, while the posting states that a bachelor's degree is required, it does not indicate that a bachelor's degree in a specific specialty is required for the position.

The Petitioner has not demonstrated that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position and therefore it has not satisfied 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

Finally, the Petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. Again, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than positions within the "Billing, Cost and Rate Clerks" occupational category that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent.¹⁰

We hereby 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 II position (out of four assignable wage-levels) relative to others within the occupational category, and hence one not likely distinguishable by relatively specialized and complex duties. Without further evidence, it is not credible that the petitioner's 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. 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. 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 therefore be dismissed and the petition denied.¹¹

¹⁰ We note again that the Petitioner designated the proffered position as a Level II wage-level position on the LCA, thereby attesting that the Beneficiary only perform moderately complex tasks requiring limited judgment. Therefore, it does not appear that the proffered position is one with particular specialized and complex duties, as such a higher-level position would be classified as a Level III or Level IV position, and requiring a significantly higher prevailing wage.

¹¹ As the grounds discussed above are dispositive of the Petitioner's eligibility for the benefit, we will not address and will instead reserve our determination on the additional deficiencies we observe in the record of proceeding.

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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.

ORDER: The appeal is dismissed.

Cite as *Matter of P-&S-, Ctd.*, ID# 13811 (AAO Sept. 18, 20105)