



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

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

MATTER OF P-, INC.

DATE: SEPT. 18, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a corporation engaged in the IT (Information Technology) business, seeks to temporarily employ the Beneficiary as a "Business Development Specialist" under the nonimmigrant classification of worker in a specialty occupation. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b). 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, upon finding that the evidence of record did not establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, the petitioner asserts that the Director's ground for denying the petition was erroneous and contends that it satisfied all evidentiary requirements.

The record of proceeding before us consists of (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 decision denying the petition; and (5) the Notice of Motion or Appeal (Form I-290B) and supporting documentation.

Upon review of the entire record of proceeding, we conclude that the Director's denial of the petition on the basis specified in her decision was correct. Accordingly, the appeal will be dismissed, and the petition will be denied.

For the reasons that will be discussed below, we agree with the Director that the petitioner has not established that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed.

I. LAW

We start with a review of the statutory and regulatory framework for establishing a position as a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in

particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

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

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position or 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.

II. PROFFERED POSITION

We here quote from the letter from the petitioner's CEO, which was submitted in response to the RFE. The CEO presents the proffered position's duties and responsibilities as follows:

[A]s a Business Development Specialist, [the beneficiary] will [(1)] seek and provide information to help the company to determine our position in the marketplace; [(2)] gather data on competitors and [(3)] analyze their prices, sales, and method of marketing and distribution; [(4)] gather data to determine supply and demand, [(5)] survey market conditions and [(6)] analyze other economic factors in order to [(7)] establish supply chain distribution; [(7)] gather data for low-cost transportation of products; [(8)] gather logistics operations; [(9)] collect and analyze data on customer demographics, preferences, needs and buying habits to [(10)] identify potential markets and factors affecting product demand; and [(11)] participate in

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planning and execution of programs designed to promote the company's overall activities.

The letter continues with an estimation of how the beneficiary would manage his worktime:

[The beneficiary] will be responsible for the larger/macro duties of market analysis and planning our delivery and product placement systems. He will spend about 80% of his time in those duties. These are extremely important tasks – and they are clearly tasks that are beyond the abilities of the non-college educated people who have attempted to fill this position for me. The other 20% of his time will be focused on sales related research to help identify new clients/customers markets. We anticipate that [the beneficiary's] sales forecasts will generate approximately 2-3 new client/customer contracts each month (the estimated value for goods and services will be between \$15,000 - \$80,000 each.)

As shown in the above excerpts from the CEO's RFE-reply letter, the petitioner limits its descriptions of the duties and responsibilities of the proffered position to statements of general functions that the beneficiary would perform. The petitioner, however, does not describe the particular work that performance of those functions would involve or specialized methodologies and analyses that the beneficiary would have to apply.

Next, we see that the petitioner asserts the need for a person with at least a bachelor's degree, but without identifying a specific major or academic concentration. Also, the petitioner does not show that specific performance aspects of the proffered position require the theoretical and practical application of a body of highly specialized knowledge in a specific specialty, or range of closely related specialties, that can only be obtained through attainment of at least a bachelor's degree in a specific specialty, or its equivalent. The following excerpt from the CEO's RFE-reply letter reflects these aspects of the petition:

[The beneficiary] has received the U.S. equivalent to a Bachelor of Arts from [REDACTED] in Egypt.¹ I note that I have attempted several times unsuccessfully to hire someone for this position without a bachelor's degree. I have discovered [that] the requirements of the job, especially in such a small company as mine, are such that I cannot handle having someone do this work who needs significant training and who lacks the degree. . . . None of the more technical requirements of marketplace and data analysis can be done by someone without a degree. Also, in the past I have already found that the tasks that require development of our supply chain and the planning and execution of the actual sales and delivery of our products were beyond the abilities of people who did not possess a college degree. This is more than a simple sales

¹ The petitioner asserts that the beneficiary has attained a foreign degree equivalent to a U.S. bachelor's degree in accounting. (We will not address the sufficiency of the evidence offered to support the claim, as the beneficiary's credentials are not relevant to the issue before us.)

position[;] it requires someone capable of analyzing what needs to be done, designing the systems for sales and delivery of our products and then executing that design.

The CEO's letter adds that, if the petitioner's business is to expand, he needs someone with at least a bachelor's degree so that he will be able to delegate some of his business development and planning duties.²

We are not questioning the CEO's veracity about the petitioner's attempts to employ persons without a bachelor's degree. However, as the petitioner has not provided documentary evidence of the particulars of those attempts - such as, for instance, the job-related experience and educational background of each employee who did not succeed, the employment period, and the particular duties he or she could not perform - the CEO statements shed little light on the factual basis for his conclusion that only a person with a bachelor's degree can perform the proffered position. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

Further, the wording of the CEO's statement suggests a view that attainment of a bachelor's degree would be sufficient to equip a person for the job, regardless of the particular major or academic concentration for which it was awarded. That perspective does not accord with the H-1B specialty-occupation requirement that the bachelor's or higher degree be in a specific specialty closely related to the performance requirements of the proffered position.

Next, we find that the business-related documents submitted on appeal (which are described as "evidence of the substantial volume of business being undertaken by the petitioner, invoices, provision for transport, telephonic marketing data[,] and sample analysis of computer system from inventory") do not provide significant evidence of the substantive nature of the work and associated performance requirements that would engage the beneficiary if the petition were approved. Thus, they do not materially advance the petitioner's case for a specialty occupation determination on appeal.

In line with the petitioner's submission of a Labor Condition Application (LCA) certified for use with a position within the Market Research Analysts and Marketing Specialists occupational group, Standard Occupational Classification (SOC) code 13-1161, we will analyze the proffered position as falling within that occupational category.

² The petitioner should note that we accord little weight to assertions that are not substantiated by evidence in the record. 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)).

III. ANALYSIS

As discussed below, our application of the supplementary criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence of record leads us to conclude that the petitioner has not established that the proffered position is a specialty occupation.

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

A petitioner satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) 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's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³ As we noted, the petitioner asserted submitted an LCA for use with a position within the occupational category "Market Research Analysts and Marketing Specialists."⁴

The subchapter of the *Handbook* entitled "How to Become a Market Research Analyst" states, in relevant part:

Education

Market research analysts typically need a bachelor's degree in market research or a related field. Many have degrees in fields such as statistics, math, and computer science. Others have backgrounds in business administration, the social sciences, or communications.

Courses in statistics, research methods, and marketing are essential for these workers. Courses in communications and social sciences, such as economics, psychology, and sociology, are also important.

Some market research analyst jobs require a master's degree. Several schools offer graduate programs in marketing research, but many analysts complete degrees in other fields, such as statistics and marketing, and/or earn a Master of Business

³ All of our references are to the 2014-15 edition of the *Handbook*, accessible at <http://www.bls.gov/ooh/>. The *Handbook's* pertinent chapter, "Market Research Analysts," is accessible at <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm>.

⁴ The occupational category designated by a petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. However, to satisfy the first criterion, the burden of proof remains on the petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement or its equivalent for entry.

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Administration (MBA). A master's degree is often required for leadership positions or positions that perform more technical research.

Other Experience

Most market research analysts can benefit from internships or work experience in business, marketing, or sales. Work experience in other positions that require analyzing data, writing reports, or surveying or collecting data can also be helpful in finding a market research position.

Licenses, Certifications, and Registrations

Certification is voluntary, but analysts may pursue certification to demonstrate a level of professional competency. The [REDACTED] offers the Professional Researcher Certification (PRC) for market research analysts. Candidates qualify based on experience and knowledge; they must pass an exam, be a member of a professional organization, and have at least 3 years working in opinion and marketing research.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Market Research Analysts, on the Internet at <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-4> (last visited Sep. 17, 2015).

The *Handbook* reports that market research analysts have degrees and backgrounds in a wide-variety of disparate fields. That is, while the *Handbook* states that employees typically need a bachelor's degree in market research or a related field, it continues by specifying that many market research analysts have degrees in fields such as statistics, math, or computer science. According to the *Handbook*, other market research analysts have backgrounds in fields such as business administration, the social sciences, or communications. This passage of the *Handbook* identifies various courses as essential to this occupation, including statistics, research methods, and marketing. It further states that courses in communications and social sciences (such as economics, psychology, and sociology) are also important. Therefore, although the *Handbook* indicates that market research analysts typically need an advanced degree, it also indicates that degrees and backgrounds in various fields are acceptable for jobs in this occupation – including computer science and the social sciences, as well as statistics and communications.

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 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.⁵ Section 214(i)(1)(B) of the Act (emphasis added).

As noted, the *Handbook* also states that "others have a background in business administration." 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 147.⁶

That is, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty (or its equivalent) that is directly related to the proposed position. 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). Therefore, the *Handbook's* recognition that a general, non-specialty "background" in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not normally the minimum entry requirement for this occupation.

The narrative of the *Handbook* further reports that some employees obtain professional certification to demonstrate a level of professional competency. It continues by outlining the requirements for market research analysts to achieve the Professional Researcher Certification (PRC), and states that candidates qualify based upon their experience and knowledge. According to the *Handbook*, the

⁵ 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. This also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

⁶ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

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

Id.

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credential is granted by the [REDACTED] to those who pass an exam and have at least three years of experience working in opinion and market research.⁷

We reviewed the [REDACTED] Internet site, which confirms the accuracy of the *Handbook's* statement regarding the requirements for professional certification (i.e., passage of an exam and three years of relevant industry experience), and further specifies that the "Education" necessary to apply for professional certification is "12 industry-related education hours within the two preceding years." The [REDACTED] website provides the following information about the Professional Researcher Certification program:

The Professional Researcher Certification program (PRC) is designed to recognize the qualifications and expertise of marketing and opinion research professionals. The goal of PRC is to encourage high standards within the survey profession to raise competency, establish an objective measure of an individual's knowledge and proficiency and to encourage professional development. Achieving and maintaining PRC validates the knowledge of the market research industry and puts researchers in a select group of like-minded professionals.

* * *

Because PRC indicates to the public your ability to conduct marketing research, the PRC Board requires [a candidate] to have experience in the survey and opinion process. Three years of relevant experience is required. . . . A total of 12 industry-related education hours within the two preceding years are required at time of application. Conferences, seminars, webinars, etc., must be added to [the candidate's] record.

* * *

The benefits of a Certification program are both industry-wide and individual. For the individual, it is a means of differentiating oneself, a "badge" of competence in the given areas and an assurance that the individual is current in knowledge and experience. For the profession/industry as a whole, it provides a vehicle for developing a pool of well-trained, competent marketing researchers, thereby improving both perceived and substantive standards.

[REDACTED]

The [REDACTED] emphasizes that the credentialing program recognizes the qualifications and expertise of marketing and opinion research professionals, encourages high standards within the profession, and establishes an objective measure of an individual's knowledge

⁷ The [REDACTED] website states that the association was founded in [REDACTED] and is the leading and largest U.S. association of [REDACTED]. For additional information, see [REDACTED].

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and proficiency. According to the association's website, the credential indicates to the public an individual's ability to conduct market research. The narrative continues by stating that the credential provides a vehicle for developing a pool of well-trained, competent marketing researchers, thereby improving both perceived and substantive standards. The website does not indicate that the market research analyst positions have any particular academic requirements for entry, nor does it indicate that these positions require any particular level of education to be identified as qualified and possessing a level of expertise/competence. Instead, the [REDACTED] highlights the importance of professional experience and industry-related professional courses (through conferences, seminars, and webinars).

Thus, the *Handbook* and the [REDACTED] website do not support the claim that the occupational category "Market Research Analysts" is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent⁸ - and we find that the petitioner has not provided any documentation to qualify, rebut, or refute those sources. Aside from that, the petitioner has not provided evidence to support a finding that, as required by the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), *its particular position* submitted as the basis for the specialty occupation claim normally has such a minimum, specialty degree requirement or its equivalent.

In the instant case, the duties and requirements of the position as described in the record of proceeding do not indicate that this particular position proffered by the petitioner is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

The first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) 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.

⁸ When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the petitioner to provide persuasive evidence that the proffered position more likely than not satisfies this or one of the other three criteria, notwithstanding the absence of the *Handbook's* support on the issue. It is the petitioner's responsibility to provide probative evidence (e.g., documentation from other objective, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation. Whenever the record of proceeding presents evidence from more than one authoritative source, an adjudicator will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation.

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

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative source) reports a standard industry-wide requirement for at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. In addition, the petitioner has not submitted letters, affidavits or other materials establishing the industry requirements for positions, parallel to the proffered position, in organizations similar to the petitioner.

As the evidence of record has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner, 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.

For whatever complexity or uniqueness it has shown for the position, a petitioner must also show such a level of complexity or uniqueness as would require a person who has attained at least a bachelor's degree in a specific specialty or the equivalent. This the petitioner has not done.

The petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. The petitioner has ascribed numerous, generally described functions to the proffered position, and has asserted that performance of those functions is beyond the capabilities of persons without a bachelor's degree, or its equivalent. However, the evidence of record has not shown that complexity or uniqueness of the position generates performance requirements that can only be handled by a person equipped with a particular body of highly specialized knowledge obtainable only by attaining a U.S. bachelor's degree in a specific specialty or its equivalent in education, training, and/or experience.

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.

In short, the evidence of record does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

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

As the record reflects no history of the petitioner exclusively recruiting or hiring for the proffered position persons with a bachelor's degree in a specific specialty, or its equivalent, there is no evidentiary basis for satisfying the criterion at 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.

We reviewed the petitioner's statements regarding the proffered position and its business operations, as well as all of the evidence in the record of proceeding. 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.

Thus, the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).⁹

⁹ Since the identified basis for denial is dispositive of the petitioner's appeal, we will not address additional grounds of ineligibility we observe in the record of proceeding.

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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 and the petition denied for this reason.

IV. 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-, Inc.*, ID# 13835 (AAO Sept. 18, 2015)