



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

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

MATTER OF S-T-, INC.

DATE: SEPT. 25, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an “International Transportation & Shipping” company, seeks to employ the Beneficiary as a “Training & Development Specialist – Airfreight”¹ 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 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.²

¹ The Labor Condition Application (LCA) submitted by the Petitioner in support of the petition was certified for use with a job prospect within the “Training and Development Specialists” occupational classification, SOC (O*NET/OES) Code 13-1151, a Level I (entry-level) prevailing wage rate, the lowest of the four assignable wage-levels.

² 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 (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 indicated that it wishes to employ the Beneficiary as a training and development specialist on a full-time basis. In the support letter, the Petitioner provided the following information regarding the duties of the proffered position:

Primarily the Training & Development Specialist will plan, organize, and direct a wide range of training activities while responding to corporate and worker service requests, as well as customer feedback and market trends. He must consult with onsite supervisors regarding available performance improvement services, conduct orientation sessions and arrange on-the-job training for new employees. He must help all employees maintain and improve their job and interpersonal skills and prepare for new services and product roll-outs.

In order to identify and assess the training needs of our company, the Training & Development Specialist must confer with managers and supervisors to conduct surveys and evaluate training effectiveness to ensure that employee training programs meet the strategic business goals of our company and ensuring that exemplary customer service is provided on a consistent and regular basis.

The Petitioner also stated that it requires a “Bachelor’s Degree or its equivalent in Business Administration, Shipping, Logistics, Transportation, Industrial Management or a similar field” for the proffered position.

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

A Training & Development Specialist performs vital functions that will ensure that our company will run more efficiently, increase sales, customer service levels, productivity, and efficiently distribute its financial resources. He will create and roll out specific training programs to help workers improve job skills while monitoring the effectiveness of such training programs. He will create and/or update training manuals, where necessary, and develop training procedures specific to the department he is assigned to. In order to identify and assess the training needs, he will not only monitor staff productivity directly, but confer with managers and supervisors to evaluate the training effectiveness and ensure that employee training programs meet the strategic business goals of our company. He will ensure that through proper training in the department(s) to which he is assigned, customer service is at an optimum level and is consistent throughout the shipping process. Through this training, he will ensure that all employees maintain and improve their job and interpersonal skills and prepare for new services and product roll-out. When new services or products are introduced, he will create training plans specific to his department(s) and train the staff on any new or updated company policies, procedures, etc. Below is a list of the position’s duties, including level of

responsibility, hours per week of work, and the percentage of time to be spent on each duty:

- Design and develop training programs to help workers maintain or improve their job and interpersonal skills (8 hours – 20%);
- Create or update training procedure manuals, guides and course materials, such as department standard operating procedures for current and new services and products (8 hours – 15%);
- Communicate with management, supervisors and staff and monitor and evaluate training program effectiveness and efficiency. Assess training needs through surveys, interviews, etc. with management, staff and even customers and agents. Adjust/alter training programs as needed to provide the highest quality and knowledgeable staff, customer service, productivity, etc. possible (10 hours – 25%);
- Conduct training sessions for new and current employees based on needs expressed by management, new product roll-outs, customer feedback, productivity, efficiency and research results (12 hours – 30%);
- Monitor training costs to ensure maintenance of training budget and prepare reports for department management and supervisors (4 hours – 10%) [.]

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. For example, the Petitioner states that the Beneficiary will “plan, organize, and direct a wide range of training activities” without providing details concerning the Beneficiary’s specific duties with regard to planning, organizing, and directing training activities. Nor does the Petitioner provide details regarding the specifics of the training activities. The abstract nature of the proposed duties is further illustrated by the Petitioner’s statement that the Beneficiary “must help all employees maintain and improve their job and interpersonal skills.” The Petitioner does not explain the Beneficiary’s actual tasks in helping employees with such matters. Similarly, in describing the Beneficiary’s duties in its RFE response letter, counsel states that the Beneficiary would “monitor training costs,” but provides no details in what monitoring training costs involve. Nor does counsel provide information regarding frequency and the type of reports the Beneficiary would prepare for the management.

Furthermore, some descriptions of the proffered position that have been submitted in the RFE response letter rely on the generic duties of a training and development specialist similar to those appear in the Department of Labor’s (DOL) Occupational Information Network (O*NET). Providing generic job duties for a proffered position similar to ones listed in O*NET is generally not sufficient for establishing H-1B eligibility. That is, while this type of description may be appropriate

when defining the range of duties that may be performed within an occupational category, it generally cannot be relied upon by a petitioner when discussing the duties attached to specific employment for H-1B approval as this type of generic description does not adequately convey the substantive work that the Beneficiary will perform within the Petitioner's business operations. In establishing a position as qualifying as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in the context of the Petitioner's business operations, demonstrate a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the Beneficiary for the period of employment requested in the petition.

Thus, as so generally described, we find that the descriptions do not illuminate the substantive application of knowledge involved or any particular educational attainment associated with such application. The duties as described give very little insight to actual tasks that the Beneficiary would perform on a day-to-day basis. Furthermore, we find that the Petitioner has not supplemented the job and duty descriptions with documentary evidence establishing the substantive nature of the work that the Beneficiary would perform, whatever practical and theoretical applications of highly specialized knowledge in a specific specialty would be required to perform such substantive work, and whatever correlation may exist between such work and associated performance-required knowledge and attainment of a particular level of education, or educational equivalency, in a specific specialty.

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 record therefore does not establish the substantive nature of the work to be performed by the Beneficiary, which therefore precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate

prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

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 U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³ The Petitioner asserted in the LCA that the proffered position falls under the occupational category "Training and Development Specialists." We reviewed the section of the *Handbook* regarding this occupational category, including the section entitled "How to Become a Training and Development Specialist," which states the following:

Training and development specialists need a bachelor's degree, and most need related work experience.

Education

Training and development specialists need a bachelor's degree. Specialists can come from a variety of education backgrounds, but many have a bachelor's degree in training and development, human resources, education, or instructional design. Others may have a degree in business or the social sciences, such as educational or organizational psychology.

In addition, as technology continues to play a larger role in training and development, a growing number of organizations seek candidates who have a background in information technology or computer science.

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/business-and-financial/training-and-development-specialists.htm#tab-4> (last visited Sep. 17, 2015).

³ All of the references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>. The excerpts of the *Handbook* regarding the duties and requirements of the referenced occupational category are hereby incorporated into the record of proceeding.

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The *Handbook* does not state that a baccalaureate or higher degree, in a specific specialty, or its equivalent is normally the minimum requirement for entry into the proffered position. To the contrary, the *Handbook* specifically states that specialists “can come from a variety of education backgrounds.” According to the *Handbook*, many specialists have a bachelor’s degree in training and development, human resources, education, or instructional design while others may have a degree in business or the social sciences, such as educational or organizational psychology. Accordingly, as the *Handbook* indicates that working as a training and development specialist does not normally require at least a bachelor’s degree in a specific specialty or its equivalent for entry into the occupation, it does not support the proffered position as being a specialty occupation.

In its support letter, the Petitioner states that the proffered position requires a “Bachelor’s degree or its equivalent in Business Administration, Shipping, Logistics, Transportation, Industrial Management or a similar field.” Even if established by the evidence of record, which it is not, the requirement of a bachelor’s degree in business administration 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, 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 139, 147 (1st Cir. 2007).

It is incumbent upon the Petitioner to provide persuasive evidence that the proffered position qualifies as a specialty occupation under this criterion, notwithstanding the absence of *Handbook* support on the issue. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that “[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation.” 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)).

In response to the RFE, the Petitioner submitted a copy of the DOL’s O*NET Summary Report for 13-1151.00. On appeal, counsel states that the summary report indicates that the position “regularly requires a minimum of a bachelor’s degree, and sometimes even higher.” Under the subsection

titled “Education,” O*NET states that “[m]ost of these occupations require a four-year bachelor’s degree, but some do not.” Moreover, O*NET does not state that a degree must be in a *specific specialty*. Therefore, O*Net does not support the Petitioner’s assertion that the proffered position is a specialty occupation.

Counsel also cites *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), asserting that “the court rejected agency interpretation because it would preclude any position form satisfying the ‘specialty occupation’ requirement where a specific degree was not available in that field.” Counsel continues to state that the Petitioner requires a bachelor’s degree in specific fields of study that are relevant to the industry. Counsel further cites the *Handbook’s* educational requirements for the training and development specialists.

As discussed above, the *Handbook* states that some individuals who enter this occupational category have degrees in, among other fields, business, human resources, education, social sciences, and computer sciences. 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 business and social sciences, 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). For the aforementioned reasons, however, 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.

In any event, counsel 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*.⁴ 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. It is

⁴ 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.

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).

The Petitioner also submits a copy of *Tapis Int'l v. INS*, 94 F. Supp. 2d 172 (D. Mass. 2000). 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.

We agree with the district court judge in *Tapis Int'l v. INS*, that in satisfying the specialty occupation requirements, both the Act and the regulations require a bachelor's degree in a specific specialty or its equivalent, and that this language indicates that the degree does not have to be a degree in a single specific specialty. However, as discussed above, there must be a close correlation between the required "body of highly specialized knowledge" and the position. A minimum entry requirement of a degree in disparate fields, such as business and social sciences, 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) (emphasis added).

In addition, the district court judge does not state in *Tapis Int'l v. INS* that, simply because there is no specialty degree requirement for entry into a particular position in a given occupational category, USCIS must recognize such a position as a specialty occupation if the Beneficiary has the equivalent of a bachelor's degree in that field. In other words, we do not find that *Tapis Int'l v. INS* stands for either (1) that a specialty occupation is determined by the qualifications of the Beneficiary being petitioned to perform it; or (2) that a position may qualify as a specialty occupation even when there is no specialty degree requirement, or its equivalent, for entry into a particular position in a given occupational category.

First, USCIS cannot determine if a particular job is a specialty occupation based on the qualifications of the Beneficiary. A beneficiary's credentials to perform a particular job are relevant only when the job is first found to qualify as a specialty occupation. USCIS is required instead to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether an alien beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560

(Comm'r 1988) (“The facts of a beneficiary’s background only come at issue after it is found that the position in which the Petitioner intends to employ him falls within [a specialty occupation].”).

Second, in promulgating the H-1B regulations, the former INS made clear that the definition of the term “specialty occupation” could not be expanded “to include those occupations which did not require a bachelor’s degree in the specific specialty.” 56 Fed. Reg. 61111, 61112 (Dec. 2, 1991). More specifically, in responding to comments that “the definition of specialty occupation was too severe and would exclude certain occupations from classification as specialty occupations,” the former INS stated that “[t]he definition of specialty occupation contained in the statute contains this requirement [for a bachelor’s degree in the specific specialty or its equivalent]” and, therefore, “may not be amended in the final rule.” *Id.*

Again, the Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in *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. at 715. 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.

Counsel further refers to an unpublished decision in which we determined that the position of film and video director proffered in that matter qualified as a specialty occupation. However, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. 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.

In the instant case, the Petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that normally 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 that are 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.

On appeal, the Petitioner provides letters from two companies. While the names of these companies suggest that they conduct business in the shipping industry, the authors provide no information regarding the nature of their business, nor do they claim that operate within the same industry as the Petitioner.⁵ Moreover, these letters provide no insight into how similar these companies are to the Petitioner. Furthermore, there is no evidence that the duties of the positions discussed in these letters parallel those of the proffered position. Therefore, these letters are insufficient to demonstrate that 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.

We will next address the job advertisements submitted by the Petitioner. The record of proceeding contains copies of 18 job advertisements 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. However, upon review of the documents, we find that the Petitioner's reliance on the job advertisements is misplaced.

In the Form I-129 petition, the Petitioner describes itself as a 440-employee international transportation and shipping company established in 1988. The Petitioner states that its gross annual income is over \$54 million and its net annual income is over four million dollars.

For the Petitioner to establish that an organization in its industry is similar, 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 general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the Petitioner to claim that an organization is similar and conducts business in the same industry without providing a legitimate basis for such an assertion.

⁵ Furthermore, both letters state that they require a bachelor's degree in business administration or equivalent for the position. Please refer to the discussion regarding a degree requirement in business addressed in the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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Upon review, we find that the record does not demonstrate 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 (3) located in organizations that are similar to the Petitioner.⁶

For example, the Petitioner submitted advertisements from [REDACTED] (a consulting and staffing company), [REDACTED] (a global development firm that specializes in education, economic growth, democratic institutions, and stabilization), [REDACTED] (a staffing company), [REDACTED] (a chain of grocery stores), [REDACTED] (a healthcare staffing company), [REDACTED] (a staffing company), [REDACTED] (a staffing company), and [REDACTED] (a staffing company). The advertisements also include unidentified companies. The Petitioner did not state which aspects or traits (if any) it shares with the advertising organizations. Without further information, the advertisements do not appear to involve organizations that operate in the Petitioner's industry that are also similar to the Petitioner, and the Petitioner has not provided any probative evidence to suggest otherwise. The Petitioner did not supplement the record of proceeding to establish that the advertising organizations are similar to it.

Moreover, these advertisements do not appear to involve parallel positions. For example, both positions with [REDACTED] require five to ten years of experience; the position with the [REDACTED] requires two to five years of experience; the position with [REDACTED] requires at least seven years of experience; the position with [REDACTED] requires three to five years of experience; the position with [REDACTED] requires a minimum of three years of experience in sales; the position with [REDACTED] requires a minimum of five years of experience; the position with [REDACTED] – [REDACTED] requires a minimum of eight years of experience; and the position with [REDACTED] requires a minimum of five years or more experience. However, the Petitioner designated the proffered position as a Level I position on the LCA. As we will discuss later, individuals occupying positions within this wage level are expected to have only a basic understanding of the occupation and perform routine tasks that require limited, if any, exercise of judgment. The advertised positions appear to involve more senior positions than the proffered position. 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.

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

⁶ See 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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 fails to 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*

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 training and development specialist. Specifically, the record does not demonstrate how the training and development specialist position described 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.⁸ 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.⁹ For example, a Level IV (fully

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”).

⁸ 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; that he will be expected to perform routine tasks that require limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results.

⁹ 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

competent) position is designated by DOL for employees who “use advanced skills and diversified knowledge to solve unusual and complex problems.”¹⁰ 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 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

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.

¹⁰ 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_Revise_11_2009.pdf.

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 Petitioner submitted several of its employees' resumes, degrees, and Forms W-2. We find that information contained in these documents is not sufficient to demonstrate the positions held by these individuals were the same as, or even similar to, the position proffered to the Beneficiary. We also note varying salaries paid to these individuals and master's degrees held by some of them raise questions as to whether the positions held by these individuals are the same as the proffered position. Furthermore, it is unclear how accurate a snapshot this information presents, as the Petitioner did not provide information establishing how many of these positions exist. Moreover, the Petitioner's own assertions regarding the acceptability of a bachelor's degree in business administration demonstrate that a bachelor's degree in a specific specialty, or the equivalent, is not required. Therefore, the Petitioner has not demonstrated that it 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.

Upon review of the record of the proceeding, we find that the Petitioner has not provided sufficient probative evidence to satisfy this criterion of the regulations. In the instant case, relative specialization and complexity have not been adequately 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 in the occupational category 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

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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.¹¹

The Petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the Petitioner has not established that the duties of the position are so specialized and complex that the 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. We therefore, conclude that the Petitioner has not satisfied the criterion 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.¹²

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.

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¹¹ 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.

¹² 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.