



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

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

MATTER OF G-V-D-C-, PC

DATE: APR. 18, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a dental clinic, seeks to temporarily employ the Beneficiary as an “operations manager” under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director, California Service Center, denied the petition. The Director concluded that the evidence of record did not establish that the Petitioner would employ the Beneficiary in a specialty occupation position.

The matter is now before us on appeal. On appeal, the Petitioner asserts that the proffered position qualifies as a specialty occupation and submits additional evidence. Upon *de novo* review, we will dismiss the appeal.

I. LAW

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.

(b)(6)

Matter of G-V-D-C-, PC

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

- (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.

8 C.F.R. § 214.2(h)(4)(iii)(A). U.S. Citizenship and Immigration Services (USCIS) has consistently interpreted 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. *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”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

II. PROFFERED POSITION

In its support letter and subsequent correspondence, the Petitioner stated that the duties of the operations manager position include the following (verbatim):

- Oversee performance of three dental clinics, a dental laboratory, and over 16 dental operatories or working units to support quality patient care (15%);
- Analyze dental operations to evaluate company performance and to determine areas of potential cost reduction, improvement, or policy change (5%);
- Serve as business advisor, directing and coordinating the company’s financial and budget activities to fund operations and increase efficiency (8%);
- Plan, organize and direct all aspects of financial operations, including implementing company policies, objectives, and activities to ensure continuing operations, to maximize return on investments, and to increase productivity (5%);
- Prepare budgets for approval, including operational budgets (6%);
- Review financial statements, activity reports, and other performance data to measure productivity and goal achievement and to determine areas needing cost reduction and improvement (4%);
- Negotiate and approve contracts and agreements with relevant parties regarding the expansion to a fourth dental facility in [REDACTED] Michigan (2%);

- Negotiate and approve contracts and agreements with dental product suppliers and other vendors (2%);
- Formulate, direct, and coordinate marketing activities and policies to promote dental services and quality patient care, including consulting with outside marketing agencies (3%);
- Identify, develop and evaluate marketing strategies, including web-based marketing and informational marketing brochures, based on knowledge of establishment objectives and market characteristics (15%);
- Evaluate and determine staffing requirements and oversee recruiting, interviewing, hiring, firing, and training of employees (5%);
- Manage staff including scheduling individuals for continuing education courses and technical job-related skills training to improve individual work performance, preparing work schedules and assigning specific duties (25%);
- Plan, direct, control and supervise work activities of dentists and staff relating to employments, compensation, and labor and employee relations (5%);
- Evaluate human relations and work related problems and meet with subordinate supervisors to determine effective remediation techniques, such as job skill training or personal intervention, to resolve human relations issues among personnel (5%);
- Ensure compliance with state and federal regulations, as well as HIPAA, JCAHO, OSHA, MIOSHA & other compliance requirements (5%); and
- Direct the preparation of company's financial reports as required for accountants and audits (10%).

The Petitioner further stated that the proffered position requires "a minimum of a Bachelor's degree or foreign equivalent in Business Management or closely related field."

III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.¹ Specifically, the record (1) does not describe the position's duties with sufficient detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.²

A. Preliminary Grounds

As a preliminary matter, we find that the Petitioner's claim that a bachelor's degree in business management is a sufficient minimum requirement for entry into the proffered position is inadequate

¹ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

² The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

to establish that the proposed 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. 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, 560 (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. *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

The Petitioner asserts that its minimum requirement for the proffered position is a bachelor's degree in business management, without further requiring that that degree be in any specific specialty. Without more, the Petitioner's statement alone indicates that the proffered position is not in fact a specialty occupation.³ The Director's decision must therefore be affirmed and the appeal dismissed on this basis alone.

Furthermore, we note that the percentages of time which the Beneficiary would spend on the listed duties totals 120 percent. It appears that the Petitioner overestimated the percentages of time the Beneficiary would spend on some of the duties. Therefore, the record of proceeding is ambiguous with regard to the actual percentages of time the Beneficiary would spend in performing his duties. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92. The record of proceeding does not contain sufficient evidence for us to make a determination regarding the primary and essential nature of the duties of the proffered position.

Moreover, upon review of the record of proceedings, we find that the Petitioner did not submit a job description to adequately convey the substantive work to be performed by the Beneficiary. USCIS must review the actual duties the Beneficiary will be expected to perform to ascertain whether those

³ A general degree requirement does not necessarily preclude a proffered position from qualifying as a specialty occupation. For example, an entry requirement of a bachelor's or higher degree in business administration with a concentration in a specific field, or a bachelor's or higher degree in business administration combined with relevant education, training, and/or experience may, in certain instances, qualify the proffered position as a specialty occupation. In either case, it must be demonstrated that the entry requirement is equivalent to a bachelor's or higher degree in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

It is also important to note that a position may not qualify as a specialty occupation based solely on either a preference for certain qualifications for the position or the claimed requirements of a petitioner. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). Instead, the record must establish that the performance of the duties of the proffered position requires both the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as the minimum for entry into the occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

(b)(6)

Matter of G-V-D-C-, PC

duties require at least a baccalaureate degree in a specific specialty, or its equivalent, as required for classification as a specialty occupation. To accomplish that task in this matter, USCIS must analyze the actual duties in conjunction with the specific project(s) to which the Beneficiary will be assigned. To allow otherwise, results in generic descriptions of duties that, while they may appear (in some instances) to comprise the duties of a specialty occupation, are not related to any actual services the Beneficiary is expected to provide.

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. The Petitioner described the duties of the proffered position, and the position itself, in relatively generalized and abstract terms that do not relate substantial details about either the position or its constituent duties. For example, the Petitioner stated that the Beneficiary would "[o]versee performance of three dental clinics..." without providing details regarding the specific tasks associated with this duty. Similarly, the Petitioner did not provide details as to the tasks involved in "[s]erv[ing] as business advisor." Likewise, stating that the Beneficiary will "[e]valuate human relations" and "[e]nsure compliance with state and federal regulations" reveals insufficient details regarding the actual tasks involved with these duties. Furthermore, the Petitioner stated that 25 percent of the Beneficiary's duties involved managing staff including "continuing education courses," "preparing work schedules," and "assigning specific duties." However, the Petitioner did not provide any details as to the Beneficiary's role in managing professional staff, such as dentists, and his specific tasks with regards to "assigning specific duties" to dental staff. In addition, the Petitioner stated that the Beneficiary would be managing two other offices – one in [redacted] Michigan, and the other in [redacted] Michigan.⁴ However, the Petitioner provided no details regarding how the Beneficiary would accomplish any of the listed duties for the offices located in other cities and amount of time the Beneficiary would spend in these other two offices.

Such generalized information does not in itself establish a correlation between any dimension of the proffered position and a need for a particular level of education, or educational equivalency, in a body of highly specialized knowledge in a specific specialty. Therefore, it is not evident that the proposed duties as described in this record of proceeding, and the position that they comprise, merit recognition of the proffered position as a specialty occupation.

⁴ The Petitioner states that the offices located in [redacted] and [redacted] are its sister companies and that the Beneficiary would be providing his services for these companies as well. However, on the LCA, the Petitioner stated that the employment location is [redacted] Michigan. The Petitioner did not identify additional work locations on the LCA. Although the Petitioner claims that the [redacted] companies are associated with it, the record of proceedings contains insufficient evidence to demonstrate the Petitioner has acquired any ownership interest in these two companies. A corporation is a separate and distinct legal entity from its owners or stockholders. See *Matter of M-*, 8 I&N Dec. 24, 50-51 (A.G., BIA 1958); *Matter of Aphrodite Invs. Ltd.*, 17 I&N Dec. 530 (Comm'r 1980); and *Matter of Tessel, Inc.*, 17 I&N Dec. 631 (Act. Assoc. Comm'r 1980). Although the Petitioner's president may operate multiple dental offices, the issue in this matter is whether the position proffered by the Petitioner is a specialty occupation. See also 8 C.F.R. § 214.2(h)(4)(ii) (definition of an "employer" for H-1B purposes).

In this 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). Although the Petitioner repeatedly claimed that the duties of the proffered position are "so specialized," the job descriptions it provided do not persuasively support the claim that the position's day-to-day job responsibilities and duties would require the theoretical and practical application of a particular educational level of highly specialized knowledge in a specific specialty directly related to those duties and responsibilities.

Based upon a complete review of the record of proceeding, we find that the Petitioner has not established (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. Consequently, these material omissions preclude a determination that the Petitioner's proffered position qualifies as a specialty occupation under the pertinent statutory and regulatory provisions. There is a lack of probative evidence substantiating the Petitioner's claims with regard to the duties, responsibilities and requirements of the proffered position.

Although the petition cannot be approved for the above-stated reasons, we will nevertheless analyze the duties and the evidence of record to determine whether the proffered position as described by the Petitioner would qualify as a specialty occupation.

B. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. To inform this inquiry, we recognize 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.⁵

⁵ All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the 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. To satisfy the first criterion, however, 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.

The Petitioner asserted in the labor condition application (LCA) that the proffered position falls under the occupational category “General and Operations Managers” SOC (ONET/OES) Code 11-1021.⁶ The Petitioner further asserted that the duties of the proffered position are “akin to an executive level position which would be classified under ‘Top Executives’ in the [*Handbook*].”

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

Although education and training requirements vary widely by position and industry, many top executives have at least a bachelor’s degree and a considerable amount of work experience.

Education

Many top executives have a bachelor’s or master’s degree in business administration or in an area related to their field of work. Top executives in the public sector often have a degree in business administration, public administration, law, or the liberal arts. Top executives of large corporations often have a master’s degree in business administration (MBA).

College presidents and school superintendents are typically required to have a master’s degree, although a doctorate is often preferred.

Although many mayors, governors, or other public sector executives have at least a bachelor’s degree, these positions typically do not have any specific education requirements.

Work Experience in a Related Occupation

Many top executives advance within their own firm, moving up from lower level managerial or supervisory positions. However, other companies may prefer to hire qualified candidates from outside their organization. Top executives who are

⁶ The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). We will consider this selection in our analysis of the position. The “Prevailing Wage Determination Policy Guidance” issued by the DOL provides a description of the wage levels. A Level I wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. This wage rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that he will be closely supervised and his work closely monitored and reviewed for accuracy; and (3) that he will receive specific instructions on required tasks and expected results. U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf. A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner’s job opportunity. *Id.*

promoted from lower level positions may be able to substitute experience for education to move up in the company. For example, in industries such as retail trade or transportation, workers without a college degree may work their way up to higher levels within the company to become executives or general managers.

Chief executives typically need extensive managerial experience. Executives are also expected to have experience in the organization's area of specialty. Most general and operations managers hired from outside an organization need lower level supervisory or management experience in a related field.

Some general managers advance to higher level managerial or executive positions. Company training programs, executive development programs, and certification can often benefit managers or executives hoping to advance.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., Top Executives, available at <http://www.bls.gov/ooh/management/top-executives.htm#tab-4> (last visited Apr. 15, 2016).

The *Handbook* does not support the assertion that at least a bachelor's degree in a *specific specialty*, or its equivalent, is normally the minimum requirement for entry into jobs located within this category. Rather, the *Handbook* reports that "education and training requirements vary widely by position and industry," and although many top executives have at least a bachelor's degree, the *Handbook* does not report that it must be in a specific specialty. Additionally, the *Handbook* recognizes that in some industries, "workers without a college degree may work their way up to higher levels within the company." The *Handbook* emphasizes that jobs within this occupational category require a considerable amount of work experience, and that most general and operations managers, if hired from outside an organization, need lower level supervisory or management experience in a related field. The *Handbook* does not conclude that the normal minimum requirement for entry into these positions is at least a bachelor's degree in a specific specialty, or its equivalent, but rather reports that there are a number of viable paths, in addition to a general bachelor's degree, to becoming a general and operations manager.

Moreover, the *Handbook's* statement that "[m]any top executives have a bachelor's or master's degree in business administration" is inadequate to establish that jobs within this occupational category qualify as specialty occupations. As discussed above, a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Therefore, the *Handbook's* recognition that a general, non-specialty degree in business administration is also sufficient for entry into the occupation strongly suggests that a bachelor's degree in a *specific specialty* is not normally the minimum requirement for entry into this occupation.

Matter of G-V-D-C-, PC

Furthermore, when reviewing the *Handbook*, we must note that the Petitioner designated the proffered position under this occupational category at a Level I on the labor condition application (LCA). Thus, based upon the Petitioner's designation of the proffered position as a Level I position (relative to others with the occupation) it does not appear as though the Beneficiary would be required to perform specialized and complex duties requiring independent judgment, which in this case does not rise to the level of a bachelor's degree in a specific specialty, or the equivalent.

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 case, it is the Petitioner's responsibility to provide probative evidence (e.g., documentation from other objection, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation.

The Petitioner submitted an advisory opinion letter from [REDACTED]. We reviewed the opinion letter in its entirety. However, the letter is not persuasive in establishing the proffered position as a specialty occupation position.

In his letter, [REDACTED] asserts that the proffered position requires "preparation at the Bachelor's Degree in Business Management, or a related area level at a minimum." [REDACTED] lists the duties of the proffered position and states that after "examining the responsibilities" of the proffered position "in detail," he concludes that the position is "specialized and complex." [REDACTED] does not identify the source of the duties he lists. Furthermore, he does not discuss the duties of the proffered position in any substantive detail. Thus, there is no indication that he possesses any knowledge of the Petitioner's proffered position beyond the information provided by the Petitioner. He does not demonstrate or assert in-depth knowledge of the Petitioner's specific business operations or how the duties of the position would actually be performed in the context of the Petitioner's business enterprise. For instance, there is no indication that [REDACTED] visited the Petitioner's business, observed the Petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. [REDACTED] opinion does not relate his conclusion to specific, concrete aspects of this Petitioner's business operations so as to demonstrate a sound factual basis for his conclusions about the educational requirements for the particular position here at issue. Importantly, his statements, particularly those regarding an industry-wide recruiting and hiring standard, are not supported by copies or citations of research material that may have been used. He has not provided sufficient facts that would support the contention that the proffered position requires at least a bachelor's degree in a specific specialty.

Finally, [REDACTED] asserts that the duties described "are not those of a lower level employee performing tasks such as those duties performed by a General Manager," continues to state that such entry-level manager positions "would not be considered a Specialty Occupation." However, that is

(b)(6)

Matter of G-V-D-C-, PC

precisely how the Petitioner described the proffered position on the LCA, and there is no indication that [REDACTED] was aware of the fact that the Petitioner designated the proffered position as such an entry-level position relative to others within the occupational category. As we discussed above, Level I designation is indicative of a comparatively low, entry-level position relative to others within the occupation and signifies that the Beneficiary is only expected to possess a basic understanding of the occupation and will perform routine tasks that require limited, if any, exercise of judgment. [REDACTED] does not acknowledge the proffered position's entry-level designation, which is akin to the type of low-level general manager position that he does not consider to be a specialty occupation. We consider this a significant omission, in that it indicates an incomplete review of the position.⁷

We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). As a reasonable exercise of our discretion we discount the advisory opinion letter as insufficient to satisfy any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Furthermore, the Petitioner noted that USCIS approved a petition that had been previously filed on behalf of the Beneficiary. The Director's decision does not indicate whether the service center reviewed the prior approval. However, if the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the Director. We are not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be "absurd to suggest that [USCIS] or any agency must treat acknowledged errors as binding precedent." *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

A prior approval does not compel the approval of a subsequent petition or relieve the Petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of eligibility for the benefit sought. *See Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the Beneficiary, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).⁸

⁷ For all of the reasons discussed, [REDACTED] letter also does not satisfy any of the remaining criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

⁸ Given that the Beneficiary has been working for the Petitioner in the proffered position for several years, it is unclear how the proffered position could still be considered an entry-level one, as claimed by the Petitioner on the LCA.

(b)(6)

Matter of G-V-D-C-, PC

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

C. Second Criterion

The second criterion presents two, alternative prongs: "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[.]" 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong contemplates common industry practice, while the alternative prong narrows its focus to the Petitioner's specific position.

1. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the "degree requirement" (i.e., a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

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. As we noted above, [REDACTED] letter does not satisfy this criterion and here we incorporate our earlier discussion regarding [REDACTED] opinion letter. The record of proceedings does not contain any other types of evidence for our consideration under this criterion.

Thus, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

2. Second Prong

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 operations manager. Specifically, the record does not demonstrate

how the operations manager 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 its duties. To the contrary, the evidence of record indicates that a general-purpose bachelor's degree would suffice.

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. Without further evidence, the record of proceedings 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 competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems." 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).

D. Third Criterion

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 satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. 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*

⁹ 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, a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I, 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 relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

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 stated that it “has never hired an Operations Manager that did not possess a bachelor’s degree in Business Management or a closely related field” and drew our attention to the Beneficiary’s previous employment with the Petitioner as an H-1B nonimmigrant worker.¹⁰ However, the Petitioner did not submit evidence of other operations managers it may have hired and the degrees they attained. Given the fact that the Petitioner was established in 1972, we find the Beneficiary’s employment with the Petitioner alone is insufficient to demonstrate its hiring history. The record of proceedings does not contain any other types of evidence for our consideration under this criterion. 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).

E. Fourth Criterion

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.

The Petitioner has not demonstrated in the record that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

¹⁰ Again, we incorporate by reference our earlier discussion regarding the Beneficiary’s previously approved H-1B petition.

IV. CONCLUSION

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation. The burden is on the Petitioner to show 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 G-V-D-C-, PC*, ID# 16301 (AAO Apr. 18, 2016)