



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

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

MATTER OF C- INC.

DATE: AUG. 15, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an online automobile shopping service, seeks to temporarily employ the Beneficiary as a sales engineer under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 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, Vermont Service Center, denied the petition. The Director concluded that the Petitioner did not establish that the job offered qualifies as a specialty occupation.

The matter is now before us on appeal.¹ In its appeal, the Petitioner submits additional evidence and asserts the proffered position qualifies as a specialty occupation.

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.

¹ We initially rejected the appeal as untimely, but later reopened the matter sua sponte.

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 knowledge required to perform the duties is usually associated with the attainment of 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 the H-1B petition, the Petitioner stated that the Beneficiary will serve as a sales engineer. In response to the Director’s request for evidence (RFE), the Petitioner provided the following job duties for the position:

1. Evaluate the subject automobiles from both technical and sales aspects, and create auto sales reports based on the inspections; apply professional knowledge to assist the company in pricing by analyzing the subject automobiles from technical aspects – 20%
2. Explain the features of selected automobiles to customers, help customers with best solutions and promote sales by applying the principles of customer services – 20%
3. Compare and contrast features of the automobiles being traded and create products rating reports for the company in order for the company to better oversee the market and target potential customers – 15%
4. Conduct products improvement recommendation, and communicate with outside parties, such as garages, about vehicle service, repair, and promotion – 15%

5. Conduct research about up-to-date industry trends and help the company to better understand the market from the technical aspect by providing internal training about automobile technology – 15%
6. Prepare inspection principles and manuals, and participate in products inspections with the company's inspector's from time to time, and supervise their work; give suggestions to the company about the procedures of inspection – 15%

According to the Petitioner, the position requires “at least a Bachelor’s degree in vehicle engineering.” The Petitioner also states that “previous experience in the vehicle field and sales are preferred.”

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.² 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.³

A. 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.⁴

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category “Sales Engineers” corresponding to the Standard Occupational Classification code 41-9031.⁵

² Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

³ 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.

⁴ 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.

⁵ 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

We reviewed the information in the *Handbook* regarding the occupational category “Sales Engineers,” including the sections regarding the typical duties and requirements for this occupational category. Although the Petitioner titled the position sales engineer, upon review of the job descriptions provided by the Petitioner, we are not persuaded that the proffered position falls under the occupational category of “Sales Engineers.”

The subchapter of the *Handbook* entitled "What Sales Engineers Do" states the following about this occupational category:

- Prepare and deliver technical presentations explaining products or services to existing and prospective customers
- Confer with customers and engineers to assess equipment needs and to determine system requirements
- Collaborate with sales teams to understand customer requirements and provide sales support
- Secure and renew orders and arrange delivery
- Plan and modify products to meet customer needs
- Help clients solve problems with installed equipment
- Recommend improved materials or machinery to customers, showing how changes will lower costs or increase production
- Help in researching and developing new products

Sales engineers specialize in technologically and scientifically advanced products. They use their technical skills to explain the benefits of their products or services to potential customers and to show how their products or services are better than their competitors'. Some sales engineers work for the companies that design and build technical products. Others work for independent sales firms.

Upon review of the submitted job duties, it appears that the duties of the proffered position do not sufficiently align with the duties of sales engineers. Specifically, the *Handbook* indicates that sales engineers “plan and modify products to meet customer needs,” “confer with customers and engineers to assess equipment needs and to determine system requirements,” “help clients solve problems with installed equipment,” and “recommend improved materials or machinery to customers, showing how changes will lower costs or increase production.” Further, they “specialize in technologically and scientifically advanced products.”

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.*

On the other hand, the Petitioner indicates that the Beneficiary's duties include "assist[ing] the company in pricing by analyzing the subject automobiles," "creat[ing] product ratings reports . . . to better oversea the market and target potential customers," "promot[ing] sales by applying the principles of customer services," and "conduct[ing] research about up-to-date industry trends." While the Petitioner also stated that the Beneficiary will utilize technical knowledge of the complexities of automobiles to complete a points inspection checklist, it appears that most of the steps require a basic check of the car to make sure it is functioning normally. For example, the checklist includes checking the headlights, checking the windshield wipers, checking for dents, and checking interior. The checklist does not appear to require an individual that "specialize[s] in technologically and scientifically advanced products."

The duties of the proffered position vary greatly from the duties listed in the *Handbook* for sales engineers. Further, the Petitioner has not provided sufficient evidence that the Beneficiary will specialize in technologically and scientifically advanced products. Given that the proffered position does not appear to fall within this occupational category, the Petitioner did not establish the substantive nature of the work to be performed by the Beneficiary, which precludes a finding that the proffered position is in a specialty occupation. "[G]oing 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 Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

However, even if the Petitioner can establish that the Beneficiary's duties are closely aligned with the duties of sales engineers, the *Handbook* does not support a conclusion that this occupation normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for entry into the occupation.

More specifically, the subchapter of the *Handbook* entitled "How to Become a Sales Engineer" states the following about this occupational category:

Sales engineers typically need a bachelor's degree in engineering or a related field. However, a worker without a degree, but with previous sales experience as well as technical experience or training, sometimes holds the title of sales engineer. Workers who have a degree in a science, such as chemistry, or in business with little or no previous sales experience, also may be called sales engineers.

The *Handbook* states that a worker without a degree but with previous sales and technical experience or training may qualify for the position of sales engineer. Thus, 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 the sales engineer occupational group.

In addition, the *Handbook* indicates that baccalaureate degrees in various fields (engineering, science or business) may be adequate for entry into this occupation. We note that, in general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's of higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or

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its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in disparate fields, such as engineering, science, and business, 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).

Notably, the *Handbook* also indicates that a general-purpose degree is acceptable for entry into the occupation. Although a general-purpose bachelor's degree, such as a degree in business, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 147. Therefore, the *Handbook's* recognition that a general, non-specialty degree (i.e., a degree in science or business) is sufficient for entry into the occupation suggests that a bachelor's degree in a specific specialty is not a normal, minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that working as a sales engineer 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.

The Petitioner also stated that according to O*NET, most of the sales engineers occupations require a four-year bachelor's degree, and this occupation falls in the Job Zone Four which requires considerable preparation needed. However, O*NET OnLine is insufficient to establish that the proffered position qualifies as a specialty occupation. In fact, O*NET does not state a requirement for a bachelor's degree. Specifically, it assigns this occupation a Job Zone "Four" rating, which groups it among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, O*NET does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty directly related to the occupation. Therefore, O*NET information is not probative evidence to establish that the proffered position is a specialty occupation.

In support of the H-1B petition, the Petitioner also submitted a letter from [REDACTED] Ph.D., a professor in the Department of [REDACTED] Technology of the [REDACTED] at [REDACTED] stated "it is my professional and experienced opinion that the described job duties are of a professional nature and require preparation at the Bachelor's Degree level in Engineering Technology or a related area at a minimum." However, we find that [REDACTED] opinion letter has limited probative value in demonstrating that the proffered position qualifies as a specialty occupation.

For example, [REDACTED] provided a list of the job duties, which is virtually verbatim from the Petitioner's job duties. Upon review of the opinion letter, there is no indication that [REDACTED] possesses any knowledge of the Petitioner's proffered position and its business operations beyond the information provided by the Petitioner. [REDACTED] does not demonstrate or assert in-depth knowledge of the Petitioner's specific business operations or how the duties of the position would

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actually be performed in the context of the Petitioner's business enterprise. There is no evidence that [REDACTED] has visited the Petitioner's business, observed the Petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job.

Further, [REDACTED] asserts a general industry educational standard for sales engineer positions without referencing any supporting authority or any empirical basis for the pronouncement. His opinion does not relate his conclusion to specific, concrete aspects of the Petitioner's business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue. Moreover, [REDACTED] does not cite specific instances in which his past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that he has published any work or conducted any research or studies pertinent to the educational requirements for such positions (or parallel positions) in the Petitioner's industry for similar organizations, and no indication of recognition by professional organizations that he is an authority on those specific requirements.

In addition, there is no indication that the Petitioner advised [REDACTED] that the proffered position is characterized as a low, entry-level sales engineer, who has only a basic understanding of the occupation (as indicated by the wage-level on the LCA). The wage-rate indicates that the Beneficiary will be expected to perform routine tasks that require limited exercise of judgment. It appears that [REDACTED] may have found this information relevant for his opinion letter.

In summary, and for each and all of the reasons discussed above, we conclude that the opinion letter rendered by [REDACTED] has limited probative value to establish the proffered position as a specialty occupation. The conclusion reached by [REDACTED] lacks the requisite specificity and detail and is not supported by independent, objective evidence demonstrating the manner in which he reached such conclusion. There is an inadequate factual foundation established to support the opinion and the opinion is not in accord with other information in the record. Therefore, the letter from [REDACTED] does not establish that the proffered position is a specialty occupation.

We may, in our discretion, use advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). As a reasonable exercise of our discretion we discount the advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, we hereby incorporate the above discussion and analysis regarding the opinion letter into each of the bases in this decision for dismissing the appeal.

We note that the Petitioner cites to *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), for the proposition that “Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge.”

We agree with the aforementioned proposition that “[t]he knowledge and not the title of the degree is what is important.” As discussed, in general, provided the specialties are closely related, e.g.,

chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. 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.

Further, the Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Finance*.⁶ 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, 719-20 (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.*

On appeal, the Petitioner also refers to several unpublished decisions and asserts "neither the statute nor any relevant regulation requires baccalaureate level of education in 'one specific academic discipline.'" Specifically, the Petitioner notes that USCIS found that software engineers are specialty occupations even though the position may be filled by professional holding degrees in numerous academic fields.

However, we note 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. Fed. Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

⁶ It is noted that the district judge's decision in that case appears to have been based largely on the many factual errors made by the Director in the 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.

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), USCIS consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147 (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”).

Moreover, the Petitioner did not provide sufficient evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. 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.

For all the foregoing reasons, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

B. 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 casts its gaze upon the 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.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms “routinely employ and recruit only degreed individuals.” *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Here and as already discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative source) reports an 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.

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The Petitioner submitted several job advertisements but they do not satisfy this alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), either. That is, neither the job-vacancy announcements themselves, nor any other evidence within the record of proceedings, establish that those advertisements pertain to positions that meet all of the criterion's elements of being in the Petitioner's industry, in organizations similar to the Petitioner, and also parallel to the proffered position. In this regard, we make several specific findings.

When determining whether the Petitioner and the 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 the organizations are similar and in the same industry without providing a legitimate basis for such an assertion.

For example, the advertisements include positions with the following employers:

- [REDACTED] “leading worldwide supplier of automation technology”;
- [REDACTED] "leading manufacturer of specialized motion control motors used for engineering applications";
- [REDACTED] client is a global leading manufacturer and supplier of high-performance customized components for the automotive, agriculture, aerospace, construction, energy, fluid power, oil and gas, energy, on-highway and off-highway markets;
- [REDACTED] "global leader in providing highly-engineered industrial manufacturing equipment”;
- [REDACTED] sales; and
- [REDACTED] product development.

Without further information, the advertisements appear to be for organizations that are not similar to the Petitioner (and in the same industry), and the Petitioner has not provided probative evidence to suggest otherwise. That is, the Petitioner did not provide sufficient information to establish that the advertising companies and the Petitioner share the same general characteristics, as well as information regarding which aspects or traits (if any) it shares with the advertising organizations.

Further, contrary to the purpose for which the advertisements were submitted, some postings do not establish that at least a bachelor's degree in a specific specialty, or its equivalent is required for the position. For example, the postings for [REDACTED] and [REDACTED] indicate that they

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require a 4-year degree but do not specify a specific specialty. [REDACTED] stated that a bachelor's degree in mechanical engineering is preferred, but does not indicate that it is required.

Moreover, some positions do not appear to be for parallel positions. For instance, a sales engineer/entry level position for [REDACTED] requires a degree and "2 to 4 years" experience. Likewise, a sales engineer position at [REDACTED] requires a bachelor's degree and "at least 3 years" experience. In addition, the position of sales engineer for [REDACTED] requires a bachelor's degree and at least 4 years of experience. As previously discussed, the Petitioner designated the proffered position on the LCA as a Level I (entry) position in comparison to others within the occupation. The advertised positions appear to be for more senior positions than the proffered position.

The Petitioner stated that "even though the size and scope of the operations between the Petitioner and the aforementioned employers are not squarely identical, as long as the job duties of these positions are similar, minimum requirement of those companies should be considered as the industry standard." However, without knowing the business operations of the advertised companies, we are not able to determine the true nature of the job duties to find that the duties are similar.

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 support of the petition, 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 did not develop relative complexity or uniqueness as an aspect of the duties of the position, and did not provide sufficient documents to establish that the duties are so complex or unique that only a specifically degreed individual could perform them. The Petitioner claims that the duties require candidate to "have professional knowledge of fuel economy/emissions, vehicle dynamics, NVH (noise, vibration, and harshness) engineering, vehicle electronics, shift quality, corrosion engineering, ergonomics engineering." However, as discussed, the record contains a checklist that appears to require only basis knowledge of automobiles. We note that the record also contains a car report for a [REDACTED] with upgrades. The report discusses various features of the car such as [REDACTED] Adjustable Suspension, [REDACTED] and more. While compiling such report may require some technical knowledge, it does not appear to so complex or unique that performing such duty requires at least a bachelor's degree in a specific specialty.

Moreover, the Petitioner designated the proffered position as an entry-level position within the occupational category (by selecting a Level I wage). This designation, when read in combination with the Petitioner's job description and the *Handbook's* account of the requirements for this occupation, further suggests that this particular position is not so complex or unique relative to other sales engineers that the duties can only be performed by an individual with a bachelor's degree or higher in a specific specialty, or its equivalent. Accordingly, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

C. 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.

In response to the RFE, the Petitioner indicated that it was founded in December 2014 and the "Beneficiary is the only Sales Engineer who has ever worked for the Petitioner for this proffered position." Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

D. 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.

As noted, the Petitioner did not establish the substantive nature of the work to be performed by the Beneficiary. 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 does not sufficiently communicate (1) the actual work that the Beneficiary would perform on a day-to-day basis, (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.

We also incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the position in the LCA as a Level I position (the lowest of four assignable wage-levels) relative to others within the same occupational category.⁷ The Petitioner has not

⁷ 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

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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).

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.

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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.