



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

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

MATTER OF A-S-&T-T-, LLC

DATE: AUG. 18, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an additive manufacturing (3D printing) and stem education technical services company, seeks to temporarily employ the Beneficiary as an “engineering technician” under the H-1B nonimmigrant classification. *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, California Service Center, denied the petition. The Director concluded that the evidence of record did not establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

The matter is now before us on appeal. On appeal, the Petitioner asserts that the Director’s basis for denial of the petition was erroneous and contends that it satisfied all evidentiary requirements.

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.

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 described the duties of the proffered position as “to apply, maintain and instruct the operating of additive manufacturing and rapid prototyping (AM/RP) equipment in educational, commercial and industrial applications. Apply 3D printing software applications and hardware technologies.” The Petitioner’s offer letter to the Beneficiary, submitted with the initial petition, similarly described the proffered duties as to “[o]perate desktop additive manufacturing and rapid prototyping (AM/RP) equipment for on-site and remote access use to produce items from materials such as plastics, wood and acrylic. Instruct users on CAD/CAM and use of AM/RP equipment.” The offer letter further stated that the necessary knowledge and skills include “CAD/CAM, STL, MS Office and Windows-based applications,” “[a]bility to read CAD drawings and schedule projects,” and “knowledge of materials, production processes, inventory management, quality control and production scheduling.”

On the labor condition application (LCA) submitted in support of the petition, the Petitioner asserted that the proffered position falls within the “Engineering Technicians, Except Drafters, All Other” occupational classification, corresponding to Standard Occupational Classification (SOC) code 17-3029, at a Level I wage level.<sup>1</sup>

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<sup>1</sup> We will consider the Petitioner’s classification of the proffered position at a Level I wage (the lowest of four assignable wage levels) 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

In response to the Director's request for evidence (RFE), the Petitioner explained that its 3D printing business "represents the next generation of global manufacturing . . . where computers, not operators run the machines." The Petitioner provided the following overview of the proffered position and the knowledge necessary to perform its duties:

The proffered position encompasses CAD/CAM and STL-related programs, MS Office and Windows-based applications. The candidate must possess the ability to use and to teach CAD/CAM using AM/RP software and equipment. The position requires the ability to initiate, analyze and build projects with highly complex software and specialized AM/RP equipment. Excellent communication skills, written, oral and visual, are also required. Knowledge of materials, production processes, inventory management, quality control and production scheduling is necessary. This position also requires the ability to create and to analyze data algorithm.

Later on in the same letter, the Petitioner highlighted the "highly technical nature and complex R&D requirements of the proffered position" and provided yet another description of the proffered position and its constituent job duties, as follows:

**Roles and Responsibilities:** To design, develop and implement 3D printing processes, technologies, software and equipment. Must collaborate with research and development engineers in different disciplines in the conceptualization, development and documentation of new and improved 3D printing technologies.

**Organizational Role:** Serves as a member of a leadership team and is considered a leading high tech professional within the organization. Must be able to deal with challenging engineering tasks independently. The organization depends on this person's engineering knowledge and skills in successfully completing its projects.

**Job Responsibilities:** Providing theoretical and technical input on the design, assembly, troubleshooting and repair of electro-mechanical products and systems; assemble and analyze data logs; interpreting and verifying mechanical and electrical drawings; conducting internal testing on prototype 3D printers; setting up and maintaining lab prototypes using CAD/CAM applications; apply knowledge of and

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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](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.* A Level I wage should be considered for research fellows, workers in training, or internships. *Id.*

operation of various metals/plastic AM machines; hands on experience in maintaining and developing machine tools independently; knowledge of materials and materials science; strong competencies in applying engineering principles to 3D printing applications and development.

**Competencies:** Must possess knowledge of additive manufacturing process and technologies. Must have the ability to design, develop and implement 3D printing technologies to meet client needs. Must possess the knowledge and skill to analyze data and make recommendations for technology and production improvement. Supervises the manufacturing process of 3D printing; answers complex questions related to 3D printing applications and principles; trains others on 3D printing design and applications using CAD software.

On appeal, the Petitioner asserts that the proffered position “encompasses the positions of Industrial Engineering Technologist[s] (17-3209.05) and Manufacturing Engineering Technologist[s] (17-3209.06),” under the broader “Engineering Technicians, Except Drafters, All Other” occupational classification designated on the LCA.

According to the Petitioner, the position requires at least a bachelor’s degree in engineering, or its equivalent.

### 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.<sup>2</sup>

As a preliminary and fundamental matter, we find that the Petitioner has not consistently described the proffered position, its associated job duties, and the knowledge and skills necessary to perform them. The Petitioner initially described the duties of the proffered position as limited to the operation of and instruction in additive manufacturing and rapid prototyping (AM/RP) equipment. The Petitioner initially stated that the proffered duties require knowledge of CAD/CAM, STL, MS Office and Windows-based applications, materials, production processes, inventory management, quality control, and production scheduling.

In response to the Director’s RFE, however, the Petitioner substantially expanded upon the proffered duties and its requirements. For instance, the Petitioner’s RFE response listed numerous job duties involving the design and development of 3D printing processes, technologies, software, and equipment. The Petitioner’s initial descriptions of the job duties did not specifically contain any design or development duties. Nor are these design and development duties consistent with the “Engineering Technicians, Except Drafters, All” (SOC code 17-3029) occupational classification

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

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selected on the LCA. In particular, while the Petitioner asserts that the proffered position encompasses the “Industrial Engineering Technologists” (SOC code 17-3029.05) and “Manufacturing Engineering Technologists” (SOC code 17-3029.06) occupational sub-categories, neither of them contain any design or development duties.<sup>3</sup> Additionally, the Petitioner’s RFE response elevated the knowledge and skills required to perform the proffered duties to include “complex [research and development] R&D requirements” and the “ability to create and to analyze data algorithm.”

Furthermore, the Petitioner’s RFE response stated that the Beneficiary in the proffered position would be a “member of a leadership team” and would “[supervise] the manufacturing process of 3D printing.” But the position’s claimed supervisory or leadership role is not apparent from the Petitioner’s initial job descriptions or documents. For example, the Petitioner’s organizational chart (submitted with the initial petition) depicts the Beneficiary in a standalone “engineering technician” position with no direct subordinates.<sup>4</sup> And as previously noted, the Petitioner submitted an LCA for a Level I position (through the Level I wage rate), which indicates that the proffered position is a comparatively low, entry-level position relative to others within the same occupation.<sup>5</sup> The Petitioner’s Level I wage rate designation is inconsistent with the proffered position’s claimed supervisory or leadership role and duties.

Moreover, the Petitioner’s RFE response implies that the proffered position is actually an *engineer* position. To illustrate, the Petitioner stated that positions in the field of additive manufacturing/3D printing have primarily been filled by “mechanical engineers” and “industrial engineers.” The Petitioner cited an article published in the [REDACTED] stating that “in additive manufacturing (3D printing), most companies are looking specifically for **engineers** (emphasis in original).” The Petitioner also stated that because its company conducts its own research and development, “it is essential that [its] engineering technicians have the same qualifications, credentials, and educational background as manufacturing and R&D engineers.” As previously mentioned, however, the Petitioner submitted an LCA certified for a position falling under the “Engineering Technicians, Except Drafters, All” (SOC code 17-3029) occupational classification. The Petitioner has not sufficiently explained how its statements and evidence regarding engineer positions relate to its proffered position, as initially described.<sup>6</sup>

<sup>3</sup> See Occupational Information Network (O\*NET) Details Report for “Industrial Engineering Technologists,” <http://www.onetonline.org/link/details/17-3029.05> (last visited Aug. 10, 2016); O\*NET Details Report for “Manufacturing Engineering Technologists,” <http://www.onetonline.org/link/details/17-3029.06> (last visited Aug. 10, 2016).

<sup>4</sup> The organizational chart also depicts the Beneficiary as reporting to the Petitioner’s executive vice president, not to its president/sole owner as later claimed in the RFE response.

<sup>5</sup> For more information on wage levels, 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://flcdatacenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf).

<sup>6</sup> Compare, e.g., with the occupational categories of “Manufacturing Engineers” (SOC code 17-2199.04) and “Industrial Engineers” (SOC code 17-2112.00), both of which typically perform design and development duties unlike the engineering technologist sub-categories chosen by the Petitioner. For more information on these engineering categories, see O\*NET Details Report for “Manufacturing Engineers,” <http://www.onetonline.org/link/details/17-2199.04> (last

The purpose of an RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to an RFE (or thereafter), the Petitioner cannot offer a new position to the Beneficiary, or materially change a position's associated job responsibilities, level of authority within the organizational hierarchy, or requirements. The Petitioner must establish that the position offered to the Beneficiary when the petition was filed merits classification for the benefit sought. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). If significant changes are made to the initial request for approval, the Petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the Petitioner in its response to the Director's RFE did not clarify or provide more specificity to the original duties of the position, but rather, added new duties and requirements to the job description. Therefore, our analysis of the proffered position will be based on the Petitioner's job descriptions and evidence submitted with the initial petition.<sup>7</sup>

#### A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), 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.<sup>8</sup> To inform this inquiry, we normally recognize the Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>9</sup>

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visited Aug. 10, 2016); O\*NET Details Report for "Industrial Engineers," <http://www.onetonline.org/link/details/17-2112.00> (last visited Aug. 10, 2016). The lack of design and development duties for the engineering technologist sub-categories corresponding to the Petitioner's LCA further supports our conclusion that the RFE response significantly changed the nature of the proffered job duties.

<sup>7</sup> The Petitioner asserts on appeal that the Director "arbitrarily alleged that Petitioner's proffered position of Engineering Technician is the same as an industrial engineering technician as defined in the [*Occupational Outlook Handbook (Handbook)*]." Contrary to the Petitioner's assertion, however, positions under this occupational category perform duties such as "[d]esign new equipment or materials or recommend revision to methods of operation, material handling, equipment layout, or other changes." O\*NET Details Report for "Industrial Engineering Technicians," <http://www.onetonline.org/link/details/17-3026.00> (last visited Aug. 10, 2016). These duties are consistent with the proffered job duties of designing and developing 3D printing processes, technologies, software, and equipment, as described in the Petitioner's RFE response. Therefore, the Director's decision was not "arbitrary," as claimed.

Nevertheless, as we find that the Petitioner's job descriptions in its RFE response changed significantly from the initial job duties, we will not follow the Director's decision to analyze the proffered position under the "Industrial Engineering Technicians" occupational classification. As explained above, our analysis of the proffered position will be based on the Petitioner's initial job descriptions, taking into consideration the occupational classification and related sub-classifications (i.e., "Industrial Engineering Technologists" and "Manufacturing Engineering Technologists") as asserted on the LCA.

<sup>8</sup> Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

<sup>9</sup> All of our references are to the 2016-2017 edition of the *Handbook*, available at <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

We reviewed the section of the *Handbook* covering “Engineering Technicians, Except Drafters, All Other.” However, the *Handbook* does not provide a detailed narrative account or summary data for this occupational category.<sup>10</sup> Accordingly, in certain instances, the *Handbook* is not determinative. When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the Petitioner to provide persuasive evidence (e.g., documentation from another objective, authoritative source) that the proffered position more likely than not satisfies this criterion, notwithstanding the absence of the *Handbook*’s support on the issue.

On appeal, the Petitioner submits the Occupational Information Network (O\*NET) Summary Reports for “Industrial Engineering Technologists” (SOC code 17-3029.05) and “Manufacturing Engineering Technologists” (SOC code 17-3029.06). The Petitioner claims that these two subsections of the occupational category most relevantly reflect the duties of the proffered position and its requirements.

The O\*NET summary reports, however, are insufficient to establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor’s degree in a specific specialty, or its equivalent. Contrary to the assertions of the Petitioner, O\*NET does not state a requirement for a bachelor’s degree for this occupation. Rather, for both industrial engineering and manufacturing engineering technologists, O\*NET assigns them a Job Zone “Four” rating which groups them among occupations for which “most . . . require a four-year bachelor’s degree, but some do not.” As pointed out by the Petitioner, only 68% of industrial engineering technologists and 52% of manufacturing engineering technologists have a bachelor’s degree. This information is not indicative of a *requirement* of a bachelor’s degree, and moreover, does not convey whether the bachelor’s degrees possessed by the employees are in any specific field of study. The O\*NET reports therefore do not sufficiently demonstrate that positions within the “Industrial Engineering Technologists” and “Manufacturing Engineering Technologists” sub-categories qualify as a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

In this case, the Petitioner has not established that the proffered position falls under an occupational category for which an 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 criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

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degree requirement, or its equivalent, for entry.

<sup>10</sup> There are occupational categories which are not covered in detail by the *Handbook*, including the “Engineering Technicians, Except Drafters, All Other” occupational classification. Nonetheless, the *Handbook* does list the “typical entry-level education” for this occupational classification as an associate’s degree. See U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., “Data for Occupations Not Covered in Detail,” <http://www.bls.gov/ooh/About/Data-for-Occupations-Not-Covered-in-Detail.htm> (last visited Aug. 10, 2016).

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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 contemplates 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)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* or another authoritative source reports a requirement for at least a bachelor’s degree in a specific specialty, or its equivalent. We incorporate by reference the previous discussion on the matter.

In response to the RFE, the Petitioner submitted two letters in support of the assertion that a bachelor’s degree in a specific specialty (or its equivalent) is required to perform the duties of the proffered position.

The first letter is written by [REDACTED] director of operations for [REDACTED] identified as “the national accelerator for additive manufacturing (AM) and 3D printing (3DP).” [REDACTED] claims that “the availability of expertise and knowledgeable individuals in this field is limited,” and that at least a bachelor’s degree in engineering is required for the position of engineering technician. [REDACTED] further states that there is a preference for degrees in industrial and mechanical engineering.

The Petitioner also submits a letter from [REDACTED] director of the [REDACTED] at the [REDACTED] at [REDACTED] which he identifies as “a leading research center for additive manufacturing.” [REDACTED] like [REDACTED] also states that at least a bachelor’s degree in engineering is required for an engineering technician position, with a preference for degrees in industrial or mechanical engineering.

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While [REDACTED] and [REDACTED] both assert a general industry standard of at least a bachelor's degree in engineering for engineering technician positions, they do not reference any supporting authority or empirical basis for their pronouncement. "[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)). Furthermore, both [REDACTED] and [REDACTED] state that "[w]hile some universities and professional organizations are developing certifications, credentialing and degree programs, much of the workforce is learning-on-the-job, employing skills of engineering, design and creativity in this evolving field."<sup>11</sup> Their statement that many engineering technicians are "learning-on-the-job," and that certification and credentialing programs are available in addition to degree programs, undermines the assertion that at least a bachelor's degree in engineering is required for engineering technician positions.

Moreover, neither individual demonstrates an in-depth knowledge of how the duties of the proffered position would actually be performed in the context of the Petitioner's specific business operations. For instance, there is no indication that [REDACTED] and [REDACTED] are aware of the proffered position's characterization as an entry-level engineering technologist position expected to have only a basic understanding of the occupation (as indicated by the wage-level on the LCA). It appears that [REDACTED] and [REDACTED] would have found this information relevant for their opinion letters. There is also no evidence that either [REDACTED] or [REDACTED] has visited the Petitioner's business, observed the Petitioner's engineering technician employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job.

Notably, at least two paragraphs are repeated verbatim in both letters, with a third paragraph that contains virtually identical wording. The use of identical language and phrasing across the various letters suggests that the language in the letters is not the authors' own. *Cf. Surinder Singh v. BIA*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an adverse credibility determination in asylum proceedings based in part on the similarity of the affidavits); *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source).

On appeal, the Petitioner submits two new opinion letters: one from [REDACTED] faculty member of [REDACTED] and one from [REDACTED] chief operating officer of the [REDACTED]. Both [REDACTED] and [REDACTED] state the general duties associated with an engineering technician position, and specifically discuss the Beneficiary's credentials, determining that he is well-qualified for the position. However, we once again note that these letters, like the letters previously discussed, simply state a general industry educational standard for engineering technician positions without any references to supporting authority or empirical data. There is also insufficient discussion of the specific position proffered here, which the Petitioner certified as a Level I, entry-level engineer technologist position. Also like the

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<sup>11</sup> Their letters do not clarify the amount of "learning-on-the-job" required.

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previous letters, there are a number of sentences that are identical or virtually identical to those contained in the letters from [REDACTED] and [REDACTED]

In summary, and for each and all of the reasons discussed above, we conclude that the opinion letters rendered by [REDACTED] and [REDACTED] are insufficient to establish the proffered position as a specialty occupation. The conclusions reached lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which such conclusions were reached. There is an inadequate factual foundation established to support the opinions, and the opinions are not in accord with other information in the letters. Therefore, the letters do 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).

Also under the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the Petitioner references vacancy announcements purportedly posted by [REDACTED] – Recruiting/Staffing and an unnamed company in Northeast Ohio. But the Petitioner did not submit copies of the actual advertisements. Without corroborating evidence, the Petitioner's bare assertions regarding these advertisements will not be further considered. Again, "going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings." *Matter of Soffici*, 22 I&N Dec. at 165.

Finally, the Petitioner submits the [REDACTED] article as well as an article from the [REDACTED] both of which discuss the hiring of "engineers" in the 3D printing industry. However, as these articles focus on *engineer* positions, the Petitioner has not sufficiently demonstrated the relevance of these articles in demonstrating that the proffered position is a specialty occupation. We therefore will not further consider these articles under this or any other criterion.

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).

## 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.

As evidence of the position's claimed complexity or uniqueness, the Petitioner described its "high tech" business operations, including the fact that the company designs and builds its own "state-of-the-art" 3D printers and conducts research and development. The Petitioner stated: "To accomplish

these tasks, it is essential that [its] engineering technicians have the same qualifications, credentials, and educational background as manufacturing and R&D engineers.”

As we previously discussed, the Petitioner submitted a certified LCA not for an *engineer* position, but for a position falling under the “Engineering Technicians, Except Drafters, All” (SOC code 17-3029) occupational classification. Moreover, the Petitioner designated the proffered position on the LCA as an entry-level position within this occupational category (by selecting a Level I wage). In light of the Petitioner’s designation of this position as a Level I, entry-level position under the “Engineering Technicians, Except Drafters, All” occupational classification, we cannot find that the particular position here is so complex or unique such that its duties can only be performed by an individual with at least a bachelor’s degree or higher in a specific specialty, or its equivalent.

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. As the Petitioner has not sufficiently and credibly developed relative complexity or uniqueness as an aspect of the duties of the position, 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.

To merit approval of the petition under this criterion, the record must establish that a petitioner’s imposition of a degree requirement is not 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 the 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 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. Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner’s past recruiting and hiring practices, as well as information regarding employees who previously held the position.

On appeal, the Petitioner asserts that “it previously hired two individuals who performed similar job duties and tasks as has been described for the Beneficiary.” The Petitioner claims that these two individuals possess a bachelor’s degree in industrial technology with an associate’s degree in mechanical engineering, and a bachelor’s degree in industrial engineering. But the Petitioner did not submit objective evidence of these individuals’ employment, job duties, or educational

qualifications. Absent objective corroborating evidence, the record is insufficient to demonstrate that these individuals were, in fact, employed in the proffered position and possess the said degrees.

The Petitioner acknowledges that the Beneficiary is the only individual currently employed by the Petitioner as an engineering technician. Although the Petitioner submitted a copy of its job vacancy announcement for the proffered position, identified as a “Rapid Prototyping Lab Technician,” this posting, alone, is insufficient to establish that the Petitioner routinely hires only specialty-degreed individuals for the proffered position.<sup>12</sup>

The Petitioner did not provide sufficient documentary evidence to support the assertion that it normally requires at least a bachelor’s degree in a specific specialty, or its equivalent, for the proffered position. Thus, the Petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

#### 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 evidence under this criterion, the Petitioner provided its revised description of the proffered position, which included the design, development, and supervisory/leadership duties not found in the Petitioner’s initial job descriptions. The Petitioner also supplemented the record with a copy of an engineering project designed by the Beneficiary using 3D printing, thereby reinforcing his design and development duties. But as we previously discussed, these job duties are not consistent with the Petitioner’s initial descriptions of the proffered job duties, which were limited to the operation of and instruction in additive manufacturing and rapid prototyping equipment. We therefore cannot take into consideration these duties which the Petitioner claims are so specialized or complex.

We again 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, entry-level position relative to others within the “Engineering Technicians, Except Drafters, All” occupational category.<sup>13</sup> Without further evidence, the Petitioner has not demonstrated that its proffered position

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<sup>12</sup> This posting lists the offered salary as \$52,374 per year. This is significantly higher than the wage of \$41,496 per year being offered to the Beneficiary.

<sup>13</sup> 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

is one with specialized and complex duties usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. The Petitioner has submitted inadequate evidence to satisfy the criterion of the regulations at 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 Oriende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of A-S-&T-T-, LLC*, ID# 17738 (AAO Aug. 18, 2016)

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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.