



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

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

MATTER OF N-O-B- N.A.

DATE: FEB. 11, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a commercial bank, seeks to temporarily employ the Beneficiary as a part-time “loan officer” under the H-1B nonimmigrant classification. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The Director, California Service Center, denied the petition. The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal.

I. ISSUE

The issue before us is whether the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

II. SPECIALTY OCCUPATION

A. Legal Framework

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

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the

attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. 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.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”). Applying this standard, USCIS regularly approves H-1B petitions for qualified individuals who are to be employed as engineers, computer scientists, certified public accountants,

college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the individual, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

B. Proffered Position

In the labor condition application (LCA) submitted to support the visa petition, the Petitioner stated that the proffered position corresponds to the occupational category "Loan Officers" with SOC (ONET/OES) code 13-2072, at a Level I (entry level) wage.

In a letter dated March 2, 2015, the Petitioner stated that the Beneficiary will work as a loan officer performing the following duties, with percentages:

- Analyze [the Petitioner's] applicants' financial status, credit, and property evaluations to determine feasibility of granting loans. 10%
- Obtain and compile copies of loan applicants' credit histories, e.g. corporate financial statements, and other financial information. 10%
- Meet with applicants to obtain information for loan applications and to answer questions about the process at [the Petitioner]. 15%
- Explain to customers the different types of loans and credit options that are available, as well as the terms of those services of our bank. 10%
- Review loan agreements to ensure that they are complete and accurate according to policy of [the Petitioner]. 15%
- Approve loans within specified limits, and refer loan applications outside those limits to management for approval. 10%

- Handle customer complaints and take appropriate action to resolve them. 10%
- Stay abreast of new types of loans and other financial services and products of other local commercial banks to better meet customers' needs. 10%
- Review and update credit and loan files. Submit applications to credit analysts for verification and recommendation. 10%

In its support letter, the Petitioner did not indicate the minimum requirements for the position, but stated that the Beneficiary has a U.S. Master of Science degree in Applied Finance and a Bachelor's degree in International Economics.

In response to the RFE, in a letter dated May 19, 2015, the Petitioner did not provide its minimum requirements for the position, but stated that it has a past practice of hiring persons with a minimum of a Bachelor's degree to work as loan officers.

On appeal, in a letter dated July 8, 2015, the Petitioner states, "People who work in our bank as loan officers must have a minimum education qualification of a Bachelor's Degree according to our bank policy." Although the Petitioner states that a minimum requirement for the proffered position is a bachelor's degree, the Petitioner does not indicate that the degree must be in a specific specialty.

C. Analysis

For H-1B approval, a petitioner must demonstrate a legitimate need for a position to exist and to substantiate that it has H-1B caliber work for the Beneficiary for the period of employment requested in the petition. It is incumbent upon a petitioner to demonstrate it has sufficient work to require the services of a person with at least a bachelor's degree in a specific specialty, or its equivalent, to perform duties at a level that requires the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty for the period specified in the petition.

As a preliminary matter, the Petitioner's claim that a bachelor's degree is a sufficient minimum requirement for entry into the proffered position is inadequate 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 147.¹

The Petitioner asserts that its minimum requirement for the proffered position is only a bachelor's degree, without further requiring that the 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. The Director's decision must therefore be affirmed and the appeal dismissed on this basis alone.

Moreover, it also cannot be found that the proffered position qualifies as a specialty occupation as the Petitioner has not satisfied any of the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). To reach this conclusion, we turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

We recognize the U.S. Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² The *Handbook's* section titled "How to Become a Loan Officer" states:

Most loan officers need a bachelor's degree and receive on-the-job training. Mortgage loan officers must be licensed.

Education

Loan officers typically need a bachelor's degree, usually in a field such as business or finance. Because commercial loan officers analyze the finances of

¹ 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").

² The *Handbook*, which is available in printed form, may also be accessed online at <http://www.bls.gov/ooh>. The references to the *Handbook* are from the 2016-17 edition available online.

businesses applying for credit, they need to understand general business accounting, including how to read financial statements.

Some loan officers may be able to enter the occupation without a bachelor's degree if they have related work experience, such as in sales, customer service, or banking.

Training

Once hired, loan officers usually receive some on-the-job training. This may be a combination of formal, company-sponsored training and informal training during the first few months on the job.

Licenses, Certifications, and Registrations

Mortgage loan officers must have a Mortgage Loan Originator (MLO) license. To become licensed, they must complete at least 20 hours of coursework, pass an exam, and submit to background and credit checks. Licenses must be renewed annually, and individual states may have additional requirements.

Several banking associations, including the American Bankers Association and the Mortgage Bankers Association, as well as a number of schools, offer courses, training programs, or certifications for loan officers. Although not required, certification shows dedication and expertise and thus may enhance a candidate's employment opportunities.

U.S. Department of Labor (DOL), Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., Loan Officers, available on the Internet at <http://www.bls.gov/ooh/business-and-financial/loan-officers.htm#tab-4> (last visited Feb. 8, 2016).

The *Handbook* does not indicate that a bachelor's or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. Rather, the occupation accommodates a wide spectrum of educational and/or experience credentials. While the *Handbook* reports that most officers need a bachelor's degree, it also reports that some firms hire loan officers with related work experience instead of a bachelor's degree.

When reviewing the *Handbook*, we must note that the Petitioner designated the proffered position under this occupational category at a Level I on the LCA.³ This designation is indicative of a

³ The "Prevailing Wage Determination Policy Guidance" issued by the U.S. Department of Labor (DOL) provides a description of the wage levels. A Level I wage rate is described by DOL as follows:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental

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. In accordance with the relevant DOL explanatory information on wage levels, the Beneficiary will be closely supervised and her work closely monitored and reviewed for accuracy. Furthermore, she will receive specific instructions on required tasks and expected results. DOL guidance indicates that a Level I designation is appropriate for a research fellow, a worker in training, or an internship. Thus, based upon the Petitioner's designation of the proffered position as a Level I position (relative to others with the occupation), it appears as though the proffered position would be among those loan officer positions falling on the end of the spectrum for which work experience would likely suffice.

As the evidence of record does not indicate that normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent for this particular position, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

Next, we find that the Petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for the Petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being (1) in the Petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the Petitioner.

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

As already discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or any other independent, authoritative source) reports an industry-wide requirement

purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

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.

There are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement and no submission of letters or affidavits from firms or individuals that attest that such firms routinely employ only individuals with a degree in a specific specialty.

In support of the assertion that the degree requirement is common to the Petitioner's industry in parallel positions among similar organizations, the Petitioner submitted copies of job advertisements. However, upon review of the documents, we find that the Petitioner's reliance on the job announcements is misplaced.

As noted, the Petitioner stated that it is a commercial bank. The Petitioner designated its business operations under the North American Industry Classification System (NAICS) code 522110.⁴ This NAICS code is designated for "Commercial Banking." The U.S. Department of Commerce, Census Bureau website describes this NAICS code by stating the following: "This industry comprises establishments primarily engaged in accepting demand and other deposits and making commercial, industrial, and consumer loans. Commercial banks and branches of foreign banks are included in this industry." U.S. Dep't of Commerce, U.S. Census Bureau, 2012 NAICS Definition, 522110 – Commercial Banking, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited Feb. 8, 2016).

For the Petitioner to establish that other organizations are similar, it must demonstrate that they share the same general characteristics. Without such evidence, documentation submitted by the Petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the Petitioner. When determining whether the Petitioner and the 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). Notably, it is not sufficient for the Petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

Upon review of the documentation, we find that the Petitioner did not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being (1) in the Petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the Petitioner.

⁴ According to the U.S. Census Bureau, the North American Industry Classification System (NAICS) is used to classify business establishments according to type of economic activity and each establishment is classified to an industry according to the primary business activity taking place there. See <http://www.census.gov/eos/www/naics/> (last visited Feb. 8, 2016).

(b)(6)

Matter of N-O-B- N.A.

For instance, the Petitioner included an advertisement for a position with the [REDACTED]. There is insufficient information to establish that this advertisement is for an organization that is similar to the Petitioner.

Although the other advertisements were also placed by banks, the Petitioner has not sufficiently established that the advertised positions parallel those of the duties of the proffered position. For example, the [REDACTED] advertisements are for a Commercial Loan Officer. However, because it does not appear from the Petitioner's proffered duties that the Beneficiary would work on commercial loans, the Petitioner has not demonstrated that these positions parallel the one proffered here. Additionally, the [REDACTED] requires a degree plus seven years of experience, so this position appears to occupy a higher level of responsibility than the Petitioner's position, which is paid at a Level I wage. The positions advertised by [REDACTED] require mortgage license registration, which the Petitioner does not require. This indicates that these positions are for a Mortgage Officer, which as stated by the *Handbook* requires additional certification, indicating that these positions are different than the one proffered here. The advertisement placed by [REDACTED] requires a bachelor's degree but does not require that the degree be in a specific specialty.

As the documentation does not establish that the Petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed.⁵ Therefore, the Petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the Petitioner's industry in positions that are (1) in the Petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the Petitioner. 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).

⁵ Although the size of the relevant study population is unknown, the Petitioner does not demonstrate what statistically valid inferences, if any, can be drawn from these advertisements with regard to determining the common educational requirements for entry into parallel positions in similar companies. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error.")

As such, even if the job announcements supported the finding that the position of loan officer for companies that are similar to the Petitioner requires a bachelor's or higher degree in a specific specialty, or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* that such a position does not require at least a baccalaureate degree in a specific specialty, or its equivalent, for entry into the occupation in the United States.

The particular position is so complex or unique that it can be performed only by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the Petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

The evidence of record does not develop relative complexity or uniqueness as an aspect of the position. The Petitioner did not submit evidence to demonstrate that the proffered position entails work that is more complex or unique than it can only be performed by someone with a bachelor's degree in a specific specialty, or the equivalent. Further, the LCA submitted by the Petitioner indicates a wage level at a Level I (entry) wage, which is the lowest of four assignable wage levels.⁶ Without further evidence, the record of proceeding does not indicate 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. 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."⁷ 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.

Upon review, we find that the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. For instance, the Petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it may believe are so complex and unique. While a few related courses may be beneficial, or even required, in performing certain duties of the position, the Petitioner has not demonstrated how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is

⁶ 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.

⁷ For additional information regarding wage levels as defined by DOL, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.flcdcenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

required to perform the duties of the proffered position. The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

The Petitioner did not establish that its particular position is so complex or unique that it can only be performed by an individual with at least a bachelor's degree in a specific specialty, or its equivalent. Therefore, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

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

To merit approval of the petition under this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. While a petitioner may assert that a proffered position requires a specific degree, that statement alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the Petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent, to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. We must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the

attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.

On appeal, the Petitioner provides a list of its current and former loan officers who have a wide range of degrees. Some have a master's degree in business administration, some have a master's degree in applied finance, some have a bachelor's degree in business administration, one has a master's degree in business management, one has a bachelor's degree in philosophy, and one has a bachelor's degree in finance. In addition, the Petitioner provided a copy of an advertisement it placed for a loan officer where it required a master's degree in business administration or finance plus one year of experience. Even if the Petitioner were able to demonstrate, which it did not do, that all of its loan officers perform the same duties as the ones proposed for the proffered position, we note that the Petitioner nonetheless appears to accept a wide range of bachelor's degrees, master's degrees, and experience for its' loan officer positions. We further note again that the Petitioner never stated that it requires a minimum of a bachelor's degree in a *specific specialty* or the equivalent. We hereby incorporate our earlier discussion regarding the lack of such a requirement.

Therefore, the Petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

Upon review of the record of the proceeding, we find that the Petitioner has not provided sufficient evidence to satisfy this criterion of the regulations. In the instant case, relative specialization and complexity have not been credibly developed by the Petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent.

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 (the lowest of four assignable wage-levels) relative to others within the occupational category. Without more, the position is one not likely distinguishable by relatively specialized and complex duties. That is, without further evidence, the Petitioner has not demonstrated that its proffered position is one with specialized and complex duties as such a position falling under this occupational category would

Matter of N-O-B- N.A.

likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a substantially higher prevailing wage.⁸

The Petitioner has submitted insufficient evidence to satisfy this criterion of the regulations. We, therefore, conclude that the Petitioner did not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation.

III. CONCLUSION

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of N-O-B- N.A.*, ID# 15629 (AAO Feb. 11, 2016)

⁸ As previously discussed, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems" and requires a significantly higher wage.