



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

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

MATTER OF K-C- LLC

DATE: JAN. 29, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a coffee manufacturing business with eight employees, seeks to employ the Beneficiary as a “Budget Analyst” 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, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

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.<sup>1</sup>

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:

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<sup>1</sup> We reviewed the record in its entirety before issuing our decision. We conduct appellate review on a *de novo* basis. *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015); *see also* 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989). We follow the preponderance of the evidence standard as specified in *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

*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. The Proffered Position

The Petitioner claims in the labor condition application (LCA) submitted to support the visa petition that the proffered position corresponds to Standard Occupational Classification (SOC) code and title 13-2031, Budget Analysts, from the Occupational Information Network (O\*NET). The LCA further states that the proffered position is a wage Level I, entry-level, position.

In a letter dated March 25, 2014, the Petitioner stated the following as the duties of the proffered position (verbatim):

- Prepare and Analyze standard and special budgeting reports;
- Examine budget estimates for accuracy and conformance with company regulations and procedures;
- Perform Cos-Benefits analyses to compare financial statistics, methods and make recommendations to management;
- Develop lean financial plans and forecasts to be strictly adhered to;
- Interpret budget objectives and establish practices for carrying out those objectives.

As to the educational requirement of the proffered position, the Petitioner stated: “Education: A minimum of a Bachelor’s degree in finance or related business field.”

C. Analysis

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

We will first discuss the record of proceedings in relation 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.

We recognize the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, cited by the Petitioner, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>2</sup> The *Handbook* states the following about the educational requirements of budget analyst positions:

Employers generally require budget analysts to have at least a bachelor's degree. However, some employers may require candidates to have a master's degree. Because developing a budget requires strong numerical and analytical skills, courses in statistics or accounting are helpful. Federal, state, and local governments have varying requirements, but usually require a bachelor's degree in one of many areas, such as accounting, finance, business, public administration, economics, statistics, political science, or sociology.

Sometimes, budget-related or finance-related work experience can be substituted for formal education.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Budget Analysts," <http://www.bls.gov/ooh/business-and-financial/budget-analysts.htm#tab-4> (last visited Jan. 26, 2016).

The *Handbook* does not indicate that budget analyst positions require a minimum of a bachelor's degree or the equivalent in a specific specialty. Rather, it indicates that a degree in any one of a number of very diverse fields may suffice for government positions, and does not list a specific specialty, or even any range of subjects, in which other budget analyst positions require a bachelor's degree. It states that courses in statistics or accounting are helpful, but suggests that they are taken for the purpose of becoming comfortable with numbers and analysis, rather than for the substance of such subjects. The *Handbook* does not support the assertion that budget analyst positions are specialty occupation positions.

Further, when reviewing the *Handbook*, it also must be noted that the Petitioner designated the proffered position as a Level I (entry level) position on the LCA. The wage levels are defined in

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<sup>2</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2016 – 2017 edition available online.

DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is described 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 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.

See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

Thus, in designating the proffered position at a Level I wage, the Petitioner has indicated that the proffered position is a comparatively low, entry-level position relative to others within the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the Beneficiary is only required to have a basic understanding of the occupation and carries expectations that the Beneficiary perform routine tasks that require limited, if any, exercise of judgment; that she would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she would receive specific instructions on required tasks and expected results. As noted above, according to DOL guidance, a statement that the job offer is for a research fellow, worker in training or an internship is indicative that a Level I wage should be considered.

When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the Petitioner to provide persuasive evidence that the proffered position more likely than not satisfies this or one of the other three criteria, notwithstanding the absence of the *Handbook's* support on the issue. In such cases, it is the Petitioner's responsibility to provide probative evidence (e.g., documentation from other objective, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation.

To satisfy this criterion, the Petitioner also cited the O\*NET discussion of budget analyst positions. O\*NET, however, does not state a requirement of a bachelor's degree for budget analyst positions. Rather, it assigns budget analysts a Job Zone "Four" rating, which groups them among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, the O\*NET does not

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indicate that four-year bachelor's degrees required by most Job Zone Four occupations must be in a specific specialty closely related to the requirements of that occupation. Therefore, the O\*NET information, like the information from the *Handbook*, is not probative of the proffered position's being a specialty occupation.

The Petitioner submitted two evaluations of the proffered position. One of those evaluations was prepared by Professor [REDACTED] the Director of the Graduate Program in the MS Design Management Online, School of Design Strategies at [REDACTED] and an adjunct assistant professor at the [REDACTED]. The evaluation states that the proffered position requires "advanced training through a Bachelor's program in Business Administration, Finance, or a closely related field." A degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558 (Comm'r 1988) *supra*. As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.<sup>3</sup> Professor [REDACTED] evaluation indicates that the proffered position *does not* require a minimum of a bachelor's degree in a specific specialty or its equivalent and does not, therefore, qualify for treatment as a specialty occupation.

The other evaluation, prepared by [REDACTED] an associate professor of finance at [REDACTED] states that the duties of the proffered position require "at least a Bachelor's Degree in Business Administration with a Finance concentration." The Petitioner provided Professor [REDACTED] résumé which lists his educational credentials, professional experience, and publications. Based upon a complete examination, we find that the Petitioner has not provided sufficient information regarding the basis of Professor [REDACTED] expertise on this particular issue. While the documentation contains information about his credentials, the Petitioner has not established his expertise pertinent to the hiring practices of organizations seeking to fill positions similar to the proffered position in the instant case. Without further clarification, it is unclear how Professor [REDACTED] education, training, skills or experience would translate to any particular knowledge of the current recruiting and hiring practices of Grocery and Related Product Merchant Wholesalers (as designated by the Petitioner with the NAICS code 424490) or similar organizations for budget analyst positions.

Also, it appears that Professor [REDACTED] based his opinion on a list of duties he attributes to budget analysts in general. That list is almost identical to the list provided by the Petitioner. There is no indication that Professor [REDACTED] possesses any knowledge of the Petitioner's proffered position beyond this brief description. He does not discuss the duties of the proffered position in any substantive

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<sup>3</sup> 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.

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detail. Further, he did not provide a detailed description of the Petitioner's business or otherwise demonstrate or assert in-depth knowledge of the specific business operations or how the duties of the position would actually be performed in the context of the Petitioner's business enterprise. For instance, there is no evidence that Professor [REDACTED] visited the Petitioner's business, observed the Petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job.

Professor [REDACTED] asserts a general educational standard for budget analyst positions without referencing any supporting authority or any empirical basis for the pronouncement. Likewise, he does not provide a substantive, analytical basis for his opinion and ultimate conclusion. He 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. Accordingly, the very fact that he attributes a degree requirement to such a generalized treatment of the proffered position undermines the credibility of his opinion.

Furthermore, there is no indication that the Petitioner advised Professor [REDACTED] that the Petitioner characterized the proffered position as an entry-level budget analyst position, for an employee who has only a basic understanding of the occupation (as indicated by the wage-level on the LCA) relative to other positions within the occupational category. It appears that Professor [REDACTED] would have found this information relevant for his opinion letter. Moreover, without this information, the Petitioner has not demonstrated that Professor [REDACTED] possessed the requisite information necessary to adequately assess the nature of the Petitioner's position and appropriately determine parallel positions based upon job duties and responsibilities.

In summary, and for all of the reasons discussed above, we conclude that the opinion letter rendered by Professor [REDACTED] does not establish that the proffered position qualifies as a specialty occupation. The conclusions reached by Professor [REDACTED] lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which he reached such conclusions. There is an inadequate factual foundation established to support the opinion and we find that the opinion is not in accord with other information in the record. We may, in our discretion, use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). 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. *Id.* As a reasonable exercise of our discretion we discount Professor [REDACTED] advisory opinion 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.

Further, the record of proceedings does not contain sufficient persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion within the budget analyst occupational category establishes the proffered position as, in the words of this criterion, a "particular position" for which "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry."

The evidence submitted does not support the claim that the occupational category of budget analysts is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent. The duties and requirements of the position as described in the record of proceedings do not indicate that this particular position proffered by the Petitioner is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the Petitioner has not satisfied the 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 will review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are: (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

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. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals."

Thus, the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to parallel positions with organizations that are in the Petitioner's industry and otherwise similar to the Petitioner. The Petitioner has not, therefore, satisfied the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

The evidence of record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that “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.” A review of the record of proceedings indicates that the Petitioner has not credibly demonstrated that the duties the Beneficiary will be responsible for or perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor’s degree in a specific specialty, or its equivalent. Even when considering the Petitioner’s general descriptions of the proffered position’s duties, the evidence of record does not establish why a few related courses or industry experience alone is insufficient preparation for the proffered position. 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 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.

This is further evidenced by the LCA submitted by the Petitioner in support of the instant petition. As noted above, the Petitioner attested on the submitted LCA that the wage level for the proffered position is a Level I (entry-level) wage. Such a wage level is for a position which only requires a basic understanding of the occupation; the performance of routine tasks that require limited, if any, exercise of judgment; close supervision and work closely monitored and reviewed for accuracy; and the receipt of specific instructions on required tasks and expected results, is contrary to a position that requires the performance of complex duties.<sup>4</sup> It is, instead, a position for an employee who has only basic understanding of the occupation. In order to attempt to show that parallel positions require a minimum of a bachelor’s degree in a specific specialty or its equivalent, the Petitioner would be obliged to demonstrate that other wage Level I budget analyst positions, entry-level positions requiring only a basic understanding of budget analysis, require a minimum of

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<sup>4</sup> The issue here is that the Petitioner’s designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), an entry-level position would still require a minimum of a bachelor’s degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor’s degree in a specific specialty or its equivalent. That is, a position’s wage level designation may be a consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

a bachelor's degree in a specific specialty or its equivalent, the proposition of which is not supported by the *Handbook*.

The evidence of record does not demonstrate that the duties that collectively constitute the proffered position require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. 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 of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered 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 required to perform the duties of the particular position here.

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for such positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the Petitioner did not demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the Petitioner has 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 usually review a petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

The Petitioner has not expressly asserted eligibility nor submitted evidence under this criterion. Whether the Petitioner has ever hired anyone in this position is unclear. While a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) requires a demonstration that a petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position. How an employer would be able to satisfy the criterion at without providing evidence pertinent to people it has previously hired to fill the position is unclear. We cannot conclude that the Petitioner has satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).<sup>5</sup>

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<sup>5</sup> While a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS

*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*

We now address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the evidence of record establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. In the instant case, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. We again refer to our earlier comments and findings with regard to the implication of the Petitioner's designation of the proffered position in the LCA as a Level I (the lowest of four assignable levels) wage. That is, the Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category, and hence one not likely distinguishable by relatively specialized and complex duties. Upon review of the totality of the record, the Petitioner has not established that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. For the reasons discussed above, the evidence of record does not satisfy the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As a final matter, we note that the Petitioner cites to several district court cases such as *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012) and *Raj and Company v. USCIS*, 85 F. Supp. 3d 1241 (W.D. Wash. 2015). In *Raj*, the court stated that a specialty occupation requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent. The court confirmed that this issue is well-settled in case law and with USCIS's reasonable interpretation of the regulatory framework. In the decision, the court noted that "permitting an occupation to qualify simply by requiring a generalized bachelor degree would run contrary to congressional intent to provide a visa program for specialized, as opposed to merely educated, workers." The court stated that the regulatory provisions do not restrict qualifying occupations to those for which there exists a single, specifically tailored and titled degree program; but rather, the statute and regulations contain an equivalency provision. We agree with the court that a specialty occupation is one that requires the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent. We further note that a petitioner must also demonstrate that the position requires the theoretical and practical application of a body of highly specialized knowledge in accordance with section 214(i)(1)(B) of the

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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 employer 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 387. In other words, if a petitioner's degree requirement is only symbolic and 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 section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

Act and 8 C.F.R. § 214.2(h)(4)(ii), and satisfy one of the four criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The Petitioner also cites to *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), for the proposition that “[t]he knowledge and not the title of the degree is what is important. 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.” In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor’s or higher degree in more than one specialty is recognized as satisfying the “degree in the specific specialty (or its equivalent)” requirement of section 214(i)(1)(B) of the Act. In such a case, the required “body of highly specialized knowledge” would essentially be the same. Since there must be a close correlation between the required “body of highly specialized knowledge” and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be “in *the* specific specialty (or its equivalent),” unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added). For the aforementioned reasons, however, the Petitioner has not met its burden to establish that the particular position offered in this matter requires a bachelor’s or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those tasks.

In any event, the Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Raj* or *Residential Finance*.<sup>6</sup> 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.*

The Petitioner has not satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

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<sup>6</sup> It is noted that the district judge’s decision in *Residential Finance* 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.

### 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) (citing *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966)). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of K-C- LLC*, ID# 15573 (AAO Jan. 29, 2016)