



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

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

MATTER OF E- CORP.

DATE: JULY 18, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

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

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

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the additional evidence submitted on appeal clarifies “the specialized and complex nature” of the proffered position.¹

Upon *de novo* review, we will dismiss the appeal.²

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:

¹ On appeal, the Petitioner requests oral argument before us. We have the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the written record appears to fully represent the facts and issues in this matter, and the Petitioner has not identified any unique factors or issues of law to be resolved. Consequently, the request for oral argument is denied.

² This decision does not prejudice or otherwise prevent the Petitioner from filing a new petition on behalf of the Beneficiary or other individuals, especially if the facts and circumstances have since changed such that eligibility for the immigration benefit can be established.

- (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). USCIS has consistently interpreted the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

II. PROFFERED POSITION

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as a “sales engineer.” In addition, the Petitioner provided the Beneficiary’s job duties for the proffered position. In response to the Director’s request for evidence (RFE), the Petitioner submitted the following description:

- *Analysis and Forecasting.* The sales process begins with research and analysis of major competitive forces (products, channels, etc.) and target account profiles to develop a sales forecast and the related reports to management. The sales engineer also tracks industry trends through technical research and monitoring new products, services or technologies. The account plan and forecast are

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reviewed periodically with management. The case study shows the benefits of this activity, which requires 5% of the sales engineer's time.

- *Interface with R+D/Management.* In Switzerland [the Petitioner's] R+D engineers (12) develop and improve products based on new technologies and trend reports from the field, including important customer inquiries/requests. The sales engineer has the cross-functional charge of researching trends, engaging with test/development network engineers and gauging new products and markets. Traditional interaction (with channel distributors) was quite limited, but [the Petitioner's] California-based sales engineers are expected to provide meaningful reports on new technology, venture funding trends, and more. We expect him to spend about 10% of time on technical development issues, including specialized software development projects.
- *Pre-sales at Product Development Stages.* In the wireless network industry, even early ideas for projects require some degree of protocol analysis. The case study describes how wireless product ideas are discussed and evaluated against known [redacted] standards before development even begins. This critical "prospecting" stage allows sales engineers to demonstrate a deep knowledge of network hardware, software, and traffic (among other network issues) and thus become a trusted source of valuable information for the customer. Valid ideas generate prototypes that must be tested; the case study shows that [redacted] bylaws require specialized protocol analysis equipment to comply with core specifications, and that [the Petitioner's] sales engineers attend technical events to meet developers, test prototypes, and analyze results. These technical Q+A sessions tend to solidify trust in sales engineer and leads to further engagement. All pre-sales efforts (including travel commitments) comprise about 40% of the sales engineers' time.
- *Engagement (Sales) Negotiations.* Negotiating the terms and conditions of sales require an understanding of and compliance with [the Petitioner's] premium pricing strategy, analysis of the customer's specific situation, the volume of equipment involved, and other strategic factors. Major and/or volume discounts must be approved in accordance with management. The engagement negotiation process comprises about 10% of the sales engineers time.
- *Post-sales Engagement.* After the sale, customers use the equipment for protocol development. At this stage, the technical support of our sales engineer can be critical and is budgeted into the negotiated sales price, typically comprising 30% of his time. Support includes training, troubleshooting, protocol analysis, and more, and it nurtures the relationship while providing insight for R+D and sales opportunities when new equipment is introduced. The case study cites new [redacted] applications requiring protocol analysis across platforms and

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development cycles, and how customers are targeted for [the Petitioner's] [REDACTED] analyzers. [Footnote omitted].

- *Administration and Training.* The sales engineer must handle administrative duties (expense reports, budgeting, etc.) and conduct in-house testing and staff training up to 5% of time.

III. ANALYSIS

Upon review of the record of proceedings, we find that there are inconsistencies and discrepancies in the petition and supporting documents, which lead us to question the Petitioner's claim with regard to the services the Beneficiary will perform, as well as the actual nature and requirements of the proffered position. When a petition includes discrepancies, those inconsistencies will raise concerns about the veracity of the Petitioner's assertions.³

For example, the Petitioner has provided inconsistent information regarding the Beneficiary's work site. For instance, on the Form I-129 (page 5), the Petitioner stated that the Beneficiary would work off-site at another company or organization's location. However, on the Form I-129 (page 21), the Petitioner indicated the Beneficiary would not be assigned to work at an off-site location. Thereafter, in an unsigned letter submitted in response to the RFE, the Petitioner stated that the Beneficiary would work from his own home.

In addition, there are additional discrepancies in the record of proceedings with regard to the requirements for the proffered position. Initially, in the letter of support, the Petitioner stated that the position requires a bachelor's degree in engineering or equivalent experience. Thereafter, the Petitioner claimed that the duties of the proffered position require a bachelor's degree in computer science and two years of experience. The Petitioner also submitted a position description, which states that the job requires a bachelor's degree equivalent in computer engineering. No explanation for these variances was provided by the Petitioner.

Further, in the letter of support, the Petitioner stated that the Beneficiary's duties include "[l]iaison with other members of the sales team and other technical experts" and "[p]rovid[ing] training and produce support material for the sales team." In response to the RFE, the Petitioner stated that the Beneficiary "must handle administrative duties (expense reports, budgeting, etc.) and conduct in-house testing and staff training." On the Form I-129, the Petitioner states that its business consists of two employees. Thus, we must question the substantive nature of these claimed job duties.

³ "[I]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence." *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the Petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92.

Nevertheless, we will continue our evaluation and analysis of the evidence provided by the Petitioner. 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.⁴ Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.⁵

A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. To inform this inquiry, we recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁶

On the Labor Condition Application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Sales Engineers," corresponding to the Standard Occupational Classification code 43-6014 at a Level I wage.⁷

The *Handbook* subchapter entitled "How to Become a Sales Engineer" states, in pertinent part: "Sales engineers typically need a bachelor's degree in engineering or a related field. However, a worker without a degree, but with previous sales experience as well as technical experience or training, sometimes holds the title of sales engineer." The *Handbook* further reports that: "Workers

⁴ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

⁵ The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

⁶ All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

⁷ 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 Petitioner expects the Beneficiary to have a basic understanding of the occupation. This wage rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that he will be closely supervised and his work closely monitored and reviewed for accuracy; and (3) that he will receive specific instructions on required tasks and expected results. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf. A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner's job opportunity. *Id.* A Level I wage should be considered for research fellows, workers in training, or internships. *Id.*

who have a degree in a science, such as chemistry, or in business with little or no previous sales experience, also may be called sales engineers.”⁸

This passage of the *Handbook* reports that a worker without a degree, but with some experience or training can serve as a sales engineer. In addition, the *Handbook* reports that baccalaureate degrees in various fields are acceptable for entry into the occupation.⁹ Thus, it does not support the assertion an educational background, or its equivalent, commensurate with a specialty occupation is required. Moreover, on appeal, the Petitioner acknowledges that not all sales engineer positions require a degree.

The Petitioner also referenced the Occupational Information Network (O*NET) OnLine Summary Report for “Software Engineers.” The summary report provides general information regarding the occupation; however, it does not support the Petitioner’s assertion regarding the educational requirements for the occupation. For example, the Specialized Vocational Preparation (SVP) rating cited within O*NET’s Job Zone designates this occupation as 7 < 8. An SVP rating of 7 to less than (“<”) 8 indicates that the occupation requires “over 2 years up to and including 4 years” of training. Further, while the SVP rating indicates the total number of years of vocational preparation required for a particular position, it is important to note that it does not describe how those years are to be divided among training, formal education, and experience – and it does not specify the particular type of degree, if any, that a position would require.¹⁰

Further, the summary report provides the educational requirements of “respondents,” but does not account for 100% of the “respondents.” The respondents’ positions within the occupation are not distinguished by career level (e.g., entry-level, mid-level, senior-level). Additionally, the graph in the summary report does not indicate that the “education level” for the respondents must be in a specific specialty.

⁸ For additional information regarding this occupational category, see U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-2017 ed., Sales Engineers, <http://www.bls.gov/ooh/sales/print/sales-engineers.htm> (last visited July 13, 2016). 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. It is the Petitioner’s responsibility to provide probative evidence 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.

⁹ In addition to recognizing degrees in disparate fields (i.e., engineering, chemistry, and/or business), the *Handbook* states that a degree in business is acceptable. Although a general-purpose bachelor’s degree, such as a degree in business, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Therefore, the *Handbook*’s recognition that a general, non-specialty degree in business is sufficient for entry into the occupation strongly suggests that a bachelor’s degree *in a specific specialty* is not normally the minimum requirement for entry into this occupation.

¹⁰ For additional information, see the O*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

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The Petitioner has not provided sufficient documentation from a probative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

B. Second Criterion

The second criterion presents two, alternative prongs: “The degree requirement is common to the industry in parallel positions among similar organizations *or, in the alternative*, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree[.]” 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong 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 other authoritative source, reports a 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.”

In support of this criterion, the Petitioner submitted copies of job announcements placed by other employers. However, upon review of the documents, we find that the Petitioner’s reliance on the job announcements is misplaced. First, we note that some of the job postings do not appear to involve organizations similar to the Petitioner. For example, the Petitioner is a two-person wireless technology sales company, whereas the advertising organizations include:

- [REDACTED] – an electronic measurement company with 9,500 employees;
- [REDACTED] – a company that automates the clinical trial process;
- [REDACTED] – a technology company with 71,000 associates; and

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- [REDACTED] – a manufacturer of commercial kitchen ventilation with over 850 employees.

Furthermore, one of the postings appears to be for a staffing agency and provides no information regarding the hiring employer.

When determining whether the Petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the Petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion. The Petitioner did not supplement the record of proceeding to establish that the advertising organizations are similar to it.

Moreover, many of the advertisements do not appear to be for parallel positions. For example, some of the positions appear to be for more senior positions than the proffered position. Moreover, some of the postings do not include the duties and responsibilities for the advertised positions. Thus, it is not possible to determine important aspects of the jobs, such as the day-to-day responsibilities, complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Therefore, the Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

In addition, some of the postings do not indicate that at least a bachelor's degree in a directly related specific specialty (or its equivalent) is required.¹¹ The job postings suggest, at best, that although a bachelor's degree is sometimes required for budget analyst positions, a bachelor's degree in a *specific specialty* (or its equivalent) is not.¹²

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.¹³ That is, not every deficit of every job posting has been addressed.

¹¹ As discussed, the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but a bachelor's degree in a specific specialty that is directly related to the duties of the position. *See* section 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). Further, a *preference* for a degree in a field is not necessarily an indication of a minimum *requirement*.

¹² It must be noted that even if all of the job postings indicated that a requirement of a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the Petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *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”).

¹³ The Petitioner did not provide any independent evidence of how representative the job postings are of the particular

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The Petitioner also submitted an opinion letter from [REDACTED]. In the letter, [REDACTED] states that the requirement of a bachelor's degree in computer engineering for the sales engineer position is common in the industry among organizations that are similar to the Petitioner. Upon review, we note that [REDACTED] did not discuss the duties of the proffered position in any substantive detail. Rather, he paraphrased the duties listed in the Petitioner's RFE response letter. Thus, there is no indication that he possesses any knowledge of the Petitioner's proffered position beyond this job description, e.g., visited the Petitioner's business, observed the Petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that these workers apply on the job prior to documenting his opinion regarding the proffered position. In fact, [REDACTED] stated that he formed his opinion "based on the assumption" that the information provided by the Petitioner is accurate. His level of familiarity with the actual job duties as they would be performed in the context of the Petitioner's business has therefore not been substantiated.

Furthermore, [REDACTED] description of the position upon which he opines does not indicate that he considered, or was even aware of, the fact that the Petitioner submitted an LCA certified for a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation, which signifies that the Beneficiary is only expected to possess a basic understanding of the occupation. In any event, he does not discuss this aspect of the proffered position. We consider this a significant omission, in that it suggests an incomplete review of the position in question and a faulty factual basis for his ultimate conclusion as to the educational requirements of the position upon which he opines.

The Petitioner also submits letters from [REDACTED] and [REDACTED].¹⁴ The writers assert that sales engineers require certain credentials; however, they not provide documentary evidence to corroborate their claims. Their testimony does not substantiate their conclusions, such that we can conclude that the Petitioner has shouldered its burden of proof. For example, they do not reference, cite, or discuss probative studies, surveys, industry publications, authoritative publications, or other sources of empirical information which they may have consulted to complete the evaluations. They also do not distinguish the position from those jobs that do not require the application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty

For the reasons discussed, we find that the opinion letters lend little probative value to the matter here. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988) (The service is not required to accept or may give less weight to an advisory opinion when it is "not in accord with other information or is in any way questionable.").

advertising employers' recruiting history for the type of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the actual hiring practices of these employers.

¹⁴ Moreover, [REDACTED] has not demonstrated how the requirements for positions in China are relevant for determining whether the proffered position satisfies the applicable statutory and regulatory provisions for a specialty occupation in the United States.

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

2. Second Prong

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

We reviewed the Petitioner's statements regarding the proffered position; however, in the appeal brief, the Petitioner does not assert that it satisfies this prong of the second criterion. Further, the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. Thus, 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.

The Petitioner stated in the H-1B petition that it has two employees and was established in 2008 (approximately seven years prior to the filing of the H-1B petition).¹⁵ According to the Petitioner, it employs one sales engineer, [REDACTED]. Importantly, the Petitioner did not provide the total number of people it has employed to serve in the proffered position. Consequently, it cannot be determined how representative the Petitioner's statement regarding this individual is of the its normal recruiting and hiring practices.¹⁶

In support of its claim that it requires a specific degree, the Petitioner submitted [REDACTED] resume, which indicates that he possesses a degree in electrical engineering.¹⁷ However, on appeal the Petitioner claims that it requires a bachelor's degree in computer science, which does not appear to be in align with [REDACTED] credentials.¹⁸ Moreover, the Petitioner's website states that it is "seeking brilliant people, who are highly analytical, capable of thinking 'out-of-the-box', and who are motivated to learn from the best." It does not indicate any particular academic requirements for employment.

¹⁵ Notably, the Petitioner did not submit the academic credentials of this individual, e.g. copies of diplomas and transcripts. The Petitioner should note that the evidentiary weight of a resume is generally insignificant as it represents a claim by an individual, rather than evidence to support that claim. In the instant case, no further documentation was submitted of the individual's asserted credentials.

¹⁶ See generally Earl Babbie, *The Practice of Social Research* 186-228 (7th ed. 1995).

¹⁷ The Petitioner did not submit evidence establishing that it employs this individual (e.g., pay statements, tax documents).

¹⁸ On appeal, the Petitioner states that the individual's degree and a chart of academic coursework was enclosed; however, upon review of the record, no degree or chart was included.

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Without more, the Petitioner has not provided sufficient evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Therefore, it 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.

In support of this criterion, the Petitioner provided descriptions of the proffered position and information regarding its business operations, including copies of its 2013 and 2012 income tax returns, product brochures, case studies, an organizational chart, a list of its customers, and printouts regarding [REDACTED]. The Petitioner asserts that the proffered position is specialized and complex.

While the Petitioner may believe that the proffered position meets this criterion of the regulations, it has not sufficiently demonstrated how the position as described requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent. 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 tasks. While a few related courses may be beneficial in performing certain duties of the position, the Petitioner has not demonstrated how an established curriculum of such courses is required. The evidence in the record does not refute the *Handbook's* information to the effect that a bachelor's degree in a specific specialty, or its equivalent is not required for entry into the occupation. Without more, the record lacks sufficiently detailed information to distinguish the level of judgment and understanding necessary to perform the duties as specialized and complex.

Further, the Petitioner designated the proffered position as an entry-level position within the occupational category (by selecting a Level I wage). This designation, when read in combination with the Petitioner's job descriptions and the evidence, further suggests that the particular position is not so specialized and complex that the duties can only be performed an individual with 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. The Petitioner has not demonstrated in the record that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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IV. CONCLUSION

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation. The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of E- Corp.*, ID# 17110 (AAO July 18, 2016)