



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

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

MATTER OF L-O-O-L-&A-, PLLC

DATE: JULY 22, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

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

The Director, Vermont Service Center, denied the petition. The Director concluded that the Petitioner did not establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director erred in finding that the record did not satisfy the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A).

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

I. LAW

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

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

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

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

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

II. Proffered Position

The Petitioner stated that the Beneficiary will serve as a “law clerk.” In response to the Director’s first request for evidence (RFE), the Petitioner submitted the following description of the proffered position:

Job Duties	% of time	No. of hours
<ul style="list-style-type: none"> • Perform legal research of USCIS statues, regulations, cases, memos, and other materials 	20%	8 hrs
<ul style="list-style-type: none"> • Assist attorneys in preparing and reviewing legal and business documents, forms that are related to EB-5 investment and foreign direct investment. More particularly: <ol style="list-style-type: none"> (1) Review, analyze, and evaluate financial data and information of individuals and businesses to document source of funds of EB-5 investments. The candidate is required to be knowledgeable about businesses documents and able to review and decide whether they will meet USCIS requirements. (2) Draft and edit business plans for clients’ commercial enterprises if they choose to establish their own companies and apply for EB-5 immigrant visa through direct investment and direct job creation. The candidate must have knowledge of corporate 	50%	20 hrs

<p>structure, business principles, business formation, and be able to ensure the compliance with related laws and government regulations.</p> <p>(3) Work directly with attorneys and assist in drafting immigration petitions, filling out immigration forms, and compiling immigration petition packages as well as responding to RFEs. The candidate must have knowledge of law, be able to draft legal documents and perform legal research as needed.</p> <p>(4) Review Private Offering Memorandums and provide summary for due diligence. Prepare affidavits or other documents, such as legal correspondence. The candidate must be able to read and interpret complex legal documents (Securities documents prepared in accordance with SEC rules and regulations), and be able to write legal communications through email and paper based correspondence.</p>		
<ul style="list-style-type: none"> Collaborate with CPAs and other professionals in analyzing the investor's business and financial documents such as income statements and balance sheets, etc. The candidate needs to be able to read and understand business and financial documents. 	10%	4 hrs
<ul style="list-style-type: none"> Act as a liaison between attorneys and foreign clients to explain USCIS's EB-5 Immigrant Investor Program, and assist in the collection of necessary business documents pertaining to finance and investment. Also, follow up with client regarding information they need to know and actions they need to take while their applications are pending. The candidate needs to have a professional image and be able to converse intelligently with foreign investors who are business owners, executives, and other professionals. 	20%	8 hrs

According to the Petitioner, the position requires at least a bachelor degree in law, legal studies or other related fields. However, the Petitioner also claims that degrees in business, English, accounting, and communications are also acceptable.

III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.¹ Specifically, the record (1) contains inconsistent information regarding the proffered position; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.

¹ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

A. Labor Condition Application

We turn first to the labor condition application (LCA) submitted in support of the H-1B petition, in which the Petitioner designated the proffered position under the occupational category “Paralegals and Legal Assistants” corresponding to the Standard Occupational Classification code 23-2011 at a Level I wage.

The U.S. Department of Labor (DOL) guidance states that wage levels should be determined only after selecting the most relevant occupational code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer’s job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation. Factors to be considered when determining the wage level for a position include the complexity of the job duties, as well as the levels of judgment, supervision, and understanding required to perform the job duties.

DOL guidance states that a Level I (entry) 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.² A Level I wage should be considered for research fellows, workers in training, or internships.³

According to DOL guidance, an indication that the job request warrants a wage determination at a Level I would be a requirement for years of education and/or experience that are generally required as described in the Occupational Information Network (O*NET) Job Zones. The occupational category “Paralegals and Legal Assistants,” has been assigned an O*NET Job Zone 3, which groups it among occupations for which medium preparation is needed. More specifically, most occupations in this zone “require training in vocational schools, related on-the-job experience, or an associate’s degree.” See O*NET OnLine Help Center, at <http://www.onetonline.org/help/online/zones>, for a discussion of Job Zone 3. Therefore, the Petitioner’s designation of the proffered position at a Level I on the LCA suggests that the Petitioner’s academic and/or professional experience requirements for the proffered position would be *less than* “training in a vocational school, related on-the-job experience, or an associate’s degree.”

The Petitioner’s asserts that the proffered position can be distinguished from other paralegal positions as it entails complex, unique and/or specialized job duties. According to the Petitioner, the

² For additional information, 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://flcdcenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

³ *Id.*

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job description differentiates its law clerk position from other entry-level paralegals. The Petitioner further claims that the duties relate to complex business matters. However, these aspects of the position do not appear to be reflected in the wage level chosen by the Petitioner on the LCA.⁴ The statements regarding the claimed level of complexity, independent judgment and understanding required for the proffered position, as well as the requirements, appear to be materially inconsistent with the certification of the LCA for a Level I position. This conflict challenges the overall credibility of the petition in establishing the nature of the proffered position and in what capacity the Beneficiary will be employed. Therefore, we are precluded from finding that the proffered position is a specialty occupation.

B. Requirements

The Petitioner asserts that degrees in law, legal studies, business, English⁵, accounting, and communications are acceptable for its law clerk position. We note that, 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 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).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. *See* section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). As just stated, this also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

⁴ A petitioner must distinguish its proffered position from others within the occupation through the proper wage level designation to indicate factors such as complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. Through the wage level, the Petitioner reflects the job requirements, experience, education, special skills/other requirements and supervisory duties.

⁵ It appears that the Petitioner will accept a degree in English (as a second language). The Petitioner states that [REDACTED] and [REDACTED] serve in paralegal positions for its business operations, and references their academic qualifications, which include English degrees from foreign universities in China. The Petitioner submitted a transcript for [REDACTED], which indicates coursework including Listening, Pronunciation, Conversation, Grammar, Selection Reading from English Newspaper, Business English, and Overview of English Country.

Here, and as indicated above, the Petitioner, who bears the burden of proof in this proceeding, did not establish it requires a degree in a specific specialty, or its equivalent. Absent evidence to the contrary, the fields of law, legal studies, business, English, accounting, and communications are not closely related specialties, and the Petitioner has not established how these fields are directly related to the duties and responsibilities of the proffered position.

B. First Criterion

Nevertheless, for the purpose of providing a full analysis, we will now address the evidence of record.⁶ Therefore, we now turn 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.⁷ 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.⁸

We reviewed the subchapter of the *Handbook* entitled "How to Become a Paralegal or Legal Assistant." The *Handbook* reports, in relevant part: "Most paralegals and legal assistants have an associate's degree in paralegal studies, or a bachelor's degree in another field and a certificate in paralegal studies."⁹ It further specifies, "There are several paths a person can take to become a paralegal. Candidates can enroll in a community college paralegal program to earn an associate's degree." It also states that "many employers prefer, or even require, applicants to have a bachelor's degree." According to the *Handbook*, "Employers sometimes hire college graduates with no legal experience or legal education and train them on the job."

The *Handbook* does not support the Petitioner's assertion that a bachelor's degree in a specific specialty is required for entry into this occupation. Rather, the *Handbook* indicates that there are various paths to enter into this occupation, such as obtaining an associate's degree in paralegal studies or a college degree in an unrelated field. The *Handbook* reports that employers sometimes

⁶ The Petitioner submitted documentation in support of 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.

⁷ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

⁸ All of our references are to the 2016-2017 edition of the *Handbook*, available at <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

⁹ For additional information regarding the occupational category "Paralegals and Legal Assistants," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-2017 ed., Paralegals and Legal Assistants, available at <http://www.bls.gov/ooh/legal/print/paralegals-and-legal-assistants.htm> (last visited July 21, 2016).

hire individuals who have earned a degree but have no legal experience/education. This passage of the *Handbook* does not indicate that there are any specific degree requirements for these jobs.

The Petitioner has not provided 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).

C. 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 half casts its gaze upon the common industry practice, while the alternative prong narrows its focus to the Petitioner’s specific position.

1. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the “degree requirement” (i.e., a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

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

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.¹⁰ 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 six-person law firm,

¹⁰ Notably, many of the advertisements submitted by the Petitioner are missing the second page. No explanation was provided by the Petitioner as to the reason it did not include the entire announcements.

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whereas one of the advertising organizations appears to be a staffing agency [REDACTED], where no information regarding the hiring employer is provided. In addition, some of the advertisements (e.g., [REDACTED] & [REDACTED] provide little or no information regarding the hiring employers. The Petitioner did not supplement the record of proceeding to establish that the advertising organizations are similar to it.

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.

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.¹¹ Moreover, not all of the postings (e.g., [REDACTED] 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.¹² For instance, the posting for [REDACTED] states that a college diploma/degree is needed, but does not specify the degree level (e.g., associate's, vocational degree, baccalaureate). The other postings suggest, at best, that a bachelor's degree is sometimes required for paralegal positions, but a bachelor's degree in a *specific specialty* (or its equivalent) is not.¹³

¹¹ For example, the advertisement for [REDACTED] is for attorney-track immigration law clerks/interns and experienced immigration lawyers and requires a juris doctorate or a masters of law, and a state bar license or awaiting a bar exam result.

¹² 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, although a general-purpose bachelor's degree, such as a degree in business administration, 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.

¹³ Even if all of the job postings indicated that a bachelor's degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations (which they do not), the Petitioner does not demonstrate what inferences, if any, can be drawn from these 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).

(b)(6)

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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.¹⁴ That is, not every deficit of every job posting has been addressed.

In addition, the Petitioner submitted profiles of two individuals employed as law clerks with [REDACTED] and [REDACTED]. Notably, the Petitioner did not provide sufficient information regarding the [REDACTED] and [REDACTED] to conduct a meaningfully substantive comparison of its business operations to the Petitioner.¹⁵ The record lacks sufficient supplemental information to establish that the organizations are similar to the Petitioner.

Furthermore, although the profiles indicate that these individuals are employed as law clerks, the Petitioner did not provide any specific job duties and day-to-day responsibilities for the position. There is no information regarding the complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Accordingly, there is insufficient information regarding the duties and responsibilities of the position to determine whether it is the same or parallel to the proffered position.¹⁶

Without more, the Petitioner has not provided sufficient evidence to establish that a bachelor's degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations. 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

As such, even if the job announcements supported the finding that the position required a bachelor's or higher degree in a specific specialty, or its equivalent (for organizations in the same industry that are similar to the Petitioner), it cannot be found that such a limited number of postings that appear to have been consciously selected outweigh the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not normally require at least a baccalaureate degree in a specific specialty, or its equivalent, for entry into the occupation in the United States.

¹⁴ The Petitioner did not provide any independent evidence of how representative the job postings are of the particular 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.

¹⁵ As previously noted, the Petitioner is a six-person law firm. According to [REDACTED] website, it has offices in six countries, including the United States, Czech Republic, India, Peru, China, and Ecuador. In addition, the [REDACTED] website indicates that it has 1900 attorneys and 38 offices in the United States, Latin America, Europe, the Middle East, and Asia. Thus, these organizations do not appear to be similar to the Petitioner.

¹⁶ The Petitioner did not provide sufficient documentary evidence to corroborate that these organizations currently or in the past employed individuals in positions that are parallel in terms of duties and requirements, nor did the Petitioner substantiate the claimed academic requirements. From the printouts, we are unable to determine whether the employers require certain academic credentials or, alternatively, whether the individuals just happen to possess such degrees. The Petitioner did not submit probative evidence of these organizations' recruitment and/or hiring practices.

performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

In support of its assertion that the proffered position qualifies as a specialty occupation, the Petitioner submitted descriptions of the proffered position and information regarding its business operations. On appeal, the Petitioner asserts that the duties of the proffered position are so complex and unique that a bachelor's degree in law is required. However, 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 *Handbook's* account of the requirements for this occupation, further suggests that the particular position is not so complex or unique 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 did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position, and it did not identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. Accordingly, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

C. Third Criterion

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position.

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 created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

In response to the RFE, the Petitioner claims that it's part-time paralegal's "job duties are most similar to the proffered position of Law Clerk." The Petitioner submitted copies of her academic credentials and the Form W-2, Wage and Tax Statement for 2014. Notably, this individual has a

master's degree in accounting and her undergraduate transcript does not indicate a major.¹⁷ Her foreign academic credentials indicate that she obtained a degree in English. The documentation does not establish that the Petitioner normally requires a degree in a specific specialty, or its equivalent, directly related to the duties of the position.

The Petitioner stated in the Form I-129 that it has six employees and was established in 2008 (approximately seven years prior to the filing of the H-1B petition). 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 claim regarding one individual is of the Petitioner's normal recruiting and hiring practices. Without further information, the submission of the educational credentials of one individual is not persuasive in establishing that the Petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the position. Therefore, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

D. Fourth Criterion

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

While the Petitioner provided a more detailed job description in response to the RFE, the description does not establish that the duties 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 also 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 (of the lowest of four assignable wage-levels) relative to others within the occupational category.¹⁸ Without further evidence, the Petitioner has not demonstrated that its proffered position is one with specialized and complex duties as such a position within this occupational category would likely be classified at a higher-level, requiring a substantially higher prevailing wage.¹⁹

¹⁷ It must be noted for the record that the transcript is not on university/school letterhead.

¹⁸ 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.

¹⁹ 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. 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

Furthermore, 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. In response to the RFE, the Petitioner provided a list of a few courses studied by the Beneficiary that it claims is relevant to the proffered position. However, 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 two-year associate's degree or certificate is sufficient 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.

Although the Petitioner asserts that the nature of the specific duties is specialized and complex, the record lacks sufficient evidence to support this claim. Thus, the Petitioner has submitted inadequate probative evidence to satisfy the criterion of the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

IV. CONCLUSION

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation.

The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of 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 L-O-O-L-&A-, PLLC* ID# 17259 (AAO July 22, 2016)