



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

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

MATTER OF S-I-C-

DATE: JUNE 1, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

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

The Director, California Service Center, denied the petition. The Director concluded that the position offered to the Beneficiary did not qualify as a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director erred in finding that the proffered position is not a specialty occupation as it met one of the four criteria listed under 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

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

(A) 80% - Budget Analysis (16 hours per week)

Percentage of time/Hours per week of work:

Approximately 80% or 16 hours per week, [the Beneficiary] will apply principles of economics and statistics to conduct studies, which will provide detailed cost information not supplied, by the company’s general budgeting system. She will be in charge of preparing annual and special reposts and evaluating budget proposals. Also, she will monitor company performance variances to stated quotas and standards.

Specific job duties:

- Provide forecasts for projects to be undertaken based on past and present financial performances.

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- Analyze obtained data to ensure that the company is operating effectively and efficiently.
- Analyze changes in insurance product trends, new insurance policies, and new services provided to determine effects on costs.
- Compile cost information to be used in operating budget preparation and make cost estimates of new and proposed projects or service costs.
- Analyze financial information and select the plans that afford maximum probability of profit and effectiveness in relation to cost or risk.
- Examine budget estimates for completeness, accuracy, and conformance with procedures and regulations.
- Collect data to determine cost of business activity and translating them in such a way as to guide the core management into making the right decisions.
- Plan costing systems and methods, investment analysis, project management, and cost audit.

(B) 20% - Communications and Recommendations (4 hours per week)

Percentage of time/Hours per week of work:

Approximately 20% or 4 hours per week, [the Beneficiary] will communicate and recommend her findings to the management so as to develop the company's budgets.

Specific job duties:

- Assist with management to ensure that managerial decisions are well within the cost prescriptions.
- Summarize budgets and submit recommendations for approval and disapproval of funding requests.
- Consult with management to ensure that budget adjustments are made in accordance with procedures and regulations.
- Analyze costs of each expansion and marketing project before it starts to assist the management with decision making.

According to the Petitioner, the position requires a bachelor's degree in finance, business, economics, or a closely related field.

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

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

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Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.²

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category “Budget Analysts” corresponding to the Standard Occupational Classification code 13-2031. The Petitioner also stated in the LCA that the wage level for the proffered position is a Level I (entry level) and claimed that the prevailing wage in [REDACTED] California) for the proffered position is \$27.53 per hour.³

In response to the RFE and on appeal, the Petitioner states that its budget analyst position is similar to a financial analyst position, and thus, “should be considered alternative positions.”⁴ While the occupational categories “Financial Analysts” and “Budget Analysts” may have some general duties in common, they are distinct and separate occupational categories.⁵ When the duties of the proffered position involve more than one occupational category, the U.S. Department of Labor (DOL) provides guidance for selecting the most relevant Occupational Information Network (O*NET) code classification.

The “Prevailing Wage Determination Policy Guidance” by DOL states the following:

In determining the *nature of the job offer*, the first order is to review the requirements of the employer’s job offer and determine the appropriate occupational classification. The O*NET description that corresponds to the employer’s job offer shall be used to

² 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.

³ The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). We will consider this selection 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 she will be closely supervised and her work closely monitored and reviewed for accuracy; and (3) that she 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://fldatacenter.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.*

⁴ When responding to a request for evidence or on appeal, the Petitioner cannot offer a new position to the Beneficiary, materially change a position’s associated job responsibilities, or alter the claimed occupational category of a position. The Petitioner must establish that the position offered to the Beneficiary when the petition was filed merits classification for the benefit sought. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm’r 1978). If significant changes are made to the initial request for approval, the Petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

⁵ For more information regarding the “Financial Analysts” occupational classification corresponding to Standard Occupational Classification (SOC) code 13-2051, see the Occupational Information Network Details Report for “Financial Analysts.” <http://www.onetonline.org/link/details/13-2051.00> (last visited Apr. 27, 2016).

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identify the appropriate occupational classification If the employer's job opportunity has worker requirements described in a combination of O*NET occupations, the [determiner] should default directly to the relevant O*NET-SOC occupational code for the highest paying occupation. For example, if the employer's job offer is for an engineer-pilot, the [determiner] shall use the education, skill and experience levels for the higher paying occupation when making the wage level determination.

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.

The occupational category "Financial Analysts" has a higher prevailing wage than the occupational category "Budget Analysts."⁶ The fact that the Petitioner did not select the "Financial Analysts" occupational classification on the LCA undermines the Petitioner's assertion that the proffered position should also be treated as a financial analyst position, and raises questions regarding the substantive nature of the position.⁷

Moreover, the Petitioner's descriptions of the position's duties are not explained with sufficient detail to convey the actual tasks the Beneficiary would perform within the context of the Petitioner's operations. For instance, the Petitioner stated the Beneficiary would perform the job duty of "[a]nalyze financial information and select the plans that afford maximum probability of profit and effectiveness in relation to cost or risk."⁸ The Petitioner did not further explain, for example, whose financial information the Beneficiary would analyze, what types of plans she would select, and perhaps more importantly, for whom this information would be prepared. Notably, the Petitioner states on appeal that the Beneficiary would "assist [Mandarin-speaking customers] with contract review for their chosen insurance policies" and would also "be able to suggest the most beneficial

⁶ The prevailing wage for "Financial Analysts" (SOC code 13-2051) in the [REDACTED] CA Metropolitan Division, CA Metropolitan Division for the period 7/2014 - 6/2015 is \$28.36 per hour. For more information, see [http://www.flcdatacenter.com/OesQuickResults.aspx?code=13-2051&\[REDACTED\]&year=15&source=1](http://www.flcdatacenter.com/OesQuickResults.aspx?code=13-2051&[REDACTED]&year=15&source=1) (last visited Apr. 27, 2016).

⁷ Under the H-1B program, a petitioner must offer a beneficiary wages that are at least the actual wage level paid by a petitioner to all other individuals with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application. See section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A).

As such, if the proffered position combines the duties of a financial analyst as claimed, then the Petitioner has not established that (1) it submitted a certified LCA that properly corresponds to the claimed occupation and duties of the proffered position; and (2) it would pay the Beneficiary an adequate salary for her work, as required under the Act, if the petition were granted.

⁸ The Petitioner indicated that the Beneficiary would spend 80% of her time on job duties including this particular duty. However, the Petitioner did not further specify how much of this 80% of time she would spend on this particular duty.

insurance policies to each customer and will eventually help Petitioner to achieve its goal of expansion.” The Petitioner has not explained how these job duties directly involving the Petitioner’s customers are consistent with the “Budget Analysts” occupational classification chosen here or are otherwise consistent with the Petitioner’s other job descriptions. Without more, the record does not adequately demonstrate the nature of the proffered position and its constituent duties.

Furthermore, the Petitioner’s claim that a bachelor’s degree in business is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm’r 1988), *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.⁹ For this additional reason, the record does not demonstrate the proffered position as a specialty occupation.¹⁰

A. First Criterion

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we now turn 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 DOL’s *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹¹

⁹ Specifically, the court explained in *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147, that:

The courts and the agency consistently have stated that, although a general-purpose bachelor’s degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int’l v. INS*, 94 F.Supp.2d 172, 175-76 (D. Mass. 2000); *Shanti*, 36 F. Supp. 2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm’r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

¹⁰ 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.

¹¹ Although the Petitioner and Director referenced the 2014-15 edition of the *Handbook*, all of our references in this decision are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site

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As discussed, the Petitioner designated the proffered position under the occupational category “Budget Analysts” on the LCA. The *Handbook* subchapter entitled “How to Become a Budget Analyst” states, in pertinent part, that “[e]mployers generally require budget analysts to have at least a bachelor’s degree.”¹² It also states that “[s]ometimes, budget-related or finance-related work experience can be substituted for formal education.”¹³

A review of the *Handbook* does not indicate that, simply by virtue of its occupational classification, a budget analyst position qualifies as a specialty occupation. The *Handbook* reports that budget or finance-related work experience can be substituted for formal education, but does not specify the amount of work experience or the type of formal education that can be substituted.

The Petitioner also submitted a printout of the O*NET OnLine Summary Report for “Budget Analysts.” 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. While the SVP rating indicates the total number of years of vocational preparation required for a particular position, 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.¹⁴

Furthermore, the Occupation Profile for “Budget Analysts” from [REDACTED] submitted by the Petitioner with the initial petition, is also insufficient to establish that the proffered position qualifies as a specialty occupation. The report states, in pertinent part, that the “[t]ypical education needed for entry” into the position is a “Bachelor’s degree.” The [REDACTED] reference to a “Bachelor’s degree” – without specification of any particular academic concentration or major – is not evidence that a bachelor’s degree *in a specific specialty*, or its equivalent, is normally the minimum requirement for entry into this occupation. Therefore, despite

<http://www.bls.gov/ooh/>. No substantive changes to the relevant subchapter on “How to Become a Budget Analyst” were made from the 2014-15 edition.

In any event, we do not 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.

¹² For additional information, see 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/print/budget-analysts.htm> (last visited Apr. 27, 2016).

¹³ *Id.*

¹⁴ 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's assertions to the contrary, the [REDACTED] information is also not probative of the proffered position qualifying as a specialty occupation.

In the instant case, 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).

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 common industry practice, while the alternative prong narrows its focus to the Petitioner's specific position.

1. First Prong

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

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

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* or another authoritative source reports a requirement for at least a bachelor's degree in a specific specialty, or its equivalent. 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 of the regulations, the Petitioner submitted three job advertisements for financial analyst positions.¹⁵ Upon review, we find that the advertisements do not appear to involve

¹⁵ 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). The Petitioner also does not provide any

parallel positions. For example, the posting for a financial analyst II or senior level financial analyst III position states that a degree and a minimum of five years of relevant work experience in finance, accounting, or economics is required. As previously noted, the Petitioner designated its proffered position as a wage level I (entry level) position on the LCA. The advertised position therefore appears to involve a more senior position than the proffered position. More importantly, the Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised financial analyst positions are parallel to those of the proffered budget analyst position.

Nor has the Petitioner submitted sufficient information about the general characteristics of the advertising organizations to demonstrate that they are similar to the Petitioner. On appeal, the Petitioner states that “a ‘similar’ organization is not defined as one that is similar sized or one that generates similar incomes.” The Petitioner further asserts that “[s]ince there is no clear definition of ‘similar organization,’” the submitted postings “should be viewed as [from] similar organizations based on their similar type of business.”

However, the Petitioner does not cite to any legal authority to support its assertions. For a petitioner to establish that an organization is similar, it must demonstrate that it shares the same general characteristics with the advertising organization, which may include factors such as 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 a petitioner to claim that an organization is similar to it without providing a legitimate basis for such an assertion. Moreover, the regulatory criterion requires the Petitioner to demonstrate that “[t]he degree requirement is common to *the industry* in parallel positions among *similar organizations*.” 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (italics added to emphasize the separate elements). Therefore, the Petitioner’s request to treat these advertisements as from “similar organizations” is not persuasive.

In addition, the postings do not demonstrate that at least a bachelor’s degree in a directly related specific specialty (or its equivalent) is required.¹⁶ 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.

independent evidence of how representative the job postings are of the particular advertising employers’ recruiting and hiring history, as the advertisements are only solicitations for hire and not evidence of these employers’ actual hiring practices. Without more, it cannot be found that this limited number of postings that appear to have been consciously selected outweigh the findings of the *Handbook* 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.

¹⁶ One posting requires a “BS degree preferably with emphasis on Accounting, Finance.” Another posting requires “Four-year college degree with Finance, Economics, Accounting, Business, or related field preferred.” However, a *preference* for a degree in a field is not necessarily an indication of a minimum *requirement*. Further, as discussed previously, the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a general-purpose bachelor’s or higher degree such as a degree in “business,” 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).

As the documentation does not establish that the Petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed. 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.

In support of its assertion that the proffered position qualifies as a specialty occupation, the Petitioner submitted a description of the proffered position and information regarding its business operations, including a copy of its 2013 income tax return, 2014 quarterly federal tax return, printouts of its website, photos of its office, and copies of contracts with insurance carriers. The Petitioner states on appeal that the submitted evidence demonstrates "that the candidate should be equipped with the following knowledge: economics and accounting, English language, mathematics, administration and management and computer and electronics [*sic*]."

The Petitioner has not adequately established relative complexity or uniqueness as an aspect of the proffered position. Although the Petitioner broadly identified the bodies of knowledge required to perform the proffered position (i.e., economics and accounting, English language, mathematics, administration and management, and computer and electronics), this information does not sufficiently explain how the proffered position is more complex or unique than other budget analyst positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. In fact, these identified bodies of knowledge mirror those found in the O*NET Summary Report for "Budget Analysts" that was submitted by the Petitioner. This information about the bodies of knowledge generally required for positions within the "Budget Analysts" occupational classification is insufficient to demonstrate the relative complexity or uniqueness of the particular position being offered here.

We must also consider the Petitioner's designation of the proffered position as a Level I, entry-level position within the occupational category (on the LCA). This designation, when read in combination with the Petitioner's job descriptions, 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.

In the letter of support, the Petitioner claimed that the Beneficiary is well-qualified for the position, and references her 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. While related courses may be beneficial in performing certain duties of the position, the Petitioner has not demonstrated how an

established curriculum of 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.

For all the above reasons, 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 was established in 2011 (approximately four years prior to the filing of the H-1B petition) and has eight employees. Upon review of the record, we find that the Petitioner did not submit information regarding employees who currently or previously held the particular position being offered here.¹⁷ The record does not establish that the Petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, directly related to the duties of 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 incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the position in the LCA as a Level I position (the lowest of four assignable wage-levels) relative to others within the same occupational category.¹⁸ The Petitioner has not

¹⁷ In support of this criterion, the Petitioner states on appeal that it has hired a financial analyst with a bachelor's degree. As previously discussed, "Financial Analysts" and "Budget Analysts" are distinct and separate occupational categories. Thus, this information will not be further considered.

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.

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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).

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 S-I-C-*, ID# 17303 (AAO June 1, 2016)