



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

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

MATTER OF S-V-S-, LLC

DATE: JUNE 1, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a technical support business, seeks to temporarily employ the Beneficiary as a “senior 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 proffered position does not qualify as a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred as the Petitioner has established that its proffered position meets at least one, and likely three, of the four alternative criteria for “specialty occupation” in 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 “senior engineer.” In its letter of support, the Petitioner stated that, in the position of senior engineer, the Beneficiary “will design, build, and be in charge of [its] Network Operations Center (NOC).” The Petitioner explained its NOC as a “complex system [which] will pull in information from multiple sources and use multiple computers with half a dozen monitors to build a status board . . . [to provide the Petitioner] with an overview of all of [its] client’s networks and [devices].” The Petitioner stated that the “minimum academic requirement for this position is a Bachelor’s degree in Computer Science, Computer Engineering, Information Systems Engineering, or in a closely related discipline.”

In response to the Director’s request for evidence (RFE), the Petitioner asserted that the proffered position will be “focused on designing, building and running [the] NOC,” and provided the following job duties (verbatim):

Network Operations Center (NOC) design and setup (~80% of time, or 32+ hours per week): The job duties involved in designing, building and maintaining a NOC is similar in some ways to a software development process, in that it entails developing a requirements statement, selecting products that support those requirements, developing a design specification and then tracking the project’s progress. The Senior Engineer at [the Petitioner] will:

- Assess and collate clients' current and projected systems and requirements
- Create a business plan containing NOC design requirements to present to the CEO of [the Petitioner].
- Review best software to fit [Petitioner's] requirements for this business plan.
- Set up comprehensive monitoring software and scripts using PowerShell, Linux tools, and N-able.
- Set up comprehensive notification systems using email and SMS alerting
- Set up patch management, antivirus controls and backup monitoring environments and tools
- Create a workflow process and document all procedures
- Create a business continuity/redundancy plan for the NOC
- Create new service level client agreements reflecting NOC model of service.

Senior-level client support (~20% of time, or 8+ hours per week): Via remote access, provide IT engineering expertise to resolve clients' software issues with MS Office programs, email programs, antivirus software, VPN software, and related; server issues with server hardware, operating systems, services and software; and network issues with network hardware, DNS, DHCP, switches, routers, and patching. Build PCs and laptops as needed; contribute to knowledgebase for both colleagues and end users. Manage incidents raised by 3rd party hardware, software or service providers on behalf of clients dependent on resolution. Via remote access and as-needed client visits, resolve hardware issues with desktops, laptops, printers, scanners, and mobile devices. Ensure the delivery of service in accordance with the company's service-level agreements.

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) does not describe the position's duties with sufficient detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.²

In this matter, the Petitioner has not adequately and consistently described the specific duties and tasks to be performed in the proffered position. For example, the Petitioner indicated that the Beneficiary would spend 80 percent of his time on "designing, building and maintaining a NOC." However, there is no clear delineation in the time allocated to the design and build out of the NOC, versus the time dedicated to maintaining the NOC for the Petitioner's clients. We observe that the

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

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.

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tasks of designing and building a network more closely align with the occupation of “Computer Network Architects.” See Occupational Information Network (O*NET) Details Report for “Computer Network Architects.” <http://www.onetonline.org/link/details/15-1143.00> (last visited May 5, 2016); U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., “Computer Network Architects,” <http://www.bls.gov/ooh/computer-and-information-technology/print/computer-network-architects.htm> (last visited May 5, 2016). The Petitioner did not designate the position as such on the corresponding labor condition application (LCA).³

Moreover, the Petitioner indicated that the Beneficiary would spend 20 percent of his time on a variety of “client support” duties, such as resolving clients’ “software issues with MS Office programs,” “[b]uild PCs and laptops as needed,” and “resolve hardware issues with desktops, laptops, printers, scanners, and mobile devices.” Again, however, there is no clear delineation in the time allocated to these particular duties. There is also no detailed explanation of what particular “issues” and associated tasks the Beneficiary would be involved. Accordingly, the Petitioner has not established that these duties involving clients’ software and hardware issues, as well as building computers as needed, are consistent with the “Network and Computer Systems Administrators” occupational classification chosen here. Moreover, the Petitioner has not established that these duties all represent H-1B caliber work.

To qualify for classification as a specialty occupation, the Petitioner must establish, among other things, that the duties of the proffered position require a bachelor’s or higher degree in a specific specialty, or its equivalent. See section 214(i)(1)(B) of the Act and 8 C.F.R. § 214.2(h)(4)(ii) (defining the term “specialty occupation”). There are no provisions in the law relevant to H-1B

³ If the proffered position is primarily a “Computer Network Architects” position, then the LCA submitted with the petition does not support the Form I-129. With respect to the LCA, the Department of Labor’s (DOL’s) “Prevailing Wage Determination Policy Guidance” advises that, when a job offer has requirements described in a combination of O*NET occupations, a petitioner “should default directly to the relevant O*NET-SOC occupational code for the *highest paying* occupation (emphasis added).” 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.

A Level I “Computer Network Architects” position in the [redacted] California area requires a substantially higher prevailing wage (\$95,950 per year) than the prevailing wage of a Level I “Network and Computer Systems Administrators” position (\$56,742 per year) that is being proffered here. For more information regarding prevailing wages for “Computer Network Architects” (SOC code 15-1143) in the [redacted] CA MSA, for the period 7/2014 – 6/2015, see FLC Data Center at [http://www.flcdatacenter.com/OesQuickResults.aspx?code=15-1143&\[redacted\]year=15&source=1](http://www.flcdatacenter.com/OesQuickResults.aspx?code=15-1143&[redacted]year=15&source=1) (last visited May 5, 2016). Thus, if the proffered position were a combination of the two, the Petitioner should have defaulted directly to the highest-paying occupation of “Computer Network Architects” on the LCA.

nonimmigrants that allow a beneficiary to perform non-qualifying duties, i.e., duties not of H-1B caliber.⁴

Further, we must consider the Petitioner's designation of the proffered position at a Level I (entry) wage level (the lowest of four assignable wage levels). The "Prevailing Wage Determination Policy Guidance" issued by the Department of Labor (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://flcdatcenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf. The Petitioner's designation of the proffered position as a Level I, entry-level position undermines the credibility of the Petitioner's claim that the Beneficiary will be expected to serve in a leadership or "senior" role, or otherwise work at an advanced level.

For the above reasons, the record does not describe the position's duties with sufficient detail to convey substantive information about the relative complexity, uniqueness and/or specialization of the proffered position or its associated duties. The record also does not demonstrate whether the proffered position requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation. The record therefore does not establish that the proffered position qualifies for classification as a specialty occupation.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we will now analyze the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

⁴ Compare e.g., 8 C.F.R. § 214.2(l)(3)(v)(C) (permitting L-1A managers or executives that are coming to the United States to open a "new office" in the United States to perform some non-qualifying duties during a one year grace period).

While no provision in the law for specialty occupations permits the performance of non-qualifying duties, we will view the performance of duties that are incidental to the primary duties of the proffered position as acceptable when they are unpredictable, intermittent, and of a minor nature. The job duties collectively comprising 20 percent of the Beneficiary's time, however, cannot be considered merely incidental duties.

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On the LCA submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category “Network and Computer Systems Administrators,” corresponding to Standard Occupational Classification (SOC) code 15-1142 at a Level I wage. The Petitioner submitted copies of the DOL’s *Occupational Outlook Handbook (Handbook)* chapter on “Network and Computer Systems Administrators” as evidence under this criterion.⁵

However, as previously discussed, there is insufficient evidence to establish that the proffered position can appropriately be classified under the “Network and Computer Systems Administrators” occupational category. Absent such evidence, we will not further consider the *Handbook*’s information regarding this occupational category.

Under this criterion, the Petitioner also submitted letters prepared by [REDACTED] Professor, Computer Science Department, and [REDACTED] Computer Science and Computer Engineering, both at [REDACTED]. Upon review of the two opinion letters, we must question the reliability and factual foundation upon which these letters were based.

For instance, while the two evaluators reviewed the same job description, one found that the Beneficiary will “assist[] with network design responsibilities.” The other found that the Beneficiary “will be solely responsible for the design, implementation, and management of this complex NOC system.” This is an important distinction in the interpretation of the Beneficiary’s actual duties because as noted above, a position with the primary duty of designing a NOC would more closely align with a “Computer Network Architect” position, a position that requires a significantly higher wage. These different interpretations of the actual duties of the position demonstrate the lack of clarity of the Petitioner’s descriptions for the proffered position.

Additionally, [REDACTED] compares the duties of the proffered position to one that needs the deep theoretical and practical knowledge that is required for more advanced Network and Computer System Administrator positions. [REDACTED] similarly find that the Petitioner is seeking an experienced computer network engineer. Both opinions conflict with the Petitioner’s designation of the position as a Level I, entry-level position, as such a position requires only a basic understanding of the occupation. 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. It is unclear whether these evaluators were informed of the Petitioner’s attestation on the LCA that the proffered position was a Level I (entry) wage position. The omission of any discussion of the entry-level wage

⁵ We normally recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. To satisfy the first criterion, 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. 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.

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designation further diminishes the evidentiary value of these opinions as the opinions do not appear to be based on a complete understanding of the proffered position.

Moreover, the record does not include evidence that either evaluator has published, conducted research, run surveys, or engaged in any enterprise, pursuit, or employment - academic or otherwise - regarding the minimum education requirements for the performance of the duties of the proffered position. While the evaluators may have anecdotal information regarding the minimum educational requirements for a network and computer systems administrator position, the record does not include any relevant research, studies, surveys, or other authoritative publications as part of their review and/or as a foundation for their opinions.⁶ Nor have the evaluators indicated that they made personal observations of or other research into the Petitioner's particular business operations, and the duties of the proffered position within that specific context. The record thus does not establish that these opinion letters are based upon sufficient information about the position proposed here. "[G]oing on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings." *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

We may, in our discretion, use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Id.* For the reasons discussed above, the opinion letters do not constitute probative evidence towards satisfying 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), or any other criterion. For efficiency's sake, we hereby incorporate the above discussion and analysis regarding the opinion letters into each of the bases in this decision for dismissing the appeal.

In this case, the Petitioner has not established that the proffered position falls under an occupational category for which an authoritative source indicates that normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. 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

⁶ Although both evaluators reference a few job announcements, they do not discuss what statistically valid inferences, if any, can be drawn from these few advertisements with regard to determining the common educational requirements for entry into a network and computer systems administrator position. See generally Earl Babbie, *The Practice of Social Research* 186-228 (7th ed. 1995). In addition, [REDACTED] and [REDACTED] but did not attach printouts of the advertisements they referenced.

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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.

Here, the Petitioner submitted two letters to establish that similar firms in the Petitioner's industry "routinely employ and recruit only degreed individuals." The first letter is signed by a principal of [REDACTED] who stated that his business is similar in size and provides similar information technology and support services as the Petitioner. [REDACTED] stated further that the Petitioner's planned NOC is similar to his company's data center and for "a Senior Engineer to design, build, and take charge of a NOC for a company in our particular industry, he/she absolutely must have the level of knowledge and skill usually associated with a Bachelor's or the equivalent in Information Technology, Management Information Systems, Computer Science, or Engineering." [REDACTED] also repeated portions of the Petitioner's job description and outlined his expectation that in such a position the senior engineer would need a "deep understanding of data structures and network architecture," programming skills using particular technical software, expertise in communications and networking, and a sophisticated understanding of data warehousing and database management systems as well as knowledge of computer systems security, systems analysis and systems development. [REDACTED] also noted that most of his technical staff had Bachelor's degrees in Computer Science, Engineering, Information Systems, or a related field and that those that did not have degrees had demonstrated a functional equivalent with technical trainings and certifications. [REDACTED] noted that his two current employees with work that is approximate to the Petitioner's proffered position have Bachelor's degrees in Information Technology and Mechanical Engineering.

The second letter is signed by [REDACTED] CEO of [REDACTED] who also compared the size and purpose of his company to that of the Petitioner. [REDACTED] indicated that he had discussed the proffered position with the Petitioner's principals and had reviewed the written details of the proffered job and that he believes that the proffered position "is at the far end of the complexity spectrum for what companies like ours do." [REDACTED] illustrates this point by noting that at one end of the spectrum, IT services companies supporting small businesses might have non-degreed technicians performing installations of pre-packaged software and basic networking of office computers to a local server, but at the opposite end of the spectrum they would have degreed engineers or their functional equivalent handling an array of project work for clients with more complex information system needs. [REDACTED] noted that his company hired "full-time network/systems administrators who have the level of network architecture, systems design, and programming knowledge most often associated with a Bachelor's degree in an IT or engineering-related field."

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Both [REDACTED] and [REDACTED] appear to believe that the individual in the proffered position would need expertise, and an advanced understanding to handle setting up the Petitioner's NOC [REDACTED] or to handle client's complex information system needs [REDACTED]. Again, however, as noted above, the Petitioner has designated the proffered position as an entry Level I wage on the LCA, not a position that requires expertise and advanced understanding of the occupation. Furthermore, although referencing his employees, [REDACTED] does not provide the level of responsibility, experience, salary, or actual job duties of individuals he has hired for positions he claims are parallel to the proffered position. [REDACTED] also indicates that members of his staff who do not have degrees have demonstrated a functional equivalent with technical trainings and certifications. [REDACTED] however, does not offer an analysis of what he believes to be a functional equivalent to a bachelor's degree in a specific specialty. Although [REDACTED] notes his company hires "full-time network/systems administrators who have the level of network architecture, systems design, and programming knowledge most often associated with a Bachelor's degree in an IT or engineering-related field," he does not provide detailed information and evidence of his employees' specific duties, level of responsibilities, and educational levels.

It is not possible to conclude from these two letters that it is common to the Petitioner's industry to hire individuals with a bachelor's degree in a specific specialty. The letters do not convey sufficient information to evidence that the letter-writers had a complete understanding of the proffered position so that they could offer comparisons to positions in their companies that are parallel to the proffered position.

We have also reviewed the printouts of the online job announcements submitted by the Petitioner. Here, none of the advertisements referenced or submitted provide sufficient information regarding the advertising organizations to establish that the advertising organizations are similar to the Petitioner. To satisfy this criterion and for the Petitioner to establish that an advertising organization is similar, it must demonstrate that it shares the same general characteristics with the advertising organization. Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. It is not sufficient for a petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

Additionally, the requirements to perform the duties of the advertised positions vary widely. Several of the advertisements indicate that experience equivalent to a bachelor's degree will suffice but do not delineate the standards for determining equivalency. Two of the advertisements indicate that the prospective employers consider a bachelor's degree a plus or a preference. A preference, however, is not a requirement. One advertisement lists a requirement for a technical degree but does not specify whether an associate's degree would be sufficient. Moreover, the duties described in the submitted job announcements are general. It is not possible to conclude from the limited information provided that the advertised positions are parallel to the proffered position.

Accordingly, the job advertisements do not establish that similar organizations to the Petitioner routinely employ individuals with degrees in a specific specialty, in parallel positions.⁷

Based upon a complete review of the record, we conclude that the Petitioner has not established 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. 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.

Upon review, we find that the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. For instance, the Petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it may believe are so complex and unique. The Petitioner provided a general overview of the proposed duties that is subject to different interpretations regarding the level of design involvement by the Beneficiary and other salient aspects of the position. The descriptions do not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them.

Again, the LCA submitted by the Petitioner indicates a wage level at a Level I (entry) wage, which, as noted above, is the lowest of four assignable wage levels. As previously discussed, in designating the proffered position at a Level I wage, the Petitioner has indicated that the proffered position is a comparatively low, entry-level position relative to others within the occupation. *See* U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. Without further evidence, the record of proceedings does not indicate that the proffered position is so complex or unique as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing

⁷ The Petitioner did not provide any independent evidence of how representative these job advertisements are of the advertising employers’ recruiting history for the type of jobs advertised. As they are only solicitations for hire, they are not evidence of the employers’ actual hiring practices. In addition, the Petitioner did not demonstrate what statistically valid inferences, if any, can be drawn from these advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (7th ed. 1995).

wage.⁸ 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. Here the Petitioner does not claim, and the record does not show, that the Petitioner has previously employed other persons in the proffered position. Therefore, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).⁹

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 the instant case, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. The Petitioner does not establish how the proffered duties elevate the position to a specialty occupation. We again refer to our earlier comments and findings with regard to the insufficient position description, as well as to the implication of the Petitioner's designation of the proffered position as a Level I wage, which is for a position that is not likely distinguishable by relatively specialized and complex duties. Upon review of the totality of the record, the Petitioner has not established that the nature of the specific duties is

⁸ 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.

⁹ We note, for the Petitioner's information only, that while a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F.3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

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

We have reviewed the six-year old book excerpt the Petitioner submits on appeal which discusses our past non-precedent decisions. First, the record of proceedings does not contain sufficient information regarding the underlying facts of the non-precedent decisions and, therefore, no substantive determination could be made to establish what facts, if any, were analogous to those in this proceeding. Second, while 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Finally, as previously discussed, the evidence of record in this matter regarding the proffered position is insufficient and inconsistent regarding the nature of the duties and their level of responsibility. Thus, we cannot find that the Petitioner will employ the Beneficiary in a position that has duties that are so specialized and complex.

For the reasons discussed above, the evidence of record does not satisfy the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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-V-S-, LLC*, ID# 16586 (AAO June 1, 2016)