



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF D-O-C-, INC.

DATE: JUNE 21, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a gas station and convenience store,¹ seeks to temporarily employ the Beneficiary as a “staff accountant” under the H-1B nonimmigrant classification for specialty occupations. See section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 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 proffered position is not 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 in finding that the proffered position is not a specialty occupation.

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

I. LAW

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

- (A) theoretical and practical application of a body of highly specialized knowledge, and

¹ While the Petitioner states that it owns and operates several gas stations and drive-through stores, the Petitioner only listed one address where the Beneficiary would work, which, from the fuel supply agreement and tax returns provided, appears to be a single gas station/convenience store. The evidence of record does not establish that the Petitioner owns and operates more than one gas station/convenience store or that the Beneficiary would work at any location other than the one specified in the petition.

² We follow the preponderance of the evidence standard as specified in *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

- (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 "staff accountant." In a letter submitted at the time the petition was filed, the Petitioner provided the following job duties for the position (verbatim):

Internal Audit: 70%

- Audit a variety of internal activities and/or procedures gathered by company bookkeeper/store manager for the purpose of ensuring compliance with law, regulations, prescribed accounting standards/protocols, detecting issues occurring so proper resolution can be determined;
- Collaborate with other staff members, independent audit staff, state agencies, etc of the purpose of responding to questions with fund audits and/or preparing work aids, manuals, policies and procedures;

- Prepare a variety of financial reports, documents and other written materials (e.g. concise statistical, cash flow analysis, balance sheets, income statements, analytical reports, detailed audit findings) based on present and past operation trends and costs to ensure compliance with accounting policies and procedures;
- Review financial/accounting information to detail assets liabilities and capital and accordingly prepare financial reports;
- Respond to inquiries from a variety of sources (e.g. staff, state auditors, government agencies) for the purpose of providing information related to company's accounting issues and clarification as needed;
- Interpret budget and audit results to management and advise them on effective use of resources and assumptions underlying budget forecasts;
- Review company internal processes and controls (e.g. reimbursement related issues, state accounting manual) for the purpose of ensuring financial information is properly processed, reported and safeguarded.;

Management Accounting: 30%

- Use the data processing system, such as Quick book, with financial data for the purpose of ensuring system is operating efficiently, effectively and accurately, maintains bookkeeping and accounting records, including general journal and cash accounts, bill paying and monthly account reconciliation;
- Guide and direct the Store Manager (*who performs the store's daily bookkeeping functions*) for the purpose of responding to questions and communication updates to policies and procedures;
- Research discrepancies of financial information and/or documentation for the purpose of research resolutions, ensuring accuracy of data and complying to established procedures, creates and maintain a ticker system to track cash flow obligation;

According to the Petitioner, the position requires a bachelor's degree or equivalent in business administration, accounting, finance, 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.³ Specifically, the record (1) does not describe the position's duties with sufficient detail; and (2) does

³ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

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not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.⁴

Regarding the proffered duties, we find that the Petitioner did not submit sufficient objective evidence to establish that the Beneficiary would actually perform the duties of an accountant. While we acknowledge the Petitioner's evidence that its business revenue has grown over the past several years, the Petitioner did not provide sufficient documentation to demonstrate that it would actually utilize the services of a full-time in-house accountant, as claimed. For example, although the Petitioner stated that it employed a staff accountant from 2009 to 2013, the Petitioner also submitted a 2012 tax return prepared by an external provider, rather than its in-house staff accountant. Further, the Petitioner did not submit any samples of the prior staff accountant's work product to demonstrate that this individual carried out the Petitioner's internal audit, financial control and account management protocols, as claimed. We also note that the fuel supply agreements do not reference the franchisers' accounting audit requirements and that, even if they did, the Petitioner did not provide sufficient evidence indicating that its prior staff accountant performed duties relating to those requirements. In addition, the Petitioner was a party to only one of the submitted fuel supply agreements. The other two fuel supply agreements were executed by [REDACTED] as an individual, with addresses in two different cities that differed from the worksite named in the petition. The Petitioner did not explain these discrepancies. Therefore, the Petitioner has not submitted sufficient documentation to demonstrate that it actually has sufficient work to employ the Beneficiary as a staff accountant in-house on a full-time basis. For this reason alone, the evidence of record does not establish the proffered as a specialty occupation.

Moreover, we observe that the Petitioner claimed that an individual with a bachelor's degree in business administration, with no further specialization, could perform the duties of the proffered position. However, the requirement of a bachelor's degree in business administration, with no further specialization, is inadequate to establish that a 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 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 administration, 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). To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position,

⁴ 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.

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 139, 147 (1st Cir. 2007). For this additional reason, the evidence of record does not establish the proffered as a specialty occupation.⁵

However, even if the Petitioner had shown that it would employ the Beneficiary as a staff accountant, we would not find that the proffered position is a specialty occupation, as explained below.

A. First Criterion

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

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Accountants and Auditors" corresponding to the Standard Occupational Classification code 13-2011.⁷

We reviewed the chapter of the *Handbook* on "Accountants and Auditors" including the sections regarding the typical duties and requirements. However, the *Handbook* does not indicate that at least

⁵ This deficiency cannot be cured. If the Petitioner were to add a mandate for further specialization or concentration in a relevant field, such as accounting, then the Beneficiary, whose foreign education has been evaluated as equivalent to a U.S. bachelor's degree in business administration with a minor in English literature, would not qualify to perform the duties of the proffered position, and the petition would be denied on that basis.

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

⁷ The Petitioner classified the proffered position at a Level 1 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 1 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://flcdatcenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf. A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner's job opportunity. *Id.*

a bachelor's degree in a specific specialty, or its equivalent is normally the minimum requirement for entry into this occupational category. The subsection of the *Handbook* entitled "How to Become an Accountant or Auditor" states the following:

Most accountants and auditors need at least a bachelor's degree in accounting or a related field. Certification within a specific field of accounting improves job prospects. For example, many accountants become Certified Public Accountants (CPAs).

Education

Most accountant and auditor positions require at least a bachelor's degree in accounting or a related field. Some employers prefer to hire applicants who have a master's degree, either in accounting or in business administration with a concentration in accounting.

A few universities and colleges offer specialized programs, such as a bachelor's degree in internal auditing. In some cases, those with associate's degrees, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, get junior accounting positions and advance to accountant positions by showing their accounting skills on the job.

Many colleges help students gain practical experience through summer or part-time internships with public accounting or business firms.

Licenses, Certifications, and Registrations

Every accountant filing a report with the Securities and Exchange Commission (SEC) is required by law to be a Certified Public Accountant (CPA). Many other accountants choose to become a CPA to enhance their job prospects or to gain clients. Many employers will often pay the costs associated with the CPA exam. . . .

U.S. Department of Labor (DOL), Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., Accountants and Auditors, available on the Internet at <http://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm#tab-4> (last viewed June 21, 2016).

The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into this occupation. Rather, the occupation accommodates other paths for entry, including less than a bachelor's degree in a specific specialty. For example, the *Handbook's* narrative states that individuals with an associate's degree, or bookkeepers and accounting clerks with work experience, obtain junior accounting positions and advance to accountant positions by showing their accounting skills on the job. Accordingly, individuals who do not possess a bachelor's degree in a specific specialty or the equivalent can

obtain junior accounting positions and then advance to accountant positions. Given the Level I wage-level designation for this position,⁸ the *Handbook* does not support the claim that the proffered position normally requires at least a baccalaureate degree (or higher) in a specific specialty, or its equivalent.

The *Handbook* reports that certification may be advantageous or even required for some accountant positions. However, we note that there is no indication that the Petitioner requires the Beneficiary to have obtained the designation CPA, Certified Management Accountant (CMA), or any other professional designation to serve in the proffered position.

On appeal, the Petitioner claims that the proffered position meets the first criterion of 8 C.F.R. 214.2(h)(4)(iii)(A), as a position for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation in the United States. The Petitioner further claims that the *Dictionary of Occupational Titles* (DOT) lists accounting occupations as Specific Vocational Preparation (SVP) 8.

However, the DOT does not support the assertion that assignment of an SVP rating of 8 is indicative of a specialty occupation. This conclusion is apparent upon reading Section II of the DOT's Appendix C, Components of the Definition Trailer, which addresses the SVP rating system.⁹ The section reads:

II. SPECIFIC VOCATIONAL PREPARATION (SVP)

Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

Specific vocational training includes training given in any of the following circumstances:

⁸ Again, the Petitioner's Level I designation is indicative of a comparatively low, entry-level position relative to others within the occupation and signifies that the Beneficiary is only expected to possess a basic understanding of the occupation and will perform routine tasks that require limited, if any, exercise of judgment. The Petitioner's selection of Level I wage level indicates that the Beneficiary will be closely supervised and her work closely monitored and reviewed for accuracy. Based upon the Petitioner's designation of the proffered position as a Level I position (relative to others with the occupation) it appears likely that the Beneficiary will work in an entry-level or junior role.

⁹ The Appendix can be found at the following website: <http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM>.

- a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);
- b. Apprenticeship training (for apprenticeable jobs only);
- c. In-plant training (organized classroom study provided by an employer);
- d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);
- e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

Level	Time
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month
3	Over 1 month up to and including 3 months
4	Over 3 months up to and including 6 months
5	Over 6 months up to and including 1 year
6	Over 1 year up to and including 2 years
7	Over 2 years up to and including 4 years
8	Over 4 years up to and including 10 years
9	Over 10 years

Note: The levels of this scale are mutually exclusive and do not overlap.

Thus, an SVP rating of 8 does not indicate that at least a four-year bachelor's degree is required, or more importantly, that such a degree must be in a specific specialty closely related to the occupation to which this rating is assigned. Therefore, the DOT information is not probative of the proffered position qualifying as a specialty occupation.

The fact that a person may be employed in a position designated by a petitioner as that of an accountant and may apply some accounting principles in the course of his or her job is not in itself sufficient to establish the position as one that qualifies as a specialty occupation. In the instant case, the Petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other 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)(I).

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 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 independent, authoritative source) reports a standard industry-wide requirement for at least a bachelor’s degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter.

There are no submissions from the industry’s professional association indicating that it has made a degree a minimum entry requirement and no submission of letters or affidavits from firms or individuals that attest that such firms routinely employ only individuals with a degree in a specific specialty.

In support of the assertion that the degree requirement is common to the Petitioner’s industry in parallel positions among similar organizations, the Petitioner submitted copies of job advertisements. However, upon review of the documents, we find that the Petitioner’s reliance on the job announcements is misplaced.

The Petitioner designated its business operations under the North American Industry Classification System (NAICS) code 447110.¹⁰ This NAICS code is designated for “Gasoline Stations with

¹⁰ According to the U.S. Census Bureau, the North American Industry Classification System (NAICS) is used to classify business establishments according to type of economic activity and, each establishment is classified to an industry according to the primary business activity taking place there. See <http://www.census.gov/eos/www/naics/> (last visited

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Convenience Stores.” The U.S. Department of Commerce, Census Bureau website describes this NAICS code as follows:

This industry comprises establishments engaged in retailing automotive fuels (e.g., diesel fuel, gasohol, gasoline) in combination with convenience store or food mart items. These establishments can either be in a convenience store (i.e., food mart) setting or a gasoline station setting. These establishments may also provide automotive repair services.

See U.S. Dep’t of Commerce, U.S. Census Bureau, 2007 NAICS Definition, 722110 – Full-Service Restaurants, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited June 21, 2016).

For the Petitioner to establish that an organization in its industry is also similar to it, it must demonstrate that the Petitioner and the organization share the same general characteristics. 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.

The companies placing the advertisements do not appear to conduct business in the same industry as the Petitioner. For example, [REDACTED] and [REDACTED] are not gas stations with convenience stores. Additionally, an advertisement placed by [REDACTED] on behalf of an energy company in the oil and gas industry does not include information such as the level of revenue and staffing to establish that the referenced company is similar to the Petitioner.

Nor is it clear that these positions are “parallel” to the proffered position. For example, many of them require work experience. However, in designating the position at an entry-level wage, the Petitioner claimed that the duties of the position would require limited, if any, exercise of judgment; that the employee would be closely supervised and his or her work closely monitored and reviewed for accuracy; and that he or she would receive specific instructions on required tasks and expected results.

The evidence of record does not establish that a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent is common to the Petitioner’s 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).

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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.

The record of proceedings does not contain evidence establishing relative complexity or uniqueness as aspects of the proffered position, let alone that the position is so complex or unique as to require the theoretical and practical application of a body of highly specialized knowledge such that a person with a bachelor's or higher degree in a specific specialty or its equivalent is required to perform the duties of that position. Rather, we find that the evidence of record does not distinguish the proffered position from other junior positions located within the "Accountants and Auditors" occupational category, which, the *Handbook* indicates, do not necessarily require a person with at least a bachelor's degree in a specific specialty or its equivalent.

The Petitioner's statements regarding the claimed complex and unique nature of the proffered position are acknowledged. However, those assertions are undermined by the fact that the Petitioner submitted an LCA certified for a job prospect with a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation. Without further evidence, the record of proceedings does not indicate that the proffered position is complex or unique as such a position falling under this occupational category 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 wage.¹¹ For example, 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."¹² The evidence of record does not establish that this position is significantly different from other positions in the occupational category such that it refutes the *Handbook's* information that a bachelor's degree in a specific specialty or its equivalent is not required for the proffered position.

¹¹ The issue here is that the Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), an entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty or its equivalent. That is, a position's wage level designation may be a consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

¹² 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 http://www.flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

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 also 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 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 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if 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").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.

In support of this criterion, the Petitioner claims that it previously employed A-G-¹³ as a staff accountant, and that A-G- has a bachelor's degree in business administration. While the Petitioner's claim is acknowledged, we also note that the most recent H-1B petition filed by the Petitioner on behalf of A-G- was denied on behalf of the Director's determination that the proffered position was

¹³ Name withheld to protect individual's identity.

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not a specialty occupation.¹⁴ The decision was appealed to our office, and we dismissed it. Therefore, the Petitioner's claim that it previously employed A-G- in a specialty occupation position must be disregarded, and the record contains no other evidence for our consideration under this prong.

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.

Upon review of the record of the proceeding, we find that the Petitioner has not provided sufficient evidence to satisfy this criterion of the regulations. In the instant case, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than the duties of 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 position in the LCA as a Level I position (the lowest of four assignable wage-levels) relative to others within the same occupational category. The Petitioner has not demonstrated in the record that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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 D-O-C-, Inc.*, ID# 17267 (AAO June 21, 2016)

¹⁴ See [REDACTED]