



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

MATTER OF P-E- INC

DATE: JUNE 23, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a restaurant chain, seeks to temporarily employ the Beneficiary as an “area coach operations-in training” 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 evidence of record does not establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the proffered position is a specialty occupation.

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 an “area coach operations-in training” (ACO-IT). According to the Petitioner, the proffered position is a “potential trainee” position in which the incumbent learns to perform the tasks of an area coach of operations position. The Petitioner stated the ACO-IT works with operations leadership to be trained for the following:

- Recruiting high caliber managerial candidates
- Developing associates
- Ensuring the delivery of exceptional guest experience
- Achieving financial targets
- Maximizing effectiveness by working closely with support center team

In response to the Director’s request for evidence(RFE), the Petitioner submitted a more detailed job description, along with the educational requirements for the position. Specifically, the Petitioner stated the following:

**People**

- Culture: Lives and cultivates [the Petitioner's] Culture and Values to ensure the 2020 vision is alive and in action.
- Recruitment: Works with assigned Operations leaders (ACOs/RDOs) on recruiting high caliber store management and staffing stores effectively; learns to develop a pipeline of internal and external talent, including successors for every store and Area management position.
- Training: Works closely with Area and Regional leaders on how to effectively communicate and train store management on company policies and procedures and on Operation standards; Assists ACOs in overseeing the training of AMITs and GMITs delivered by Area Training Leaders (TLs).
- People Development: Is trained to actively coach store management in people development to build bench of qualified associates; Engages in the Region's Area people planning process to understand [the Petitioner's] process for assessing internal talent and creating IDPs for management and hourly associates.
- Associate Relations/Environment: Promotes a safe and empowering environment for Team [Petitioner] to listen, appreciate and challenge each other; Works with HR to learn how to handle associate relations claims effectively.
- Work Safety: Learns to effectively communicate work and food safety guidelines; Works with Risk management to understand the company's safety guidelines and their consistent implementation.

**Guest**

- Exceptional Guest Experience: Works with Area and Regional leadership on how to coach store team members on building connections with guests; Learns how to ensure operational standards that produce fantastic food, service, and ambience.
- Brand Awareness: Works with Field Marketing to learn how to build brand awareness through community engagement. Receives training on effective ways to implement local and national marketing initiatives and promotions.
- Guest Relations: Works with operations leaders and with Field Marketing to learn how to coach store management on resolving guest relations issues related to products and guest experience.

**Financial**

- Financial Results: Works with Operations leaders to gain operational expertise for achieving business results. Conduct operational effectiveness and efficiency reviews in assigned stores to ensure functional or project systems are applied and functioning as designed. Compare, review and analyze financial/accounting reports including Profit and Loss (Income Statement) of all stores assigned, Detailed General Ledger, etc. and marketing and survey reports on spreadsheets, charts, and document findings of studies and prepare recommendations
- Learns how to become accountable for an assigned Area's financial results.

- Strategic Planning: Works with Operations leaders to learn how to conduct strategic planning for the Area. Learns how to coach store management to identify opportunities to improve performance and develop action plans for implementation.
- Store Openings and Site Selection: Works with Area and Regional leadership and with Marketing leaders on successful approaches to new store openings and learns how to coach lower level Operations managers on these approaches.

Work Hours: 40 hours per week plus O.T.

Education Requirement: Bachelor's Degree in Business Administration, Hospitality Management or related or equivalent (e.g. two-year Associate's Degree in Business Administration, Hospitality Management or related plus 6 years work related experience).

The Petitioner also stated that the major job duties for the position are as follows:<sup>1</sup>

- Recruiting high caliber managerial candidates (10%)
- Training and developing associates (30%)
- Ensuring delivery of exceptional guest experience and brand building (15%)
- Achieving financial targets (35%)
- Strategic planning and execution of all aspects of operations in conjunction with Support Center to achieve sustained efficiency and effectiveness (10%)

On appeal, the Petitioner submitted another detailed description of the proffered position.

### III. ANALYSIS

Upon review of the entire record, we determine that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.<sup>2</sup>

#### A. Job Duties

The Petitioner requested that the petition be approved for a three-year period for a position "in-training." The job duties, as described, largely reflect that the Beneficiary will receive training and

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<sup>1</sup> In the initial petition, the Petitioner stated that the Beneficiary would be "trained" for these virtually all of these duties. However, in response to the RFE, the Petitioner claimed that these are the major job duties of the position.

<sup>2</sup> 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.

work with others to learn various tasks as reflected by the phrases in the descriptions, such as “works with,” “is trained to,” “learns to,” “learns how,” and “assists.” However, these statements do not explain the particular tasks the Beneficiary will – or will not – be responsible for performing as a “trainee.” Moreover, anything beyond incidental duties, e.g., predictable, recurring, and substantive job responsibilities, must be specialty occupation duties or the proffered position as a whole cannot be approved as a specialty occupation.

In response to the RFE, the Petitioner provided an organizational chart but stated that the ACO-IT’s subordinates are not assigned until the training is completed. As the Petitioner has requested that the Beneficiary be approved for an “in training” position, we must therefore conclude that the organizational chart does not reflect the Beneficiary’s role in this position, but rather is speculative of some potential hierarchy scheme that may occur a year or more in the future.

On appeal, the Petitioner reported that the incumbent in this trainee position “usually supervises 9 to 15 employees in one store [in the] first year” and then will “develop new stores in the following years.” However, the submitted job descriptions do not include the duties the Beneficiary will perform in supervising a single store location for the first year of the requested three-year validity period, and the Petitioner does not clarify what it means by “develop new stores,” how many “years” it is referring to, and whether this job duty encompasses all the other stated job duties.

#### B. Requirements

According to the Petitioner, an associate’s degree in business administration, hospitality management or a related field and six years of work related experience are sufficient for the position. We note that on appeal, the Petitioner states that its policy is to count three years of experience as equal to one year of college education. However, the Petitioner has not established that this combination of education and experience is equivalent to at least a baccalaureate in a specific specialty. For example, there is no indication that such experience must entail progressively responsible experience in the specialty and achieved recognition of expertise in the specialty.<sup>3</sup> Therefore, without more, the Petitioner has not demonstrated that the position satisfies the requirements for a specialty occupation.

Further, the Petitioner states that a degree in business administration, without further specification, is a sufficient minimum requirement for entry into the position. Based on this requirement alone, we cannot find that the proffered position requires at least a bachelor’s degree *in a specific specialty*, or its equivalent, in order to qualify as a specialty occupation.

To demonstrate 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 previously noted, USCIS interprets the degree requirement at 8 C.F.R.

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<sup>3</sup> For additional information, see 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

§ 214.2(h)(4)(iii)(A) to require a degree *in a specific specialty* that is directly related to the proposed position. 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). Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147 (finding a business administration degree to be a "general-purpose" degree).<sup>4</sup>

Nevertheless, for the purpose of performing a comprehensive analysis, we will discuss the evidence of record under each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).<sup>5</sup>

#### A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. 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.<sup>6</sup>

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "General and Operations Managers," corresponding to Standard Occupational Classification (SOC) code 11-1021.<sup>7</sup> The

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<sup>4</sup> 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.

<sup>5</sup> Although some aspects of the regulatory criteria may overlap, we will address each criterion individually.

<sup>6</sup> All of our references are to the 2016-17 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.

<sup>7</sup> 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 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. 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

*Handbook* states, in pertinent part, that “workers without a college degree may work their way up to higher levels within the company to become . . . general managers.”<sup>8</sup> It also reports that “[m]ost general and operations managers hired from outside an organization need lower level supervisory or management experience in a related field.”<sup>9</sup> According to the *Handbook*, the “educational requirements [for general and operations managers] vary by industry, but candidates who can demonstrate strong leadership abilities and experience getting positive results will have better job opportunities.”<sup>10</sup>

The *Handbook* does not support the Petitioner’s assertion that a baccalaureate or higher in a specific specialty (or its equivalent) is necessary for entry into this occupation. Rather, the *Handbook* does not indicate that there are any specific degree requirements for these jobs, and instead emphasizes the importance of strong leadership abilities and experience for this occupation.

In response to the RFE, the Petitioner references the Occupational Information Network (O\*NET) OnLine Summary Report for “General and Operations Managers.” However, it does not support the Petitioner’s assertion that a bachelor’s degree in a specific specialty (or its equivalent) is required for entry. More specifically, the summary report provides general information regarding the occupation, including a Specialized Vocational Preparation (SVP) rating. According to the SVP rating cited in the summary report, this occupation is designated 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 is important to note that it does not describe how those years are to be divided among training, formal education, and experience – and it does not specify the particular type of degree, if any, that a position would require.<sup>11</sup>

Further, the summary report provides the educational requirements of “respondents,” but does not account for 100% of the “respondents.” The respondents’ positions within the occupation are not distinguished by career level (e.g., entry-level, mid-level, senior-level). Additionally, the graph in the summary report does not indicate that the “education level” for the respondents must be in a specific specialty. Further, while the graph indicates that 29% of respondents reported that a bachelor’s degree is required, the majority of respondents reported that some college (no degree) or a high school diploma (or equivalent) is sufficient. Thus, the summary report provides general information regarding the occupational category, but it does not corroborate the Petitioner’s claim

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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://flcdcenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://flcdcenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf).

<sup>8</sup> For more information on this occupational category, see U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., “Top Executives,” <http://www.bls.gov/ooh/management/top-executives.htm#tab-4> (last visited June 20, 2016).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> For additional information, see the O\*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

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*Matter of P-E- Inc*

regarding that these positions require an educational background, or its equivalent, commensurate with a specialty occupation.

In its RFE response and on appeal, the Petitioner also cites to the *Handbook's* chapter on "Training and Development Managers." However, we find the Petitioner's reliance on this *Handbook* chapter misplaced. That is, despite the Petitioner's assertions that the proffered position encompasses the duties of "Training and Development Managers," the Petitioner submitted an LCA for a position located under the "General and Operations Managers" occupational classification. The Petitioner has not sufficiently explained how its reliance on the *Handbook's* chapter on "Training and Development Managers" is appropriate and consistent with the LCA.<sup>12</sup>

Subsequent to filing the petition, the Petitioner cannot offer a new position to the Beneficiary or materially change the associated job responsibilities, requirements, or other salient aspects of the proffered position. The Petitioner must establish eligibility at the time of filing, i.e., that the position offered to the Beneficiary when the petition was filed merits classification for the benefit sought. 8 C.F.R. § 103.2(b)(1); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). We therefore will not further consider the *Handbook's* information or the Petitioner's assertions regarding "Training and Development Managers" under this criterion.

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

## B. Second Criterion

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<sup>12</sup> With respect to the LCA, DOL guidance states that if an employer's job opportunity has worker requirements described in a combination of O\*NET occupations, then the employer should choose the most relevant O\*NET-SOC occupational code for the highest paying occupation on the LCA. 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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

As indicated on the LCA, the prevailing wage for a Level I "General and Operations Managers" position in the [redacted] IA MSA, for the time period 7/2015 - 6/2016, is \$41,766 per year. In comparison, the prevailing wage for a Level I "Training and Development Managers" (SOC code 11-3131) position in the same MSA and time period is \$48,589 per year. For more information regarding the prevailing wage for "Training and Development Managers" in the [redacted] IA MSA for the time period 7/2015 - 6/2016, see [http://www.flcdatacenter.com/OesQuickResults.aspx?code=11-3131&\[redacted\]&year=16&source=1](http://www.flcdatacenter.com/OesQuickResults.aspx?code=11-3131&[redacted]&year=16&source=1) (last visited June 20, 2016).

Thus, if the Petitioner believed its position were a combination of both "General and Operations Managers" and "Training and Development Managers" positions, it should have chosen the highest-paying occupation of "Training and Development Managers" on the LCA. Because the Petitioner did not do so, and did not explain why, the Petitioner cannot now reasonably rely upon the *Handbook* chapter or any other information relevant to the "Training and Development Managers" occupational classification.

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

### 1. First Prong

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

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

As discussed above, the Petitioner has not established that its proffered position is one for which the *Handbook* or another source reports a requirement for at least a bachelor’s degree in a specific specialty or its equivalent. We incorporate our previous discussion on the matter. There are also 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 the petition, the Petitioner provided a few job postings.<sup>13</sup> However, the Petitioner has not adequately demonstrated that these advertisements are for parallel positions. The job titles for the positions are: regional manager, district manager, area manager, and general manager. None of the advertisements are for trainee positions, and the job descriptions do not focus on the incumbent training, learning, working with, and assisting (as noted above about the Petitioner’s job descriptions). Rather, the advertisements appear to be for positions entailing more senior responsibilities and requiring significantly more experience, such as 7+ and 10+ years of experience in addition to a bachelor’s degree.

Further, the advertisements do not support the conclusion that a bachelor’s degree in a specific specialty is required. Instead, these advertisements suggest that a bachelor’s degree in a field of

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<sup>13</sup> The Petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from these few advertisements regarding the common educational requirement for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

general applicability, such as business, is a sufficient educational background to perform the duties of the advertised positions. Most of the advertisements indicate that a general or general-purpose bachelor's degree (e.g., degrees in business or business administration) is acceptable.

Based upon a complete review of the record, we conclude that the Petitioner has not established the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

## 2. Second Prong

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

We reviewed the Petitioner's statements and documentation regarding the proffered position, and its business operations. The Petitioner does not specifically assert eligibility under this prong of the second criterion, and has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. Thus, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

## C. Third Criterion

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

To merit approval of the petition under this criterion, the record must establish that a petitioner's imposition of a degree requirement is not 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 the Petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the Petitioner created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner's past recruiting and hiring practices, as well as information regarding employees serving in the position.

On appeal, the Petitioner submits a list of seven individuals that it claims are currently employed in the ACO-IT position. We note, however, that the Petitioner was established in 1990, and states that it operates and manages over 1,800 stores and has over 32,000 employees. Consequently, the Petitioner has not established how this information about seven individuals is representative of its employment practices for this position. The Petitioner does not specify how many individuals hold

or have held the ACO-IT position, such that this list of individuals could be considered an objective depiction of the Petitioner's employment practices.

Moreover, the salaries of these individuals vary significantly from each other and from the proffered wage. This suggests that they are not all serving in the same positions.<sup>14</sup> Further, the Petitioner did not provide a description of the individuals' responsibilities. The Petitioner also did not provide any information regarding the complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Accordingly, aside from job title, it is unclear whether the duties and responsibilities of these individuals are the same or similar to the proffered 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.

The Petitioner asserts that the duties of its proffered position are specialized and complex because they encompass "some of the duties of an Accountant/Financial Analyst, Business/Operations Analyst, and Trainer" and references the occupational category "Training and Development Managers." For the reasons previously discussed, we find the Petitioner's reliance upon the "Training and Development Managers" and other occupational categories misplaced. Again, the Petitioner designated the position on the LCA as a position under the "General and Operations Managers" occupational category. The Petitioner has not adequately explained how its references to the duties and requirements of other occupational classifications are appropriate and consistent with the LCA submitted to support the petition.<sup>15</sup>

The Petitioner's designation of the proffered position as a "trainee" position corresponding to a Level I (entry) wage rate further supports the conclusion that the Beneficiary will not perform specialized and complex duties compared to others within the occupation. Moreover, the Petitioner initially stated that the Beneficiary will assist in supervising 7 to 15 stores, but later clarified that,

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<sup>14</sup> It appears that several of the individuals have degrees in business administration without a further concentration in any particular field. This information therefore suggests that the Petitioner does not normally require a bachelor's degree in a specific specialty, or its equivalent, for the position. As previously stated, the requirement of a general-purpose degree in business administration, without more, is generally not considered a degree requirement in a specific specialty. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

<sup>15</sup> If the position is a combination of occupations, the Petitioner should have selected the highest-paying occupation on the LCA. If the proffered position encompasses these other occupational classifications, we must conclude that the submitted LCA does not correspond to and support the petition, which constitutes an independent ground for denying the petition.

during the first year of the Beneficiary's training, he will only supervise one store. Furthermore, despite the organizational chart's depiction of the Beneficiary as directly supervising other managerial employees, the Petitioner states on appeal that "[t]hose subordinates are not assigned until he finishes his training." We are thus not persuaded that this entry-level trainee position has duties that are distinguishable by relative specialization or complexity.

On appeal, the Petitioner states that the Level I wage rate offered here "does not mean the job duties [are] simple."<sup>16</sup> The Petitioner compares the position to an entry-level, Level I "certified public accountant position . . . in [his or her] training period." However, the Petitioner has not further explained and documented how the proffered position is analogous to a certified public accountant position in training, if such a position even exists.<sup>17</sup> Going on record without supporting documentary evidence is not sufficient to meet 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 California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).<sup>18</sup> Without more, the record lacks sufficiently detailed information to distinguish the level of judgment and understanding necessary to perform the duties as specialized and complex.

The Petitioner asserts that the duties of its specific position requires knowledge gained in courses such as accounting, finance, marketing, quantitative methods, economics, and supply chain management. The Petitioner adds on appeal that "[i]n addition to these [courses], other management and necessary courses designed by university in related degree are required to prepare a leader in the designated area." These statements, however, do not demonstrate that the necessary knowledge for the proffered position is attained through an established curriculum of particular courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent.

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<sup>16</sup> Again, according to DOL, a Level I 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://fldatacenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://fldatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf).

<sup>17</sup> The *Handbook* subchapter on "How to Become an Accountant or Auditor" discusses one license available for applicants who have completed a bachelor's degree and who desire to *become* a certified public accountant. The *Handbook* does not reference any "training period" for persons who are already certified public accountants. For more information on "Accountants and Auditors," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Accountants and Auditors," <http://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm#tab-4> (last visited June 20, 2016).

<sup>18</sup> 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 or certified public accountants, 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.

The Petitioner also references the Beneficiary's qualifications and indicates that he is well-qualified for the position. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner has not sufficiently developed specialization or complexity as aspects of the duties of the position.

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 P-E- Inc*, ID# 17309 (AAO June 23, 2016)