



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

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

MATTER OF I-S- LLC

DATE: JUNE 23, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a computer consulting/staffing firm with four employees, seeks to temporarily employ the Beneficiary as a “computer programmer” 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 there is insufficient evidence to establish that the proffered position qualifies as a specialty occupation.

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 a “computer programmer.”¹ In the letter of support, the Petitioner provided the Beneficiary’s job duties in the proffered position, along with the approximate percentage of time the Beneficiary will spend on each duty.

In response to the Director’s request for evidence (RFE), the Petitioner repeated the same job duties from its letter of support and added the following responsibilities:²

As a Computer Programmer, [the Beneficiary] will serve as the primary point of contact for [the Petitioner’s] customers. She will be interacting with the client and gather business requirements. She will then analyze these requirements and prepare High Level Technical Architecture and Component level architecture. For example, this will include Object Oriented Technologies, client/server applications and internet/intranet web applications. Design, Development, Testing and Maintenance,

¹ The Petitioner provided inconsistent information regarding the Beneficiary’s rate of pay in the record. In the Form I-129 and Labor Condition Application (LCA), the Petitioner stated that the Beneficiary would be compensated \$52,083 per year. However, the employment agreement between the Petitioner and the Beneficiary stated that the Beneficiary would be paid \$55,000 per year. No explanation for this inconsistency was provided by the Petitioner.

² The Petitioner mistakenly and repeatedly references the Beneficiary in the masculine pronoun case. The record provides no explanation for this inconsistency. Thus, we must question the accuracy of the documents and whether the information provided is correctly attributed to this particular Beneficiary and position.

Substantial exposure in developing applications including C, C++, Cobol, Java. [The Beneficiary] will also be responsible to create a task list and plan that will allow the development team members to deliver the software solution.

On appeal, the Petitioner expands the Beneficiary's job duties. Specifically, the Petitioner provides the following job duties for the position (verbatim):

- Manage ongoing software development projects;
- Interact and mentor offsite development team;
- Perform requirement gathering, analysis, estimation, architecture designing, development and implementation;
- Plan, develop, design, test, implement and support custom proprietary software applications in various software languages, platforms and environments;
- Evaluate user requests for new or modified programs;
- Consult with user to identify current operating procedures to clarify program objectives;
- Formulate plans outlining steps required to develop programs, using structured analysis and design;
- Prepare flowcharts and diagrams to illustrate sequence of steps, [sic] program must follow and to describe logical operations involved;
- Write documentation to describe program development, logic, coding and corrections;
- Oversee installation of hardware and software, monitor performance of program after implementation;
- Conduct user training, performing periodic system updates, interacting with users for future enhancements;
- Architecture, Design and Build;
- Requirement Gathering/Business analysis;
- Project Planning;
- SMC and FP Estimation;
- Project Scheduling & Tracking;
- Focused Delivery ensuring Quality of the Deliverables;
- Deployment at Customer Environment;
- Post Production Support; and
- Status Reporting, Handling Escalations

[The Beneficiary] will also analyze, design, architect, develop and test software systems that simulate business process and can be used to optimize and increase their efficiency, using various computer languages Windows based platforms; he will gather customer requirements and create high-level component level architecture; confer with personnel of oversee specific input and output requirements; format reports; write detailed description of user needs, program functions, and steps required to develop or modify computer programs; review computer system

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capabilities, workflow; and schedule limitations to determine if requested program or program change is possible within existing system.

In addition, the Petitioner states that the position requires a bachelor's degree in computer science, computer information systems, or a 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 satisfies any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, qualifies as a specialty occupation.³ Specifically, the record (1) provides inconsistent information regarding the position; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.⁴

As a preliminary matter, we note that the Petitioner has provided inconsistent information on several critical aspects of the position. For instance, the record contains discrepancies as to whether the Beneficiary will work at the Petitioner's business site or at a client site, as well as whether the Beneficiary's services are needed for a one-year period or a three-year period.⁵ Further, the Petitioner expanded the Beneficiary's job duties on appeal, adding such items as: (1) manage ongoing software development projects; and (2) mentor offsite development team. However, the Petitioner must establish that the position offered to the Beneficiary when the petition was filed merits classification for the benefit sought. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978).

In addition, we observe that many of the job duties provided by the Petitioner on appeal are recited virtually verbatim from U.S. Department of Labor's Dictionary of Occupational Titles (DOT), specifically from the occupational category "Programmer-Analyst."⁶ Providing job duties for a proffered position from DOT or other Internet source is generally not sufficient for establishing H-1B eligibility. That is, while this type of description may be appropriate when defining the range

³ In the decision denying the petition, the Director noted that the Petitioner had not established eligibility at the time of filing and noted a number of discrepancies in the record, including: (1) the Petitioner did not identify any specific work to which the Beneficiary would be assigned in the initial submission; (2) on the Form I-129 and LCA, the Petitioner stated that the Beneficiary would work at its offices in █████ Michigan, but in the letter of support, the Petitioner stated that "[t]he primary function of this position includes the following duties at Client's place"; and (3) on the Form I-129, the Petitioner requested a validity period from October 1, 2015, to March 15, 2018, but in the letter of support, the Petitioner stated that the Beneficiary would work for the Petitioner "for a one-year period." We agree with the Director that the record does not establish the Beneficiary's role and the substantive nature of the work. Nevertheless, even assuming that the Petitioner had adequately addressed the discrepancies, the petition could not be approved because the Petitioner has not established that the proffered position qualifies as a specialty occupation.

⁴ The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position. While we may not discuss every document submitted, we have reviewed and considered each one.

⁵ On appeal, the Petitioner accounts for the discrepancies as typographical errors in the submission.

⁶ For additional information, see DOT, available at <http://www.occupationalinfo.org/> (last visited June 22, 2016).

of duties that may be performed within an occupational category, it cannot be relied upon by a Petitioner when discussing the duties attached to specific employment for H-1B approval as this type of generic description does not adequately convey the substantive work that the Beneficiary will perform on a day-to-day basis. In establishing a position as qualifying as a specialty occupation, a Petitioner must describe the specific duties and responsibilities to be performed by a Beneficiary in the context of its business operations, demonstrate that a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the Beneficiary for the period of employment requested in the petition.

Furthermore, we find that the Petitioner has provided inconsistent information regarding the minimum requirements for the proffered position. On appeal, the Petitioner states that the proffered position requires a bachelor's degree "in Computer Science, Computer Information Systems, or a related field." However, the Petitioner submits two job postings for the proffered position: one indicating that a bachelor's degree "in Computer Science or Electrical Engineering with 5 years experience as Software Engineer or IT Consultant" is required and, the other posting stating that a "BS in Computer Science, Computer Engineering, Information Technology" is required. No explanation for these variances in the requirements was provided by the Petitioner.⁷

Without more, the evidence of record is insufficient to establish the specific nature, duties, and requirements of the proffered position and, thus, whether it qualifies as a specialty occupation. Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we now turn to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

A. First Criterion

To make our determination as to whether the employment described above qualifies as a specialty occupation, 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.⁸ 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.⁹

⁷ "[I]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence." *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the Petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92.

⁸ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

⁹ 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

On the LCA submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category “Computer Programmers” corresponding to the Standard Occupational Classification code 15-1131 at a Level I wage.¹⁰

The *Handbook* subchapter entitled “How to Become a Computer Programmer” states in pertinent part: “Most computer programmers have a bachelor’s degree; however, some employers hire workers who have an associate’s degree.”¹¹ Thus, the *Handbook* does not support the Petitioner’s assertion that a bachelor’s degree is required for entry into this occupation. The *Handbook* does not indicate that there are any specific degree requirements for these jobs.

On appeal, the Petitioner submits a copy of the *Federal Register*, Vol. 69, No. 247 at Appendix A to the Preamble-Professional Recruitment Occupations-Education and Training Categories at 77377 (December 27, 2004) and claims that it is relevant here. We note, however, that the *Federal Register* states that the purpose of the list of occupations at Appendix A is not for determining whether a position is a specialty occupation, specifying that “the list [Appendix A] is not intended to be used to qualify an alien for purposes of eligibility under the H-1B and H-1B1 program.” Moreover, the *Federal Register* states that “[t]he primary purpose of the list of occupations is to provide employers with the necessary information to determine whether to recruit under the standards provided in the regulations for professional occupations or for nonprofessional occupations.” The *Federal Register* continues by stating that “the only presumption the list of occupations should create is that if the occupation involved in the application is on the list of occupations in Appendix A, employers must follow the recruitment regiment for professional occupations at § 656.17(e) of this final rule.”

Thus, we do not agree with the Petitioner’s contention that the information is relevant to this matter. The Petitioner cites no statutory or regulatory authority, case law, or precedent decision to support it. Moreover, neither the statutory nor regulatory provisions governing USCIS adjudication of Form I-129 specialty occupation petitions provide for the approval of an H-1B petition based

would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

¹⁰ We will consider the Petitioner’s classification of the proffered position at a Level I wage (the lowest of four assignable wage levels) in our analysis of the position. The “Prevailing Wage Determination Policy Guidance” issued by the DOL provides a description of the wage levels. A Level I wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. This wage rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that 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://flicdatacenter.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 Level I wage should be considered for research fellows, workers in training, or internships. *Id.*

¹¹ For additional information regarding the occupational category “Computer Programmers,” see U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-2017 ed., Computer Programmers, available at <http://www.bls.gov/ooh/computer-and-information-technology/computer-programmers.htm> (last visited June 22, 2016).

upon Appendix A, or even indicate that an employer's recruitment regimen for a permanent labor certification (which involves DOL) are relevant to the adjudication by USCIS of H-1B petitions.

Furthermore, we are not persuaded by the Petitioner's claim that the proffered position is a specialty occupation because of the cited appendix. The appendix is a list of occupations for which a bachelor's degree or higher degree is a customary requirement. It does not, however, demonstrate that a bachelor's degree in a *specific specialty* is required, and does not, therefore, demonstrate that a position so designated qualifies as a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). Therefore, despite the Petitioner's assertion to the contrary, the documentation is not probative of the proffered position qualifying as a specialty occupation.¹²

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

¹² The issue before us is whether the Petitioner's proffered position qualifies as a nonimmigrant H-1B specialty occupation and not whether it is a profession as that term is defined in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), and 8 C.F.R. § 204.5(k)(2). Thus, while a position may qualify as a profession as that term is defined in section 101(a)(32) of the Act, the occupation would not necessarily qualify as a specialty occupation unless it met the definition of that term at section 214(i)(1) of the Act.

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As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports a requirement for at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals."

In support of this criterion, the Petitioner submitted copies of job announcements placed by other employers. However, upon review of the documents, we find that the Petitioner's reliance on the job announcements is misplaced. First, we note that some of the job postings do not appear to involve organizations similar to the Petitioner. For example, the advertising organizations include [REDACTED] - a global security company - and the [REDACTED]. Furthermore, one of the postings appears to be for a staffing agency for which no information is provided regarding the hiring employer. Another posting is for a position working with the [REDACTED] in its research of ground and surface water. The Petitioner did not supplement the record to establish that the advertising organizations are similar to it.

When determining whether the Petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the Petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

Moreover, some of the advertisements do not appear to be for parallel positions. For example, some of the positions appear to be for more senior positions than the proffered position. Moreover, some of the postings do not include the duties and responsibilities for the advertised positions. Thus, it is not possible to determine important aspects, such as the day-to-day responsibilities, complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Therefore, the Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

In addition, none of the postings indicate that at least a bachelor's degree in a directly related specific specialty (or its equivalent) is required.¹³ The job postings suggest, at best, that a bachelor's degree is sometimes required for computer programmer positions, but a bachelor's degree in a *specific specialty* (or its equivalent) is not.¹⁴

¹³ As discussed, the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but a bachelor's degree in a specific specialty that is directly related to the duties of the position. See section 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

¹⁴ It must be noted that even if all of the job postings indicated that a requirement of a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the Petitioner

As the documentation does not establish that the Petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary.¹⁵ That is, not every deficit of every job posting has been addressed.

Without more, the Petitioner has not provided sufficient evidence to establish that a bachelor's degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations. Thus, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

2. Second Prong

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

In support of its assertion that the proffered position qualifies as a specialty occupation, the Petitioner described the proffered position and its business operations. In response to the RFE and on appeal, the Petitioner asserts that the duties of the proffered position are so complex that only an individual with a bachelor's degree in computer science, computer information systems, or a related field can perform the duties. However, the Petitioner designated the proffered position as an entry-level position within the occupational category (by selecting a Level I wage). This designation, when read in combination with the Petitioner's job descriptions and the *Handbook's* account of the requirements for this occupation, further suggests that the particular position is not so complex or unique that the duties can only be performed an individual with bachelor's degree or higher in a specific specialty, or its equivalent.

While the Petitioner may believe that the proffered position meets this criterion of the regulations, it has not sufficiently demonstrated how the position as described requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent. For instance, the Petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish

has not demonstrated what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that “[r]andom selection is the key to [the] process [of probability sampling]” and that “random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error”).

¹⁵ The Petitioner did not provide any independent evidence of how representative the job postings are of the particular advertising employers' recruiting history for the type of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the actual hiring practices of these employers.

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how such a curriculum is necessary to perform the tasks. While a few related courses may be beneficial in performing certain duties of the position, the Petitioner has not demonstrated how an established curriculum of such courses is required. The evidence in the record does not refute the *Handbook's* information to the effect that an associate's degree or a general degree may be sufficient for entry into the occupation. Without more, the record lacks sufficiently detailed information to distinguish the level of judgment and understanding necessary to perform the duties as so complex and unique.

On appeal, the Petitioner claims that the Beneficiary is well-qualified for the position, and references her qualifications. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position, and it did not identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. Accordingly, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

C. Third Criterion

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

To merit approval of the petition under this criterion, the record must establish that a petitioner's imposition of a degree requirement is not 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 who previously held the position.

On appeal, the Petitioner provides two job postings for the proffered position from its website and [REDACTED]. The posting from the Petitioner's website states that a "BS degree in Computer Science or Electrical Engineering with 5 years experience as Software Engineer or IT Consultant" is required. The other posting states that the position requires a "[m]inimum Bachelor degree in Computer Science, Computer Engineering, Information Technology." As previously discussed, the Petitioner has provided inconsistent information regarding the educational requirements for the proffered position.

In addition, the Petitioner submits the H-1B approval notices and employment agreements for three of its employees in the computer programmer position.¹⁶ Upon review, we find that the employment agreements indicate that two of the individuals are compensated \$50,000 per year and one individual is compensated \$65,000 per year. The documentation indicates that two individuals are paid less than the salary offered to the Beneficiary, and one individual is paid significantly higher than the salary offered to the Beneficiary. Thus, this strongly suggests that they are employed in different positions. The Petitioner did not provide an explanation for the variances in the wages. Without more, the documentation does not establish that the Petitioner satisfied this criterion of the regulations.

Further, the Petitioner did not provide the job duties and day-to-day responsibilities for these individuals. The Petitioner also did not submit any information regarding the complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Accordingly, it is unclear whether the duties and responsibilities of these individuals are the same or similar to the proffered position.

Moreover, the Petitioner did not provide the total number of people it has employed to serve in the proffered position. Consequently, it cannot be determined how representative the Petitioner's claim regarding *three individuals* is of the Petitioner's normal recruiting and hiring practices. The Petitioner has not persuasively established that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the position. Therefore, the Petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 claims that its position satisfies this criterion; however, 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 other positions in the occupational category that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. We also reiterate our earlier comments and findings regarding the implications of the position's wage level designation on the LCA.¹⁷ Thus, the Petitioner has not demonstrated in the record that its

¹⁶ Notably, the Petitioner did not submit the academic credentials of these individuals, e.g. copies of diplomas and transcripts.

¹⁷ The Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly specialized and complex 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

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.

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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.