



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

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

MATTER OF T-H- INC.

DATE: MAR. 1, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, which engages in “various travel and tour services, events, convention, wedding planning and other related services,” seeks to temporarily employ the Beneficiary as an “Operations Manager” under the H-1B nonimmigrant classification. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The Director, California Service Center, denied the petition. The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal.

I. ISSUE

The issue before us is whether the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

II. SPECIALTY OCCUPATION

A. Legal Framework

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) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the

attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must meet one of the following criteria:

- (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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Fed. Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets 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 proffered 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"). Applying this standard, USCIS regularly approves H-1B petitions for qualified individuals who are to be employed as engineers, computer scientists, certified public accountants,

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college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the individual, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position or an employer's self-imposed standards, but whether 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.

B. The Proffered Position

The labor condition application (LCA) submitted to support the visa petition states that the proffered position corresponds to Standard Occupational Classification (SOC) code and occupation title 11-1021, "General and Operations Managers," from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I position.

In a letter of support dated March 30, 2015, the Petitioner described itself as [REDACTED] which employs 16 professionals plus 16 independent contractors.¹ The Petitioner also described the scope of its operations as consisting of "four corporate offices in [REDACTED], Korea" and two "affiliated companies in Hawaii," which the Petitioner states are "separate legal entities with its own employees, but operate under the same management." The Petitioner's claimed affiliates include three different [REDACTED] agencies in Korea with 31 total employees, [REDACTED] in Hawaii and Korea with eight total employees, and a [REDACTED] company in Hawaii which is expected to start in "late 2015/early 2016."

With respect to the proffered position, the Petitioner stated that it is seeking to employ an "Operations & General Manager" "to direct and coordinate activities of [its] numerous operation activities, diverse departments within [the Petitioner] as well as affiliate companies . . . and to assist the President and Vice-President in formulating and administering comprehensive organization policies that are consistent across [its] multiple entities."² The Petitioner also stated that "[a] thorough understanding of the Korean culture and language, and what appeals to Korean

¹ The Petitioner later asserted that these contractors are being converted to employees.

² The Petitioner has provided various titles for the proffered position, such as "Operations Manager" (on the Form I-129), "Operations & General Manager" (in its March 30, 2015, letter), and "Operations and General Director (in its July 28, 2015, response to the Director's request for evidence (RFE)).

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customers[,] is critical for the position at hand,” as over 90% of its gross sales is generated by Korean visitors.

The Petitioner listed its requirements for the proffered position as including a “Bachelor’s degree or its equivalent in business administration, hospitality management or a related field” and “[g]ood knowledge and experience in [REDACTED] and [REDACTED] industry.”

In response to the Director’s RFE, the Petitioner asserted that “[t]he position is a specialty occupation due to the global nature of the Petitioner’s business and the complexity of the proposed duties.” The Petitioner elaborated that the proffered position is “distinguishable by its uniqueness and greater complexity” from a typical operations manager position, and that the Beneficiary will be performing duties which encompass duties of the following other positions: Project Development Coordinator, Operations Research Analyst, Computer and Information Systems Manager, Financial Manager, or Contract Administrator.

In addition, the Petitioner provided another description of the proffered position with percentages of time spent on each duty, as summarized below:

- Develop and direct the Petitioner’s expansion plans in the U.S. and overseas (25%)
- Direct and coordinate business activities of organization to ensure efficient and profitable operations (20%)
- Plan and direct the organization’s financial activities related to daily business operations and budget planning (20%)
- Manage and conduct contract negotiation with major vendors, wholesalers and business partners in the U.S. and overseas to advance the Petitioner’s purpose and profitability (15%)
- Liaison for the Petitioner’s diverse divisions in the U.S. and overseas (2.5%)
- Manage and oversee Events & Program Development Department (4%)
- Manage and oversee Sales & Marketing Department to meet the Petitioner’s projected sales and profit goals (2.5%)
- Manage and oversee Human Resources & Administrative Department (2.5%)
- Direct development and modification of organization’s complex computer and information system (2.5%)
- Prepare and lead weekly management meetings (6%)
- Promote the Petitioner and its subsidiaries/affiliates in [REDACTED] industry and trade associations (as needed)

The Petitioner stated that the proffered position’s duties “require knowledge usually associated with the attainment of a bachelor’s degree in business administration with a concentration in management.” Later on in this letter, the Petitioner stated that “a bachelor’s degree in business administration, travel management or a closely related field is required for the position offered.”

On appeal, the Petitioner first asserts that the proffered position requires a bachelor's degree in business administration. The Petitioner then states in the appeal brief that the minimum entry requirements for the proffered position may be satisfied by a "bachelor's degree in business administration, economics, finance, and travel industry management." Later in the brief, the Petitioner states that "[i]t is the complex nature of the Petitioner's business that necessitates hiring of a candidate with a minimum of a bachelor's degree in business management," and then, a "minimum of a bachelor's degree in the field of business is a business necessity for the [Petitioner]." Finally, the Petitioner states in the brief that the "proffered position is a specialty occupation requiring a bachelor's degree in a specific specialty (business administration, economics, finance)"

C. Analysis

As a preliminary matter, we find that the Petitioner has not consistently articulated the minimum educational requirement for the proffered position. For instance, the Petitioner initially stated that it requires a bachelor's degree in business administration, hospitality management or a related field. In response to the RFE, the Petitioner variously stated that the proffered position requires a bachelor's degree in business administration with a concentration in management, or a bachelor's degree in business administration, travel management, or a closely related field. On appeal, the Petitioner states that the minimum entry requirements for the proffered position may be satisfied by a degree in business administration, economics, finance, travel industry management, business management, or business.

Based on these various stated requirements which changed over time, it is not clear what the Petitioner's actual minimum entry requirement for the proffered position is. "[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. "Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition." *Id.* at 591.

The Petitioner cites to *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012) and *Tapis Int'l v. Immigration and Naturalization Service*, 94 F. Supp. 2d 172 (D. Mass. 2000) for the proposition that "[t]he knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge." The Petitioner asserts that because "there is no 'Operations Manager bachelor's degree' program in accredited universities," its acceptance of "a degree from more than one field of study meets the minimum educational requirement threshold."

While we agree with the general propositions cited above, we do not agree that these propositions apply to the situation at hand. The issue here is not that "there is no 'Operations Manager bachelor's degree' program in accredited universities." The Petitioner has inconsistently claimed that certain

bachelor's degrees (e.g., degrees in business administration, hospitality management, travel management, travel industry management, economics, or finance) are sufficient to provide the requisite knowledge to perform the proffered position.

In any event, the Petitioner has furnished insufficient evidence to establish that the facts of the instant petition are analogous to those in *Residential Finance Corp.* and *Tapis*. We also note that, in contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. See *Matter of K-S-*, 20 I&N Dec. 715, 719-20 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.*

Moreover, if the Petitioner's minimum entry requirement can be satisfied by a bachelor's degree in business or business administration without further specialization, this alone indicates that the proposed position does not qualify as a specialty occupation.³ A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business or 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). The general and broad nature of a business administration degree, for example, is illustrated by the Petitioner's own statement that "[c]andidates in baccalaureate's degree in business administration are provided with practical and theoretical knowledge in various areas of business administration including statistics, economics, marketing, microeconomics, finance and financial management, accounting, business environment and management, information systems, production and operations management, and others."

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 discussed *supra*, 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. Although a general-purpose bachelor's degree, such as a degree in business or business administration, may be a legitimate prerequisite for a particular position, requiring such a degree,

³ 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.

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).⁴

Based on the inconsistent statements with respect to the Petitioner's requirements for the proffered position and the Petitioner's assertion that it accepts a bachelor's degree in business or business administration without further specialization, it cannot be found that the Petitioner requires a degree *in a specific specialty* that is directly related to the proffered position. The Director's decision must therefore be affirmed and the appeal dismissed on this basis alone.

Notwithstanding the above, it also cannot be found that the proffered position qualifies as a specialty occupation because the Petitioner has not satisfied any of the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). To reach this conclusion, we first turn to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which can be satisfied by showing that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

A baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position

We recognize the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁵

The Petitioner indicated on the LCA that the proffered position corresponds to SOC code and title 11-1021, "General and Operations Managers." This occupational classification is addressed in the *Handbook* chapter on "Top Executives," which states the following about the educational requirements of such positions, in pertinent part:

⁴ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

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

Id.

⁵ The *Handbook*, which is available in printed form, may also be accessed at: <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2016 – 17 edition available online.

How to Become a Top Executive

Although education and training requirements vary widely by position and industry, many top executives have at least a bachelor's degree and a considerable amount of work experience.

Education

Many top executives have a bachelor's or master's degree in business administration or in an area related to their field of work. Top executives in the public sector often have a degree in business administration, public administration, law, or the liberal arts. Top executives of large corporations often have a master's degree in business administration (MBA).

....

Work Experience in a Related Occupation

Many top executives advance within their own firm, moving up from lower level managerial or supervisory positions. However, other companies may prefer to hire qualified candidates from outside their organization. Top executives who are promoted from lower level positions may be able to substitute experience for education to move up in the company. For example, in industries such as retail trade or transportation, workers without a college degree may work their way up to higher levels within the company to become executives or general managers.

Chief executives typically need extensive managerial experience. Executives are also expected to have experience in the organization's area of specialty. Most general and operations managers hired from outside an organization need lower level supervisory or management experience in a related field.

Some general managers advance to higher level managerial or executive positions. Company training programs, executive development programs, and certification can often benefit managers or executives hoping to advance.

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 Feb. 29, 2016).

The *Handbook* does not support the conclusion that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. To the contrary, the *Handbook* states that "education and training requirements vary widely by position and industry." *Id.* The *Handbook* also observes that in some industries, "workers without a college degree may work their way up to higher levels within the company to become executives or general

managers.” *Id.* While the *Handbook* states that “many top executives have at least a bachelor’s degree . . . [or] a bachelor’s or master’s degree in business administration,” as we previously indicated, a requirement of a general bachelor’s degree or a general-purpose business administration degree is insufficient to establish a position as a specialty occupation. *Royal Siam Corp.*, 484 F.3d at 147; *cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. at 560. Thus, we find that the *Handbook* does not support the assertion that at least a bachelor’s degree in a specific specialty or its equivalent is normally the minimum requirement for entry into this occupational category.

The Petitioner contends on appeal that the *Handbook* “should not be used as a device to disqualify the Beneficiary for the proffered position,” and highlights the *Handbook*’s statement that “the information in the *Handbook* should not be used to determine if an applicant is qualified to enter a specific job in an occupation.” The issue here, however, is not whether the Beneficiary is qualified to enter a specific job, but whether the proffered position qualifies as a specialty occupation.⁶

When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the Petitioner to provide persuasive evidence that the proffered position more likely than not satisfies this or one of the other three criteria, notwithstanding the absence of the *Handbook*’s support on the issue. In such case, it is the Petitioner’s responsibility to provide probative evidence (e.g., documentation from other objective, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation.

In this 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)(1).

*The requirement of a baccalaureate or higher degree in a specific specialty,
or its equivalent, is common to the industry in parallel
positions among similar organizations*

Next, we will review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being: (1) in the petitioner’s industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

⁶ A beneficiary’s credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.

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 other independent, authoritative source) reports an 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. The Petitioner also 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." Furthermore, with regard to this prong, the Petitioner stated in response to the Director's RFE that it is "unable, but not unwilling, to provide [relevant evidence] at this time because of its unique profile in the U.S. market."

Based upon a complete review of the record, we conclude that the Petitioner has not established 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 positions that are (1) in the Petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the Petitioner. For the reasons discussed above, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The particular position is so complex or unique that it can be performed only by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent

The record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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."

Here, the record does not credibly demonstrate exactly what the Beneficiary will do on a day-to-day basis such that complexity or uniqueness can be determined. We agree with the Director that the Petitioner's descriptions of the proffered duties, while lengthy, are generically described. For example, the Petitioner asserted that the Beneficiary will spend 25% of his time on the duty of "[d]evelop and direct Petitioner's expansion plans in the U.S. and overseas," which includes the additional duties of "[e]valuate and assess feasibility of expansion plans and projects to determine viability" and "[r]ecommend proposal for continual organizational growth by directing and analyzing revenue and expense projections, analyzing market trends and preparing competitive analysis." These duties are overly broad and do not adequately describe the specific tasks to be performed.

The Petitioner's descriptions are duplicative as well. For example, the Petitioner has not sufficiently distinguished the above duties from the Beneficiary's other stated duties, which will take up additional percentages of his time, including "[d]irect and coordinate business activities of organization" and "[d]evelop strategies to enhance Petitioner's business by providing analysis, project planning and organization . . . of new business opportunities." Without a more detailed, meaningful job description, the record as presently constituted does not sufficiently develop relative complexity or uniqueness as an aspect of the proffered position.⁷

The Petitioner claims that the duties of the proffered position are more unique and complex than the "typical Operations Manager position generically addressed in the [*Handbook*]," as the Beneficiary "will be performing complex duties which encompass duties of [other] professional positions" including a project development coordinator, operations research analyst, computer and information systems manager, financial manager, or contractor administrator. The Petitioner further asserts that the above-listed professional positions "have been found by [the AAO] to be [a] specialty occupation" and that the Director erred by "refusing to follow precedent AAO decisions."

We find the Petitioner's assertions unpersuasive. First, we note that the Petitioner cited only to non-precedent AAO decisions. While 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS employees in the administration of the Act, non-precedent decisions are not similarly binding. Moreover, the Petitioner has not sufficiently explained how the aspects of the proffered position which encompass other professional positions demonstrate that the particular position is so complex or unique that it can be performed only by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent.

In essence, the Petitioner is asserting that the Beneficiary will be performing duties in a wide variety of occupations, such as a computer and information systems manager and a financial manager.⁸ Critically,

⁷ Moreover, the Petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

The Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I, entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty, or its equivalent. That is, a position's wage level designation may be a relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act

⁸ It is noted that, where a petitioner seeks to employ a beneficiary in two or more distinct occupations, the petitioner should file separate petitions, requesting concurrent, part-time employment for each occupation. If a petitioner does not file separate petitions and if only one aspect of a combined position qualifies as a specialty occupation, USCIS would be required to deny the entire petition as the pertinent regulations do not permit the partial approval of only a portion of a proffered position and/or the limiting of the approval of a petition to perform only certain duties. See generally 8 C.F.R.

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however, the Petitioner has not adequately established how all of these duties spanning various occupations nevertheless require the theoretical and practical application of a body of highly specialized knowledge, such that a bachelor's or higher degree *in a specific specialty*, or its equivalent, is required to perform them.⁹ In other words, the Petitioner has not established what degree(s) is common to all of the above positions, such that the common degree(s) would be recognized as satisfying the “degree in *the* specific specialty (or its equivalent)” requirement of section 214(i)(1)(B) of the Act (emphasis added). Again, to be consistent with section 214(i)(1) of the Act as well as the regulation at 8 C.F.R. § 214.2(h)(4)(ii), USCIS consistently interprets 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 proffered position. While a few courses may be common among these different occupations, the Petitioner has not demonstrated how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position.

The Petitioner also asserts that the duties are unique and complex by virtue of the “global, diverse nature of the Petitioner’s business.” The Petitioner emphasizes that it “is not merely a [redacted] agency but a [redacted] provider who engages in a number of diverse operations, globally . . . in the field of [redacted] submits planning, photography, shuttle and transportation, publishing, retail market/online shopping, and others.” In this vein, the Petitioner repeatedly asserts that it has several “wholly owned subsidiaries in Hawaii” and “affiliates in Korea,” all of which are currently “[u]nder the same management and ownership” and will become directly under the Beneficiary’s chain of command.¹⁰

§ 214.2(h). Furthermore, the petitioner would need to ensure that it separately meets all requirements relevant to each occupation and the payment of wages commensurate with the higher paying occupation. *See generally* 8 C.F.R. § 214.2(h); 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. Thus, filing separate petitions would help ensure that a petitioner submits the requisite evidence pertinent to each occupation and would help eliminate confusion with regard to the proper classification of the position being offered.

According to DOL guidance, if the Petitioner believed its position was appropriately described in a combination of occupations including computer and information systems managers and financial managers, it should have chosen the relevant occupational code for the highest paying occupation. However, the Petitioner chose the occupational category for the lower paying occupation “General and Operations Managers” for the proffered position on the LCA.

⁹ For instance, the *Handbook* states that “[c]omputer and information systems managers normally must have a bachelor’s degree in a computer- or information science–related field.” U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., “Computer and Information Systems Managers,” <http://www.bls.gov/ooh/management/computer-and-information-systems-managers.htm#tab-4> (last visited Feb. 29, 2016). The *Handbook* states that “[a] bachelor’s degree in finance, accounting, economics, or business administration is often the minimum education needed for financial managers.” U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., “Financial Managers,” <http://www.bls.gov/ooh/management/financial-managers.htm#tab-4> (last visited Feb. 29, 2016). The *Handbook* does not indicate that a degree in travel or hospitality management, one of the various degrees the Petitioner accepts, would be sufficient for entry into either of these occupations. While a business administration degree may possibly be common among these occupations, a general-purpose business administration degree is not a degree *in a specific specialty*.

¹⁰ Both organizational charts show that these subsidiary or affiliated companies will report directly to the Beneficiary.

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However, the Petitioner has not sufficiently explained and documented the scope of its claimed operations and the Beneficiary's responsibilities over them. For instance, the Petitioner stated that its President and his wife "together own [the Petitioner] and [redacted] in Hawaii." The Petitioner has also characterized the [redacted] in Hawaii as a "wholly owned subsidiary[y]" of the Petitioner. However, the Articles of Incorporation for the [redacted] in Hawaii indicates that, while the company's officers are the Petitioner's President and his wife, the [redacted] is only owned in minority part (30%) by the President's wife.¹¹ Therefore, it appears that this company is neither a "wholly owned subsidiary" (i.e., owned 100% by the Petitioner) nor under the same ownership as the Petitioner (i.e., owned by both the President and his wife). "[I]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence." *Matter of Ho*, 19 I&N Dec. at 591. "Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition." *Id.*

Regarding its overseas operations, the Petitioner provided partially translated corporate documentation (Business Registrations and Certificates of Service Mark Registration) for three of its four "affiliated" companies in Korea. The Petitioner did not provide fully translated documents for all of its claimed affiliated businesses, and thus, we cannot determine whether the evidence supports the Petitioner's claims.¹² See 8 C.F.R. § 103.2(b)(3). Moreover, the Petitioner did not sufficiently explain the significance of the submitted corporate documentation. For instance, the Business Registrations do not identify the owner(s) of the companies. In addition, there are two Certificates of Service Mark Registration for the same [redacted] company in Korea, but one of these certificates bears the Petitioner's logo on the left-hand side while the other certificate does not. The Petitioner also submitted several untranslated website print-outs, which are not probative evidence of company ownership. In short, the Petitioner has not submitted sufficient probative evidence to corroborate the full scope of its claimed operations in Hawaii and Korea.

Even if these companies were shown to be "affiliates" or "subsidiaries" of the Petitioner through the same management and ownership, the Petitioner has not sufficiently established how these aspects of its operations distinguish and elevate the proffered position from other top executive positions, such that it refutes the *Handbook's* information that such positions do not normally require at least a baccalaureate degree in a specific specialty, or its equivalent, for entry into the occupation. In particular, the *Handbook* states that top executives "work in nearly every industry . . . [and] work for both large and small businesses, ranging from companies in which they are the sole employee to firms with thousands of employees." 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-3> (last visited Feb. 29, 2016). Thus, it does not appear that the Beneficiary's duties in the context of the Petitioner's entire operations are so complex or unique that they can be performed only by an individual with a degree in a specific specialty.¹³

¹¹ There are two other individuals who own the [redacted] company in 30% and 40% shares.

¹² More specifically, the Petitioner did not provide corporate documentation for its "discounted" [redacted]

¹³ We note the Petitioner's claims that it has recently established new subsidiaries to "achieve its 2-year business plan of expanding its operations to Mexico, [redacted] California, New York and China." We also note the Petitioner's claims regarding its [redacted] company in Hawaii, which the Petitioner stated was only recently established and has an expected

For all of the above reasons, the evidence of record is insufficient to establish eligibility under the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The employer normally requires a baccalaureate or higher degree in a specific specialty, or its equivalent, for the position

The Petitioner also has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. Under this criterion, we normally review the Petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position, and any other documentation submitted by a Petitioner in support of this criterion of the regulations.

The Petitioner explained that “[u]ntil several years ago, [the Petitioner’s President and his wife] shared the duties of General and Operations Manager” and that “[c]orporate officers and executives for [the Petitioner] and its subsidiaries . . . have always been headed by full-time professionals.” The Petitioner further explained that it subsequently hired the Beneficiary’s immediate predecessor, “to take on the responsibilities of directing all facets of the organization’s activities in Hawaii and Korea.” The Petitioner stated that “[the predecessor] had a bachelor’s degree but the company has lost contact with [him] and is unable to secure a copy of his diploma.” In another letter, the Petitioner reiterated that “[a]lmost, if not all, executive managerial positions in [the Petitioner’s] organization has a minimum of a bachelor’s degree.” The Petitioner provided no other explanation or evidence regarding the educational credentials of the President, his wife, or the Beneficiary’s predecessor, all of whom have performed the duties of the proffered position prior to the Beneficiary.

Merely stating that these individuals are “professionals” or have otherwise unspecified bachelor’s degrees, without more, is insufficient to establish that the Petitioner normally requires a baccalaureate or higher degree *in a specific specialty*, or its equivalent, for the proffered position.¹⁴ Again, to be consistent with the pertinent statute and regulations, the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) must be interpreted as meaning not just any bachelor’s or higher degree, but one in a specific specialty that is directly related to the proffered position.

start date of late 2015 to early 2016. There is insufficient evidence of the ownership of these entities and the proposed role that the Beneficiary will have with respect to these entities. Without more, however, we cannot consider these and any other claimed aspects of the Petitioner’s operations that were not in existence at the time of filing. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the Petitioner or Beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. at 249.

¹⁴ The Petitioner did not submit copies of these individuals’ degrees to demonstrate that they all possess bachelor’s degrees, as claimed. “[G]oing on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.” *In re Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

The evidence of record is thus insufficient to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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 in a specific specialty, or its equivalent

Finally, we will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the evidence of record establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. In the instant case, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. The Petitioner does not establish how the generally described duties of its operations manager elevate the proffered position to a specialty occupation. We also refer to our earlier discussion with respect to the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as the Petitioner combined the elements of that prong with 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). We also note the implication of the Petitioner's designation of the proffered position on the LCA as warranting only a Level I wage. Such a designation is for a position that is not likely distinguishable by relatively specialized and complex duties. Upon review of the totality of the record, the Petitioner has not established that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.¹⁵

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

III. CONCLUSION

As set forth above, we find that the evidence of record does not sufficiently establish that the proffered position qualifies as a specialty occupation. Accordingly, the appeal will be dismissed and the petition denied.

In visa petition proceedings, it is the Petitioner's burden to establish 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) (citing *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966)). Here, that burden has not been met.

¹⁵ As a final matter, the Petitioner repeatedly emphasizes its need to have an employee who is fluent in Korean and familiar with Korean culture. The Petitioner opines that it is "nearly impossible to find a qualified Operations and General Director in Hawaii" with those qualifications. Although Korean language and cultural knowledge may be legitimate prerequisites for the proffered position, the Petitioner has not adequately explained how such a requirement demonstrates that the proffered position is so complex or unique that the proffered position can be performed only by an individual with a bachelor's or higher degree in a specific specialty, or so specialized and complex that knowledge required to perform the proffered duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

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ORDER: The appeal is dismissed.

Cite as *Matter of T-H- Inc.*, ID# 16009 (AAO Mar. 1, 2016)