



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

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

MATTER OF V-P-, LLC

DATE: MAR. 17, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a plastics resin distributor, seeks to temporarily employ the Beneficiary as a “technical sales representative” under the H-1B nonimmigrant classification for specialty occupations. See Immigration and Nationality Act (the Act) § 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 Petitioner had not established that the proffered position qualifies as a specialty occupation.

The matter is now before us on appeal. In the appeal, the Petitioner claims that the proffered position is a specialty occupation. Upon *de novo* review, we will dismiss the appeal.

I. 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, 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 nor 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 Petitioner described the position and requirements in its support letter as follows:

[S]pecific job tasks include working with management to create and implement sales strategies, developing a list of prospective clients through research of online and other industry publications, cold calling prospective clients, scheduling sales presentations and servicing and maintaining existing customer accounts.

The ideal candidate for the Technical Sales Representative position is someone with the requisite educational background in business administration with a concentration in marketing and the desire to build a customer base through the development of industry knowledge and networking. The Technical Sales Representative must be able to monitor and evaluate market conditions and industry innovations in order to independently maintain and manage prospective clients.

In response to the request for additional evidence (RFE), the Petitioner supplemented the position description as follows:

Strategic Planning Duties

Monitor competitive activity and trends within markets and assist senior management with the development of long and short-range objectives and marketing strategies to achieve company objections for [the Petitioner’s] products; implement

sales plans and strategies to meet and fulfill sales targets; oversee and evaluate market research and adjust marketing strategy to meet changing market and competitive conditions
[15% of job duties]

Duties to Existing Customers

Develop and maintain business relationships through regular contact and site visits with customers and end-users to strengthen the Company's identity and commitment to the customer; establish relationships with key decision makers at end-users to identify and generate additional sales opportunities; manage and close sales opportunities through forecasting, account resource allocation, and account strategy
[40% of job duties]

Business Development Responsibilities

Continuous development of a target list of prospective accounts through telephone sales calls and cold calls; utilize online and published sources to develop and qualify leads; aggressively pursue all leads to identify customer needs and articulately describe Company products and how [the Petitioner] can address customer needs
[45% of job duties]

In addition, the Petitioner included an affidavit which stated that the Petitioner "requires its candidates and/or employees to possess a Bachelor's degree in Business Management and/or marketing in order to have an overall understanding of marketing and management concepts that are hallmarks of all successful businesses."

The Petitioner also stated the following in its affidavit:

Thermoplastics is a highly specialized industry. The Technical Sales Representative position (for which [the Petitioner] seeks permission to employ [the Beneficiary] temporarily in H-1B status), requires specialized knowledge about the industry and the needs of its end-users. Technical Sales Representatives must be highly skilled in recognizing industry trends and analyzing market conditions in order to effectively identify resources and successfully sell the various types of materials utilized in the thermoplastics industry. A fundamental business acumen and educational background is critical to the success of any Technical Sales Representative employed by [the Petitioner].

C. Analysis

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

USCIS recognizes the U.S. Department of Labor (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.¹

We reviewed the section of the *Handbook* covering "Wholesale and Manufacturing Sales Representatives," including the section entitled "How to Become a Wholesale or Manufacturing Sales Representative," which states the following:

Educational requirements vary, depending on the type of product sold. If the products are not scientific or technical, a high school diploma is generally enough for entry into the occupation. If the products are scientific or technical, sales representatives typically need at least a bachelor's degree.

Education

A high school diploma is sufficient for many positions, primarily for selling nontechnical or scientific products. However, those selling scientific and technical products typically must have a bachelor's degree. Scientific and technical products include pharmaceuticals, medical instruments, and industrial equipment. A degree in a field related to the product sold, such as chemistry, biology, or engineering, is often required.

Many sales representatives attend seminars in sales techniques or take courses in marketing, economics, communication, or even a foreign language to improve their ability to make sales.

Training

Many companies have formal training programs for beginning wholesale and manufacturing sales representatives that last up to 1 year. In some programs, trainees rotate among jobs in plants and offices to learn all phases of producing, installing, and distributing the product. In others, trainees receive formal technical instruction at the plant, followed by on-the-job training under the supervision of a field sales manager.

¹ All references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. The excerpts of the *Handbook* regarding the duties and requirements of the referenced occupational category are hereby incorporated into the record of proceeding.

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New employees may be trained by going along with experienced workers on their sales calls. As they gain familiarity with the firm's products and clients, the new workers gain more responsibility until they eventually get their own territory.

Licenses, Certifications, and Registrations

Many in this occupation have either the Certified Professional Manufacturers' Representative (CPMR) certification or the Certified Sales Professional (CSP) certification, both offered by the Manufacturers' Representatives Educational Research Foundation (MRERF). Certification typically involves completing formal technical training and passing an exam. In addition, the CPMR requires 10 hours of continuing education every year in order to maintain certification.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., Wholesale and Manufacturing Sales Representatives, available on the Internet at <http://www.bls.gov/ooh/sales/wholesale-and-manufacturing-sales-representatives.htm#tab-4> (last visited Mar. 16, 2016).

As noted, the *Handbook* specifically states that "[a] high school diploma is sufficient for many positions, primarily for selling nontechnical or scientific products." Moreover, the *Handbook* further reports that for positions which do require a bachelor's degree, "[a] degree in a field related to the product sold, such as chemistry, biology, or engineering, is often required." We note that in this case, although the Petitioner claims that the proffered position is a "technical sales representative," the Petitioner does not state that it requires a science or engineering degree in a field related to plastics, as the *Handbook* indicates is typical for selling scientific and technical products.

Further, the Petitioner indicated in the Labor Condition Application (LCA) that the proffered position corresponds to OES/SOC Code 41-4012 "Sales Representatives, Wholesale and Manufacturing, Except Technical and Scientific Products" instead of OES/SOC Code 41-4011 "Sales Representatives, Wholesale and Manufacturing, Technical and Scientific Products."² Although the Petitioner indicates that its plastic resin product is technical, the Petitioner has not provided sufficient supporting documentation regarding its company or the specific products the Beneficiary would be selling to demonstrate that the proffered position is a sales representative position selling technical and scientific products. "[G]oing on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings." *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

² We note that the prevailing wage for the occupational category OES/SOC Code 41-4011 "Sales Representatives, Wholesale and Manufacturing, Technical and Scientific Products" at Level I in [REDACTED] IN, is higher than the prevailing wage for OES/SOC Code 41-4012 "Sales Representatives, Wholesale and Manufacturing, Except Technical and Scientific Products" at \$43,930, and also higher than the Beneficiary's proffered salary at \$40,000 per year. See [http://www.flcdcenter.com/OesQuickResults.aspx?code=41-4011&area=\[REDACTED\]&year=15&source=1](http://www.flcdcenter.com/OesQuickResults.aspx?code=41-4011&area=[REDACTED]&year=15&source=1) (last visited Mar. 16, 2016).

The narrative of the *Handbook* further reports that many employees obtain professional certification to demonstrate a level of professional competency. It continues by outlining the requirements for wholesale and manufacturing sales representatives to achieve CPMR or CSP. According to the *Handbook*, the credential is granted by MRERF for those who take the technical training and who also pass an exam and that continuing education is also required. Additionally, many companies have formal training programs of their own. The Petitioner did not indicate that such certification or training is required for this position, further indicating that the proffered position is not the type of technical wholesale and manufacturing sales representative that may require at least a bachelor's degree in a specific specialty.

Thus, the *Handbook* does not support the claim that the "Wholesale and Manufacturing Sales Representatives" occupational category is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent. Even if it did (which it does not), to satisfy the first criterion, the Petitioner must provide evidence to support a finding that the particular position proffered would normally have such a minimum, specialty degree requirement or its equivalent.

On appeal, the Petitioner asserts that "reliance on the [*Handbook*] fails to take into account [its] general purpose." The Petitioner partially quotes the *Handbook's* introduction, which states that "the [*Handbook*] provides a general, composite description of jobs and cannot be expected to reflect work situations in specific establishments or localities. The [*Handbook*], therefore, is not intended, and should never be used, for any legal purpose."

We concur with the Petitioner to the extent that the Petitioner may be asserting that it would be erroneous to accord to the *Handbook* the weight or directive power of statute, regulation, or any legally binding document or directive. However, the *Handbook* indicates that it reports educational, licensing, or practical standards for occupations established by national accrediting organizations; therefore, we find the Director's reference to the *Handbook* to be reasonable.

We further note that 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 the statutory and regulatory provisions, including 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. Here, the Petitioner did not provide sufficient persuasive evidence that the proffered position qualifies as a specialty occupation.

For example, on appeal, the Petitioner refers to the Occupational Information Network (O*NET) Summary Report. However, we find that O*NET does not adequately establish that the proffered

position qualifies as a specialty occupation normally requiring at least a bachelor's degree in a specific specialty, or its equivalent. In general, O*NET OnLine is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a standard entry requirement for a given position, as O*NET OnLine's Job Zone designations make no mention of the specific field of study from which a degree must come. Again, we interpret 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 at 147. Furthermore, the Specialized Vocational Preparation (SVP) ratings, which are cited within O*Net OnLine's Job Zone designations, are meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP ratings do 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.³

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. The record lacks sufficient evidence to support a finding that the particular position proffered here, an entry-level technical sales representative position (as indicated on the LCA), would normally have such a minimum, specialty degree requirement 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.

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)).

³ See O*NET OnLine Summary Report for "41-4012.00 – Sales Representatives, Wholesale and Manufacturing, Except Technical and Scientific Products (last visited Mar. 16, 2016); O*NET OnLine Help – Job Zones, <http://www.onetonline.org/help/online/zones> (last visited Mar. 16, 2016).

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As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative source) reports a standard industry-wide requirement for at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter.

The record of proceedings contains letters written by [REDACTED] President of [REDACTED] and [REDACTED], President and [REDACTED]. First, we note that both [REDACTED] and [REDACTED] state that a bachelor's degree in business (with no further specialization), or its equivalent is typically required for technical sales representative in the Petitioner's industry, which is a more general requirement than the bachelor's degree in business management and/or marketing requirement stated by the Petitioner. The Petitioner has not provided evidence that demonstrates why it requires a more specialized degree requirement than the one that [REDACTED] and [REDACTED] assert is typical for the Petitioner's industry.

Moreover, we note that the requirement of a bachelor's degree in business, without more, is inadequate to establish that a position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988). To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, 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 147.⁴ Further, the letters describe the proffered positions only in terms of general duties and do not acknowledge that the authors have reviewed the Petitioner's business operations in sufficient detail to demonstrate they have an understanding of the nature of the work the Beneficiary would perform or the duties and minimum requirements of the other sales staff that the Petitioner may employ.

⁴ 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.

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For all of these reasons, the letters from [REDACTED] and [REDACTED] carry limited evidentiary weight, and they do not establish the proffered position as a specialty occupation. In fact, they indicate that a generalized degree in business is sufficient to perform the duties of a technical sales representative in the Petitioner's industry rather than the minimum degree requirement stated by the Petitioner.

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

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

In the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner stated that it is a plastics resin distributor with three employees. The Petitioner designated its business operations under the North American Industry Classification System (NAICS) code 424610.⁵ This NAICS code is designated for "Plastics Materials and Basic Forms and Shapes Merchant Wholesalers." The U.S. Department of Commerce, Census Bureau website describes this NAICS code as follows: "[t]his industry comprises establishments primarily engaged in the merchant wholesale distribution of plastics materials and resins, and unsupported plastics film, sheet, sheeting, rod, tube, and other basic forms and shapes." See U.S. Dep't of Commerce, U.S. Census Bureau, 2012 NAICS Definition, 424610 – Plastics Materials and Basic Forms and Shapes Merchant Wholesalers, available at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited Mar. 16, 2016).

For the Petitioner to establish that an organization in its industry is also similar under this criterion of the regulations, it must demonstrate that the Petitioner and the organization share the same general characteristics. Without such information, evidence submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the Petitioner. Without more, it cannot be determined that the job postings are from organizations similar to the Petitioner.⁶ When determining whether the Petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of

⁵ According to the U.S. Census Bureau, the North American Industry Classification System (NAICS) is used to classify business establishments according to type of economic activity and, each establishment is classified to an industry according to the primary business activity taking place there. See <http://www.census.gov/eos/www/naics/> (last visited Mar. 16, 2016).

⁶ Although some advertisements were placed by companies primarily engaged in custom injection molding, plastics, or polymers, these companies appear to conduct business on a much larger scale and have many more employees than the Petitioner. Further, some of the companies that placed advertisements, including [REDACTED] do not appear to conduct business in the same industry as the Petitioner.

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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. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190).

In addition, some postings are for positions that appear different from the one proffered here. For example, the advertisement placed by [REDACTED] is for someone in outside sales, and it does not state that the position is for a technical sales representative. Further, it requires “5+ years outside sales experience.” The advertisement placed by [REDACTED] is for a technical sales manager, not a sales representative. The Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions parallel those of the proffered position.

Further, some of the other advertisements, such as the ones placed by [REDACTED] state that the organization would accept a wide variety of degrees.⁷ Thus, the advertisements do not indicate that a bachelor’s degree in a *specific specialty* (or its equivalent) that is directly related to the duties of the position is required.⁸

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.⁹ That is, not every deficit of every job posting has been addressed.

⁷ 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).

In addition, since there must be a close correlation between the required “body of highly specialized knowledge” and the position, a minimum entry requirement of a degree in disparate fields would not meet the statutory requirement that the degree be “in *the specific specialty*,” unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required “body of highly specialized knowledge” is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

⁸ The Petitioner does not demonstrate what inferences, if any, can be drawn from these advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (7th ed. 1995). As such, even if the job announcements supported the finding that the position required a bachelor’s or higher degree in a specific specialty, or its equivalent (for organizations in the same industry that are similar to the Petitioner), it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not normally require at least a baccalaureate degree in a specific specialty, or its equivalent, for entry into the occupation in the United States.

⁹ 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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Thus, 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

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

Upon review, we find that the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. We note that the duties for the proffered position provided in response to the RFE are identical to the duties and responsibilities for a job posting listed by another employer, ██████████ in the record. Providing job duties for a proffered position that appears to have been taken from an ad listed by another employer is generally not sufficient to establish H-1B eligibility. While this type of description may be appropriate when defining the range of duties that may be performed within an occupational category, it does not convey the substantive work that the Beneficiary will perform on a day-to-day basis.

To establish eligibility, the Petitioner must describe the specific duties and responsibilities to be performed by the 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. Here, the job description does not communicate (1) the tasks that the Beneficiary would perform on a day-to-day basis; (2) the complexity, uniqueness and/or specialization of those responsibilities; and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A).

Further, the LCA submitted by the Petitioner indicates a wage level at a Level I (entry) wage, which is the lowest of four assignable wage levels.¹⁰ Without further evidence, the record of proceeding

¹⁰ The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is described as follows:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the

does not indicate that the proffered position is complex or unique as such a position falling under this occupational category would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage.¹¹ For example, a Level IV (fully competent) position is designated by DOL for employees who “use advanced skills and diversified knowledge to solve unusual and complex problems.”¹²

Moreover, the Petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it may believe are so complex and unique. While a few related courses may be beneficial, or even required, in performing certain duties of the position, 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 did not establish that its particular position is so complex or unique that it can only be performed by an individual with at least a bachelor’s degree in a specific specialty, or its equivalent. Therefore, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

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, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the Beneficiary is only required to have a basic understanding of the occupation and carries expectations that the Beneficiary perform routine tasks that require limited, if any, exercise of judgment; that he would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results. DOL guidance indicates that a Level I designation should be considered for positions in which the employee will serve as a research fellow, worker in training, or an intern.

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

¹² For additional information regarding wage levels as defined by DOL, see U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.flcdcenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

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

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 this end, we usually review a 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.

To merit approval of the petition under this criterion, the record must also establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. While a petitioner may assert that a proffered position requires a specific degree, that statement alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent, to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

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

Although the Petitioner stated in response to the RFE that it requires a bachelor's degree in business management and/or marketing is required for all of its sales representatives, the Petitioner did not provide any other documentation regarding its other sales representatives, such as copies of their degrees, to evidence this. Again, "[g]oing on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings." *Matter of Soffici*, 22 I&N Dec. at 165 (Comm'r 1998). Therefore, the evidence of record does not satisfy the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

In support of this criterion, the Petitioner provided a description of the duties of the proffered position and information regarding its business operations. We reviewed the documentation and again note that the additional duties provided in response to the RFE are identical to a job posting provided by another employer in the record. Consequently, the Petitioner has not sufficiently developed the substantive work that the Beneficiary would perform, and has not established that the duties of the proffered position are more specialized and complex than positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent.¹³

We further incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a Level I position (the lowest of four assignable wage-levels) relative to others within the occupational category. Without more, the position is one not likely distinguishable by relatively specialized and complex duties. That is, without further evidence, the Petitioner has not demonstrated that its proffered position is one with specialized and complex duties as such a position falling under this occupational category would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a substantially higher prevailing wage.¹⁴

The Petitioner has submitted insufficient evidence to satisfy this criterion of the regulations. We, therefore, conclude that the Petitioner did not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation.¹⁵

¹³ We further note that the other employer requires five to seven years of experience in sales in addition to a bachelor's degree in a related field, and the position appears to be a more specialized and complex position than the proffered position here.

¹⁴ As previously discussed, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems" and requires a significantly higher wage.

¹⁵ Since the identified base for denial is dispositive of the Petitioner's appeal, we will not address other grounds of ineligibility we observe in the record of proceeding.

II. CONCLUSION

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.

ORDER: The appeal is dismissed.

Cite as *Matter of V-P-, LLC*, ID# 15952 (AAO Mar. 17, 2016)