



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

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

MATTER OF H-P- CORP.

DATE: MAR. 18, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a home health care business, seeks to temporarily employ the Beneficiary as a “compliance analyst” 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. The matter is remanded to the Director for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

I. ISSUES

The issues before us are whether (1) the proffered position qualifies as a specialty occupation; and (2) the Beneficiary is qualified to serve in a specialty occupation position in accordance with the applicable statutory and regulatory provisions.

II. BENEFICIARY QUALIFICATIONS

The Director denied the petition, concluding that the Petitioner did not establish that the Beneficiary is qualified to perform the services in a specialty occupation. However, a beneficiary’s credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. U.S. Citizenship and Immigration Services (USCIS) is required to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether a beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm’r 1988) (“The facts of a beneficiary’s background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].”) In the instant case, the record of proceeding does not establish that the proffered position qualifies as a specialty occupation. Thus, the matter will be remanded to the Director for review and issuance of a new decision.

III. 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 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

On the Form I-129, the Petitioner stated that it wishes to employ the Beneficiary as a compliance analyst on a full-time basis. In addition, the Petitioner submitted a Labor Condition Application (LCA) in support of the petition, which states that the proffered position falls under the “Medical and Health Services Managers” occupational category - SOC (ONET/OES) code 11-9111.

In the support letter dated August 8, 2014, the Petitioner provided the Beneficiary's job duties in the proffered position, as follows:

1. Plan, direct and coordinate nursing services of a home health care agency. Assess client/ patient's health-related needs.
2. Assist in establishing standards of nursing practice/care & establish mechanisms to ensure nursing care is provided accordingly;
3. Establish work schedules and assignments for staff, according to workload and equipment availability.
4. Provide clinical & administrative supervision, guidance and direction to nursing personnel;
5. Coordinate the care provided with the interdisciplinary team of physicians, nurses, social workers, physical/ occupational/speech therapists, and home health aides. Evaluate the outcome of services provided.
6. Review clinical records for accuracy and ensure that the documentation of services is accurate and timely.
7. Confer with management & supervisory personnel to determine training needs.
8. Establish and organize seminars for management and staff to study and keep abreast of current healthcare development relating to company's services and goals.
9. Keep informed and ensure compliance with current regulatory requirements of institutional, professional, regulatory, and governmental agencies.

The Petitioner also stated that "the minimum requirements for the position of Compliance Analyst are a Bachelor's Degree in Accounting with previous work experience in the Healthcare field."

C. Analysis

As a preliminary matter, the Petitioner's claimed requirement of a bachelor's degree in "Accounting" for the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation, because 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.¹ Upon review, we find that the Petitioner has not demonstrated how an accounting degree relates to the duties of the proffered position. 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. For this reason alone, the position does not qualify as a specialty occupation and the petition cannot be approved.

¹ We observe that in response to the RFE, the Petitioner states that "the beneficiary is qualified to perform services in the specialty occupation of Accountant." No explanation was provided.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we now turn to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

We will first discuss the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

USCIS recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. As discussed, the Petitioner attested in the LCA that the proffered position falls under the "Medical and Health Services Managers" occupational category.²

We reviewed the chapter of the *Handbook* entitled "Medical and Health Services Managers," including the sections regarding the typical duties and requirements for this occupational category.³ The subchapter of the *Handbook* entitled "How to Become a Medical and Health Services Manager" states the following about this occupational category:

Most medical and health services managers have at least a bachelor's degree before entering the field. However, master's degrees are common and sometimes preferred by employers. Educational requirements vary by facility.

Education

Medical and health services managers typically need at least a bachelor's degree to enter the occupation. However, master's degrees are common and sometimes preferred by employers. Graduate programs often last between 2 and 3 years and may include up to 1 year of supervised administrative experience in a hospital or healthcare consulting setting.

Prospective medical and health services managers typically have a degree in health administration, health management, nursing, public health administration, or

² The occupational category designated by a petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. However, to satisfy the first criterion, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

³ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. Our references to the *Handbook* are to the 2016 – 2017 edition available online. We hereby incorporate into the record of proceeding the chapter of the *Handbook* regarding "Medical and Health Services Managers."

business administration. Degrees that focus on both management and healthcare combine business-related courses with courses in medical terminology, hospital organization, and health information systems. For example, a degree in health administration or health information management often includes courses in health services management, accounting and budgeting, human resources administration, strategic planning, law and ethics, health economics, and health information systems.

....

Work Experience in a Related Occupation

Many employers require prospective medical and health services managers to have some work experience in either an administrative or a clinical role in a hospital or other healthcare facility. For example, nursing home administrators usually have years of experience working as a registered nurse.

Others may begin their careers as medical records and health information technicians, administrative assistants, or financial clerks within a healthcare office.

Licenses, Certifications, and Registrations

All states require licensure for nursing home administrators; requirements vary by state. In most states, these administrators must have a bachelor's degree, complete a state-approved training program, and pass a national licensing exam. Some states also require applicants to pass a state-specific exam; others may require applicants to have previous work experience in a healthcare facility. Some states also require licensure for administrators in assisted-living facilities. For information on specific state-by-state licensure requirements, visit the National Association of Long Term Care Administrator Boards.

A license is typically not required in other areas of medical and health services management. However, some positions may require applicants to have a registered nurse or social worker license.

Although certification is not required, some managers choose to become certified. Certification is available in many areas of practice. For example, the Professional Association of Health Care Office Management offers certification in medical management, the American Health Information Management Association offers health information management certification, and the American College of Health Care Administrators offers the Certified Nursing Home Administrator and Certified Assisted Living Administrator distinctions.

Advancement

Medical and health services managers advance by moving into higher paying positions with more responsibility. Some health information managers, for example,

can advance to become responsible for the entire hospital's information systems. Other managers may advance to top executive positions within the organization.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., Medical and Health Services Managers, <http://www.bls.gov/ooh/management/medical-and-health-services-managers.htm#tab-4> (last visited Mar. 17, 2016).

According to the *Handbook*, the requirements for medical and health services managers vary by facility. The *Handbook* also states that medical and health services managers typically need an advanced degree to enter the occupation, but it further clarifies that the degrees are in various fields of study (health administration, health management, nursing, public health administration, or business administration). In addition, the *Handbook* reports that degrees that focus on both management and healthcare combine business-related courses with courses in medical terminology, hospital organization, and health information systems. For example, the *Handbook* states that a degree in health administration or health information management often includes courses in health services management, accounting and budgeting, human resources administration, strategic planning, law and ethics, health economics, and health information systems. Therefore, although the *Handbook* states that medical and health services managers typically need an advanced degree, it also specifies that the requirements for these positions vary by facility and that degrees in various fields are acceptable for jobs in this occupation (e.g., health administration, health management, nursing, public health administration, and business administration).

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," 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).

The *Handbook* also states that a degree in business administration is sufficient for medical and health services manager jobs. 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

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

Again, 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. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. at 560. Therefore, the *Handbook's* recognition that a general, non-specialty degree in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not normally the minimum entry requirement for this occupation.

The narrative of the *Handbook* further indicates that nursing care facility administrators and administrators in assisted-living facilities may be subject to state licensure requirements. The *Handbook* reports that a license is not required in other areas of medical and health services management; however, certification is available in many areas of practice and that some employees obtain professional certification. The *Handbook* notes that the Professional Association of Health Care Office Management (PAHCOM) provides certification in medical management, that the American Health Information Management Association (AHIMA) offers health information management certification, and that the American College of Health Care Administrators (ACHCA) provides the Certified Assisted Living Administrator and Certified Nursing Home Administrator distinctions.

We reviewed the PAHCOM website regarding its requirements for professional certification.”⁵ The PAHCOM website states that its Certified Medical Manager (CMM) and its Health Information Technology Certified Manager for Physician Practice (HITCM-PP) are nationally recognized as the standard of excellence in physician office management. It further indicates that the programs provide recognition to office managers having the knowledge, skills, and experience necessary to successfully manage today's medical practices. The requirements for certification include:

- A minimum of three years of experience in the health care field (must be in support of patient care, such as a medical practice or other clinical environment); and,

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 For additional information regarding PAHCOM and its credentialing programs, see the Professional Association of Health Care Office Management website at <https://www.pahcom.com> (last visited Mar. 17, 2016).

- Twelve college credit hours in courses (1) pertinent to healthcare or business management for the CMM credential; or (2) pertinent to healthcare, business management, or information technology for the HITCM-PP credential. The educational credit requirement is reduced by one hour for each year experience above the three year minimum.

The PAHCOM website states that its credentialing program recognizes the qualifications and expertise of medical managers of physician practices. It specifically notes that the credential is not an entry level certification; but, rather, the CMM designation is the most senior in the industry, requiring both experience and education.

We observe that the PAHCOM website does not indicate that medical manager positions have any particular degree requirements for entry, nor does it indicate that these positions require a degree to be identified as qualified and possessing a level of expertise/competence. Instead, PAHCOM stresses the importance of professional experience, along with a few courses in healthcare, business management and/or information technology.

In addition, we reviewed the AHIMA website regarding its health information management certification.⁶ The AHIMA website states that it is the premier association of health information management (HIM) professionals worldwide. The website also states that AHIMA credentials are earned through a challenging program of examinations, education, and experience, and maintained through continuous review and education.

The AHIMA website indicates that there are two kinds of HIM certifications: (1) Registered Health Information Administrator (RHIA) certification; and (2) Registered Health Information Technician (RHIT) certification. According to the website, RHIA applicants must meet one of the following eligibility requirements:

- Complete the academic requirements, at the baccalaureate level, of an HIM program accredited by the Commission on Accreditation for Health Informatics and Information Management Education (CAHIIM); or
- Graduate from an HIM program approved by a foreign association with which AHIMA has a reciprocity agreement.

In addition, RHIT applicants must meet one of the following requirements:

- Complete the academic requirements, at an associate's degree level, of an HIM program accredited by the CAHIIM; or

⁶ For additional information regarding AHIMA and its certification program, see the American Health Information Management Association website at <http://www.ahima.org/> (last visited Mar. 17, 2016)

(b)(6)

Matter of H-P- Corp.

- Graduate from an HIM program approved by a foreign association with which AHIMA has a reciprocity agreement.

Notably, the AHIMA website does not indicate that at least a bachelor's degree in a specific specialty (or its equivalent) is required to work as a health information management professional and/or be HIM certified.

We also reviewed the [REDACTED] website regarding the Certified Assisted Living Administrator and Certified Nursing Home Administrator distinctions.⁷ According to the website, the [REDACTED] professional certification program identifies and honors administrators and managers who are performing at an advanced level of skill and knowledge. The website states that its professional certification program promotes quality in the profession and improves the public image of administrators, as well as allows experienced and practicing administrators to validate their knowledge, skill and abilities.

The [REDACTED] website indicates that there are a number of paths available to candidates seeking to fulfill the education and experience requirements for the Certified Assisted Living Administrator distinction. These include possessing: (1) a high school diploma or General Education Diploma (G.E.D.) along with six years of full-time experience as an assisted living administrator/manager; (2) an associate's degree and four years of full-time experience as an assisted living administrator/manager; or (3) a baccalaureate degree and two years of full-time experience as an assisted living administrator/manager. Thus, the [REDACTED] website does not indicate that at least a bachelor's degree in a specific specialty (or its equivalent) is required to work as an assisted living administrator/manager – or for certification.

The requirements for the Certified Nursing Home Administrator distinction include the following: (1) two year licensure as a nursing home administrator; (2) two years of experience as a nursing home administrator; and (3) a baccalaureate degree if licensed after January 1, 1996. We note that a candidate is not required to have a degree in a specific specialty, but rather a degree in any field or a general-purpose degree is sufficient.

Thus, the *Handbook*, PAHCOM, AHIMA, and [REDACTED] do not support the claim that the “Medical and Health Services Managers” 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.

In response to the RFE, the Petitioner submitted a copy of the Occupational Information Network (O*NET) OnLine Summary Report for the “Medical and Health Services Managers” occupational

⁷ For additional information regarding [REDACTED] and its certification programs, see the [REDACTED] (last visited Mar. 17, 2016).

category. We find that O*NET does not establish that the proffered position qualifies as a specialty occupation. In general, O*NET 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 Job Zone designations make no mention of the specific field of study from which a degree must come. Furthermore, the Specialized Vocational Preparation (SVP) ratings, which are cited within O*NET'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. Therefore, the O*NET is also not probative evidence that the proffered position qualifies as a specialty occupation.

The Petitioner also cites to *Residential Finance Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012) and *Unical Aviation, Inc. v. INS*, 248 F. Supp. 2d 931 (D.C. Cal 2002) for the propositions that a specialty occupation need not require a degree “in a specific academic major or have a specific title” and that the ““body of highly specialized knowledge” which must be applied theoretically and practically in the performance of the duties of the occupation must by necessity be directly related to the duties of the occupation.”

We generally agree with the aforementioned propositions. For the aforementioned reasons, however, the Petitioner has not met its burden to establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those tasks.

In any event, the Petitioner has not furnished evidence to establish that the facts of the instant petition are analogous to those in those cases.⁸ 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 (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.* at 719.

On appeal, the Petitioner refers to unpublished decisions in support of its claim that the proffered position is a specialty occupation. The Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished 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, unpublished decisions are not similarly binding.

⁸ In *Residential Finance Corp.*, the district court judge's decision in that case appears to have been based largely on the many factual errors made by the service center in its decision denying the petition. We further note that the service center's decision was not appealed to us. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by us in our *de novo* review of the matter.

In the instant case, the duties and requirements of the position as described in the record of proceeding do not indicate that this particular position proffered by the Petitioner is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. 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 the 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)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or other 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. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals."

In support of the assertion that the proffered position is a specialty occupation under this criterion of the regulations, the Petitioner submitted copies of job advertisements. However, upon review of the documents, we find that the Petitioner's reliance on the job announcements is misplaced.

On the Form I-129, the Petitioner stated that it is a home health care business with 48 employees. The Petitioner also reported its gross annual income as \$3 million. The Petitioner did not provide its net annual income. The Petitioner designated its business operations under the North American Industry Classification System (NAICS) code 621610.⁹ This NAICS code is designated for "Home

⁹ According to the U.S. Census Bureau, 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

Health Care Services.” The U.S. Department of Commerce, Census Bureau website describes this NAICS code as follows:

This industry comprises establishments primarily engaged in providing skilled nursing services in the home, along with a range of the following: personal care services; homemaker and companion services; physical therapy; medical social services; medications; medical equipment and supplies; counseling; 24-hour home care; occupation and vocational therapy; dietary and nutritional services; speech therapy; audiology; and high-tech care, such as intravenous therapy.

U.S. Dep’t of Commerce, U.S. Census Bureau, 2012 NAICS Definition, 621610 – Home Health Care Services, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited Mar. 17, 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 the Petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the Petitioner.

We will briefly note that, without more, the job postings do not appear to involve organizations similar to the Petitioner.¹⁰ When determining whether the Petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the Petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion. “[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)).

We further observe that some of the advertisements do not appear to involve parallel positions. For example, one of the postings is for the position of compliance monitoring analyst, which requires a degree and three or more years of experience in Medicare Advantage or Part D plan operations. The Petitioner also submitted an advertisement for the position of manager, healthcare analytics, which requires a degree and “[o]ver 3 years and up to and including 5 years of healthcare experience.” The Petitioner designated its proffered position as a wage level I (entry level) position on the LCA.¹¹

place there. See <http://www.census.gov/eos/www/naics/> (last visited Mar. 17, 2016).

¹⁰ The postings include the following: (1) a company that “operates the largest private Medicare exchange in the country”; (2) a company in the health insurance industry; and (3) a company that “manages and operates medical groups and affiliated physician networks.” It does not appear that the advertisements are from companies engaged primarily in home health care services.

¹¹ The “Prevailing Wage Determination Policy Guidance” issued by DOL provides a description of the wage levels. A Level I wage rate is described by DOL as follows:

The advertised positions therefore appear to involve more senior positions than the proffered position. More importantly, the Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to those of the proffered position.

In addition, none of the postings indicate that at least a bachelor's degree in a directly related specific specialty (or its equivalent) is required.¹² The job postings suggest, at best, that although a bachelor's degree is sometimes required for compliance analyst positions, a bachelor's degree in a *specific specialty* (or its equivalent) is not.¹³

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.¹⁴ That is, not every deficit of every job posting has been addressed.

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 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.

¹² 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). To reiterate, 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. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Further, a *preference* for a degree in a field is not necessarily an indication of a minimum *requirement*.

¹³ It must be noted that even if all of the job postings indicated that a bachelor's degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations (which they do not), 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 (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 outweigh 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.

¹⁴ 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.

Thus, based upon a complete review of the record, 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.

In support of its assertion that the proffered position qualifies as a specialty occupation, the Petitioner described the proffered position and its business operations. Upon review, we find that the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. For instance, 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 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 description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them.¹⁵

The record does not establish which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. The evidence of record does not establish that this position is significantly different from other positions in the occupational category such that it refutes the *Handbook's*

¹⁵ Again, the Petitioner designated the proffered position on the LCA at a Level I (entry level) wage level, which is the lowest of four assignable wage-levels. This designation indicates that the proffered position is a low-level, entry position relative to others within the "Medical and Health Services Managers" occupational category. 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.

information that a bachelor's degree in a specific specialty, or its equivalent, is not required for the proffered position.

The Petitioner claims that the Beneficiary is well qualified for the position, and references her qualifications. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner has not satisfied the second alternative prong of 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 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 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.

To merit approval of the petition under this criterion, the record must 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. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. 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. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the Petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any individual with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

The Petitioner stated in the Form I-129 that it was established in 2002 (approximately 12 years prior to the filing of the H-1B petition) and that it has 48 employees. Upon review of the record, we find that the Petitioner did not submit information regarding employees who currently or previously held the position. The record does not establish that the Petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, directly related to the duties of the position. Thus, the Petitioner has not satisfied 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.

The Petitioner claims that the nature of the specific duties of the position in the context of its business operations 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. We reviewed the Petitioner's statements regarding the duties of the proffered position and its business operations. However, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent.

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 (of 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 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.¹⁶

Although the Petitioner asserts that the nature of the specific duties is specialized and complex, the record lacks sufficient evidence to support this claim. Thus, the Petitioner has submitted inadequate probative evidence to satisfy the criterion of the regulations 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. For these reasons, the petition as currently constituted cannot be approved and this matter must be remanded to the Director for issuance of a new decision.

IV. CONCLUSION AND ORDER

As discussed, the evidence of record does not demonstrate that the proffered position is a specialty occupation. Consequently, the matter will be remanded to the Director for further review and issuance of a new decision in accordance with the applicable statutory and regulatory provisions. The Director may request any additional evidence considered pertinent to the new determination.

ORDER: The decision of the Director, California Service Center, is withdrawn. The matter is remanded to the Director, California Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of H-P- Corp.*, ID# 15825 (AAO Mar. 18, 2016)

¹⁶ 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. 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.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.