



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

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

MATTER OF H-H-H-C-, INC.

DATE: MAR. 21, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a home health care/hospice company, seeks to temporarily employ the Beneficiary as a “chief strategy officer” 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 proffered position is not a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred in its determination that the proffered position is not 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 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. Proffered Position

In the labor condition application (LCA) submitted to support the visa petition, the Petitioner indicated that the proffered position corresponds to the occupational category “General and Operations Managers” with SOC (ONET/OES) code 11-1021, at a Level I (entry level) wage.

The Petitioner submitted a description of job duties in which it states that the Beneficiary will perform the following duties as a chief strategy officer, with percentages:

- Devising strategy for business development through targeted marketing based on research and available resources. Communicating, implementing and monitoring marketing strategies by working closely with marketing dept. Direct involvement in leading potential client engagements. Devising and implementing plans to form productive coalitions to optimize growth [40%]
- Devising, executing and monitoring strategies to ensure elimination of wasteful expenses and optimum utilization of resources [10%]

- Assessing and implementing ways to ensure highest standards of clinical services are available to clients. Actively ensuring company's policies and procedures are in tandem with any changes in Health Care industry & Medicare and are communicated internally and externally to all employees, partners and other resource[s]. Devising strategy to ensure integrity of the company is of highest standards through initiating appropriate staff and management training sessions [15%]
- Productive assessment of recruiting and hiring needs based on current census and projected growth to ensure human resource consistently matches the skills offered. Devising, implementing and monitoring strategy to minimize staff turnover by driving decision making at all levels. [25%]
- Reporting and consulting with CEO via meetings or verbal & written communication and lead a team of 4 to 6 junior associates in the department [10%]

(Errors in Original.)

### C. Analysis

For H-1B approval, a petitioner must demonstrate a legitimate need for a position to exist and to substantiate that it has H-1B caliber work for the Beneficiary for the period of employment requested in the petition. It is incumbent upon a petitioner to demonstrate it has sufficient work to require the services of a person with at least a bachelor's degree in a specific specialty, or its equivalent, to perform duties at a level that requires the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty for the period specified in the petition.

As a preliminary matter, we find that the Petitioner's claimed entry requirement of at least a master's or a bachelor's degree in any field, so long as the candidate possesses at least five years of work experience in a loosely-defined "business environment," is inadequate to establish that the proposed 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 and closely to the position in question. There must be a close correlation between the required specialized studies and the position; thus, the mere requirement of a degree, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility."). Thus, while a general degree 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.

As noted, the Petitioner requires an individual with least a master's or a bachelor's degree in any field, so long as the candidate possesses at least five years of work experience in a loosely-defined "business environment" without further requiring that the degree be in any specific specialty.

Without more, the Petitioner's statement alone indicates that the proffered position is not in fact a specialty occupation. The Director's decision must therefore be affirmed and the appeal dismissed on this basis alone.

Moreover, it also cannot be found that the proffered position qualifies as a specialty occupation as the Petitioner has not satisfied any of the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). To reach this conclusion, we turn next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

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

We recognize the U.S. Department of Labor *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup> As noted, the Petitioner submitted an LCA certified for use with a job prospect located within the "General and Operations Managers" occupational category, which the *Handbook* discusses within its "Top Executives" entry. In relevant part, the *Handbook* states the following:

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

### **Education**

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

College presidents and school superintendents are typically required to have a master's degree, although a doctorate is often preferred.

Although many mayors, governors, or other public sector executives have at least a bachelor's degree, these positions typically do not have any specific education requirements.

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<sup>1</sup> All references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>. 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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### **Work Experience in a Related Occupation**

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

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Top Executives," available at <http://www.bls.gov/ooh/management/top-executives.htm#tab-4> (last visited Mar. 18, 2016).

These statements from the *Handbook* do not indicate that a bachelor's degree or the equivalent, in a specific specialty, is normally required for entry into positions located within this occupational category. Instead, the *Handbook's* information indicates that these positions generally impose no specific degree requirement on individuals seeking employment. The statement that "many" workers in this occupational category have college degrees is not synonymous with the "normally required" standard imposed by this criterion. To the contrary, such a statement does not even necessarily indicate that a majority of individuals working within this occupational category possess such a degree. While the *Handbook* indicates that top management positions may be filled by individuals with a broad range of degrees, its subsequent discussion of the training and education necessary for such employment clearly states that companies also hire executives based on lower-level experience within their own organizations or management experience with another business. Moreover, the *Handbook* does not state that those positions which do require a bachelor's degree or the equivalent require that the degree be in a specific specialty.

The *Handbook*, therefore, does not support a finding that the proffered position is a specialty occupation.

While the letters submitted as expert opinions are acknowledged, we find that they do not satisfy the first criterion. The Petitioner submits two such letters: one from [REDACTED] Assistant Professor and Director of the Graduate Program MS Strategic Design and Management at [REDACTED]

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and one from [REDACTED] Professor Emeritus of Accounting and Operations Management at [REDACTED]. Both individuals indicate that a bachelor's degree in business administration would adequately prepare an individual to perform the duties of the proffered position. However, the requirement of a bachelor's degree in business is inadequate to establish that a position qualifies as a specialty occupation. As discussed, 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. These letters do not carry the Petitioner's burden for this reason alone.

Next, we find that neither author discussed the duties of the proffered position in detail sufficiently meaningful to allow us to ascertain the degree to which they analyzed them prior to formulating their opinions. In similar fashion, neither author discussed the Petitioner's business operations in substantive detail. It does not appear that these authors visited the Petitioner's business premises or otherwise communicated with anyone affiliated with the Petitioner regarding what performance of the proffered duties would actually require. Nor do the authors articulate whatever familiarity they may have obtained regarding the particular content of the work that the Petitioner would require of the Beneficiary. These factors detract further from the probative value of these letters. For all of these reasons, these letters carry little evidentiary weight, and they do not establish the proffered position as a specialty occupation.

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's citation to *Chung Song Ja Corp. v. U.S. Citizenship and Immigration Services*, No. C14-0177RSM, 2015 WL 1058110 (W.D. Wash. 2015) is not persuasive, as the position proffered in that case was not located within the same occupational category as the one proffered here. Furthermore, in contrast to a practice of acquiescence to the holdings of a circuit court in cases arising within the jurisdiction of that circuit, we are not required to accept an adverse determination by one circuit court of appeals as binding throughout the United States. *Matter of Anselmo*, 20 I&N Dec. 25, 31 (BIA 1989); *cf. Matter of K-S-*, 20 I&N Dec. 715, 719-20 (BIA 1993). Although the reasoning underlying a circuit court'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. *See Matter of Anselmo*, 20 I&N Dec. at 31.

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The Petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

Next, we find that the Petitioner has not satisfied 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.

Again, 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

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

The record contains a letter submitted for consideration under this prong from [REDACTED] Vice President for Law at the [REDACTED]. However, as with the letters discussed above, [REDACTED] does not state that the proffered position requires a bachelor's degree in a specific specialty, or the equivalent. Instead, he indicates that a bachelor's degree in any field of study would suffice. Again, 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. There must be a close correlation between the required specialized studies and the position; thus, the mere requirement of a degree, without further specification, does not establish the position as a specialty occupation. Cf. *Matter of Michael Hertz Assocs.*, 19 I&N Dec. at 560 ("The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility."). While a general-purpose bachelor's degree 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.

In support of the assertion that the degree requirement is common to the Petitioner's industry in parallel positions among similar organizations, the Petitioner also submitted copies of job vacancy

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announcements. However, upon review of the documents, we find that the Petitioner's reliance on the these documents is misplaced.

As noted, the Petitioner claims to be a home health care/hospice company, and designated its business operations under the North American Industry Classification System (NAICS) code 621610.<sup>2</sup> This NAICS code is designated for "Home Health Care Services." The U.S. Department of Commerce, Census Bureau website describes this NAICS code by stating the following: "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. 18, 2016).

For the Petitioner to establish that other organizations are similar, it must demonstrate that they share the same general characteristics. Without such evidence, documentation submitted by the Petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the Petitioner. 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). Notably, 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.

The advertisements submitted by the Petitioner include positions at [REDACTED] an electronic manufacturing service company; and [REDACTED] a deliverer of information, tools, and services to the healthcare industry. However, there is insufficient information to establish that these advertisements were placed by organizations "similar" to the Petitioner. Nor has the Petitioner established that the duties and the requirements for the advertised positions parallel those of the proffered position. For example, [REDACTED] requires a bachelor's degree with "7 - 10+ years progressive healthcare provider organization experience with at least 3 years previous consulting firm experience in healthcare strategy, business development or operations."

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

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<sup>2</sup> 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. 18, 2016).

necessary. That is, not every deficit of every job posting has been addressed.<sup>3</sup> Therefore, 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.

The evidence of record does not develop relative complexity or uniqueness as an aspect of the position. The Petitioner did not submit evidence to demonstrate that the proffered position entails work that is more complex or unique that it can only be performed by someone with a bachelor's degree in a specific specialty. 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.<sup>4</sup> Without further

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<sup>3</sup> Although the size of the relevant study population is unknown, the Petitioner does not demonstrate what statistically valid inferences, if any, can be drawn from these advertisements with regard to determining the common educational requirements for entry into parallel positions in similar companies. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that “[r]andom selection is the key to [the] process [of probability sampling]” and that “random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error.”)

As such, even if the job announcements supported the finding that the position of chief strategy officer for companies that are similar to the Petitioner requires a bachelor's or higher degree in a specific specialty, or its equivalent, 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* that such a position does not require at least a baccalaureate degree in a specific specialty, or its equivalent, for entry into the occupation in the United States.

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 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.

evidence, the record of proceeding 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.<sup>5</sup> 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.”<sup>6</sup> 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* information that a bachelor’s degree in a specific specialty or its equivalent is not required for the proffered position.

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, 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 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. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor’s degree in a specific specialty, or its equivalent.

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U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

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 she would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she 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.

<sup>5</sup> The issue here is that the Petitioner’s designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, 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.

<sup>6</sup> 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](http://www.flcdcenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf).

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).

*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 the 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 we 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* § 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. We 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.

The evidence of record indicates that this is first time the Petitioner has filled this position. In response to the RFE, the Petitioner submitted job descriptions relating to positions whose occupants it claimed performed at the same level of the one proffered here. The positions included a Director

of Human Resources, a Hospice Director of Quality, and a Controller/Chief Financial Officer. However, those individuals did not perform the same duties as those proposed for the Beneficiary. Even if the Petitioner were able to demonstrate that these other positions in fact paralleled the chief strategy officer position proffered here, which it did not, we would still be compelled to note that the Petitioner appears to find a wide variety of degrees and experience adequate preparation for these positions. As noted, the Petitioner has not claimed that it requires an individual with a bachelor's degree in a *specific specialty*, or the equivalent, to perform these duties. We hereby incorporate the prior discussion at the beginning of the analysis section regarding the Petitioner's stating that the position requires only a bachelor's degree generally, without stating that the degree must be in a specific specialty.

Therefore, 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.

Upon review of the record of the proceeding, we find that the Petitioner has not provided sufficient evidence to satisfy this criterion of the regulations. In the instant case, relative specialization and complexity have not been credibly 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 (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.

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.

## II. CONCLUSION AND ORDER

As discussed, the evidence of record does not demonstrate that the proffered position is a specialty occupation. Consequently, the appeal will be dismissed.<sup>7</sup>

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 H-H-H-C-, Inc.*, ID# 15907 (AAO Mar. 21, 2016)

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<sup>7</sup> As this issue precludes approval of the petition, we will not address any of the additional issues we have observed in the record of proceeding, except to note that if the Petitioner is able to overcome the specialty-occupation issue at a future date, the Director should explore the following issues prior to approving the petition: (1) whether the current evidence of record demonstrates that the Beneficiary is qualified to perform the duties of a specialty occupation; and (2) whether the LCA corresponds to and supports the petition.