



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

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

MATTER OF S-R-, LLC

DATE: MAY 4, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a consulting firm, seeks to temporarily employ the Beneficiary as an “enterprise risk management (ERM) analyst” 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 there is insufficient evidence to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

The matter is now before us on appeal. On appeal, the Petitioner submits additional evidence and asserts that the Director’s basis for denial of the petition was erroneous and contends that it satisfied all evidentiary requirements.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

8 C.F.R. § 214.2(h)(4)(iii)(A). U.S. Citizenship and Immigration Services (USCIS) has consistently interpreted the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

II. PROFFERED POSITION

In the initial letter of support, the Petitioner provided the following description for its part-time ERM analyst position:

The Enterprise Risk Management Analyst will analyze and address the full spectrum of a client’s risks and manage the combined impact of those risks as an interrelated risk portfolio, in order to support the achievement of the client’s objectives. The Enterprise Risk Management Analyst will be responsible for the management of internal risk reporting, including Board level reports. The Enterprise Risk Management Analyst will manage periodic reporting to the various internal governance bodies on key risk metrics, emerging risks and performance of the client’s organization against risk goals set. The Enterprise Risk Management Analyst will administer defined procedures, analyses, and report preparation.

The position of Enterprise Risk Management Analyst requires, at a minimum, a Bachelor’s Degree in Economics, Statistics, or related field.

In response to the Director’s request for evidence (RFE), the Petitioner elaborated upon the duties of the proffered position, and percentages of time spent on each duty, as summarized below:

(b)(6)

Matter of S-R-, LLC

1. Calculation of risk tolerance with Microsoft Excel. The Enterprise Risk Management Analyst will build financial models to calculate VaR, Value at Risk, and Value per Share using Excel and [REDACTED]. (30% of time)
2. Creating risk heat map is a critical aspect of the duties of the position. After gathering risk assessments, the Enterprise Risk Management Analyst will create a heat map using Excel and SharePoint. (30% of time)
3. After applying metadata information to risk assessment findings and creating a heat map, this role's ongoing responsibility is to maintain and enhance the structure of a platform for client's documentation, communication, and collaboration in SharePoint. While all of this work takes place in an office environment, the platform is a Cloud based technology, allowing [the Petitioner's] clients easy accessibility with any device using the Internet. (20% of time)
4. Combine all the information and results from risk management and prepare internal risk reports to clients, including Board level reports. Such reports will include executive summary, Enterprise Risk Management program introduction, the ERM process, Enterprise Risk Assessment results summary, Enterprise Risk Assessment heat maps, Enterprise Risk Mitigation overview, and contact information. (20% of time)

The Petitioner further stated that the proffered position "requires, at a minimum, a Bachelor's Degree in Finance, Economics, Statistics, or related field." With the RFE response, the Petitioner submitted offer letter to the Beneficiary, which stated, in part, that as a condition of employment, he would need to provide transcripts showing that he possessed at least a bachelor's degree in business or a related field.

In the appeal, the Petitioner provides additional information regarding the duties of the position and states that it requires a bachelor's or higher degree in risk management, finance, or business administration.

III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position satisfies any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, qualifies as a specialty occupation. Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.¹

First, the Petitioner has not consistently demonstrated what the minimum entry requirement is for the proffered position. Initially, the Petitioner stated that the position requires a degree in economics,

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

statistics, or related field. Thereafter, the Petitioner added finance as an acceptable field of study. However, in the Petitioner's offer letter, it indicated that a bachelor's degree in business is sufficient.² Finally, the Petitioner modified its requirements in the appeal letter to include risk management, finance, or business administration. The Petitioner did not address this discrepancy.

Second, and as will be discussed in more detail below, the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, has not demonstrated that the proffered position qualifies as a specialty occupation.

A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.³ To inform this inquiry, we recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁴

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Financial Specialists, All Other" corresponding to the Standard Occupational Classification (SOC) code 13-2099 at a Level I wage.⁵

² Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business or business administration without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988). Although a general-purpose business 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 139, 147 (1st Cir. 2007).

³ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

⁴ All of our references are to the 2016-2017 edition of the *Handbook*, available at <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

⁵ The "Prevailing Wage Determination Policy Guidance" issued by the DOL provides a description of the wage levels. A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner's job opportunity. We will consider the Petitioner's classification of the proffered position at a Level I wage (the lowest of four assignable wage levels) in our analysis of the position. A Level I wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. This wage rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that she will be closely supervised and her work closely monitored and reviewed for accuracy; and (3) that she will receive specific instructions on required tasks and expected results. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf. A Level I wage should be considered for research fellows, workers in training, or internships. *Id.*

Although the *Handbook* covers the employment details for hundreds of occupations, there are additional occupations for which detailed occupational information is not developed. The *Handbook* suggests that for at least some of the occupations, little meaningful information could be developed.⁶ The occupational category “Financial Specialists, All Other” is one of these categories.

When the *Handbook* does not support a petitioner’s assertion that a position meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the Petitioner to provide persuasive evidence that the proffered position qualifies, notwithstanding the absence of the *Handbook*’s support on the issue.⁷ We will consider and weigh all of the evidence presented.

In response to the Director’s request for evidence (RFE), the Petitioner submitted a printout of the Occupational Information Network (O*NET) OnLine Summary Report for “Risk Management Specialists.” Even assuming, *arguendo*, that the printout for this occupation is relevant to the proffered position, it does not support the Petitioner’s assertion that a bachelor’s degree in a specific specialty (or its equivalent) is required for entry. More specifically, the summary report provides general information regarding the occupation, including a Specialized Vocational Preparation (SVP) rating. According to the SVP rating cited in the summary report, this occupation is designated as 7 < 8. An SVP rating of 7 to less than (“<”) 8 indicates that the occupation requires “over 2 years up to and including 4 years” of training. While the SVP rating indicates the total number of years of vocational preparation required for a particular position, it is important to note that it does 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.⁸

Further, the summary report provides the educational requirements of “respondents,” but does not account for 100% of the “respondents.” The respondents’ positions within the occupation are not distinguished by career level (e.g., entry-level, mid-level, senior-level). Additionally, the graph in the summary report and the Job Zone 4 designation do not indicate that the “education level” must be in a specific specialty. Thus, the summary report provides general information regarding the occupational category, but it does not corroborate the Petitioner’s claim regarding the minimum educational requirements for these jobs.

⁶ U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., “Data for Occupations Not Covered in Detail,” <http://www.bls.gov/ooh/About/Data-for-Occupations-Not-Covered-in-Detail.htm> (last visited Apr. 29, 2016).

⁷ In response to the Director’s RFE, the Petitioner submitted an excerpt from the *Handbook* regarding the occupational category “Financial Analysts” corresponding to the SOC code 13-2051. We note, however, that this is a separate occupational category from “Financial Specialists, All Other” – SOC code 13-2099. DOL provides clear guidance for selecting the most relevant occupational code classification. That is, DOL’s “Prevailing Wage Determination Policy Guidance” states that if a Petitioner’s job opportunity is a combination of occupations, the Petitioner should select the relevant occupational code for the highest paying occupation, which in the instant case would be “Financial Analysts.” Here, the Petitioner selected “Financial Specialists, All Other.” Therefore, without further explanation, the Petitioner has not established the relevancy of the “Financial Analysts” printout to the instant matter.

⁸ For additional information, see the O*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

The Petitioner has not provided documentation from a probative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

B. Second Criterion

The second criterion presents two, alternative prongs: “The degree requirement is common to the industry in parallel positions among similar organizations *or, in the alternative*, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree[.]” 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong contemplates the common industry practice, while the alternative prong narrows its focus to the Petitioner’s specific position.

1. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the “degree requirement” (i.e., a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms “routinely employ and recruit only degreed individuals.” See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In support of this criterion, the Petitioner submitted several postings for jobs with other companies.⁹ The Petitioner’s reliance on these postings, however, is misplaced. First, without further information, the advertisements appear to be for organizations that are not similar to the Petitioner – and the Petitioner has not provided any evidence to suggest otherwise or explained which aspects or traits (if any) it shares with the advertising organizations.¹⁰ Second, the record also contains

⁹ The Petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers’ recruiting history for the type of jobs advertised. Further, as they are only solicitations for hire, they are not evidence of the employers’ actual hiring practices.

¹⁰ On appeal, the Petitioner claims that “it is simply impossible to find job postings specifically for an Enterprise Risk Management by other companies that are within the industry.” Contrary to the Petitioner’s assertion in the appeal brief, we note that for a petitioner to establish that an organization is similar, it must demonstrate that it and the organization share the same general characteristics. Without such evidence, documentation submitted by a petitioner would be 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). Moreover, it

Matter of S-R-, LLC

advertisements from companies for which little or no information regarding the hiring employers is provided. Consequently, there is insufficient information regarding these employers' business operations to conduct legitimate comparison to the Petitioner's operations.

Third, contrary to the purpose for which the advertisements were submitted, some job postings do not indicate that at least a bachelor's degree in a specific specialty (or its equivalent) is required.¹¹ For example, the posting for [REDACTED] states that a degree or 2 years of experience is acceptable. Furthermore, many of the job postings state that a degree is required, but they do not specify any particular field of study.

Finally, some of the advertisements do not appear to be for parallel positions. For example, some of these advertised positions appear to be for more senior positions than the proffered position. More importantly, the Petitioner has not sufficiently established that the primary duties and responsibilities of these advertised positions are parallel to the proffered position.

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.¹²

Also under this criterion, the Petitioner submitted two letters from [REDACTED], Director of Risk Management for the [REDACTED]. We carefully evaluated [REDACTED] assertions in support of the instant petition but, for the following reasons, determined his letters do not have significant weight in this matter.

In his first letter, [REDACTED] attests that ERM analyst positions in the industry require "a minimum bachelor degree, professional business skills, experience with risk management information systems and related knowledge." This letter does not state that the degree must be in a specific specialty.

In addition, [REDACTED] letter cites to a 2013 Risk Management Compensation Survey of the educational backgrounds of ERM analysts. Not only is this survey silent as to whether these with higher degrees are from any particular field(s), but it also indicates that a high school diploma, an

is not sufficient for a petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

¹¹ 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 one in a specific specialty that is directly related to the duties of the position. Further, requiring a general-purpose bachelor's 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.

¹² Further, the Petitioner does not demonstrate what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, there is no indication that the advertisements were randomly selected, thus, 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").

(b)(6)

Matter of S-R, LLC

associate's degree, and a general-purpose business administration degree are adequate for such positions.¹³

In his second letter, [REDACTED] attests to a different set of requirements altogether, stating: "at least a Bachelor's degree in Finance or a related field" is necessary. Yet, the Petitioner has not sufficiently explained or submitted evidence to reconcile [REDACTED] apparently inconsistent letters as to the requirements for ERM analyst positions.¹⁴

The Petitioner also submitted a letter from [REDACTED], concluding that ERM analyst positions in the industry typically require a bachelor's degree in risk management, finance, insurance, and related disciplines. However, we accord this letter little probative value, as the writer does not explain the factual basis for his conclusion. He does not reference, cite, or discuss any studies, surveys, industry publications, authoritative publications, or other sources of empirical information which he may have consulted to complete his assessment on this issue. He simply references a survey as to the "type of organization" where an unidentified individuals are employed.

Even assuming the writers possessed expertise on the degree requirements for ERM analysts, their opinion letters do not substantiate their conclusions, such that we can conclude that the Petitioner has met its burden of proof. The writers do not demonstrate in-depth knowledge of the Petitioner's operations or how the duties of the position would actually be performed in the context of its business enterprise. Further, the record does not indicate whether the writers were aware that, as indicated by the Level I wage on the LCA, the Petitioner considered the proffered position to be for an entry level employee. The Petitioner has not demonstrated that they possessed the requisite information to adequately assess the nature of the position and appropriately determine parallel positions based upon the job duties and level of responsibilities. Additionally, there is no indication that they have conducted any research or studies pertinent to the educational requirements for such positions (or parallel positions) in the Petitioner's industry for similar organizations.

We may, in our discretion, use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, where an opinion is not in any way questionable, we are not required to accept or may give less weight to that evidence. *Id.*

¹³ Again, the requirement of a general-purpose degree business or business administration degree, alone, is insufficient to establish eligibility as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. at 560 (a general college degree does not establish eligibility); *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147 (a business administration degree does not establish eligibility).

¹⁴ The Petitioner submitted the second letter [REDACTED] on appeal, apparently in response to the Director's finding that the first letter was insufficient because it makes "no indication that an applicant for the proffered position would require a bachelor's degree in any specific field." However, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Thus, it is not sufficient for the Petitioner to merely submit a second letter attesting to a different set of requirements, without further explanation and evidence to support the changes.

We reviewed the evidence submitted, however, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

2. Second Prong

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

In support of its assertion that the proffered position qualifies as a specialty occupation, the Petitioner described the proffered position and its business operations. The Petitioner referred to the "complex nature" of its business operations, as well as its focus on providing consulting advice to "large organizations," which are subject to "increased government regulatory scrutiny." The Petitioner also made brief references to its "proprietary cloud based tool and relevant ERM consulting." However, the Petitioner has not sufficiently explained and documented these claimed "complex" or "proprietary" aspects of its business operations.

In addition, we considered the Petitioner's designation of the proffered position as an entry-level position within the occupational category (by selecting a Level I wage).¹⁵ This designation, when read in combination with the Petitioner's job descriptions, further suggests that the particular position is not so complex or unique that the duties can only be performed by an individual with a bachelor's degree or higher in a specific specialty, or its equivalent. While related courses may be beneficial in performing certain duties of the position, the Petitioner has not demonstrated how an established curriculum of 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.

Accordingly, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

C. Third Criterion

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

¹⁵ Nevertheless, a low wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a high wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I 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.

To merit approval of the petition under this criterion, however, the record must establish that a petitioner's imposition of a degree requirement is not a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. While a petitioner may assert that a proffered position requires a specific degree, that statement alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing the Petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the Petitioner created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

Under this criterion, the Petitioner asserts that it has always required either a bachelor's degree in finance, or a combination of sufficient experience while hiring its employees. The Petitioner submits copies of the degrees and resumes for its two employees who "are expected to perform similar job duties as the proffered position." The individuals are: (1) the founder/president – who holds a degree in liberal arts¹⁶ and (2) Steven Wadle– who holds a degree in physics and a master's of business administration.

First, the Petitioner did not provide the duties of these individuals, thus, it is not possible to determine important aspects of the jobs, such as the day-to-day responsibilities, complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. That is, the record indicates that one of the individuals is the Petitioner's owner/founder and the other individual was a "previous intern of the Petitioner." The documentation does not establish that their positions, duties, and responsibilities are the same or parallel to the proffered position.

Further, the fact that the Petitioner would find acceptable individuals with degrees in disparate fields, such as liberal arts and business, for its position does not support its assertion that it requires an individual with a bachelor's degree in a specific specialty, or the equivalent.¹⁷

Thus, without more, the Petitioner's assertion regarding these individuals does not constitute sufficient evidence of the Petitioner's recruiting and hiring history necessary for analysis under this

¹⁶ The Petitioner claims on appeal that his work experience is sufficient to be the equivalent of a bachelor's in finance, risk management, insurance, or similar degree. However, the Petitioner has not explained the factual basis for this conclusion, nor its qualifications to render such a conclusion regarding an individual's educational equivalency.

¹⁷ There must be a close correlation between the required "body of highly specialized knowledge" and the proffered position. Therefore, a minimum entry requirement of degrees in disparate fields, such as liberal arts and business, 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 Petitioner has not done so here.

(b)(6)

Matter of S-R-, LLC

criterion.¹⁸ Therefore, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

D. Fourth Criterion

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

On appeal, the Petitioner cites to another survey conducted by the [REDACTED] regarding “the educational distribution of the proffered position.”¹⁹ Assuming, *arguendo*, that these survey results are for “the proffered position” as claimed by the Petitioner, this survey reflects that a high school diploma, an associate’s degree, a general-purpose business administration degree, and other unspecified qualifications are adequate for such positions.

Further, the Petitioner has not established that the proffered duties are more specialized and complex than duties for positions that are not usually associated with at least a bachelor’s degree in a specific specialty, or its equivalent. We again incorporate our earlier discussion and analysis regarding the Petitioner’s designation of the position as a Level I position (the lowest of four assignable wage-levels) relative to others within the same occupational category.

The Petitioner therefore has not demonstrated in the record that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

IV. CONCLUSION

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation.²⁰ The burden is on the

¹⁸ See generally Earl Babbie, *The Practice of Social Research* 186-228 (7th ed. 1995).

¹⁹ While the Petitioner asserts that it previously submitted these survey results, these survey results differ from the other survey results recited in [REDACTED] letter.

²⁰ The regulations prohibit USCIS from approving an H-1B petition filed earlier than six months before the date of actual need for a beneficiary’s services. 8 C.F.R. § 214.2(h)(9)(i)(B). For H-1B classification, a petitioner is required to submit evidence of the terms of the agreement under which the beneficiary will be employed. See 8 C.F.R. § 214.2(h)(4)(iv)(A) and (B). Further, the petitioner must demonstrate eligibility at the time of filing in accordance with 8 C.F.R. § 103.2(b)(1).

In the instant case, the Petitioner submitted the H-1B petition on April 1, 2015. With the petition, the petitioner submitted an offer of employment letter from the Petitioner to the Beneficiary with the terms of the agreement under which the beneficiary will provide her services. The letter is dated March 11, 2015 (just a few weeks prior to the submission of the H-1B petition). In the letter, the Petitioner offers the Beneficiary a part-time position as an ERM analyst, starting on October 5, 2015. Thus, despite the October 1, 2015 start date listed on the petition, the Petitioner

Matter of S-R-, LLC

Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of S-R-, LLC*, ID# 17026 (AAO May 4, 2016)

indicated that its actual need for the Beneficiary's services is more than six months after the H-1B petition was filed. Therefore, the regulations preclude the approval of the petition. 8 C.F.R. § 214.2(h)(9)(i)(B).