



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

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

MATTER OF HM-M- CORP

DATE: MAY 10, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a retailer of Asian specialty food products, seeks to temporarily employ the Beneficiary as a part-time “purchasing manager” under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director, California Service Center, denied the petition. The Director concluded that the Petitioner had not established that the proffered position qualifies as a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional documentation and asserts that the proffered position is a specialty occupation under the applicable statutory and regulatory provisions.

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

The Petitioner identified the proffered position as a part-time “purchasing manager” on the H-1B petition, and attested on the required labor condition application (LCA) that the occupational classification for the position is “Purchasing Managers,” corresponding to Standard Occupational Classification code 11-3061 at a Level I wage.

In a letter of support and in an addendum to the H-1B petition, the Petitioner stated that the duties to be performed in the proffered position, in general, are as follows:

- Recommend retail price of various seasoning, dried foods, snacks, beverage, frozen foods, canned foods, raw fish, fruits and vegetables, kitchen equipments [*sic*] and home appliances, as appropriate;
- Develop display arrangement and space management;
- Coordinate the purchase of seasoning, dried foods, snacks, beverage, frozen foods, canned foods, raw fish, fruits and vegetables, kitchen equipments [*sic*] and home appliances to ensure appropriate assortment to achieve sales and profit objectives;
- Prepare marketing proposals of seasoning, dried foods, snacks, beverage, frozen foods, canned foods, raw fish, fruits and vegetables, kitchen equipments [*sic*] and home appliances to increase sales and profitability;

- Communicate and follow up with vendors, marketing and operation divisions for new product specification and costs;
- Coordinate the merchandising activities including hiring, setting performance objectives, assigning individual tasks, providing guidance, technical assistance as required, and evaluating the results achieved;
- Evaluate the operational performance of newly implemented plans and programs, measuring against project goals, and identify opportunities for further improvement as appropriate;
- Develop, direct and/or lead merchandising projects assigned by determining the requirement of new or modified programs, procedures and processes that support the merchandise operations functions; and
- Maintain awareness of other companies in Korean specialty food products and kitchen equipments [*sic*] retail industries in order to evaluate their merchandising support methodologies, control and reporting mechanisms for possible application to our company.

The Petitioner stated that the minimum requirement to perform the proffered position is “a Bachelor’s degree in Business Administration, Management, or related field of study, or progressively responsible work experience.”

In response to the Director’s request for evidence (RFE), the Petitioner expanded upon the position’s duties and allocated an approximate percentage of time its part-time purchasing manager would spend on each of the duties.

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 qualifies as a specialty occupation.¹ Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.²

As a preliminary matter, the Petitioner’s claim that a bachelor’s degree in business administration is a sufficient minimum requirement for entry into the proffered position 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. 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

¹ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

² The Petitioner submitted documentation to support 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.

occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business 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 147.³

Again, the Petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. Without more, this assertion 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 is a specialty occupation because the Petitioner has not satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). To reach this conclusion, we will now discuss the record of proceedings in relation to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), 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. 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

³ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

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

Id.

⁴ In support of the petition, the Petitioner relied upon the 2014-15 edition of the *Handbook*. The *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>, is now in its 2016-17 edition. The 2016-17 edition of the

The 2014-15 edition of the *Handbook* chapter on “Purchasing Managers, Buyers, and Purchasing Agents,” a copy of which the Petitioner submitted for the record, states that “[p]urchasing managers usually have at least a bachelor’s degree and some work experience in the field. A master’s degree may be required for advancement to some top-level purchasing manager jobs.”⁵ The 2016-17 edition of the *Handbook* chapter on “Purchasing Managers” similarly states that “[p]urchasing managers usually have at least a bachelor’s degree and some work experience in procurement. A master’s degree may be required for advancement to some top-level purchasing manager jobs.” U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., “Purchasing Managers,” <http://www.bls.gov/ooh/management/print/purchasing-managers.htm> (last visited Apr. 28, 2016). Both editions of the *Handbook* state that “[p]urchasing managers typically must have at least 5 years of experience as a buyer or purchasing agent.” *Id.*

A review of the *Handbook* does not indicate that, simply by virtue of its occupational classification, a purchasing manager position qualifies as a specialty occupation. The *Handbook* does not state a normal minimum requirement of a U.S. bachelor’s or higher degree *in a specific specialty*, or its equivalent, for entry into this occupational category. More specifically, while the *Handbook* states that purchasing managers “usually have at least a bachelor’s degree,” it does not specify whether the bachelor’s degree must come from a specific field of study. As previously stated, a general degree requirement is insufficient to establish a position as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147; *cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. at 560. While the *Handbook* also states that purchasing managers “typically must have at least 5 years of experience as a buyer or purchasing agent,” it does not specify whether this required work experience, combined with an otherwise unspecified bachelor’s degree, equates to at least a U.S. bachelor’s or higher degree *in a specific specialty*, and if so, in what specific specialty.

Handbook separates the occupation of purchasing managers from purchasing buyers or agents, a change which is relevant to the Petitioner’s assertions under this criterion. We therefore will analyze both the 2014-15 and 2016-17 editions of the *Handbook*.

Notwithstanding, we do not 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. Whenever more than one authoritative source is presented by the Petitioner, an adjudicator will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation.

⁵ The Petitioner asserts that the Director “misunderstood” the relevant part in the 2014-15 edition of the *Handbook* by confusing the requirements for purchasing managers with the requirements for the lower positions of buyers and purchasing agents. However, this assertion is not persuasive. As quoted above, the 2014-15 edition of the *Handbook* set forth specific requirements for purchasing managers, in addition to more general requirements for the occupational classification as a whole. Regardless, the fact that the 2016-17 edition of the *Handbook* now (1) separates purchasing managers from buyers and purchasing agents, and (2) makes similar statements to the 2014-15 edition of the *Handbook* regarding the requirements for purchasing managers, should help avoid any misinterpretation of the *Handbook*.

(b)(6)

Matter of HM-M- Corp

The Petitioner highlights the language in the 2014-15 edition of the *Handbook* that “[m]any manufacturing firms put an even greater emphasis on formal training, preferring applicants who have a bachelor’s or master’s degree in engineering, business, economics, or one of the applied sciences.” The Petitioner asserts that, based on this highlighted language, “we can infer that those specific specialties required to perform the duties of purchasing manager are engineering, business, economics, or one of the applied sciences.” However, the Petitioner’s assertions are unpersuasive. First, we note that a *preference* is not a *requirement*. Second, even if these degrees were required, a requirement of degrees in broad and potentially disparate fields, such as “business” or any “one of the applied sciences,” is insufficient to establish a requirement of a degree “in *the* specific specialty (or its equivalent).” Section 214(i)(1)(B) of the Act (emphasis added).

In addition, we have reviewed the opinion letter prepared by [REDACTED], Associate Dean of Academic Affairs, School of Business at the [REDACTED], which the Petitioner submits on appeal. [REDACTED] opines that the proffered position requires a minimum of “a Bachelor’s Degree in Business Administration, Operations Management, Marketing, or a related area, or the equivalent.”

Upon review of [REDACTED] opinion, we find that [REDACTED] does not explain the empirical basis for his conclusions. For instance, [REDACTED] does not indicate that he visited the Petitioner’s business premises or spoke with anyone affiliated with the Petitioner, so as to ascertain and base his opinions upon the substantive nature and educational requirements of the proposed duties as they would be actually performed. [REDACTED] also does not discuss the pertinent occupational information provided in the *Handbook* on the position of a purchasing manager, and differentiate the proffered position from those purchasing managers that the *Handbook* reports are performed by persons who have only a general degree and some experience.

Moreover, [REDACTED] confirms the Petitioner’s statement that the proffered position can be performed by an individual with a general-purpose business administration degree. Again, a general degree requirement is insufficient to establish a position as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147; *cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. at 560.

For all of the reasons discussed above, we find that [REDACTED] opinion letter is not probative evidence towards satisfying the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), or any other criteria. We may, in our discretion, use as advisory opinion statements submitted as expert testimony. 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. *Matter of Caron International*, 19 I&N Dec. 791 (Comm’r 1988).

The duties and requirements of the position as described in the record of proceedings 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)(I).

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 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.

We have reviewed the printouts of the online job announcements submitted by the Petitioner in response to the Director’s RFE and on appeal. This documentation, however, does not establish that the proffered position qualifies as a specialty occupation.

To satisfy this criterion, the Petitioner must establish that an advertising organization is similar to it and in the same industry. Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion. It 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.

Here, none of the submitted advertisements provide sufficient information regarding the advertising organizations to establish that the advertising organizations are similar to the Petitioner. For example, some of the advertising organizations appear to be staffing organizations that do not disclose the actual client, another is a large retail organization, and others do not appear to be in the Petitioner’s industry. Upon review, the information provided is insufficient to demonstrate that these advertising organizations are similar in type, scope, and size to this Petitioner.

Importantly, some of the advertisements require a degree in a field of general applicability such as “business administration” or “business.” Further, some advertisements appear to accept experience alone or experience that the advertising company deems comparable to a bachelor’s degree based on varying or unspecified standards. Moreover, the majority of the advertisements require that the successful applicant have between two and ten years of specific experience. As the Petitioner here has designated the proffered position as a Level I, entry-level position, it appears that the advertised positions are for more senior positions than the position proffered here.⁶ It is not possible to

⁶ A Level I wage level is the lowest of four assignable wage levels. The “Prevailing Wage Determination Policy Guidance” issued by the DOL provides a description of the wage levels. 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

conclude from the information provided in the advertisements that the positions are parallel to the proffered position.

In addition, 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. The Petitioner also did not demonstrate what statistically valid inferences, if any, can be drawn from these advertisements. Thus, the record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to parallel positions with organizations that are in the Petitioner's industry and otherwise similar to the Petitioner. The Petitioner has not, therefore, satisfied the criterion of 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.

The record does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), either. Even when considering the Petitioner's description of duties submitted in response to the Director's RFE and the allocation of the Beneficiary's time to those duties, the record does not sufficiently 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.

This is further evidenced by the Petitioner's attestation on the LCA that the wage level for the proffered position is a Level I (entry) wage. As noted above, this wage rate indicates that the Beneficiary is only required to have a basic understanding of the occupation. It is not indicative of a position that is one with complex duties, as such a higher-level position would likely be classified at a Level III or Level IV wage, requiring a significantly higher prevailing wage than the one proffered here.⁷ See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy*

rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that he will be closely supervised and his work closely monitored and reviewed for accuracy; and (3) that he 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 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. *Id.*

⁷ 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

Guidance, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

The record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that a general degree would be sufficient. As the Petitioner did not adequately demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the Petitioner has 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.

The Petitioner has not expressly asserted that it has employed other purchasing managers for its retail operation, but claimed that its affiliated companies have obtained H-1B classification for their purchasing manager employees. In support of its claim, the Petitioner submitted the federal tax return for its parent company, which is a holding company for 34 different affiliated companies (including the Petitioner). The Petitioner also submitted a list of receipt numbers for 11 H-1B petitions that were purportedly approved for the same position within the affiliated companies, along with the approval notices, job descriptions, and educational credentials for four of these petitions.⁸ In addition, the record includes the Petitioner's advertisement for the proffered position stating that the Petitioner requires a bachelor's degree in management, business administration, or a related field.

The Petitioner has not sufficiently established how representative the submitted evidence is of the overall company's employment history for this position. For instance, the Petitioner has not explained and documented how many total purchasing managers the company (including all 34 affiliates) has employed throughout its operational history. The Petitioner also has not explained and

Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I, entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty, or its equivalent. That is, a position's wage level designation may be a relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

⁸ While some of these four petitions are for "merchandising managers," the job duties are the same as the proffered duties. We note that the Petitioner did not submit detailed evidence for the other seven petitions it claims were previously approved. It must be emphasized that each petition filing is a separate proceeding with a separate record. *Hakimuddin v. DHS*, Civ No. 4:08-cv-1261, 2009 WL 497141, at *6 (S.D. Tex. Feb. 26, 2009); see also *Larita-Martinez v. INS*, 220 F.3d 1092, 1096 (9th Cir. 2000) (stating that the "record of proceeding" in an immigration appeal includes all documents submitted in support of the appeal). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. 8 C.F.R. § 103.2(b)(16)(ii).

documented the educational credentials for all the company's employees in this position. The Petitioner thus has not established what statistically valid and relevant inferences, if any, can be drawn from this limited data with regard to the company's normal employment practices. See generally *Earl Babbie, The Practice of Social Research* 186-228 (7th ed. 1995).

Notably, out of the four other petitions that the Petitioner submitted more detailed information about, the claimed educational credentials of these four employees reflect that the Petitioner does not normally require a bachelor's degree in a specific specialty, or its equivalent, for the position.⁹ These employees hold, for instance, bachelor's degrees in (1) business administration with a concentration in international trade, (2) agriculture economics, and (3) English language and literature. The Petitioner has not explained and documented how these various degrees are all directly related to the duties of the proffered position, such that these degrees could be considered to meet the statutory requirement of a degree "in *the* specific specialty (or its equivalent)." Section 214(i)(1)(B) of the Act (emphasis added). Without more, the evidence of record indicates that the Petitioner requires merely a general bachelor's degree which, as previously discussed, is insufficient to establish a position as a specialty occupation.¹⁰ See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147; cf. *Matter of Michael Hertz Assocs.*, 19 I&N Dec. at 560. Accordingly, the Petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

In the instant case, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. The Petitioner did not establish how the duties as described are complex or specialized so that they could only be performed by someone with a baccalaureate or higher degree in a specific specialty, or its equivalent. We reiterate our previous findings and comments regarding the insufficiency of evidence that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to

⁹ The Petitioner did not submit copies of these individuals' diplomas and/or foreign education evaluations. Nevertheless, we will assume for the sake of argument that the Petitioner's statements of these individuals' educational credentials are accurate.

¹⁰ The Petitioner further refers to several unpublished AAO decisions and asserts that we determined that knowledge to perform the duties of a specialty occupation could be imparted through studies in a variety of academic areas. The Petitioner does not submit copies of those decisions and it is unclear if the Petitioner's interpretation of those unpublished decisions is correct. Even if so, the Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. Moreover, 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.

the effect that a general degree would be sufficient. We also point out again the Petitioner's designation of the proffered position as a Level I, entry-level position. Such a designation is for a position that is not likely distinguishable by relatively specialized and complex duties.

The Petitioner has highlighted "[t]he specialized nature of [its] business, servicing Korean and other Asian immigrant population[s]." The Petitioner explains that this aspect of its operations "clearly distinguishes [its] business from all other supermarkets in the US which caters to the general population," as the Petitioner has "a special need to particularly tailor [its] marketing activities." However, these vague statements are insufficient to establish why the proffered duties require the theoretical and practical application of a body of highly specialized knowledge that can only be gained from a bachelor's or higher degree in a specific specialty, or its equivalent. For instance, while the Petitioner identified courses of study relevant to the proffered duties, the Petitioner did not explain in detail how these courses would provide the knowledge necessary to perform the proffered duties within the context of the Petitioner's particular operations and target immigrant audience.

Upon review of the totality of the record, the Petitioner has not established that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. For the reasons discussed above, the evidence of record does not satisfy the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

IV. CONCLUSION

Because the Petitioner has not satisfied any 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. The burden is on the 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 HM-M- Corp*, ID# 16308 (AAO May 10, 2016)