



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

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

MATTER OF M- LLC

DATE: MAY 13, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a cellular telephone store, seeks to employ the Beneficiary as a part-time “sales manager” under the H-1B nonimmigrant classification. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The 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, Vermont Service Center, denied the petition. The Director concluded that the Petitioner had not demonstrated that the position proffered in this case qualifies for treatment as a specialty occupation position.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the evidence of record is sufficient to show that the petition should be approved.

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

I. 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) 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 claims in the labor condition application (LCA) submitted to support the visa petition that the proffered position corresponds to Standard Occupational Classification (SOC) code and title 11-2022, Sales Managers, from the Occupational Information Network (O*NET).

In a letter submitted with the visa petition, the Petitioner stated that the duties of the proffered position include, but are not limited to:

- Resolving customer complaints regarding sales and service.
- Determining price schedules and discount rates.
- Reviewing operational records including past sales records to project future sales and determine profitability.
- Preparing budgets and approving budget expenditures.
- Conferring with upper management/owners in order to plan advertising and promotions of the company’s services.
- Directing and coordinating all activities related to the sale of our products and services.
- Monitoring customer satisfaction and preferences in order to maintain quality of our services to ensure repeat sales and generate new customers.

The Petitioner further stated:

The [proffered position] is very specific and requires a level of complexity that can only be achieved through formal education and work experience in the field such as [the Beneficiary] has obtained. [The Beneficiary's] educational background makes him an ideal candidate for this position. [The Beneficiary] will be required to apply the principles, practices, methods and techniques only learned through a formal education.

The Petitioner did not otherwise characterize the educational background required by the proffered position.

Subsequently, the Petitioner provided a letter, dated June 11, 2015, which contains the following expanded list of duties (note: errors in the original text have not been changed):

1. The hiring, training, and development of [the Petitioner's] staff (sales and technicians) to build a team motivated to deliver exceptional customer service and quality brand presentation. [The Beneficiary] will be responsible for identifying and training top talent for all three stores across all staff levels. This task will occupy on average around 15% of the manager daily duties.
2. Responsible for staff scheduling for [all of the Petitioner's locations] to ensure appropriate shift coverage during stores operation hours. This task will occupy on average around 5% of the manager daily duties.
3. Manage and motivate sales staff to meet or exceed target sales objectives. This can be achieved firstly through the selection and development of a high performing sales team. Secondly, [the Petitioner] will oversee, direct and coordinate sales activities of all sales personnel at all three locations and make adjustments in staffing and sales objectives as needed based on a daily, weekly and quarterly reviews of each sales person's performance. This task will occupy on average around 15% of the manager daily duties.
4. Drive sales by continuously finding new ways to boost sales and staff productivity (i.e. planning stores promotions for holiday's periods). This task will occupy on average around 10% of the manager daily duties.
5. Ensure the accuracy, completion and reconciliation of all financial transactions including merchandise purchase orders, inventory tracking, and operation of Point of Sale (POS) terminals. This task will occupy on average around 20% of the manager daily duties.
6. Compute weekly/monthly sales report and analyze business growth regularly to make appropriate decisions. This task will occupy on average around 10% of the manager daily duties.
7. Oversees and coordinates the safety and security of [the Petitioner's] employees, merchandise and the store premises. This task will occupy on average around 10% of the manager daily duties.

8. Addresses all escalated customer service related issues with a professional courtesy and provides a consistent experience for the customer. This task will occupy on average around 5% of the manager daily duties.
9. Other duties and responsibilities as assigned on demand. This task will occupy on average around 5% of the manager daily duties.

In that letter, the Petitioner stated that the Beneficiary has the equivalent of a U.S. degree in Management and Business and that his education and experience qualify him for the proffered position. It did not state that the proffered position requires any specific degree.

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 (1) does not describe the position's duties with sufficient detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.²

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.³

In the chapter entitled "Sales Managers," the *Handbook* states the following with regard to the requirements of sales manager positions: "Most sales managers have a bachelor's degree, although some have a master's degree. Educational requirements are less strict for job candidates who have significant work experience. Courses in business law, management, economics, accounting, finance, mathematics, marketing, and statistics are advantageous."

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.

³ All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., Sales Managers," <http://www.bls.gov/ooh/management/sales-managers.htm#tab-4> (last visited May 11, 2016).

Although the *Handbook* states that most sales managers have a bachelor's degree, and that some have a master's degree, it does not indicate that their degrees must be in any specific specialty. As such, it does not indicate that a minimum of a bachelor's degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position.

When reviewing the *Handbook*, it also must be noted that the Petitioner designated the proffered position as a Level I (entry level) position on the LCA. 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.

See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

Thus, in designating the proffered position at a Level I wage, the Petitioner has indicated that the proffered position is a comparatively low, entry-level position relative to others within the occupation. That is, 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 will perform routine tasks that require limited, if any, exercise of judgment; that he would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results. As noted above, according to DOL guidance, a statement that the job offer is for a research fellow, worker in training or an internship is indicative that a Level I wage should be considered. That the Petitioner asserts that the proffered position is a Level I position makes the assertion that it requires a minimum of a bachelor's degree in a specific specialty or its equivalent yet more tenuous.

In certain instances, the *Handbook* is not determinative. In such case, it is the Petitioner's responsibility to provide probative evidence (e.g., documentation from other objective, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation. In this matter, the Petitioner provided the O*NET Summary Report for Sales Managers, which only states that

most, but not all, of these occupations require a four-year bachelor's degree. O*NET OnLine Summary Report for "11-2022, Sales Managers," <http://www.onetonline.org/link/summary/11-2022.00> (last visited May 11, 2016). More importantly, however, the O*NET does not reference any specific specialty for the degree. As such, it cannot be concluded based on O*NET that the position qualifies as a specialty occupation normally requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, we find that, to the extent that they are described in the record of proceedings, the duties that the Petitioner ascribes to the proffered position indicate a need for a range of knowledge pertinent to sales, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

For the reasons explained above, the evidence does not satisfy 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 casts its gaze upon 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)).

Here and as already discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or 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. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in

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the Petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals."

Apparently to satisfy this criterion, the Petitioner provided vacancy announcements placed by other companies. They are for positions entitled Digital Account Manager, Business Development Manager IV, Regional Sales Manager, Bilingual (Spanish/English) Entry Level Sales Account Manager Trainee, Field Sales and Marketing Manager, Account Manager-Customer Service, and Marketing Manager, Communications.

For various reasons, the vacancy announcements submitted by the Petitioner do not establish that the degree requirement is common to the industry in parallel positions among similar organizations. First, we note that 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.

Second, upon review of the advertisements, we find that they do not provide sufficient information about the advertising organizations to establish that they are similar to the Petitioner. Without such evidence, these advertisements are generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the Petitioner. Moreover, the descriptions of responsibilities in the advertisements are generally perfunctory and do not provide sufficient information to determine the role the successful applicant will play in the advertising organization or the level of responsibility that will be required of the successful applicant.

We observe that one of the advertisements is for "Business Development Manager IV," which is unlikely to denote an entry-level position, as the Petitioner has characterized the position proffered in this case. In fact, only one of the vacancy announcements makes clear that it is for an entry-level position: a "Bilingual (Spanish/English) Entry Level Sales Account Manager-Trainee" position for [REDACTED] which is not in the Petitioner's industry.

Further, some of the vacancy announcements state that the positions they announce require a bachelor's degree, but not that they require a bachelor's degree in any specific specialty. Some of the vacancy announcements state that six years of experience, or four to six years of experience, or greater than five years of experience would be an acceptable qualification in lieu of a bachelor's degree. Six years of experience is not equivalent to a bachelor's degree pursuant to the salient regulation. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

Finally, even if all of the vacancy announcements were for parallel positions with organizations similar to the Petitioner and in its industry, and required a minimum of a bachelor's degree in a specific specialty or its equivalent, the Petitioner has not demonstrated what statistically valid inferences, if any,

can be drawn from those announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.⁴

Thus, the evidence of 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 evidence of record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." A review of the record of proceedings indicates that the Petitioner has not credibly demonstrated that the duties the Beneficiary will be responsible for or perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty, or its equivalent. Even when considering the Petitioner's general descriptions of the proffered position's duties, the evidence of record does not establish why a few related courses or industry experience alone is insufficient preparation for the proffered position. 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.

This is further evidenced by the LCA submitted by the Petitioner in support of the instant petition. As noted above, the Petitioner attested on the submitted LCA that the wage level for the proffered position is a Level I (entry-level) wage. Such a wage level is for a position which only requires a basic

⁴ USCIS "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). As just discussed, the Petitioner has not established the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the Petitioner still would not have demonstrated what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

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understanding of the occupation, and is contrary to a position that requires the performance of complex duties.⁵ In order to show that parallel positions require a minimum of a bachelor's degree in a specific specialty or its equivalent, the Petitioner would be obliged to demonstrate that other wage Level I sales manager positions, entry-level positions requiring only a basic understanding of sales management, require a minimum of a bachelor's degree in a specific specialty or its equivalent, the proposition of which is not supported by the *Handbook*.

The Petitioner provided an evaluation of the proffered position to satisfy this criterion. That evaluation was prepared by [REDACTED] a Professor of Marketing and Associate Dean for Graduate Programs in the School of Business & Economics at [REDACTED]. Based on a duty description that is substantially similar to that the Petitioner provided in its June 11, 2015, letter, [REDACTED] stated that the duties of the proffered position can only be performed by a person with at least a bachelor's degree in management or a related field.

However, there is no indication that [REDACTED] possesses any knowledge of the Petitioner's proffered position beyond the brief duty description. For example, he does not discuss the duties of the proffered position in any substantive detail. Further, while he provided a brief description of the Petitioner's business ("mobile wireless company which markets mobile phones, applications, and compatible electronic devices and applications"), he does not demonstrate or assert in-depth knowledge of the specific business operations or how the duties of the position would actually be performed in the context of the Petitioner's business enterprise. For instance, there is no evidence that [REDACTED] has visited the Petitioner's business, observed the Petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job.

Furthermore, there is no indication that the Petitioner advised [REDACTED] that it characterizes the proffered position as a low, entry-level sales manager position, for a beginning employee who has only a basic understanding of the occupation (as indicated by the wage-level on the LCA) relative to other positions within the occupational category. We consider this a significant omission, as it appears that [REDACTED] would have found this information relevant for his opinion letter. Moreover, without this information, the Petitioner has not demonstrated that [REDACTED] possessed the requisite information necessary to adequately assess the nature of the Petitioner's position and appropriately determine parallel positions based upon job duties and responsibilities.

⁵ 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.

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In summary, and for each and all of the reasons discussed above, we conclude that the opinion letter rendered by [REDACTED] is not sufficient to establish the proffered position qualifies as a specialty occupation. The conclusions reached by [REDACTED] lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which he reached such conclusions. There is an inadequate factual foundation established to support the opinion and we find that the opinion is not in accord with other information in the record. As such, neither [REDACTED] findings nor his ultimate conclusions are persuasive, and his opinion letter does not satisfy any criterion of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The evidence of 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 there is a spectrum of degrees acceptable for such positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the Petitioner did not 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.

To address this criterion, the Petitioner states, on appeal:

Because the [Petitioner] is new the Petitioner does not have a track record of hiring other sales managers and documenting the [Petitioner's] requirement that any candidate for this position must possess the equivalent of a U.S. bachelor's degree in management or a related field and have sales management experience. [*sic*] However, the Petitioner is establishing this standard for [itself] now and USCIS'[s] refusal to grant the Petitioner the liberty of establishing its own hiring standards despite evidence that a majority of sales manager's in the mobile services filed and other industry[ies] require a minimum of a Bachelor's degree in management or a related field and serval years of sales management experience. [*sic*]

The proffered position is a new position. While a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, it is unclear how an employer that has never recruited and hired for the position would be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position.

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

We conclude that 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. We again refer to our earlier comments and findings with regard to the implication of the Petitioner's designation of the proffered position in the LCA as a Level I (the lowest of four assignable levels) wage. That is, the Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category, and hence one not likely distinguishable by relatively specialized and complex duties. 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).

The Petitioner has not 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. The appeal will be dismissed.

E. Additional Discussion

The Petitioner cited two unpublished decisions in which we determined that a particular "senior sales/marketing engineer" position, and a particular "market research analyst" position, qualified as

specialty occupation positions. However, the Petitioner has furnished insufficient evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. Further, 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.

Finally, the Petitioner cites to *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), for the proposition that “there is no apparent requirement that the specialized study needed to be in a single academic discipline as opposed to a specialized course of study in related business specialties” and that what is important is that “an occupation requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge.”

We agree with the aforementioned proposition that “[t]he knowledge and not the title of the degree is what is important.” In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor’s or higher degree in more than one specialty is recognized as satisfying the “degree in the specific specialty (or its equivalent)” requirement of section 214(i)(1)(B) of the Act. In such a case, the required “body of highly specialized knowledge” would essentially be the same. Since there must be a close correlation between the required “body of highly specialized knowledge” and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be “in *the* specific specialty (or its equivalent),” unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

In the instant case, the Petitioner has never clearly stated: (1) that the proffered position requires a minimum of a bachelor’s degree, or its equivalent, in a specific specialty or (2) that a range of specialties would suffice and, if so, what that range of specialties would include. Further, of the two position evaluations provided, one indicates that an otherwise undifferentiated bachelor’s degree in business administration would be a sufficient educational qualification for the proffered position.

A degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558 (Comm’r 1988). As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor’s degree in business administration is not a requirement of a minimum of a bachelor’s degree in a specific specialty or its equivalent. That such a degree would satisfy the educational requirement of the proffered position indicates that the proffered position is not a specialty occupation position.

In any event, the Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Finance*.⁶ We also note that, in contrast to the broad

⁶ It is noted that the district judge’s decision in that case appears to have been based largely on the many factual errors

precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. *See Matter of K-S-*, 20 I&N Dec. 715, 719-20 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.*

IV. BENEFICIARY'S QUALIFICATIONS

As the Petitioner did not demonstrate that the proffered position is a specialty occupation, we need not fully address other issues evident in the record. That said, we wish to identify an additional issue to inform the Petitioner that this matter should be addressed in any future proceedings.⁷

Specifically, the record does not currently demonstrate that the Beneficiary's combined education and work experience is the equivalent of a U.S. bachelor's degree in a specific specialty. While the claimed equivalency is based in part on experience, the record does not establish (1) that the evaluator has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university with a program for granting such credit, or (2) that the Beneficiary's expertise in the specialty is recognized through progressively responsible positions directly related to the specialty. *See* 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(~~7~~) and (D)(1).

V. CONCLUSION

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 M- LLC*, ID# 16402 (AAO May 13, 2016)

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

⁷ In reviewing a matter *de novo*, we may identify additional issues not addressed below in the Director's decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003) ("The AAO may deny an application or petition on a ground not identified by the Service Center.").