



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

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

MATTER OF S-E-, INC.

DATE: MAY 24, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a furniture and accessories wholesaler, seeks to temporarily employ the Beneficiary as a "supply chain analyst" 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, Vermont Service Center, denied the petition. The Director concluded that the Petitioner had not demonstrated 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. In its appeal, the Petitioner submits additional evidence and asserts that the evidence of record is sufficient that the visa petition should be approved.

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 H-1B petition, the Petitioner stated that the Beneficiary would serve as a “supply chain analyst.” In a letter, dated March 24, 2015, the Petitioner stated:

In his capacity as a Supply Chain Analyst, [the Beneficiary] will be providing the following services to our company:

- Analyze supplier performance using tools like root cause analysis and identify opportunities for improvement periodically.
- Develop and make reports on supply chain key performance indicators on a regular basis for the management team and contribute to facilitating decision making using these reports.
- Monitor inventory position for the company’s products and make suggestions to expedite/de-expedite purchases and manage demand.

- Interpret data on logistics elements, such as availability, maintainability, reliability, supply chain management, strategic sourcing or distribution, supplier management, or transportation.
- Communicate to all company's global suppliers and work to resolve all supply chain related issues to ensure the on time product delivery.
- Provide ongoing analyses in areas such as transportation costs, parts procurement, back orders, or delivery processes
- Perform ad hoc analysis and reports on logistic performance measures for management.
- Manage consignment program with business partners and replenish inventory as required.
- Remotely monitor the flow of inventory, using Web-based logistics information systems to track delivery of containers of products.
- Develop or maintain models for logistics uses, such as cost estimating or demand forecasting
- Perform cross-functional assignments with sales, marketing, finance and warehouse teams.
- Enter logistics-related data into databases using Lean Manufacturing and Six Sigma production processes, as well as using Excel, Word, Microsoft Access for reports.
- Communicate and present to upper management effectively.

The Petitioner also stated, "The requirement for the position is a Bachelor's degree in Supply Chain Management, or a related field."

### 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.<sup>1</sup> Specifically, the record does not establish that the job duties the Beneficiary would perform in the proffered position require an educational background, or its equivalent, commensurate with a specialty occupation.<sup>2</sup>

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

<sup>2</sup> 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.

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. 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.<sup>3</sup>

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner stated that the proffered position corresponds to SOC Code and Title 13-1081, Logisticians, from O\*NET.<sup>4</sup> The *Handbook* states the following about the educational requirements of logistician positions:

Logisticians may qualify for some positions with an associate's degree. However, as logistics becomes increasingly complex, more companies prefer to hire workers who have at least a bachelor's degree. Many logisticians have a bachelor's degree in business, systems engineering, or supply chain management.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Logisticians," <http://www.bls.gov/ooh/business-and-financial/logisticians.htm#tab-4> (last visited May 23, 2016).

The *Handbook* indicates that logistician positions do not require a minimum of a bachelor's degree or the equivalent for entry, as it indicates that an associate's degree may suffice for some positions. Further, as to those logistician positions that may require a bachelor's degree, the *Handbook* indicates that an otherwise undifferentiated bachelor's degree in business administration may suffice.

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<sup>3</sup> 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.

<sup>4</sup> The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). We will consider this selection in our analysis of the position. 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 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](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.*

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.

In the instant case, the Petitioner also cited O\*NET's inclusion of logistician positions within Job Zone 4 and Specific Vocational Preparation level (SVP level) 7.0 to < 8.0 as evidence that it qualifies as a specialty occupation position.

A designation of Job Zone 4 indicates that a position requires considerable preparation.<sup>5</sup> It does not, however, demonstrate that a bachelor's degree in any specific specialty is required, and, therefore, does not demonstrate that a position so designated is in a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). See the O\*NET *OnLine* Help Center, at [www.online.onetcenter.org/help/online/zones](http://www.online.onetcenter.org/help/online/zones), for a discussion of Job Zone 4, which explains that this Zone signifies only that most but not all of the occupations within it require a bachelor's degree. Further, the Help Center's discussion confirms that Job Zone 4 does not indicate any requirements for particular majors or academic concentrations. Therefore, despite counsel's assertions to the contrary, the OWL and O\*NET information is not probative of the proffered position qualifying as a specialty occupation.

Similarly, the inclusion of logistician positions within SVP level 7.0 to < 8.0 does not demonstrate that a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation.

The following is an explanation of the various levels of specific vocational preparation:

Level	Time
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month
3	Over 1 month up to and including 3 months
4	Over 3 months up to and including 6 months
5	Over 6 months up to and including 1 year
6	Over 1 year up to and including 2 years
7	Over 2 years up to and including 4 years
8	Over 4 years up to and including 10 years
9	Over 10 years

See <http://www.onetonline.org/help/online/svp>.

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<sup>5</sup> For an explanation of Job Zones, see <http://www.onetonline.org/help/online/zones>.

Thus, an SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position.<sup>6</sup> 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. Further, the SVP level of logistician positions makes clear that a logistician position may require as little as two years of preparation. For both reasons, the SVP level of logistician positions does not indicate that such positions require a minimum of a bachelor's degree in a specific specialty or its equivalent, and does not, therefore, demonstrate that they qualify as specialty occupation positions.

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 of shipping, 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 all of these reasons, 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 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

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<sup>6</sup> For an explanation of SVP levels see <http://www.onetonline.org/help/online/svp>.

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requirement for at least a bachelor's degree in a specific specialty or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals."

The Petitioner did provide vacancy announcements placed by other companies. They are for positions entitled, Supply Chain Business Analyst, Supply Chain Analyst, Sr. MPM (Manufacturing Process Management) Specialist, Subcontract Program Manager, and ENG Logistics Specialist II.

Some of those vacancy announcements do not state an educational requirement. Another announcement suggests that the educational requirement of the positions it announces may be satisfied by a degree in business administration, which, as was explained above, absent additional specification, is not a degree in a specific specialty. Those vacancy announcements are not, therefore, persuasive evidence in support of the proposition that such positions require a minimum of a bachelor's degree in a specific specialty or its equivalent.

None of those vacancy announcements appears to have been placed by furniture wholesalers, which is the Petitioner's industry. Some were placed by [REDACTED] a manufacturer of high-tech weaponry and similar electronics; [REDACTED] a similar manufacturer; and [REDACTED] a craft store chain. Another was placed by a recruiting company and does not specify the industry the position advertised is in. As none of the jobs discussed in the vacancy announcements have been shown to be within the Petitioner's industry, they are not directly relevant to whether the Petitioner can satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Further, the Petitioner has designated the proffered position a wage Level I position which, as was explained above, is an entry-level position relative to others in the occupational category. The position designated ENG Logistics Specialist II, by virtue of the suffix "II," is unlikely to be an entry-level position. As such, it is unlikely to be a position parallel to the proffered position, and has not been shown to be relevant to the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Some of the vacancy announcements state a requirement of a considerable amount of specific experience, which suggests that the positions they discuss are also not analogous to wage Level I positions and are not, therefore, directly relevant to whether the Petitioner has satisfied this criterion.

In order to attempt 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 logistician positions, entry-level positions requiring only a basic understanding of the duties of a logistician position, 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*.

Finally, even if all of the vacancy announcements were for parallel positions with organizations similar to the Petitioner and in the Petitioner's industry and unequivocally required a minimum of a

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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 the few announcements provided with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>7</sup>

The Petitioner also submitted two evaluations of the proffered position. [REDACTED] of the Department of Business Management of [REDACTED] prepared the first evaluation. It states that "Based on the [Petitioner's] operations," the proffered position requires, "the level of knowledge and analytical capability that would only reliably have been gained via bachelor's study in Supply Chain Management or a related field."

[REDACTED] of the [REDACTED] prepared the second position evaluation. She stated that the proffered position requires a degree with the coursework appropriate to the performance of the duties listed by the Petitioner, which could include a bachelor's degree in supply chain management, industrial engineering, or process engineering.

We reviewed those letters in their entirety. However, as discussed below, neither persuades us that the proffered position is a specialty occupation.

One of the evaluators based his evaluation on the duties listed in the Petitioner's March 24, 2015, letter. The other is based on a substantially similar set of duties. However, the record contains no indication that either evaluator possesses any knowledge of the Petitioner's proffered position beyond those brief duty descriptions. For example, they did not discuss the duties of the proffered position in any substantive detail, but simply relied on the same generalized, bullet-pointed list of duties contained in the Petitioner's letter. Further, although one provided a brief description of the Petitioner's business ("Texas-based home furnishing wholesaler"), and stated that his opinion is "Based on the operations of the company," neither demonstrates or asserts 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 specific business enterprise. For instance, there is no evidence that either evaluator 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.

The evaluators assert a general industry educational standard for logistician positions without referencing any supporting authority or any empirical basis for the pronouncement. Likewise, they do not provide a substantive, analytical basis for their opinions and conclusions. They do not relate their conclusions to specific, concrete aspects of the Petitioner's business operations to demonstrate

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<sup>7</sup> 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).

a sound factual basis for their conclusions about the educational requirements for the particular position here at issue. Accordingly, the very fact that they attribute a degree requirement to such a generalized treatment of the proffered position undermines the credibility of their opinions.

Furthermore, there is no indication that the Petitioner advised the evaluators that the Petitioner characterized the proffered position as a low, entry-level logistician 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. It appears that the evaluators would have found this information relevant to their analyses. Moreover, without this information, the Petitioner has not demonstrated that the evaluators 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. We therefore consider this a significant omission.

In summary, and for each and all of the reasons discussed above, we conclude that the opinion letters provided do not establish that the proffered position qualifies as a specialty occupation. The conclusions reached by the evaluators are not supported by independent, objective evidence demonstrating the manner in which they reached such conclusions. There is an inadequate factual foundation established to support the opinion and we find that the opinions are not in accord with other information in the record. As such, neither the evaluators' findings nor their conclusions are worthy of any deference, and their opinion letters are not probative evidence towards satisfying any criterion of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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). As a reasonable exercise of our discretion we discount the advisory opinion letters as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, we hereby incorporate the above discussion and analysis regarding the opinion letter into each of the bases in this decision for dismissing the appeal.

For all of the reasons above, 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.

A review of the record of proceedings finds 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 only a person with at least a bachelor's degree in a specific specialty, or its equivalent can perform it. Even when considering the Petitioner's 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 understanding of the occupation; the performance of routine tasks that require limited, if any, exercise of judgment; close supervision and work closely monitored and reviewed for accuracy; and the receipt of specific instructions on required tasks and expected results, is contrary to a position that requires the performance of complex duties.<sup>8</sup> It is, instead, a position for an employee who has only basic understanding of the occupation.

Therefore, 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 that are less than a bachelor's degree. 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

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<sup>8</sup> The issue here is that the Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), an entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty or its equivalent. That is, a position's wage level designation may be a consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

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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.

In the instant case, the Petitioner identified two people, [REDACTED] and [REDACTED] whom it says have worked in the proffered position, and provided résumés that show that they have bachelor's degrees. The Petitioner did not provide transcripts, diplomas, or any other evidence to corroborate the assertions on those résumés.

Absent supporting documentation a *curriculum vitae* is not sufficient to meet the petitioner's burden of proof. The résumés of [REDACTED] and [REDACTED] represent claims made by [REDACTED] and [REDACTED] rather than evidence to support their claims, and the record of proceeding lacks documentary evidence to establish or corroborate the claims regarding the education and professional experience made in their résumés. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Further, the Petitioner, which has 59 employees and was established in [REDACTED] did not indicate whether [REDACTED] and [REDACTED] are the only people to have held the proffered position, or the only people to have held it recently. As such, even if the evidence were sufficient to show that [REDACTED] and [REDACTED] have the claimed degrees, the evidence would still be insufficient to show that the Petitioner normally requires a bachelor's degree for the proffered position.

Further, the Petitioner provided an organizational chart that shows that one of those employees, [REDACTED], supervises the Beneficiary and another inventory coordinator. Since the Petitioner has designated the proffered position a wage Level I position, an entry-level position for an employee with only a basic understanding of the occupation, to perform routine tasks under close supervision, it is unlikely to be a supervisory position. Therefore, evidence pertinent to the educational requirement the Petitioner places on the Beneficiary's supervisor is not directly relevant to this criterion, as he does not, and apparently will not, hold the same position.<sup>9</sup>

For all of these reasons, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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<sup>9</sup> If the Petitioner does plan to elevate the Beneficiary to a supervisory role, this would raise the issue of whether the petition is supported by a corresponding LCA, which was certified for an entry-level position in which the employee needs only a basic understanding of the occupation, will perform routine tasks that require limited, if any, exercise of judgment, and will himself work under close supervision.

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.

We also incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the position in the LCA as a Level I position (the lowest of four assignable wage-levels) relative to others within the same occupational category. The Petitioner 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 any 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. 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 S-E-, Inc.*, ID# 17058 (AAO May 24, 2016)