



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

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

MATTER OF T-C-S- LTD.

DATE: MAY 24, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an information technology consulting firm, seeks to temporarily employ the Beneficiary as a “developer” 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 demonstrated that: (1) the proffered position qualifies for treatment as a specialty occupation position; and (2) the Beneficiary is qualified to work in a specialty occupation position.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that evidence of record is sufficient to demonstrate that the instant 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 will serve as a “developer.” In a letter dated March 28, 2015, the Petitioner provided the following list of duties of the proffered position:

- Develop industry-specific solutions based on client needs and manage and upgrade existing applications.
- Carry out detailed analysis to understand requirements and create code and/or build solutions as per requirements in development/maintenance projects in accordance with coding standards.
- Perform unit testing per test plans and test cases.
- Develop and manage applications, upgrade existing applications and/or integrate application with any new/existing applications and databases.
- Resolve application-related issues experienced by end-users.
- Provide consulting and/or pre-sales support through initial consulting to engagements based on practice solutions offerings, through input on RFPs/RFIs/client presentations, and through technical reviews of contracts and service agreements, as needed.

A letter from the Petitioner, dated August 31, 2015, contains the following additional duties:

- Provide service continuity by analyzing & identifying issue priority and provide solutions in time
- Address the enhancement demand provided by the business.
- Quick turnaround for Service requests.
- Key in resolving the JIRA/Incident/Problem/change management issues.
- Optimal utilization of the resource (Performance optimization).
- Standardize platform and services
- Supporting enterprise solutions as per SLA.
- Minimize custom solutions adhere to standard solutions in SAP & Improve quality of service.
- Participate in requirement gathering sessions held with Business
- System analysis and preparation of Proof of concepts and presenting them to Business
- Configure the SAP system as per the solution design proposed and document the changes in a Configuration Design Specification
- Transfer the technical requirements to the respective teams and assist in developing a High Level design for the program changes
- Collaborate with the interface teams to test the Business requirement across the system landscape

The Petitioner asserted that the duties of the proffered position “are more than sufficiently complex to justify [the Petitioner’s] requirement that candidates for the Computer Programmer position possess at least a Bachelor’s degree or its equivalent in a technical field.” The Petitioner also stated that the proffered position requires a bachelor’s degree in Computer Science, Engineering, Information Systems, or a directly 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 require an educational background, or its equivalent, commensurate with a specialty occupation.<sup>2</sup>

As a preliminary matter, we find that the Petitioner has not established the substantive nature of the work to be performed by the Beneficiary, which precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). For example, the record contains a copy of an employment contract. The Petitioner stated that “[the employment contract] is a sample deputation agreement demonstrating the terms which govern the employment of [the

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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.

*Matter of T-C-S- Ltd.*

Petitioner's] employees, such as the Beneficiary, upon their deputation to the United States." That employment contract states, *inter alia*:

[The Petitioner] shall be entitled to relocate [the Beneficiary] to another location in the United States and/or redefine roles and tasks (including assignments to different project(s) and different customer engagement(s) during the Deputation Term . . . . [The Beneficiary] here by agrees to such relocation and extensions as reasonably required by [the Petitioner].

Because the Petitioner reserves the right to assign the Beneficiary to duties other than those described, it has not demonstrated the substantive nature of the duties the Beneficiary would actually perform if the visa petition were approved. That is, the Petitioner, has provided the employment agreement described above and indicated that it is relevant to the instant petition. If the visa petition were approved, the Petitioner has indicated that it might assign the Beneficiary to perform other, unspecified duties. The substantive nature of those other duties that the Beneficiary might perform is not clear.<sup>3</sup>

That the Petitioner did not establish the substantive nature of the work to be performed by the Beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4. Because the Petitioner cannot satisfy any of the alternative criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is unable to show that the proffered position qualifies as a specialty occupation position pursuant to the salient regulations. This is sufficient reason to find that the proffered position has not been shown to qualify for treatment as a specialty occupation position .

Nevertheless, in order to perform a comprehensive analysis, we will assume, *arguendo*, that the duty descriptions provided accurately depict the duties the Beneficiary would actually perform if the visa petition were approved, and continue our analysis of whether the proffered position qualifies as a specialty occupation. To that end, we will next discuss the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) individually.

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<sup>3</sup> The employment contract also specifically states that the Beneficiary may be relocated to other worksites. However, the Petitioner stated in the H-1B petition that the [redacted] address in [redacted] Minnesota would be the "ONLY WORK LOCATION." "[I]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence." *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92.

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.<sup>4</sup>

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Computer Programmers" corresponding to the Standard Occupational Classification code 15-1131.<sup>5</sup>

The *Handbook* states the following about the educational requirements of positions located within the "Computer Programmers" occupational category:

Most computer programmers have a bachelor's degree; however, some employers hire workers who have an associate's degree. Most programmers get a degree in computer science or a related subject. Programmers who work in specific fields, such as healthcare or accounting, may take classes in that field to supplement their degree in computer programming. In addition, employers value experience, which many students gain through internships.

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

According to the *Handbook*, the occupation accommodates a wide spectrum of educational credentials, including less than a bachelor's degree in a specific specialty. The *Handbook* states that some employers hire workers who have an associate's degree. Furthermore, while the *Handbook's*

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<sup>4</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>5</sup> The Petitioner classified the proffered position at a Level II wage (the second-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 II wage rate is generally appropriate for positions in which the Beneficiary will perform "moderately complex tasks" that require only "limited judgment." 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.*

narrative indicates that most computer programmers obtain a degree (either a bachelor's degree or an associate's degree) in computer science or a related field, the *Handbook* does not report that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. The *Handbook* also reports that employers value computer programmers who possess experience, which can be obtained through internships.

Moreover, given the Petitioner's statement on the LCA that this is a Level II position, and that the Beneficiary would therefore be performing moderately complex tasks requiring only limited judgment, the Petitioner has not provided documentation from another probative source to substantiate that its particular position requires a bachelor's degree in a specific specialty. In fact, to the extent that they are described in the record of proceedings, the numerous duties that the Petitioner ascribes to the proffered position indicate a need for a range of technical knowledge in the computer/IT field, 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.

Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

#### B. Second Criterion

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

As noted, the Petitioner provided job vacancy announcements placed by other companies to satisfy this criterion. The Internet vacancy announcements submitted by the Petitioner do not, however, establish that the degree requirement is common to the industry in parallel positions among similar organizations. First, the Petitioner did not provide any independent evidence of how representative these job vacancy 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.

Some of the vacancy announcements advertise computer systems analyst or programmer analyst positions. However, the *Handbook* considers computer systems analyst and programmer analyst positions separately, in the chapter entitled, "Computer Systems Analysts," while the Petitioner represented the proffered position as being located within the "Computer Programmers" occupational category. If the proffered position is a computer programmer position, as represented, then those positions may not be positions parallel to the proffered position, and the requirements of those positions would thus be inapposite to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Further still, some of those vacancy announcements indicate that a bachelor's degree in business administration would be a sufficient educational preparation for the positions they announce. An otherwise unspecified degree in business administration is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558 (Comm'r 1988). Therefore, an educational requirement that may be satisfied by an otherwise unspecified 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. As such, those vacancy announcements provide little support for the proffered position that positions parallel to the proffered position require a minimum of a bachelor's degree in a specific specialty or its equivalent.

One of the vacancy announcements indicates that the position it announces requires a bachelor's degree, with a preference that the degree be in computer science, mathematics, or a related field. A "preference" is not analogous to a minimum requirement. As such, that vacancy announcement does not state a *requirement* of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Finally, even if all of the vacancy announcements were for parallel positions at organizations similar to the Petitioner and in the Petitioner's 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, could be drawn from the announcements provided with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>6</sup>

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 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.

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

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<sup>6</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, could 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).

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, we cannot conclude that the Petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

This is further evidenced by the LCA submitted by the Petitioner in support of the instant petition. Again, the LCA indicates that, relative to other positions located within the "Computer Programmers" occupational category, the Beneficiary would perform only moderately complex tasks that require only limited judgment. Without further evidence, the evidence does not demonstrate that the proffered position is complex or unique as such a position falling under this occupational category would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage.<sup>7</sup> For example, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems." The evidence of record does not establish that this position is significantly different from other positions in the occupational category such that it refutes the *Handbook's* information that a bachelor's degree in a specific specialty, or its equivalent is not required for the proffered position.

The Petitioner claims that the Beneficiary is well-qualified for the position, and references his qualifications. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position, and it did not identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. Accordingly, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

### C. Third Criterion

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

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<sup>7</sup> The issue here is that the Petitioner's designation of this position as a Level II 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 II wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), such a 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.

To establish eligibility under this criterion, the Petitioner submitted evidence pertinent to 36 of its employees; whom the Petitioner stated work as computer programmers. The record shows that all 36 of these employees are H-1B beneficiaries. The issue to be addressed under this criterion is not whether the Petitioner requires that all of its H-1B employees have a bachelor's degree in a specific specialty, or its equivalent, but whether it normally requires such a degree for its computer programmer positions.<sup>8</sup>

The Petitioner claims to have a total of 308,464 employees "worldwide." We do not know how many workers the Petitioner employs in the United States, notwithstanding that such information was specifically requested by the Director. The Petitioner also did not state how many computer programmers it currently employs in the United States or how many it has employed recently. The record contains insufficient indication that the educational qualifications of the 36 workers it identified are representative of a requirement that the Petitioner normally imposes in the recruiting and hiring of computer programmers.

The Petitioner has not demonstrated that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position and has not, therefore, satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

#### D. Fourth Criterion

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

We find that 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 II (the second lowest of four assignable levels) wage. That is, the Level II wage designation is indicative of a position that entails performing moderately complex tasks that require limited judgment.<sup>9</sup>

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

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<sup>8</sup> Although many of the degrees held by those identified workers are in Computer Applications, Computer Science and Engineering, Information Science and Technology, and similar subjects, one of those workers appears to have a bachelor's degree in Biotechnology. This also suggests that the Petitioner may not impose a requirement of a minimum of a bachelor's degree *in a specific specialty* or its equivalent on its programmer positions. However, as was explained above, the evidence does not demonstrate that the Petitioner imposes a requirement of any bachelor's degree or equivalent on its programmers, and we need not, therefore, further belabor the issue of whether it imposes a requirement of a minimum of a bachelor's degree *in a specific specialty* or its equivalent.

<sup>9</sup> Again, the Petitioner's designation of this position as a Level II position undermines its claim that the duties of the position are particularly complex, specialized, or unique compared to other positions *within the same occupation*.

associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. The evidence of record does not, therefore, satisfy the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

#### IV. BENEFICIARY'S QUALIFICATIONS

The Director also found that the Beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. However, a beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the proffered position does not require a baccalaureate or higher degree in a specific specialty, or its equivalent. Therefore, we need not and will not address the Beneficiary's qualifications further.

#### 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 T-C-S- Ltd.*, ID# 17349 (AAO May 24, 2016)