



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

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

MATTER OF C-B-S- INC.

DATE: SEPT. 9, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

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

The Director, California Service Center, denied the petition. The Director concluded that the Petitioner had not demonstrated that the proffered position qualifies as a specialty occupation position.<sup>1</sup>

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the evidence is sufficient to satisfy all evidentiary requirements.

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

I. LAW

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

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

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<sup>1</sup> In a decision issued contemporaneously, the Director denied the Petitioner’s request to extend the Beneficiary’s stay in H-1B status. As the Director observed in the decision denying the extension of stay, there is no appeal from the denial of a request for an extension of stay. 8 C.F.R. § 214.1(c)(5). We therefore will not address the matter further.

(b)(6)

*Matter of C-B-S- Inc.*

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

Although the Petitioner’s address is in [REDACTED] California, the visa petition states that the Beneficiary would work at [REDACTED] in [REDACTED] California. Other evidence indicates that the Beneficiary would work for [REDACTED] (end client) at that address through [REDACTED] (middle vendor).

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as a “project manager.” In a letter provided with the petition and a letter provided in response to a request for evidence (RFE), the Petitioner provided the following duty description for that position:

- Develop and manage the end-to[-]end identity and Access Management project implementation plan.
- Develop the Technical use case for the Identity and Access management systems
- Document the current Identity and Access management process for gap analysis.

- Review the technical system and architectural documents [of] the existing system as a part of initial software environment assessment
- Recommend and document the Identity and Access Management framework based on the client environment.
- Build a roadmap for system Identity and Access management system integration
- Review the technical requirements for vendor proposals
- Technical evaluate [sic] the Identity and Access Management products.
- Review with Business partners and provide technical solutions for business challenges
- Provide ongoing status report to project sponsors and executives on weekly basis.

The Petitioner also stated: “[T]he Petitioner’s minimum requirement for this position is a comprehensive understanding of computer systems and programming, which comes with at least a Bachelor’s degree in computer systems/ engineering/related field, or a related field.”

On appeal, the Petitioner stated that it was “confirming” the duties of the Beneficiary, and provided the following duty description:

1. Interact with stakeholders and clients to collect requirements, manage scope, document BRD specifications, flowcharts, seek clarifications, resolve their concerns/questions – 5 hrs (11%)
2. Work with technical team & QA team to implement and test complex 3-D secure authentication platforms for various clients. Triage and prioritize defects against project milestones – 10 hrs (23%)
3. Initiate project kick offs, create SOWs, project estimations, devise project plan incorporating delivery schedule (development, QA test, UAT, production test), cost and resource schedule – 15 hrs (33%)
4. Identify and manage risks, escalations, and develop contingency risk response strategies and risk mitigation plans – 3 hrs (6%)
5. Present to the Director and Sr. Manager on a weekly basis highlighting lessons learnt [sic] for escalation cases in the previous week and forthcoming long-term sustainable development strategies – 2 hrs (5%)
6. Manage customer interactions, financial, scheduling and reporting functions for a number of projects on CRM tools – 10 hrs (22%)

In a letter dated January 19, 2015, submitted on appeal, the end client confirmed that the Beneficiary would work at its location and provided the following duty description:

- Manage the CA SaaS solution implementations for the customer
- Experience managing client onboarding and setup for SaaS products. Such experience will be given a preference
- Experience managing external facing / client projects
- Understand customer business requirements and technical requirements and recommend the best solution that meets customer requirements
- Coordinate and participate in review; revisions; changes; enhancements; testing, and documentation; Member/business notification of product enhancements and/or business opportunities.
- Build and maintain close relationship with the customer and understand the changing needs and environment of the customer
- Multi-task across many projects and customers, in the neighborhood of 12-15 customers with multiple projects each.
- Evaluate business requests to determine feasibility; work with Software Engineers to define alternatives and recommend optimal solutions.
- Work closely with developers and requesters identifying data and functional requirements in the design of new/enhanced systems.
- Ensure timely and accurate communication with project staff throughout the life cycle of the project.
- Communicate to customers on new products, features and offerings.
- Maintain a high level of customer satisfaction
- Provide the Enterprise sales team with pre-sales technical assistance
- Has very good understanding and working knowledge in latest internet technologies as well as SaaS products.
- Working knowledge of how Credit/Debit card transactions work
- Keep abreast with latest technologies

In that letter, the end client stated that the proffered position requires a bachelor's degree in computer science or the equivalent and a minimum of four years of experience in enterprise software implementation.

### 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. Specifically, we find that the record of proceedings lacks sufficient documentation to substantiate the claim that the Petitioner has H-1B caliber work for the Beneficiary for the period of employment requested in the petition.

(b)(6)

*Matter of C-B-S- Inc.*

The record contains a letter from the end client, which states that “[the end client] has a Master Services Agreement with [the middle vendor],” and that pursuant to “[the middle vendor]’s Supplier Agreement with [the Petitioner], [the middle vendor] has procured the services of [the Beneficiary] to be assigned to work as a Project Manager at [the end client’s] location at [redacted] California.” However, the letter is not supported by the above-mentioned master services agreement or the supplier agreement, or other similar documentation to substantiate its contractual terms and detailing specifics of the Beneficiary’s claimed assignment.

The record also contains a letter from the middle vendor, which states that “[the Beneficiary] will be on a contract engagement for [the end client]” and that it “is a long-term project which has an opportunity for an extension subject to continuing business necessity.”<sup>2</sup> However, it does not indicate that the Beneficiary will be on the contract engagement for the duration of the validity period requested. Likewise, the letter from the end client also did not specify the duration of the Beneficiary’s engagement, and the record does not contain information regarding other projects.

Without a purchase order or contract that outlines the terms and conditions of the Beneficiary’s employment and information regarding specific projects to which the Beneficiary would be assigned that covers the duration of the period of employment requested, we are not able to ascertain what the Beneficiary would do, where the Beneficiary would work, or how this would impact circumstances of his relationship with the Petitioner. A petition must be filed for non-speculative work for the Beneficiary, for the entire period requested, that existed as of the time of the petition’s filing. The Petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the Petitioner or Beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg’l Comm’r 1978).<sup>3</sup>

<sup>2</sup> Notably, the letter from the middle vendor is on the end client’s letterhead and is not signed.

<sup>3</sup> The agency made clear long ago that speculative employment is not permitted in the H-1B program. For example, a 1998 proposed rule documented this position as follows:

Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor’s degree. See section 214(i) of the Immigration and Nationality Act (the “Act”). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

Petitioning Requirements for the H Nonimmigrant Classification, 63 Fed. Reg. 30,419, 30,419-20 (proposed June 4, 1998) (to be codified at 8 C.F.R. pt. 214). While a petitioner is certainly permitted to change its intent with regard to non-speculative employment, e.g., a change in duties or job location, it must nonetheless document such a material

Further, the record contains numerous discrepancies that lead us to question the Petitioner's claim with regard to the services the Beneficiary will perform, as well as the actual nature and requirements of the proffered position. When a petition includes discrepancies, those inconsistencies will raise concerns about the veracity of the Petitioner's assertions.

For example, the record contains inconsistent job title for the proffered position. In the H-1B petition, the Petitioner claims that the proffered position is a project manager position. However, the middle vendor indicates that the Beneficiary will be employed as a "QA engineer" for the end client. In another letter submitted with the RFE, the Petitioner claims that the Beneficiary will be working as a "Middleware Admin" for the end client.

Moreover there are discrepancies in the record of proceedings with regard to the requirements for the proffered position. In the letter filed with the H-1B petition, the Petitioner indicated that the position requires at least a Bachelor's degree in computer systems, engineering or related field." On appeal, the Petitioner asserts that the proffered position "involves complex job duties"; therefore, an alien with a degree in Information Technology and Business Administration only can perform those duties." The end client states that "a Bachelor's degree in computer science or equivalent is required" and "4-6 years of experience in enterprise software implementation."<sup>4</sup>

We note that "it 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. Here, the Petitioner did not explain the discrepancies which undermine its credibility with regard to the services the Beneficiary will perform, as well as the actual nature and requirements of the proffered position.

Because of the discrepancies discussed above, we cannot determine the nature and scope of the Beneficiary's employment. The record lacks evidence sufficiently informative to demonstrate that the proffered position qualifies as 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 entry into 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. Thus, the Petitioner has not satisfied any of the criteria under the applicable provisions at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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change in intent through an amended or new petition in accordance with 8 C.F.R. § 214.2(h)(2)(i)(E).

<sup>4</sup> As we will discuss later, the Petitioner classified the proffered position at a Level I wage (entry-level).

Nevertheless, we will continue our evaluation and analysis of the evidence provided by the Petitioner.<sup>5</sup> Upon review, we find that the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.<sup>6</sup>

#### 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>7</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 Occupations, All Other" corresponding to the Standard Occupational Classification code 15-1199.<sup>8</sup> However, the *Handbook* does not provide a detailed narrative account nor does it provide summary data for this occupational category. More specifically, the *Handbook* does not provide the typical duties and responsibilities for "Computer Occupations, All Other." It also does not provide any information regarding the academic and/or professional requirements for these positions. Thus, the *Handbook* does not support the claim that the occupational category here is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent.

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<sup>5</sup> Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

<sup>6</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.

<sup>7</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>8</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 she will be closely supervised and her work closely monitored and reviewed for accuracy; and (3) that she will receive specific instructions on required tasks and expected results. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://flcdatacenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](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.*

Notably in a letter submitted with the H-1B petition, the Petitioner referred to the occupational category of “Software Quality Assurance Engineers and Testers” at SOC 15-1199.01, implying that the proffered position is such a position. As to those positions, the Petitioner stated:

This occupation is in an SVP range of at least 7, therefore, a bachelor’s degree is the minimum requirement. Furthermore, this requirement of a minimum of bachelor’s degree has been confirmed by the [*Handbook*] published by the US Department of Labor, where it stated that at least Bachelor’s Degree in a specialized area is commonly required according to the education and training subheading for this occupation. Thus, this is the typical requirement in the Petitioner’s industry.

We observe that the *Handbook* discusses the duties of software quality assurance analysts in the chapter pertinent to computer systems analysts. The *Handbook* states the following about the educational requirements of computer systems analyst positions:

A bachelor’s degree in computer or information science field is common, although not always a requirement. Some firms hire analysts with business or liberal arts degrees who have skills in information technology or computer programming.

#### **Education**

Most computer systems analysts have a bachelor’s degree in a computer-related field. Because these analysts also are heavily involved in the business side of a company, it may be helpful to take business courses or major in management information systems.

Some employers prefer applicants who have a master’s degree in business administration (MBA) with a concentration in information systems. For more technically complex jobs, a master’s degree in computer science may be more appropriate.

Although many computer systems analysts have technical degrees, such a degree is not always a requirement. Many analysts have liberal arts degrees and have gained programming or technical expertise elsewhere.

U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., “Computer Systems Analysts,” <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-4> (last visited Aug. 30, 2016).

The *Handbook* does not state that a baccalaureate or higher degree *in a specific specialty*, or its equivalent, is normally the minimum requirement for entry into the occupation. In fact, the *Handbook* specifically states that a bachelor’s degree is not always a requirement for computer systems analyst positions. Further, it indicates that many analysts have a liberal arts degree, rather than a degree in a specific specialty directly related to systems analysis. Moreover, the *Handbook* also notes that many analysts have technical degrees, but does not specify a degree level (e.g.

associate's degrees), and also states that such a technical degree is not always a requirement. Thus, the *Handbook* does not support the claim that the occupational category is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent.

As mentioned, the Petitioner states that the proffered position qualifies as a specialty occupation position since the *Dictionary of Occupational Titles* (DOT) indicates that the proffered position has Specific Vocational Preparation (SVP) 7.

The DOT does not support the assertion that assignment of an SVP rating of 7 is indicative of a specialty occupation. This conclusion is apparent upon reading Section II of the DOT's Appendix C, Components of the Definition Trailer, which addresses the SVP rating system.<sup>9</sup> The section reads:

## II. SPECIFIC VOCATIONAL PREPARATION (SVP)

Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

Specific vocational training includes training given in any of the following circumstances:

- a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);
- b. Apprenticeship training (for apprenticeable jobs only);
- c. In-plant training (organized classroom study provided by an employer);
- d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);

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<sup>9</sup> The Appendix can be found at the following Internet site: <http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM>.

e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

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

Note: The levels of this scale are mutually exclusive and do not overlap.

Thus, an SVP rating of 7 does not indicate that at least a four-year bachelor's degree is required, or more importantly, that such a degree must be in a specific specialty closely related to the occupation to which this rating is assigned. Therefore, the DOT information is not probative of the proffered position qualifying as a specialty occupation.

The evidence submitted does not demonstrate that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the proffered position. Further, the Petitioner has not provided documentation from other probative sources to substantiate its assertion regarding the minimum requirement for entry into this particular position.

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

#### B. Second Criterion

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

(b)(6)

*Matter of C-B-S- Inc.*

### 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 the Petitioner’s industry attesting that such firms “routinely employ and recruit only degreed individuals.”

On appeal, the Petitioner provides four vacancy announcements. None of the companies that placed those vacancy announcements have been shown to be in the Petitioner’s industry, and some clearly are not.<sup>10</sup> Further, those companies have not been shown to be otherwise similar to the Petitioner. Unless they are shown to have been placed by similar companies in the Petitioner’s industry, vacancy announcements are generally outside the scope of inquiry in determining whether the Petitioner has satisfied the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Further, some of the vacancy announcements provided state a requirement of a bachelor’s degree, but do not indicate that the requisite degree must be in any specific specialty. Some state that “equivalent work experience” may be substituted for the otherwise requisite degree, without identifying the type and amount of work experience that the hiring authority would consider to be equivalent to a bachelor’s degree. Without such information, we are unable to determine whether those vacancy announcements require a minimum of a bachelor’s degree or its equivalent within the meaning of the salient regulations. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

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<sup>10</sup> One of the vacancy announcements was placed by [REDACTED] “a global payment technology company.” Another was placed by [REDACTED] “a leader of digital ticketing for live entertainment venues and fans.” One was placed by [REDACTED] a health information technology company. The fourth vacancy announcement was placed by [REDACTED] a recruitment company, for an unidentified client.

One of the vacancy announcements states that an MBA would be a sufficient educational preparation for the position announced. 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 degree in business administration is not 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 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 four announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>11</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.

On appeal, the Petitioner relied upon the second duty description, above, and on some of the duties described in the third duty description, provided in the letter from the end client, in support of this criterion. The Petitioner retracted the first duty description, above. The Petitioner asserted that it had no intention of causing any confusion pertinent to the end client in this case, but did not explain why an inaccurate duty description was provided with the H-1B petition and in a subsequent letter.

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. The evidence of record does not establish why a few related courses or industry experience alone would be insufficient preparation for the proffered

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<sup>11</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).

position. While 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.

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 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.

The Petitioner stated, on the H-1B petition, that it was established in 2000 and that it has 15 employees in the United States. Whether or not the Petitioner employs, or has employed, anyone else in the position proffered in the instant H-1B petition is unknown to us. In any event, the Petitioner did not provide any evidence pertinent to the qualifications of any of its other employees, and has not, therefore, provided sufficient evidence to satisfy 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.

In the instant case, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. The record does not demonstrate that the duties of the proffered position, such as managing SaaS solutions, managing client onboarding, managing client projects, etc., are more complicated than those of computer systems analyst positions that do

not require a minimum of a bachelor's degree in a specific specialty or its equivalent. We also incorporate our earlier discussion and analysis regarding 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.<sup>12</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 associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. The Petitioner has not, therefore, satisfied the 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 QUALIFICATION

Since the identified basis for denial is dispositive of the Petitioner's appeal, we need not address another ground of ineligibility we observe in the record of proceedings. Nevertheless, we will briefly note and summarize it here with the hope and intention that, if the Petitioner seeks again to employ the Beneficiary or another individual as an H-1B employee in the proffered position, it will submit sufficient independent objective evidence to address and overcome this additional ground in any future filing.

As discussed in this decision, the Petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the Beneficiary possesses that degree or its equivalent. Therefore, we need not and will not address the Beneficiary's qualifications further, except to note that, in any event, the Petitioner did not submit an evaluation of the Beneficiary's foreign degree or sufficient evidence to establish that [his/her] degree is equivalent to a U.S. bachelor's degree in a specific specialty. As such, since evidence was not presented that the Beneficiary has at least a U.S. bachelor's degree in a specific specialty, or its equivalent, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

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<sup>12</sup> The Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I, entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty, or its equivalent. That is, a position's wage-level designation may be a relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

*Matter of C-B-S- Inc.*

#### 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 C-B-S- Inc.*, ID# 18129 (AAO Sept. 9, 2016)