



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

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

MATTER OF S-USAE- INC

DATE: SEPT. 9, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a company which owns and operates gas stations and convenience stores, seeks to extend the temporary employment of the Beneficiary as a “computer programmer/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 did not establish that it has sufficient specialty occupation work available for the Beneficiary for the duration of the requested period.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred in finding that specialty occupation work is unavailable.

Upon *de novo* review, we will dismiss the appeal.<sup>1</sup>

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> We follow the preponderance of the evidence standard as specified in *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

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 response to the Director’s request for evidence (RFE), the Petitioner provided the following overview of the proffered position:

[The Beneficiary’s] initial job duty was to determine the best computer system for our company’s specific needs. She then designed the system to meet those needs. This included the best way to network our businesses together and the best programs to accomplish our goals. As needed, she prepared and has updated these programs to ensure that our computer system is fully functional and up-to-date. She tests, maintains, and monitors computer programs and systems including coordinating the installation of computer programs and systems. She coordinates and links the computer systems within the company to increase compatibility and the sharing of information. She expands or modifies the system to serve new purposes and to improve work flow. She installs all network hardware and software and makes needed upgrades and repairs. (25%).

She trains the staff and users to work with the computer system and programs and provides training to users to keep them up to date with technical and financial developments, including issues with software problems. She trains our staff in computer interface and software use and has prepared instruction manuals. If there are any computer issues, she is on the spot to resolve these problems. These computer issues can arise at any time, and it is imperative that she be available to handle these issues as they happen (10%).

She is constantly working on new programs to help grow our business, including the development of new software programs and systems that will help to increase our sales, reduce our costs, and better manage our payroll and tax issues. Currently, she is working on developing a new inventory control program. Sometimes these programs take months to develop and she has to manage her time working on these new programs while she resolves the day to day computing issues of the business. She is responsible for testing new software to ensure there are no problems and she must debug programs whenever problems arise. She also has to keep up with technical changes in our industry, as well as the computer industry, so that our business can perform at its highest potential (35%).

For all of our computer systems and software programs, she has to evaluate the cost benefit and return on investment to assist the officers of the business in deciding what systems and programs to implement. This includes determining what computer software, hardware, or peripherals are needed to set up or alter the system, and she must stay abreast of new technology trends in order to incorporate any relevant applications to existing systems (10%).

Obviously, a computer systems is only as good as the information stored in it. In that regard, it is vitally important that all information is correctly and properly saved and stored. She maintains all the databases in secure software which stores and organizes data, such as financial information, to make sure that it is available to users and is secure from unauthorized access. She backs up all data to the "Cloud" as well as to an external hard drive and also provides training to our employees who are responsible for backing up all data at the end of each day. She saves all important information, such as inventory, sales, payroll, taxes, etc. in a central database and prepares the daily and monthly reports to know exactly what the company's income and expenses are and provides this information to the company accountants for preparation of monthly, quarterly, and year-end tax returns (15%).

The remaining part of her time is spent on literally dozens of other issues related to operating and maintaining a well-run computer system. Issues can arise at any time, and it is imperative that we have someone on hand who can handle any of these problems as they arise (5%).

On appeal, the Petitioner emphasizes its growing business operations, and states that, "as each new business is purchased, [the Beneficiary's] duties increase and become even more complex."

The Petitioner states that the proffered job duties "can only be handled by someone who has at a minimum a Bachelor's Degree in Computer Science or related field," as well as "some experience as a programmer/analyst and network administrator."

### 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, the record does not adequately demonstrate the nature of the proffered position and its constituent duties, and consequently, does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.<sup>2</sup>

Regarding the proffered duties, we concur with the Director's finding that the Petitioner did not submit sufficient objective evidence to establish that the Beneficiary would actually perform the duties of a computer programmer analyst for the entire requested validity period. While we acknowledge the Petitioner's evidence that its business revenue has grown over the past several years, the Petitioner did not provide sufficient documentation to demonstrate that it has and would continue to utilize the services of a full-time, in-house computer programmer analyst, as claimed. For example, the Petitioner did not submit any samples of the Beneficiary's work product to demonstrate that she developed software programs to facilitate the Petitioner's business operations, or provided networking services to connect the computer systems of the Petitioner's multiple locations. The Petitioner asserts that the Beneficiary has implemented accounting and tax programs, payroll programs, and an inventory control program, yet does not provide corroborating evidence of the existence of such programs. In addition, the record does not contain detailed explanations of how such programs are utilized in the Petitioner's daily operations.

While the Petitioner states that it owns and operates several gas stations and convenience stores, the Petitioner only listed one address where the Beneficiary would work, which, from the fuel supply agreement and tax returns provided, appears to be a single gas station/convenience store. Although the evidence of record indicates that the Petitioner owns and operates more than one gas station/convenience store, it does not indicate that the Beneficiary would work at any location other than the one specified in the petition.

Moreover, the Petitioner submitted numerous photos, both exterior and interior, of its gas stations/convenience stores. Yet none of the submitted pictures verify the existence of the Petitioner's claimed computer network systems or the Beneficiary's workspace in general. Based on

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<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.

the photographs alone, there is insufficient evidence to demonstrate the existence of the claimed computer programs and network the Petitioner claims are the focus of the Beneficiary's position and is in use among its various locations. Although the Petitioner repeatedly asserts that the Beneficiary is responsible for networking all of its various locations together, and training all staff members among its three retail outlets in the use of such networks and systems, there is insufficient evidence to demonstrate that this claimed intricate system exists and is in use.

The above deficiencies, coupled with the lack of evidence of any work product that was created by the Beneficiary during the past six years, renders the claims of the Petitioner questionable. "Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition." *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The evidence of record also contains conflicting descriptions of the proffered position and its associated job duties, which further render the Petitioner's claims questionable.

Here, the Petitioner attested on the labor condition application (LCA) that the proffered "computer systems analyst" position falls within the "Computer Systems Analysts" occupational classification, corresponding to Standard Occupational Classification (SOC) code 15-1121, at a Level I wage. However, the Petitioner simultaneously characterizes the proffered position as a "network administrator" position. In particular, the Petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that the Beneficiary "[w]ill continue to work as a network administrator & programmer/analyst for the various stores owned by petitioner." Consistent with the "network administrator" title, the Petitioner also listed various network administrator duties for the Beneficiary. The Petitioner stated in its initial support letter that "[i]t is imperative that we continue to have a person who can assist our company in developing software programs . . . but, most importantly, allows us to network all of the locations together." The Petitioner also stated in its RFE response that the Beneficiary's duties include designing "the best way to network our businesses together," "coordinat[ing] and link[ing] the computer systems within the company," and "install[ing] all network hardware and software." These descriptions are consistent with the typical job duties for positions falling within the "Network and Computer Systems Administrators" occupational classification, corresponding to SOC code 15-1142.<sup>3</sup>

<sup>3</sup> See the Occupational Information Network (O\*NET) Online Details Report for "Network and Computer Systems Administrators," <http://www.onetonline.org/link/details/15-1142.00> (last visited Aug. 17, 2016). In this report, O\*NET lists typical duties of network administrators as including "[m]aintain and administer computer networks and related computing environments including computer hardware, systems software, applications software, and all configurations," and "[d]esign, configure, and test computer hardware, networking software and operating system software."

See also U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "What Network and Computer Systems Administrators Do," <http://www.bls.gov/ooh/computer-and-information-technology/network-and-computer-systems-administrators.htm#tab-2> (last visited Aug. 17, 2016). The *Handbook* states in this sub-chapter that network administrators typically perform duties such as "[d]etermine an organization's network and computer system needs before setting one up," "[i]nstall all network hardware and software and make needed upgrades and repairs," and "[t]rain users in the proper use of hardware and software."

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It is noted that, where a petitioner seeks to employ a beneficiary in two distinct occupations, the petitioner should file two separate petitions, requesting concurrent, part-time employment for each occupation. Additionally, the petitioner would need to ensure that it separately meets all requirements relevant to each occupation and the payment of wages commensurate with the higher paying occupation.<sup>4</sup> In this matter, the prevailing wage for “Network and Computer Systems Administrators” at a Level I wage is higher, at \$45,157 per year, than the prevailing wage for “Computer Systems Analysts,” which is \$44,429 per year.<sup>5</sup> According to guidance from the U.S. Department of Labor (DOL), if the Petitioner believed the position encompasses the duties of both a computer systems analyst and network administrator, as appears to be the case here, it should have chosen the relevant occupational code for the highest paying occupation, in this case “Network and Computer Systems Administrators”<sup>6</sup> That the Petitioner acknowledges the position as a network administrator, but did not choose the most relevant occupational code for “Network and Computer Systems Administrators,” without further explanation, leads us to question the Petitioner’s credibility and reliability.

Furthermore, we highlight the proffered duties of preparing the company’s daily and monthly reports on “inventory, sales, payroll, taxes, etc.,” knowing “exactly what the company’s income and expenses are[,] and provid[ing] this information to the company accountants for preparation of monthly, quarterly, and year-end tax returns.” The Petitioner has not explained and documented how these job duties involving the company’s finances (e.g., inventory, sales, payroll, and taxes) are consistent with the “Computer Systems Analysts” occupational classification chosen here.

We also highlight the Petitioner’s vague statements that the Beneficiary’s duties, which include “literally dozens” of other unspecified duties, are “increase[ing] and becom[ing] even more

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<sup>4</sup> See generally 8 C.F.R. § 214.2(h); 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/NP\\_WHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://flcdatacenter.com/download/NP_WHC_Guidance_Revised_11_2009.pdf).

<sup>5</sup> For more information regarding the wages for “Network and Computer Systems Administrators” – SOC 15-1142, in the [REDACTED] AR MSA for the period 7/2015 – 6/2016, see [http://www.flcdatacenter.com/OesQuickResults.aspx?code=15-1142](http://www.flcdatacenter.com/OesQuickResults.aspx?code=15-1142&year=16&source=1) &year=16&source=1 (last visited Aug. 17, 2016).

<sup>6</sup> Specifically, DOL’s “Prevailing Wage Determination Policy Guidance” states the following:

In determining the *nature of the job offer*, the first order is to review the requirements of the employer’s job offer and determine the appropriate occupational classification. The O\*NET description that corresponds to the employer’s job offer shall be used to identify the appropriate occupational classification. . . . If the employer’s job opportunity has worker requirements described in a combination of O\*NET occupations, the SWA should default directly to the relevant O\*NET-SOC occupational code for the highest paying occupation. For example, if the employer’s job offer is for an engineer-pilot, the SWA shall use the education, skill and experience levels for the higher paying occupation when making the wage level determination.

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/NP\\_WHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://flcdatacenter.com/download/NP_WHC_Guidance_Revised_11_2009.pdf).

complex” as the Petitioner’s business grows. The Petitioner has not provided sufficient details to convey the nature of the Beneficiary’s additional duties. We are further precluded from finding that the “Computer Systems Analysts” occupational classification chosen here is the most appropriate, relevant occupational classification, and that the Petitioner’s statements about the proffered position are credible.

Overall, we find that the Petitioner has not sufficiently established the substantive nature of the work to be performed by the Beneficiary. We are therefore precluded from finding that the proffered position satisfies 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. Accordingly, as the Petitioner cannot satisfy any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), we cannot find that the proffered position qualifies as a specialty occupation.

However, even if the Petitioner had shown that it would employ the Beneficiary as a computer programmer/analyst, we still would not find that the proffered position qualifies as a specialty occupation, as explained below.<sup>7</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 DOL’s *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>8</sup>

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<sup>7</sup> The Director stated that “USCIS acknowledges that the position of computer programmer/analyst is traditionally considered a specialty occupation,” and the Petitioner cites to this concession on appeal in support of the assertion that the proffered position is in fact a specialty occupation. We note, however, that this blanket assertion on the part of the Director was misplaced, as each petition filing is a separate proceeding with a separate record, and eligibility in every matter before USCIS is determined based on the evidence presented in each individual proceeding.

<sup>8</sup> All of our references are to the 2016-17 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.

The *Handbook* subchapter entitled “How to Become a Computer Systems Analyst” states, in pertinent part: “A bachelor’s degree in a 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.”<sup>9</sup> The *Handbook* also states: “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.”<sup>10</sup>

The *Handbook* indicates that a bachelor’s degree in a computer or information science field may be common, but not that it is a *requirement* for entry into these jobs. In fact, this chapter reports that “many” computer systems analysts may only have liberal arts degrees and programming or technical experience, but does not further qualify the amount of experience needed. The *Handbook* also notes that many analysts have technical degrees, but does not specify a degree level (e.g., associate’s degree) for these technical degrees. The *Handbook* further specifies that such a technical degree is not always a requirement. Thus, this passage of the *Handbook* reports that there are several paths for entry into the occupation.

When reviewing the *Handbook*, we must also consider that the Petitioner designated the proffered position as a Level I (entry) position on the LCA. The “Prevailing Wage Determination Policy Guidance” issued by the DOL describes a Level I wage rate as generally appropriate for a position 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.<sup>11</sup> Thus, in designating the proffered position at a Level I wage, the Petitioner has indicated that the proffered position is a comparatively low, entry-level position relative to others within the occupation.<sup>12</sup>

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<sup>9</sup> 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. 17, 2016).

<sup>10</sup> *Id.*

<sup>11</sup> 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).

<sup>12</sup> The Petitioner’s designation of this position as a Level I, entry-level position indicates that it is a comparatively low-level position 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.

In the instant case, the Petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or another authoritative source, indicates that normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. 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 contemplates common industry practice, while the alternative prong narrows its focus to the Petitioner's specific position.

### 1. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the "degree requirement" (i.e., a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

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)).

As discussed above, the Petitioner has not established that its proffered position is one for which the *Handbook*, or another authoritative source, reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. We incorporate by reference our 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." See *id.* Therefore, based upon a complete review of the record, we conclude that the Petitioner has not satisfied 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.

Upon review, we find that the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. For instance, the Petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it may believe are so complex and unique. While a few related courses may be beneficial 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.

In this matter, the Petitioner highlights the Beneficiary's duties of designing the company's computer systems and network, and expanding and maintaining that system as the Petitioner's business expands. The Petitioner again highlights on appeal its growing business operations, resulting in the Beneficiary's duties increasing and becoming "even more complex." However, these vague descriptions of the Beneficiary's duties, without additional detail or corroborating evidence of the specific tasks she will perform as they relate to the Petitioner's operations, are insufficient to establish relative complexity or uniqueness as aspects of the proffered position. The general descriptions of the proffered duties do not identify which tasks are so complex or unique that only a specifically degreed individual could perform them. While the duties the Petitioner ascribed to the proffered position indicate a need for a range of technical knowledge in the computer/IT field, they do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty (or its equivalent) as minimally necessary to attain such knowledge.

Further, and as previously noted, the LCA submitted by the Petitioner indicates that the proffered position is a Level I (entry) wage, which, as noted above, is the lowest of four assignable wage levels. Without additional evidence, the record of proceedings does not indicate that the proffered position is so complex or unique, as such a position would likely be classified at a higher-level, which requires a significantly higher prevailing wage.<sup>13</sup>

The Petitioner claims that the Beneficiary is well-qualified for the position, and references her 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).

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<sup>13</sup> See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://flcdatacenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf).

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 states that it was established in 2007, and currently employs 10 people among three retail outlets.<sup>14</sup> The Petitioner submits no evidence that it has previously hired any other individuals in the position of computer programmer/analyst. While we note the Petitioner's assertion that the Beneficiary is the only person to hold the position of computer programmer/analyst, and that the Beneficiary was previously approved for H-1B employment with the Petitioner in the proffered position, a prior approval does not compel the approval of a subsequent petition or relieve the Petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought.<sup>15</sup> Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act, 55 Fed. Reg. 2,606, 2,612 (Jan. 26, 1990) (to be codified at 8 C.F.R. pt. 214).

Here, the record of proceedings is insufficient to establish that the Petitioner normally requires a bachelor's or higher degree in the specific specialty, or its equivalent, for the proffered position. The Petitioner has not 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.

In the instant case, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. The Petitioner does not establish how the

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<sup>14</sup> Although the Petitioner provides evidence on appeal of its acquisition of an additional gas station/convenience store in January 2016, this evidence is not relevant to our review of the Petitioner's enterprise, because the Petitioner must establish eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the Petitioner or Beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978).

<sup>15</sup> While a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

proffered duties elevate the proffered position to a specialty occupation. We again refer to our comments regarding the implications of the Petitioner's designation of the proffered position at a Level I (entry) wage level.

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

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. PRIOR APPROVALS

The Petitioner noted that USCIS approved other petitions that had been previously filed on behalf of the Beneficiary. The Director's decision does not indicate whether the prior approvals of the other nonimmigrant petitions were reviewed. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the Director. We are not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be "absurd to suggest that [USCIS] or any agency must treat acknowledged errors as binding precedent." *Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987).

As noted above, a prior approval does not compel the approval of a subsequent petition or relieve the Petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act, 55 Fed. Reg. 2,606, 2,612 (Jan. 26, 1990) (to be codified at 8 C.F.R. pt. 214). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of eligibility for the benefit sought. *See Tex. A&M Univ. v. Upchurch*, 99 F. App'x 556 (5th Cir. 2004). Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of a beneficiary, we would not be bound to follow the contradictory decision of a service center. *See La. Philharmonic Orchestra v. INS*, 44 F. Supp. 2d 800, 803 (E.D. La. 1999).

#### V. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. The burden is on the Petitioner

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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-USAE- Inc*, ID# 17754 (AAO Sept. 9, 2016)