



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

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

MATTER OF S- CORP.

DATE: NOV. 8, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an information technology consulting company, seeks to temporarily employ the Beneficiary as a “systems 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 of the California Service Center denied the petition, concluding that the Petitioner did not establish that the proffered position qualifies as a specialty occupation. The Director also found that the Petitioner did not document that it has sufficient specialty occupation work for the Beneficiary to perform throughout the entire requested validity period.

On appeal, the Petitioner submits additional evidence and asserts that the Director erred in denying the petition. Upon *de novo* review, we will dismiss the appeal.¹

I. LEGAL FRAMEWORK

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

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

¹ 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.

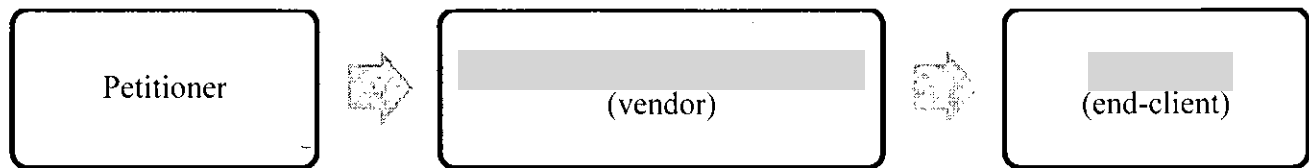
8 C.F.R. § 214.2(h)(4)(iii)(A). We construe the term “degree” to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement 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).

As recognized by the court in *Defensor*, 201 F.3d at 387-88, where the work is to be performed for entities other than the petitioner, evidence of the client companies’ job requirements is critical. The court held that the former Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary’s services. *Id.* Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

II. THE PROFFERED POSITION

In the H-1B petition and supporting documentation, the Petitioner stated that the Beneficiary would be a “systems analyst” assigned to work at the end-client’s work sites in ██████████ Kentucky and ██████████ Kansas.² The Petitioner identified the path of contractual succession as follows:

² We note that while the Petitioner included both locations for the end-client in the record and on the labor condition application (LCA), it did not explain what the Beneficiary would do at each location or how much time she would spend at either location.



The Petitioner submitted three separate letters from each, the vendor and the end-client.³ In each of its letters, both the vendor and the end-client list the Beneficiary's duties in the proffered position as follows:

- Interact with business user for gathering the requirements for Salesforce Implementation.
- Create new custom objects and relationships between objects to better suit the organization's business needs and create page layouts, custom tabs, components, custom reports and Dashboards.
- Create profiles and implement Object level, field-level and record-level security.
- Work on various Salesforce.com standard objects like Campaigns, Leads, Accounts, Contacts, Opportunities, Cases and Activities[.]
- Develop Visual force pages and controller classes and manage complex workflows, approvals, data validation and system triggers.
- Develop apex Test Classes and Test scenarios to have good coverage across.
- Evaluates business requirements, evaluates and recommends appropriate solutions and prepares high level analysis.
- Develop Apex Triggers, Apex classes and controller classes and manage complex workflows, approvals, data validation and system triggers.
- Work with and support Development and Quality Assurance teams to ensure that code meets specification.
- Create new custom objects and relationships between objects to better suit the organization's business needs and create page layouts, custom tabs, components, custom reports and Dashboards.

Initially, the Petitioner provided the same list of job duties for the proffered position as the vendor and the end-client. Then, in response to the Director's request for evidence (RFE), the Petitioner explained that the "Beneficiary will be assigned to the [redacted] project . . . [whose] purpose is to improve sales business processes, increase the customer loyalty base, manage print services and supplies management along with increasing hardware sales." The Petitioner then further broke down the previously listed duties, indicating that the Beneficiary would devote 20% of her time to provisioning and system analysis; 20% of her time to gathering business requirements; 40% of her time to development, testing, and promotion; 10% of her time to extended packages; and 10% of her

³ In its letter, the end-client stated that the terms and conditions of its contract with the vendor are confidential. Although a petitioner may always refuse to submit confidential commercial information if it is deemed too sensitive, a petitioner must also satisfy the burden of proof and runs the risk of a denial. *Cf. Matter of Marques*, 16 I&N Dec. 314 (BIA 1977).

time to analysis services and analytics services. The Petitioner included various tasks associated with each of the listed duties.

III. SPECIALTY OCCUPATION

For the reasons set out below, we have determined that the proffered position does not qualify as a specialty occupation. Specifically, the record does not: (1) describe the proffered position in sufficient detail; and (2) establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.⁴

A. Variances in Position Requirements

First, we find that the Petitioner has provided inconsistent information regarding the minimum requirements for the proffered position. The table below summarizes the variances in the educational requirements.

Record of Proceedings	Degree Requirements
Petitioner's Letter of Support – Apr. 1, 2017 (page 4)	<ul style="list-style-type: none">• bachelor's degree• bachelor's degree or equivalent in a field related to the proffered position
Petitioner's RFE Response – Dec. 5, 2017 (page 4)	<ul style="list-style-type: none">• bachelor's degree
Petitioner's Letter in RFE Response – Nov. 15, 2017 (page 3)	<ul style="list-style-type: none">• bachelor's degree in engineering
Vendor's Letter in RFE Response – Nov. 10, 2017 (page 1)	<ul style="list-style-type: none">• bachelor's degree in engineering
End-Client's Letter in RFE Response – Oct. 30, 2017 (page 1)	<ul style="list-style-type: none">• bachelor's degree in engineering
Expert Opinion Letter in RFE Response – Nov. 21, 2017 (page 4)	<ul style="list-style-type: none">• bachelor's degree in computer information systems or a related field
Petitioner's Appeal Brief – Undated (page 11)	<ul style="list-style-type: none">• bachelor's degree

⁴ The Petitioner submitted documentation in support of 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.

End-Client's Letter on Appeal – Jan. 15, 2018 (page 1)	• bachelor's degree in electronics and communications engineering or a related field
---	--

The Petitioner did not provide an explanation for the variances in the requirements.

The requirements for the position as stated in the record raise a number of issues. The Petitioner and the end-client provided varying accounts of the educational background experience necessary for the performance of the duties of the proffered position. Inconsistencies in the requirements undermine the credibility of the Petitioner's claims regarding the proffered position. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

Even if we set that issue aside we would still conclude that the proffered position is not a specialty occupation because the evidence of record does not satisfy at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(ii)(I)-(4).⁵

B. First Criterion

We turn next 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. 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.⁶

On the labor condition application (LCA)⁷ submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Computer Systems Analysts" corresponding to the Standard Occupational Classification (SOC) code 15-1121.⁸ Thus, we

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

⁶ We do not 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 we regularly review 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.

⁷ A petitioner submits the LCA to DOL to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the area of employment or the actual wage paid by the employer to other employees with similar duties, experience, and qualifications. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

⁸ The Petitioner classified the proffered position at a Level II wage. A wage determination starts with an entry-level wage (Level I) and progresses to a higher wage level (up to Level IV) after considering the experience, education, and skill requirements of the Petitioner's job opportunity. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at

Matter of S- Corp.

reviewed the *Handbook's* subchapter entitled "How to Become a Computer Systems Analyst," which states, in pertinent part, that a bachelor's degree in a computer or information science field is common, although not always a requirement.⁹ According to the *Handbook*, some firms hire analysts with business or liberal arts degrees. As discussed, we interpret the term "degree" to mean a degree *in a specific specialty* that is directly related to the proposed position. *See Royal Siam Corp.*, 484 F.3d at 147. Since there must be a close correlation between the required specialized studies and the position, a requirement of general and wide-ranging degrees in business and liberal arts strongly suggests that a computer systems analyst position is not categorically a specialty occupation. *See id.* *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988). The *Handbook* continues by stating that many analysts have technical degrees, but such a degree is not always a requirement – and that, in fact, many analysts have liberal arts degrees and gain programming or technical expertise elsewhere.¹⁰ The *Handbook* does not specify a degree level (e.g., associate's degree) for these business, technical, and liberal arts degrees.

The *Handbook*, therefore, does not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for these positions.

The Petitioner also references DOL's Occupational Information Network (O*NET) summary report for "Computer Systems Analysts" listed as SOC code 15-1121.00 for our consideration under this criterion.

Though relevant, the information the Petitioner submits from O*NET does not establish the Petitioner's eligibility under the first criterion, as it does not establish that a bachelor's degree *in a specific specialty*, or the equivalent, is normally required. The summary report provides general information regarding the occupation; however, it does not support the Petitioner's assertion regarding the educational requirements for these positions. For example, the Specific Vocational Preparation (SVP) rating, which 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," cited within O*NET's Job Zone designates this position as having an SVP 7 < 8. This indicates that the occupation requires "over 2 years up to and including 4 years" of training.¹¹ While the SVP rating provides the total number of years of vocational preparation required for a particular position, it is important to note that it does not describe how those years are to be divided among training, formal education, and experience – and it does not specify the particular type of degree, if any, that a position would require.¹² The O*NET

http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

⁹ Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Computer Systems Analysts, <https://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-4> (last visited Nov. 7, 2018).

¹⁰ *Id.*

¹¹ This training may be acquired in a school, work, military, institutional, or vocational environment. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

¹² For additional information, see the O*NET Online Help webpage available at <http://www.onetonline.org/help/>

Matter of S- Corp.

summary report for this occupation also does not specify that a degree is required, but instead states, “most of these occupations require a four-year bachelor’s degree, but some do not.” Similar to the SVP rating, the Job Zone Four designation does not indicate that any academic credentials for Job Zone Four occupations must be directly related to the duties performed.

Further, we note that the summary report provides the educational requirements of “respondents,” but does not account for 100% of the “respondents.” The respondents’ positions within the occupation are not distinguished by career level (e.g., entry-level, mid-level, senior-level). Additionally, the graph in the summary report does not indicate that the “education level” for the respondents must be in a specific specialty. The survey indicates that 33% of “respondents” claim to hold a bachelor’s degree and 14% of “respondents” claim to hold a master’s degree. However, the same survey indicates that compared to bachelor’s degree respondents almost the same amount of respondents, 29%, reported possessing at most an associate’s degree, and further, 24% are unaccounted for. Regardless, a requirement for a bachelor’s degree alone is not sufficient. Instead, we construe the term “degree” to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position.¹³ See *Royal Siam Corp.*, 484 F.3d at 147 (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”).

O*NET, therefore, also does not support the assertion that at least a bachelor’s degree in a specific specialty, or its equivalent, is normally the minimum requirement for these positions.

The Petitioner has not provided sufficient documentation from a probative, authoritative source 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).

C. 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.

online/svp.

¹³ Nor is it apparent whether these credentials were prerequisites to these individuals’ hiring.

We generally consider the following sources of evidence to determine if there is such a common degree requirement: 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) (considering these "factors" to inform the commonality of a degree requirement)).

The Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative sources) 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."

The Petitioner submitted job vacancy announcements for our consideration under this prong. To be relevant for this consideration, the job vacancy announcements must advertise "parallel positions," and the announcements must have been placed by organizations that (1) conduct business in the Petitioner's industry and (2) are also "similar" to the Petitioner. These job vacancy announcements do not satisfy that threshold. Upon review of the documents, we find that the Petitioner's reliance on the job announcements is misplaced.

We will first consider whether the advertised job opportunities could be considered "parallel positions." Both of the advertised positions have education or experience requirements that are beyond those of the proffered position. For example, the GBIT position requires a master's degree in computer science or electrical engineering and the CDM Smith position requires a bachelor's degree in electrical engineering and 10-13 years of experience since acquiring the degree. The CDM Smith position further requires that the candidate "supervise or coordinate the work of CADD Operators, design technicians and others assisting in specific assignments." Therefore, the Petitioner has not sufficiently established that the advertised job opportunities are parallel to the proffered position.

Nor does the record contain documentary evidence sufficient to establish that these job vacancy announcements were placed by companies that (1) conduct business in the Petitioner's industry and (2) are also "similar" to the Petitioner. Here, the advertisements do not provide sufficient information regarding the hiring employers and the Petitioner also did not supplement the record of proceedings to establish that these organizations are similar to it.¹⁴

¹⁴ Further, the Petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given

When determining whether the Petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the Petitioner to claim that an organization is similar and in the same industry without providing a basis for such an assertion.

As the documentation does not establish that the Petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary.¹⁵ That is, not every deficit of every job posting has been addressed.

The Petitioner also submitted a letter from the [REDACTED]. In sum, the letter states that, after reviewing the duties and details of the proffered position provided by the Petitioner, [REDACTED] determined that it would require a bachelor's degree in computer science or a related field. However, the letter is not supported by evidence or the necessary information to determine that the company routinely employs or recruits only specifically degreed individuals for systems analyst positions (or parallel positions). Thus, we find that the letter is not sufficient to satisfy the first prong.

The Petitioner also submitted two expert opinion letters, both authored by [REDACTED] Associate Professor of Computer Applications and Information Systems at the School of Business, [REDACTED]. In his letters, [REDACTED] (1) describes the credentials that he asserts qualify him to opine upon the nature of the proffered position; (2) lists the duties proposed for the Beneficiary; and (3) states that these duties require at least a bachelor's degree, or its equivalent, in computer information systems or a related area. We carefully evaluated [REDACTED] assertions in support of the instant petition but find them insufficient.

In his letters, [REDACTED] referenced the duties of the proffered position and stated that "it is standard for a company such as [the Petitioner] to hire a systems analyst and require that individual to have attained at least a [b]achelor's [d]egree in [c]omputer [i]nformation [s]ystems or a related area," and that "the industry standard for a position such as [s]ystems [a]nalyst for [the Petitioner] is to be filled through recruiting a college graduate with the minimum of a [b]achelor's [d]egree in [c]omputer [i]nformation [s]ystems, or a related area, or the equivalent." However, according to his letter on appeal, he relied solely on the *Handbook* and O*NET, which we have already discussed do not report 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. [REDACTED] did not reference, cite, or discuss any other studies, surveys, industry publications, authoritative

that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

¹⁵ The Petitioner did not provide any independent evidence of how representative the job postings are of the particular advertising employers' recruiting history for the type of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the actual hiring practices of these employers.

publications, or other sources of empirical information, which he may have consulted to complete his evaluation. As such, it remains unclear how [REDACTED] reached his conclusions as to the industry educational requirements for the proffered position.

We may, in our discretion, use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Id.* Consistent with *Caron Int'l*, we find that this evaluation does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and, for the sake of efficiency, hereby incorporate this finding into our analysis of the remaining specialty-occupation criteria.¹⁶

The Petitioner has not provided sufficient evidence to establish that a bachelor's degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations. Thus, 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.

We reviewed the end-client and the vendor's statements regarding the proffered position; however, neither has sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. That is, neither the end-client, nor the vendor, nor the Petitioner has explained in detail how tasks such as:

- interacting with business users to gather requirements for Salesforce implementation
- creating new custom objects and relationships between objects to better suit the organization's business needs and create page layouts, custom tabs, components, custom reports, and dashboards
- creating profiles and implementing object level, field-level, and record-level security
- working on various Salesforce.com standard objects
- developing visual force pages and controller classes
- managing complex workflows, approvals, data validation, and system triggers
- evaluating business requirements
- evaluating and recommending appropriate solutions and preparing high level analysis and

¹⁶ We hereby incorporate our discussion of [REDACTED] letter into our discussion of the other 8 C.F.R. § 214.2(h)(4)(iii)(A) criteria.

- working with and supporting development and quality assurance teams to ensure that code meets specification

require the theoretical and practical application of a body of highly specialized knowledge. In fact, we note that the end-client and vendor listed duplicate duties within their own bulleted lists, as shown in the previous section above.

We also note that the Beneficiary's proposed job duties include collaborations with "business user[s]," "development team," and "quality assurance team." However, neither the end-client, the vendor, nor the Petitioner have identified the individuals the Beneficiary would work with or how they relate to her assigned project.

Here, although the end-client and the vendor included a list of duties in their letters, the record does not include sufficient information relevant to a detailed course of study leading to a specialty degree and the Petitioner has not established how such a curriculum is necessary to perform the duties of the proffered position. Moreover, the end-client's list of duties lacks sufficient details establishing, for instance, the complexity or uniqueness of the job duties, supervisory duties (if any), independent judgment required, or the amount of supervision received. While the end-client identified the education level it requires for the position, neither the Petitioner nor the end-client has distinguished the proffered position as more complex or unique from other positions that can be performed by persons without such a degree.

We again refer to the two expert opinion letters authored by [REDACTED] opinion letters do not substantiate his conclusions, such that we can conclude that the Petitioner has met its burden of proof. In his letters, [REDACTED] lists the same 10 duties provided by the end-client and the vendor for the proffered position. While [REDACTED] provided a description of the Petitioner's business activities and identifies the documentation he reviewed to gain an understanding of those activities, he did not discuss the Beneficiary's duties as they would be performed at the end-client's site or on the end-client's project.

Further, in discussing the listed duties for the proffered position, [REDACTED] concluded that "the nature of these specific responsibilities and knowledge is so specialized and complex that knowledge required to perform these duties is usually associated with the attainment of a [b]achelor's [d]egree in one of these fields." He also stated that the "described job duties are of a professional nature and requires preparation at the [b]achelor's [d]egree level in [c]omputer [i]nformation [s]ystem, or a related area at a minimum." However, the record does not indicate whether [REDACTED] was aware that the Beneficiary would provide services offsite to an end-client rather than to the Petitioner. *See Defensor*, 201 F.3d at 387-88. Nor does [REDACTED] reference the specifics of a particular project upon which the Beneficiary would work in meaningful detail. For example, while we appreciate his brief discussion of several of the bullet-pointed duties, that description still falls short of providing a meaningful discussion of what the Beneficiary would actually do at the client's office or what projects he would be assigned to. Additionally, [REDACTED] does not address the Petitioner's Level II designation, which we consider a significant omission. As a result, we conclude that the Petitioner

has not demonstrated that [REDACTED] possessed the requisite information to adequately assess the nature of the position and appropriately determine parallel positions based upon the job duties and level of responsibilities. Again, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988).

The generalized implications in the record indicating that the knowledge and associated entry requirements associated with the proffered position exceed those of other positions located within the occupation are acknowledged. However, the Petitioner's Level II wage designation undercuts the claim that it satisfies this criterion.¹⁷ In other words, if typical positions located within the occupational category do not require a bachelor's degree in a specific specialty, or the equivalent, then it is unclear how a position with Level II characteristics would, regardless of the Petitioner's assertions.

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).

D. 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.

Here, while the Petitioner stated that it hires individuals with bachelor's degrees, and submitted copies of degree certificates, transcripts, and pay stubs, it did not provide any evidence that those individuals were employed in the same capacity as the Beneficiary.

The record must establish that a petitioner's stated degree requirement is not a matter of preference for high-caliber candidates but is necessitated instead by performance requirements of the position.

¹⁷ The Petitioner's designation of this position as a Level II position would undermine a claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, a Level II 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 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

See Defensor, 201 F.3d at 387-88. Were we limited solely to reviewing a petitioner's claimed self-imposed requirements, an organization could bring any individual with a bachelor's degree to the United States to perform any occupation as long as the petitioning entity created a token degree requirement. *Id.* Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner's past recruitment and hiring practices, as well as information regarding employees who previously held the position.

We conclude that the Petitioner did not provide sufficient documentary evidence to support the assertion that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, directly related to the duties of the position. The Petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

E. 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 acknowledge the Petitioner's assertions regarding the specialization and complexity of the position's duties. However, as above, those claims are undermined by the Petitioner's Level II wage designation.¹⁸ Moreover, and for reasons similar to those discussed under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), we conclude that the Petitioner has not established that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). We incorporate our earlier discussion and analysis on this matter.

IV. SPECULATIVE EMPLOYMENT

The Petitioner has also not adequately established that it has secured definite, non-speculative work for the Beneficiary before it filed this petition. As noted by the Director, the Petitioner did not submit sufficient evidence of a contractual obligation on the part of the end-client to demonstrate that it will have specialty occupation work available for the Beneficiary for the requested period. On appeal, the Petitioner submits an excerpt from the end-client's Master Services Agreement with the vendor. Page three¹⁹ of that Agreement specifically states that "[the end-client] makes no commitment concerning the amount of business, if any, that it will provide to [the vendor] under this Agreement. Specific commitments to purchase Services will be made exclusively on [redacted] Purchase Order(s)." However, the Petitioner did not include the Purchase Order from the end-client identifying the Services to be provided by the Beneficiary. While the Petitioner submitted a document titled, Exhibit A, which it claims is the Purchase Order from the vendor, there is no

¹⁸ Again, 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*.

¹⁹ The Petitioner submitted pages 3 and 12 of the Agreement between [redacted] and [redacted]

Matter of S- Corp.

information as to the actual contracted duration for the Beneficiary's services. Further, the Exhibit A document submitted on appeal lists a start date of June 4, 2017 and a duration of 12 months.

For H-1B approval, the Petitioner must demonstrate a legitimate need for an employee exists and to substantiate that it has H-1B caliber work for the Beneficiary for the period of employment requested in the petition. U.S. Citizenship and Immigration Services regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 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).

V. CONCLUSION

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.

ORDER: The appeal is dismissed.

Cite as *Matter of S- Corp.*, ID# 1420330 (AAO Nov. 8, 2018)