



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

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

MATTER OF C-D-S- LLC

DATE: FEB. 9, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a product development and information technology software services company, seeks to temporarily employ the Beneficiary as a “computer programmer” under the H-1B nonimmigrant classification. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The Director, California Service Center, denied the petition and reaffirmed her denial decision in response to the Petitioner’s subsequent motions. The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal.

I. ISSUE

The issue before us is whether the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

II. SPECIALTY OCCUPATION

As noted, the issue before us is whether the evidence of record demonstrates by a preponderance of the evidence that the Petitioner will employ the Beneficiary in a specialty occupation position.¹

A. Legal Framework

For an H-1B petition to be granted, the Petitioner must provide sufficient evidence to establish that it will employ the Beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the Petitioner must establish that the employment it is offering to the Beneficiary meets the applicable statutory and regulatory requirements.

¹ We follow the preponderance of the evidence standard as specified in *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

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

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

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor’s degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must meet one of the following criteria:

- (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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Fed. Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the

necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets 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 proffered 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”). Applying this standard, USCIS regularly approves H-1B petitions for qualified individuals who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. USCIS must examine the ultimate employment of the individual, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position or an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

B. The Proffered Position

The record of proceedings contains varied descriptions of the duties of the proffered position. In its support letter, the Petitioner provided the following information regarding the duties of the proffered position:

. . . [The Beneficiary] will design and develop programs for [the Petitioner’s] products and will code, test, implement and maintain existing programs. In particular, [the Beneficiary] will design and develop programs using Java, JavaScript, XML, Oracle, SQL and Web Services. In particular, [the Beneficiary] will be involved in developing & testing programs sing database related software packages. Other responsibilities will include fact-finding programming analysis of routine problems, analysis of performance of existing programs, correcting deficiencies by interacting

with the product team; will work in a team environment developing user friendly product capabilities.

The Petitioner stated that it requires its computer programmers to hold a “Bachelor[']s degree in one of a variety of industry recognized areas including computer science, Electronics and Communication, Engineering, Statistics, mathematics, or a related field.”

With its support letter, the Petitioner also submitted an unsigned document entitled “Proffered Position Qualifies as a Specialty Occupation & Evidence of Employer-Employee Relationship,” in which it provided virtually the same duties in the “Position Offered” section of the letter and which stated that the position “doesn’t require supervising or directing other employees.” The Petitioner also provided another version of the duties of the proffered position in the “Detailed Job Description” section of the letter as follows (verbatim):

Develop high level and detailed design Documents for Predictive Analytics. Candidate will work under the Supervision of the Technical Lead. Work closely with Data Architect and Database Administrator to understand the existing architecture. Extract, Load and transform data from data sources into target databases. Develop and execute data migration test plans. Design and implement appropriate error handling procedures. Capture metadata as it pertains to sources/targets. Be fluent in the business concepts related to data models provided; Understands and adheres to documentation standards, file design. Responsible for maintain and enhance custom ETL code using Oracle SQL; Develop system test plans and Create test cases; monitoring progress of specific testing activities against plan, and successfully completing testing activities within the requisite project timeframes.

Coordinating with Project team to ensure data model designs support business reporting tools; coordinating with Quality Assurance and other business units to support end-to-end testing; monitoring, managing and reporting on development progress and status. Perform coding in Custom ETL, Oracle PL/SQL, and in shell scripting. Strong SQL Skills: Solid understanding of SQL (sub-queries, minus/union, inline Queries etc). Apply knowledge of computer applications and programming techniques and computer systems to perform the job duties. Keep yourself updated with the latest developments in the field by studying the technical manuals, periodicals and reports to learn ways to develop programs that meet user requirements.

20% Analysis: Independently analyze complex business problems by communicating with current and future process users. Document findings and communicate finding through written documents and models to stakeholders. The analysis tasks include understanding and researching functionality and applicable technology of both potentially new applications/packages and new releases of existing applications/packages.

20% Design & Customization: Solves business problems by designing and customizing computer applications that will meet the business requirements by utilizing best practices, corporate standards and technology. Determine and outline multiple approaches and recommend best option.

20% Development: Develop Informatica ETL mappings and workflows and make use of tools such as Informatica Power Center, Oracle Data Integrator and SQL Server Integration Services. Develop User Acceptance Test, System Test, Unit Test, Stress Test, String Test and Performance Test Plans.

20% On-Going Support & Enhancements: Provide on-going support and enhancements to computer applications or packages which includes: diagnosing problems, researching possible solutions, determining effects on the entire process, coding, thoroughly testing, documenting, and implementing. This includes setting up business processes within a package, customizations to packages/applications, and interfaces to other applications.

20% Manages Tasks/Projects: Manages daily priorities, support efforts, phases of complex projects or phases of a larger project utilizing the Project Management methodology.

In its RFE response letter dated February 25, 2015, the Petitioner provided a revised version of the duties of the proffered position as follows (verbatim):

. . . Beneficiary will develop software programs and will code, test, implement, and maintain existing programs. He will design and develop software programs, using Visual Basic, Java, Oracle, SQL, PL/SQL, SQL Server and QTP according to requirements. He will be involved in developing and testing software programs using web and database related software packages. Beneficiary will perform fact-finding programming analysis of routine problems, analysis of existing program performance, and correcting deficiencies by interacting with the users of various programs. He will work in a team environment developing user-friendly software/system applications in accordance with the project specifications. This position does not require supervising or directing other employees.

In more specific terms, Beneficiary will develop high-level and detailed design documents for predictive analytics. He will work closely with data architects and database administrators to understand the existing architecture. He will extract, load and transform (“ETL”) data from data sources into target databases, develop and execute data migration test plans, design and implement appropriate error handling procedures, and capture metadata as it pertains to sources/targets. Beneficiary will be fluent in the business concepts related to data models provided and understand and adhere to documentation standards and file design. He will be responsible for maintaining and enhancing custom ETL code using Oracle SQL, developing system

test plans and creating test cases, monitoring the progress of specific testing activities against the plan, and successfully completing testing activities within the requisite project timeframes. Beneficiary will coordinate with the project team to ensure data model designs support business reporting tools and coordinate with quality assurance and other business units to support end-to-end testing. He will monitor, manage and report on the development progress and status. He will perform coding in Custom ETL, Oracle PL/SQL, and shell scripting. The position requires strong SQL skills, including a solid understanding of sub-queries, minus/union, and inline queries. Beneficiary will apply his extensive knowledge of computer applications and programming techniques and computer systems to perform the job duties. He will remain updated with the latest developments in the field by studying the technical manuals, periodicals, and reports to learn ways to develop programs that meet user requirements.

Beneficiary's responsibilities and duties may be broken down into the following competencies:

15% Analysis: Independently analyze complex business problems by communicating with current and future process users, management engineering, and/or technical personnel and applying education and training relating to coding, IT-supported business processes, and extensive familiarity with industry-standard software applications and systems. Understand and research functionality and applicable technology of both potentially new applications/packages and new releases of existing applications/packages fitting client needs and priorities while accommodating anticipated growth within IT industry and business systems. Document findings and communicate finding through written documents and models to stakeholders.

15% Design and Customization: Solves business problems by designing and customizing computer applications through the creation and/or modification of codes, form and scripts that meet business requirements, and that utilize best practices, corporate standards and technology. Determine and outline multiple approaches and recommend best option.

45% Development: Develop mapping and workflows for applications, programs or software, making use of industry-standard business analytics tools. Develop, for the same, user acceptance tests, unit tests, stress tests, string tests and performance test plans.

25% On-Going Support & Enhancements: Provide on-going technical and programming support and enhancements to computer applications or packages, which includes diagnosing problems, researching possible solutions, determining effects on the entire process, coding, thoroughly testing, documenting, and implementing. Set

up business processes within a package, customizations to packages/applications, and interfaces to other applications.

The record of proceedings also contains a “Job Description Form” signed by the Petitioner and the Beneficiary on March 17, 2014, which states the following regarding the Beneficiary’s duties:

The Computer Programmer develops and maintains client server and Web applications. Analyze/resolve software-related issues/problems. Maintain development software for the development team. Work with network team to maintain server hosted development tools. Will be responsible for mentor and assist in the management and tasks for the junior developers. Work with Database Administrators on design/development.

- Participates in requirement meetings with Business Analysts to understand analytical content needs. Assist in documenting these requirements, resolving ambiguities and conflicts, and ensuring requirements are complete.
- Provides strategic thinking leadership pertaining to new ways of leveraging information to improve business processes.
- Must have experience in web application development using Java, J2EE, Hibernate, MyBatis, JDBC, JMX, JMS, Log4J, Web Services, JSP/Query/UI technology and MQ.
- Wide breadth of knowledge across many Java Open-Source technologies including AJAX, Spring Framework, Ant, Struts 2, XML parser technology and JUnit.
- Experience with software development best practices (RUP, Waterfall, XP, Agile).
- Strong understanding of object oriented analysis and design patterns concepts.
- Proven hands on experience with DAO and Data Services.
- Excellent application performance tuning skills.
- Experience with RDBMS (DB2, Oracle or MS SQL)
- Knowledge of the HTTP protocol, security basics, and user navigation
- Hands-on experience with J2EE (JDBC, servlets, collections, threading knowledge, OO concepts) design, development and implementation, including writing unit test cases, and delivering quality code
- Web UI experience (HTML, JSP, DHTML, CSS, JavaScript, XML, XSL, AJAX, GWT, Flash, FLEX) or willing to develop UI experience
- Strong SQL skills with Stored Procedure knowledge.
- Knowledge of relational database techniques, data warehouse concepts and architecture – Oracle
- Knowledge of XML and schema design and validation techniques.
- Experience working in UNIX environment including knowledge of shell scripts
- HTMLS skills a plus with Mobile application development experience
- Working knowledge with various JavaScript frameworks (AngularJS, BackboneJS, jQuery, ExtJS, YUI, etc)

- Overall understanding of web architectures
- Knowledge of Kerberos and other SSO authentication mechanisms is a plus
- Working knowledge of directory services – LDAP and Active Directory a plus
- Candidate should be able to diagnose problems quickly and independently.
- Sharp, quick, aggressive ability to deal with business and system problems
- Strong communication skills and willingness to learn new technologies & applications a must.

The Labor Condition Application (LCA) submitted by the Petitioner in support of the petition was certified for use with a job prospect within the “Computer Programmers” occupational classification, SOC (O*NET/OES) Code 15-1131, and a Level I (entry-level) prevailing wage rate, the lowest of the four assignable wage-levels.

C. Analysis

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. It is incumbent upon the Petitioner to demonstrate it has sufficient work to require the services of a person with at least a bachelor’s degree in a specific specialty, or its equivalent, to perform duties at a level that requires the theoretical and practical application of at least a bachelor’s degree level of a body of highly specialized knowledge in a specific specialty for the period specified in the petition.

In this matter, the Petitioner indicated that the Beneficiary will be employed in-house as a “Computer Programmer.” However, upon review of the record of proceedings, we find that the Petitioner did not submit a job description that adequately conveys the substantive work to be performed by the Beneficiary. USCIS in this matter must review the actual duties the Beneficiary will be expected to perform to ascertain whether those duties require at least a baccalaureate degree in a specific specialty, or its equivalent, as required for classification as a specialty occupation. To accomplish that task in this matter, USCIS must analyze the actual duties in conjunction with the specific project(s) to which the beneficiary will be assigned. To allow otherwise, results in generic descriptions of duties that, while they may appear (in some instances) to comprise the duties of a specialty occupation, are not related to any actual services the beneficiary is expected to provide.

Considering the totality of all of the Petitioner’s duty descriptions, we find that the evidence of record does not establish the depth, complexity, or level of specialization, or substantive aspects of the matters upon which the Petitioner claims that the Beneficiary will engage. We acknowledge that the Petitioner provided rather lengthy versions of the duties; however, the duties of the proffered position, and the position itself, are nonetheless described in relatively generalized and abstract terms that do not relate substantial details about either the position or its constituent duties. For example, the Petitioner stated that the Beneficiary will “design and develop software programs” and “be involved in developing and testing software programs” without providing details regarding the software programs the Beneficiary will develop and test, and the specific duties associated with these tasks. Similarly, the Petitioner does not provide details as to the tasks involved in “monitor[ing], manag[ing] and report[ing] on the

development progress and status.” Likewise, stating that the Beneficiary “will work in a team environment developing user-friendly software/system applications in accordance with the project specifications” reveals no details regarding the project itself or the tasks involved with the project. Furthermore, the Petitioner states that the Beneficiary will “remain updated with the latest developments” and “be fluent in the business concepts,” which refer to the skills required in performing tasks but do not provide any insight into the actual tasks the Beneficiary will perform.²

Such generalized information does not in itself establish a correlation between any dimension of the proffered position and a need for a particular level of education, or educational equivalency, in a body of highly specialized knowledge in a specific specialty. Therefore, it is not evident that the proposed duties as described in this record of proceeding, and the position that they comprise, merit recognition of the proffered position as a specialty occupation. As so generally described, we find that the descriptions do not illuminate the substantive application of knowledge involved or any particular educational attainment associated with such application. The duties as described give very little insight to actual tasks that the Beneficiary would perform on a day-to-day basis. Furthermore, we find that the Petitioner has not supplemented the job and duty descriptions with documentary evidence establishing the substantive nature of the work that the Beneficiary would perform, whatever practical and theoretical applications of highly specialized knowledge in a specific specialty would be required to perform such substantive work, and whatever correlation may exist between such work and associated performance-required knowledge and attainment of a particular level of education, or educational equivalency, in a specific specialty.

In this case, the Petitioner has not described the proffered position with sufficient detail to determine that the minimum requirement is a bachelor’s degree in a specialized field of study. It is incumbent on the Petitioner to provide sufficient evidence to establish that the particular position that it proffers would necessitate services at a level requiring both the theoretical and practical application of a body of highly specialized knowledge and the attainment of at least a bachelor’s degree in a specific specialty, or its equivalent. When “any person makes application for a visa or any other document required for entry, or makes application for admission, . . . the burden of proof shall be upon such person to establish that he is eligible” for such benefit. Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)

Further, we note that there are inconsistencies in the record of proceedings that undermine the Petitioner’s credibility with regard to the services the Beneficiary will perform, as well as the actual nature and requirements of the proffered position. For example, in the Form I-129, the Petitioner stated that the Beneficiary would work off-site, and stated that an itinerary had been included. However, the Petitioner also asserts that the Beneficiary will work in-house. In addition, the Petitioner provided inconsistent percentages of the duties/responsibilities/ competencies³ of the proffered position. For example, while the Petitioner stated in a document submitted with the initial

² The Petitioner listed similar required skills under the subheading “Role Specific Responsibilities” in the “Job Description Form” document.

³ On appeal the Petitioner asserts that the breakdown of proffered position’s duties into general areas of competencies is “not the duties themselves.”

filing of the petition that 20 percent of the duties encompassed development, the Petitioner changed this to 45 percent in its RFE response. Similar inconsistencies are noted in the “analysis,” “design and customization,” and “on-going support and enhancements” categories. Furthermore, the Petitioner deleted the “manages tasks and projects” section in its RFE response, which the Petitioner stated in its initial evidence that 20 percent of the duties were within this category. The record of proceedings contains insufficient evidence resolving these inconsistencies.

The Petitioner further indicated that the proffered position requires experience with application design, development, and implementation of various computer and web programs. The Petitioner also stated that the Beneficiary would “mentor” junior developers. However, the Petitioner’s statements on the LCA undermine these assertions. The LCA indicates a wage level at a Level I (entry) wage, which is the lowest of four assignable wage-levels.⁴ “[I]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence.” *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92.

Without a meaningful, credible job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation’s level of knowledge in a specific specialty. The tasks as described do not communicate (1) the actual work that the Beneficiary would perform, (2) the complexity, uniqueness and/or specialization of the tasks, and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty. The Petitioner’s assertion with regard to the educational requirement for the position is conclusory and unpersuasive, as it is not supported by the job description or probative evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *In re Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). For this reason alone, we find that the evidence of record does not establish the proffered position as a specialty occupation.

Nevertheless, we will analyze the duties as described and the evidence of record to determine whether the proffered position as described would qualify as a specialty occupation. To that end and to make our determination as to whether the employment described above qualifies as a specialty occupation, we turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

A baccalaureate or higher degree in a specific specialty, or its equivalent, is

⁴ The wage-level of the proffered position indicates that (relative to other positions falling under this occupational category) the Beneficiary is only required to have a basic understanding of the occupation. That designation indicates further that the Beneficiary will only be expected to “perform routine tasks that require limited, if any, exercise of judgment.” 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://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. This wage-level designation is not consistent with the Petitioner’s statements that the position requires work experience and would involve mentoring “junior employees.”

normally the minimum requirement for entry into the particular position

USCIS recognizes of the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (the *Handbook*) as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁵ As noted, the Petitioner asserted in the LCA that the proffered position falls under the occupational category "Computer Programmers"

The *Handbook* states the following with regard to the educational requirements necessary for entrance into this field:

Most computer programmers have a bachelor's degree in computer science or a related subject; however, some employers hire workers with an associate's degree. Most programmers specialize in a few programming languages.

Education

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

Most programmers learn only a few computer languages while in school. However, a computer science degree gives students the skills needed to learn new computer languages easily. During their classes, students receive hands-on experience writing code, debugging programs, and doing many other tasks that they will perform on the job.

To keep up with changing technology, computer programmers may take continuing education and professional development seminars to learn new programming languages or about upgrades to programming languages they already know.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Computer Programmers," available at <http://www.bls.gov/ooh/computer-and-information-technology/computer-programmers.htm#tab-4> (last visited Feb. 3, 2016).

The *Handbook* 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 entry into this occupational category. Rather, the *Handbook* states that although most computer programmers have a bachelor's degree in

⁵ All of the references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. The excerpts of the *Handbook* regarding the duties and requirements of the referenced occupational category are hereby incorporated into the record of proceeding.

computer science or a related subject, some employers hire workers with an associate's degree. The fact that some employers find an associate's degree sufficient undermines the Petitioner's assertion that the proffered position is a specialty occupation requiring at least a bachelor's degree in a specific specialty. Furthermore, although the *Handbook* does make provision for work experience, it does not state that such experience must be equivalent to a bachelor's degree in a specific specialty. 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.

When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the Petitioner to provide persuasive evidence that the proffered position more likely than not satisfies this or one of the other three criteria, notwithstanding the absence of the *Handbook*'s support on the issue. In such case, it is the Petitioner's responsibility to provide probative evidence (e.g., documentation from other objective, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation.

The Occupational Information Network (O*NET) Summary Report, referenced by the Petitioner, is insufficient to establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor's degree or its equivalent in a specific specialty. The pertinent section of the O*NET Internet site relevant to 15-1131.00 – Computer Programmers assigns this occupation a Job Zone “Four” rating, which groups it among occupations of which “most,” but not all, “require a four-year bachelor's degree.” Further, O*NET does not indicate whether the four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty directly related to the occupation. Furthermore, the Petitioner asserts that the “SVP level between 7 and 8” assigned by this classification indicates “the same level of prerequisite education as would be attained through a post-secondary degree-granting program.” However, the Specialized Vocational Preparation (SVP) rating is meant to indicate only the total number of years of vocational preparation required for a particular position. 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. For all of these reasons, the O*NET excerpt submitted by the Petitioner is of little evidentiary value to the issue presented on appeal.

In support of its contention that the proffered position is a specialty occupation, the Petitioner cites a memorandum entitled “*Guidance Memorandum on H1B Computer Related Positions*,” from Terry Way, Director, Nebraska Service Center (NSC), to Center Adjudications Officers (Dec. 22, 2000).

We find that the Petitioner's reliance on this memorandum is misplaced as the memorandum is irrelevant to this proceeding. By its very terms, the memorandum was issued by the then Director of the NSC as an attempt to “clarify” an aspect of NSC adjudications; and, framed as it was, as a memorandum to NSC “Adjudication's Officers,” it was addressed exclusively to NSC personnel

within that Director's chain of command. As such, it has no force and effect upon the present matter, which was initially adjudicated by the California Service Center.

It is also noted that the legacy memorandum cited by the Petitioner does not bear a "P" designation. According to the Adjudicator's Field Manual (AFM) § 3.4, "correspondence is advisory in nature, intended only to convey the author's point of view" AFM § 3.4 goes on to note that examples of correspondence include letters, memoranda not bearing the "P" designation, unpublished AAO decisions, USCIS and DHS General Counsel Opinions, etc. Regardless, the NSC no longer adjudicates H-1B petitions and, therefore, the memorandum is not followed by any USCIS officers even as a matter of internal, service center guidance.

Even if we were bound by this memorandum either as a management directive or as a matter of law, it was issued more than a decade ago, during what the NSC Director perceived as a period of "transition" for certain-computer related occupations; that the memorandum referred to now outdated versions of the *Handbook* (the latest of those being the 2000-2001 edition); and that the memorandum also relied partly on a perceived line of relatively early unpublished (and unspecified) decisions in the area of computer-related occupations, which did not address the computer-related occupations as they have evolved since those decisions were issued more than a decade ago.^[1] In any event, the memorandum reminds adjudicators that a specialty occupation eligibility determination is not based on the proffered position's job title but instead on the actual duties to be performed. For all of the reasons articulated above, the memorandum is immaterial to this discussion regarding the job duties of the Petitioner's proffered position and whether the Petitioner has satisfied its burden of establishing that this particular position qualifies as a specialty occupation.

Upon review of the totality of the evidence in the entire record of proceeding, we conclude that the Petitioner has not established that the proffered position falls within an occupational category for which the *Handbook*, or other authoritative source, indicates that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is normally required for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the particular position that is the subject of this petition is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the Petitioner has not satisfied the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

*The requirement of a baccalaureate or higher degree in a specific specialty,
or its equivalent, is common to the industry in parallel
positions among similar organizations*

Next, we will review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions

^[1] While 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

that are identifiable as being (1) in the Petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the Petitioner.

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, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative source) reports a standard 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.

The Petitioner submitted a letter from [REDACTED] the President of [REDACTED] stating that the duties of the proffered position are "complex" and that he "confirm[s]" that the computer programmer "must hold a minimum of a bachelor's degree in science, technology...." Depending on the specificity, detail, and credibility of a letter, we may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." See *Matter of Acosta*, 19 I&N Dec. 211, 218 (BIA 1985). The BIA has also held, however, "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *In re S-A-*, 22 I&N 1328, 1332 (BIA 2000). If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *In re Y-B-*, 21 I&N Dec. 1136, 1139 (BIA 1998). We find that Mr. [REDACTED] letter lacks specificity and detail regarding the duties of the proffered position and the Petitioner provided insufficient evidence to corroborate Mr. [REDACTED] statements.

Moreover, it does not appear that the Petitioner notified Mr. [REDACTED] that it designated the proffered position on the LCA as a Level I (entry) position relative to others within the occupational category. It appears that this information would have been relevant for his assessment of the proffered position. Therefore, Mr. [REDACTED] knowledge of the position has not been established.

Therefore, Mr. [REDACTED] letter is insufficient to demonstrate that of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being (1) in the Petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the Petitioner.⁶

⁶ For these reasons, Mr. [REDACTED] letter also does not satisfy any of the remaining criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Thus, based upon a complete review of the record, we find that the Petitioner has not established that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner. Thus, for the reasons discussed above, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The particular position is so complex or unique that it can be performed only by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent

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 evidence of record shows that the Petitioner's 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.

Here, the evidence of record does not credibly demonstrate relative complexity or uniqueness as aspects of the proffered position. Specifically, it is unclear how the computer programmer position, as described, necessitates the theoretical and practical application of a body of highly specialized knowledge such that a person who has attained a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. The evidence of record did not demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. 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 of the proffered position. While related courses may be beneficial, or even essential, in performing certain duties of a computer systems engineer position, the evidence of record does not demonstrate 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 Petitioner's proffered position. The evidence of record does not distinguish the proffered position from similar positions within the occupational category which do not require a bachelor's degree *in a specific specialty, or the equivalent*.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. The LCA indicates a wage level at a Level I (entry) wage, which is the lowest of four assignable wage levels.⁷ Without further evidence, the evidence does not demonstrate that the proffered position is complex or unique as such a position falling under this occupational category would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent)

⁷ As previously mentioned, the wage-level of the proffered position indicates that (relative to other positions falling under this occupational category) the Beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

position, requiring a significantly higher prevailing wage.⁸ For example, a Level IV (fully competent) position is designated by DOL for employees who “use advanced skills and diversified knowledge to solve unusual and complex problems.”⁹ The evidence of record does not establish that this position is significantly different from other positions in the occupational category such that it refutes the *Handbook*’s information that a bachelor’s degree in a specific specialty, or its equivalent is not required for the proffered position.

The Petitioner claims that the Beneficiary is well qualified for the position, and references his qualifications. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor’s degree in a specific specialty, or its equivalent. The evidence of the record has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The employer normally requires a baccalaureate or higher degree in a specific specialty, or its equivalent, for the position

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. To this end, we review the Petitioner’s past recruiting and hiring practices, as well as information regarding employees who previously held the position, and any other documentation submitted by a petitioner in support of this criterion of the regulations.

To merit approval of the petition under this criterion, the record must establish that a petitioner’s imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. While a petitioner may assert that a proffered position requires a specific degree, that statement 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 Petitioner 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 388.

⁸ 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.

⁹ For additional information regarding wage levels as defined by DOL, 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://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.

The Petitioner submitted copies of several of its employees' academic credentials. The record also contains Forms W-2 and Wage and Tax Register documents relating to these employees. We find that information contained in these documents is not sufficient to demonstrate that the positions held by these individuals were the same as, or similar to, the position proffered to the Beneficiary. We also find that the varying salaries paid to these individuals and the master's degrees some of them hold raise questions as to whether these individuals hold the same position proffered here. Furthermore, it is unclear how accurate of a snapshot this listing constitutes, as the Petitioner did not provide information as to how many other positions exist.¹⁰ Therefore, the Petitioner has not demonstrated that it normally requires at least a bachelor's degree in a specific specialty or its equivalent for the proffered position, it does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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 in a specific specialty, or its equivalent

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.

The Petitioner claims that the nature of the specific duties of the position in the context of its business operations 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 reviewed the Petitioner's statements regarding the proffered position and its business operations. However, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent.

¹⁰ The Petitioner submitted an organizational chart for its "Information Technology Healthcare COE" department. However, the positions on this chart are identified as "Programmer Analyst" and the individuals shown on this chart do not correspond to the individuals that the Petitioner identified as its computer programmers.

We further incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a Level I position (of the lowest of four assignable wage-levels) relative to others within the occupational category. Without more, the position is one not likely distinguishable by relatively specialized and complex duties. That is, without further evidence, the Petitioner has not demonstrated that its proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a substantially higher prevailing wage.¹¹

Although the Petitioner asserts that the nature of the specific duties is specialized and complex, the record lacks sufficient evidence to support this claim. Thus, the Petitioner has submitted inadequate probative evidence to satisfy the criterion of the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed.¹²

III. CONCLUSION AND ORDER

In visa petition proceedings, it is the Petitioner's burden to establish 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-D-S- LLC*, ID# 15635 (AAO Feb. 9, 2016)

¹¹ As previously discussed, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems" and requires a significantly higher wage.

¹² As the grounds discussed above are dispositive of the Petitioner's eligibility for the benefit sought in this matter, we will not address and will instead reserve our determination on the additional issues and deficiencies that we observe in the record of proceeding with regard to the approval of the H-1B petition.