



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 9096095

Date: SEP. 30, 2020

Appeal of California Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker

The Petitioner, an information technology solutions provider, seeks to temporarily employ the Beneficiary as a “sales engineer” 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 record did not establish that the proffered position qualifies as a specialty occupation. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. See *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

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

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

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

8 C.F.R. § 214.2(h)(4)(iii)(A). 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”).

II. THE PROFFERED POSITION

The Petitioner seeks to employ the Beneficiary as a sales engineer. In response to the Director’s request for evidence (RFE), the Petitioner provided a list of job duties for the proffered position, as follows:

Respond to functional and technical elements of RFIs/RFPs	5%
Convey customer requirements to Product Management teams to ensure Product Management Team makes the correct upgrades/feature improvements and satisfies customer needs more efficiently	5%
Prepare cost estimates by evaluating processes, plans, and related customer documents	5%
Consult with architects, other professional and technical personnel	5%
Design solutions utilizing [the Petitioner’s] best practices and maintain technical responsibility for project delivery as the sole technical resource on a project or the leader of a delivery team	55%
Consult with clients and partners to provide functional and technical expertise in areas including, solution design, project management, business process improvement and risk identification/mitigation	15%
Develop and document configuration best practices and contribute to team training and professional development efforts	10%

The Petitioner also included tasks the Beneficiary would perform in carrying out each duty.

The Petitioner indicated that the minimum entry requirement for the proffered position is a bachelor’s degree, or equivalent, in computer engineering or a related field.

III. ANALYSIS

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.¹

A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. 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.²

On the labor condition application (LCA)³ submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Sales Engineers" corresponding to the Standard Occupational Classification (SOC) code 41-9031. Thus, we reviewed the Handbook's subchapter entitled "How to Become a Sales Engineer," which states, in pertinent part, that sales engineers typically need a bachelor's degree in engineering or a related field but that a worker without a degree, but with previous sales experience as well as technical experience or training, may qualify for the position of sales engineer.⁴ The Handbook also states that "workers who have a degree in science, such as chemistry, or in business with little or no previous sales experience, also may become sales engineers."⁵ To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. The Handbook's report does not establish this standard.

For example, the Handbook indicates that baccalaureate degrees in various fields (engineering, science, or business) may be adequate for entry into this occupation. In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or

¹ 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.

² 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.

³ 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).

⁴ Bureau of Labor Statistics, U.S. Dep't of Labor, Occupational Outlook Handbook, Sales Engineers, <https://www.bls.gov/ooh/sales/sales-engineers.htm> (last visited Sept. 15, 2020).

⁵ Id.

its equivalent)” requirement of section 214(i)(1)(B) of the Act.⁶ In such a case, the required “body of highly specialized knowledge” would essentially be the same. Since there must be a close correlation between the required “body of highly specialized knowledge” and the position, however, a minimum entry requirement of a degree in disparate fields, such as engineering, science, and business, would not meet the statutory requirement that the degree be “in the specific specialty (or its equivalent),” unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position. Section 214(i)(1)(b).

The Handbook, therefore, does not support a conclusion that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

The Petitioner also references DOL’s Occupational Information Network (O*NET) summary report for “Sales Engineers,” listed as SOC code 41-9031.00 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.⁷ 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.⁸ The O*NET 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

⁶ Whether read with the statutory “the” or the regulatory “a,” both readings denote a singular “specialty.” Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. This includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position. The Petitioner has not provided this evidence here.

⁷ 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.

⁸ For additional information, see the O*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

in the summary report does not indicate that the “education level” for the respondents must be in a specific specialty.⁹ 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. 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.

Nor is the case law the Petitioner cites sufficient to satisfy the first criterion. The Petitioner contends that in concluding a bachelor’s degree in a specific specialty, or the equivalent, is not normally the minimum requirement for the proffered position, the Director mischaracterized the Handbook and cites to *Next Generation Tech., Inc. v. Johnson*, 328 F. Supp. 3d 252 (S.D.N.Y. 2017) to claim that her conclusion bore no “rational connection” to the Handbook.

First, we are not bound to follow the published decision of a United States district court. See *Matter of K-S-*, 20 I&N Dec. 715, 719-20 (BIA 1993). However, even if we were to consider the logic underlying *Next Generation Tech., Inc.*, we would still conclude that the Petitioner had not demonstrated that the proffered position qualifies as a specialty occupation.

As recognized by another court, while the Handbook may satisfy the first regulatory criterion for some professions, it does not for other occupations in such a categorical manner.¹⁰ See *Innova Sols., Inc. v. Baran*, 2019 WL 3753334, at *8 (N.D. Cal. Aug. 8, 2019) (declining to follow *Next Generation Tech., Inc.*). For example, “[the Handbook’s] description for the Computer Programmer occupation does not describe the normal minimum educational requirements of the occupation in a categorical fashion.” *Id.*; see also *Xiaotong Liu v. Baran*, 2018 WL 7348851 (C.D. Cal. Dec. 21, 2018). “Accordingly, [the Petitioner] could not simply rely on [the Handbook’s] profile, and instead had the burden to show that the particular position offered to [the Beneficiary] was among the Computer Programmer positions for which a bachelor’s degree was normally required.” See *Innova Sols., Inc.* 2019 WL 3753334, at *8.

Moreover, the court in *Next Generation Tech., Inc.* relied in part on a USCIS policy memorandum regarding “Computer Programmers” indicating generally preferential treatment toward positions located within that occupational category, and “especially” toward companies in that particular petitioner’s industry. However, USCIS rescinded the policy memorandum cited in *Next Generation Tech., Inc.*¹¹

The Handbook does not describe the normal minimum educational requirement for positions located within the “Sales Engineers” occupational category in a categorical manner since it states that “a

⁹ Nor is it apparent whether these credentials were prerequisites to these individuals’ hiring.

¹⁰ Such categorically-described professions would include, for example, surgeons or attorneys, which indisputably require at least a bachelor’s degree for entry into the occupation.

¹¹ See USCIS Policy Memorandum PM-602-0142, Rescission of the December 22, 2000 “Guidance memo on H1B computer related positions” (Mar. 31, 2017), <https://www.uscis.gov/sites/default/files/files/nativedocuments/PM-6002-0142-H-1BComputerRelatedPositionsRecission.pdf>.

worker without a degree, but with previous sales experience as well as technical experience or training, may qualify for the position of sales engineer” and that “workers who have a degree in science, such as chemistry, or in business with little or no previous sales experience, also may become sales engineers.” Further, the Petitioner has not sufficiently established that a bachelor’s degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

The Petitioner also cites *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012). We agree that “[t]he knowledge and not the title of the degree is what is important.” However, in general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor’s or higher degree in more than one specialty is recognized as satisfying the “degree in the specific specialty (or its equivalent)” requirement of section 214(i)(1)(B) of the Act. In such a case, the required “body of highly specialized knowledge” would essentially be the same. Since there must be a close correlation between the required “body of highly specialized knowledge” and the position, however, a minimum entry requirement of a degree in two disparate fields, such as English and business, would not meet the statutory requirement that the degree be “in the specific specialty (or its equivalent),” unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position. Section 214(i)(1)(B) of the Act (emphasis added).¹² For the aforementioned reasons, however, the Petitioner has not met its burden to establish that the particular position offered in this matter requires a bachelor’s or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those tasks.

In any event, the Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Finance*.¹³ Again, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. See *K-S-*, 20 I&N Dec. at 719-20. It is also important to note that in a subsequent case reviewed in the same jurisdiction, the court agreed with our analysis of *Residential Finance*. See *Health Carousel, LLC v. USCIS*, No. 1:13-CV-23, 2014 WL 29591 (S.D. Ohio 2014).

The Petitioner also cites to a recent district court case, *Raj and Co. v. USCIS*, 85 F. Supp. 3d 1241 (W.D. Wash. 2015), and claims that it is relevant here.¹⁴ We reviewed the decision; however, the Petitioner has not established that the duties and responsibilities, level of judgment, complexity, supervisory duties, independent judgment, or amount of supervision in that case are analogous to the position proffered here.¹⁵ There is little indication that the positions are similar.

¹² The court in *Residential Finance* did not eliminate the statutory “bachelor’s or higher degree in the specific specialty” language imposed by Congress. Rather, it found that the petitioner in that case had satisfied the requirement.

¹³ The district judge’s decision appears to have been based largely on the many factual errors made by the Director in the decision denying the petition. We further note that the Director’s decision was not appealed to us. Based on the district court’s findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by us in our de novo review of the matter.

¹⁴ In contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge’s decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.* at 719.

¹⁵ We note that the Director’s decision was not appealed to our office. Based on the district court’s findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision in our de novo review of the matter.

Further, in *Raj*, the court stated that a specialty occupation requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent. The court confirmed that this issue is well-settled in case law and with the agency's reasonable interpretation of the regulatory framework. In the decision, the court noted that "permitting an occupation to qualify simply by requiring a generalized bachelor degree would run contrary to congressional intent to provide a visa program for specialized, as opposed to merely educated, workers." The court stated that the regulatory provisions do not restrict qualifying occupations to those for which there exists a single, specifically tailored and titled degree program; but rather, the statute and regulations contain an equivalency provision.¹⁶

In *Raj*, the court concluded that the employer met the first criterion. We must note, however, that the court stated that "[t]he first regulatory criterion requires the agency to examine the generic position requirements of a market research analyst in order to determine whether a specific bachelor's degree or its equivalent is a minimum requirement for entry into the profession." Thus, the decision misstates the regulatory requirement. That is, the first criterion requires the petitioner to establish that a baccalaureate or higher degree (in a specific specialty) or its equivalent is normally the minimum requirement for entry into the particular position.

Consequently, if the court meant to suggest that any position classified under the occupational category "Market Research Analysts" would, as it stated, "come within the first qualifying criteria" – we must disagree.¹⁷ The occupational category designated by a petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the Handbook on the duties and educational requirements of the wide variety of occupations that it addresses. However, to satisfy the first criterion, 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. That is, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title or designated occupational category. 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 beneficiary and determine whether the position qualifies as a specialty occupation. See generally *Defensor*, 201 F.3d 384.

Nevertheless, it is important to note that the court in *Raj* determined that the evidence in the record demonstrated that the particular position proffered required a bachelor's degree in market research or its equivalent as a minimum for entry. Further, the court noted that "[t]he patently specialized nature of the position sets it apart from those that merely require a generic degree." The position in *Raj* can, therefore, be distinguished from the instant position. Here, the duties and requirements of the position as described in the record of proceeding do not indicate that this particular position proffered by the

¹⁶ We agree with the court that a specialty occupation is one that requires the attainment of a bachelor's or higher degree in a specific specialty or its equivalent. We further note that a petitioner must also demonstrate that the position requires the theoretical and practical application of a body of highly specialized knowledge in accordance with section 214(i)(1)(B) of the Act and 8 C.F.R. § 214.2(h)(4)(ii), and satisfy one of the four criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

¹⁷ In *Raj*, the court quoted a brief excerpt from the Handbook; however, the quotation is from the 2012-2013 edition rather than the current 2014-2015 edition (which contains several revisions). Further, we observe that the court did not address the section of the Handbook indicating that there are no specific degree requirements to obtain the Professional Researcher Certification credential – and therefore to work as a market research analyst.

petitioner 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 criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The record lacks sufficient probative evidence to support a finding that the proffered position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. For the aforementioned reasons, the Petitioner has not met its burden to establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those tasks. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

B. Second Criterion

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

1. First Prong

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

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 establish 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)).

As noted, the Handbook does not indicate that a bachelor's degree in a specific specialty is a common requirement within the industry for parallel positions among similar organizations. Also, the Petitioner did not submit evidence from an industry professional association or from firms or individuals in the industry indicating such a degree is a minimum requirement for entry into the position. 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."

In response to the RFE, and on appeal, 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.

While the advertising organizations appear to be within the Petitioner's industry, the advertised positions are not "parallel" to the position proffered here. As noted, the Petitioner attested to DOL that the proffered position is a Level II position. However, several of the advertised positions require significant work experience beyond the requirements for a Level II position. Here, four of the advertised positions (all for the same employer) require a bachelor's degree plus 10 years' experience supporting a solution sales team in the pre-sales technical role; another advertised position requires a bachelor's degree plus five years' experience; and three other advertised positions require a bachelor's degree plus three years' experience in a related position. Further, some of the advertisements do not include sufficient information about the duties and responsibilities for the advertised positions. Thus, it is not possible to determine important aspects of the jobs, such as the complexity of the job duties, supervisory duties (if any), and independent judgment required or the amount of supervision received. Therefore, the Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions parallel those of the proffered position.

Moreover, some of the postings do not indicate that at least a bachelor's degree in a directly related specific specialty (or its equivalent) is required. For instance, two of the advertised positions require a bachelor's degree but do not identify a specific field of study for the degree.¹⁸ Additionally, six of the advertised positions state that they would accept "equivalent experience" in place of a degree. While this may be acceptable, we do not know what formulation those employers would use to determine the equivalent of a bachelor's degree, and if the H-1B category would utilize the same standard to ensure that the advertisements represented the same "equivalent" standard.¹⁹ Further, one advertised position states that a bachelor's degree is required, "preferably in a STEM field." However, a preference is not an indication of a requirement for a degree in a specific specialty. Furthermore, one of the advertised positions states that a bachelor's degree in business, engineering, marketing, or a related field is acceptable. However, a degree in business, without further specialization, would not be considered a requirement for a bachelor's degree in a specific specialty. Overall, the job postings suggest, at best, that although a bachelor's degree is sometimes required for these positions, a bachelor's degree in a specific specialty (or its equivalent) is not.²⁰ For all these reasons, we find that the advertised positions do not satisfy this prong of the second criterion, as they do not indicate that a bachelor's degree in a specific specialty, or the equivalent, is common to the industry in parallel positions among similar organizations.

¹⁸ As discussed, the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but a bachelor's degree in a specific specialty that is directly related to the duties of the position. Section 214(i)(1)(b) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). See *Royal Siam Corp.*, 484 F.3d at 147.

¹⁹ See 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

²⁰ Again, even if all of the job postings indicated that a requirement of a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), 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 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").

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.²¹ That is, not every deficit of every job posting has been addressed.

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 Petitioner's statements regarding the proffered position; however, while the Petitioner stated that the Beneficiary "will show how [the Petitioner's] products simplify automation and integration of complex systems for customers worldwide" and "will also work closely with [the Petitioner's] partner and sales teams to bridge the gap between value and technical capabilities," it has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. That is, the Petitioner has not explained in detail how tasks such as, analyze technical requirements of RFP; coordinate internally with the product engineering, sales engineering, and sales teams to effectively fulfill RFP; provide answers to technical questions utilizing [the Petitioner's] product knowledge and general software infrastructure knowledge; note customer feedback through communication via e-mail, web meetings, or in-person meetings; interpret technical customer feedback and consolidate in a report; sort feedback from customers by priority; pass on the report to product management; assist product management with internal testing and feedback of new product/feature releases to track feature improvements and bugs; assist product management by providing feedback for current product/feature releases to track feature improvements and bugs; interpret and understand detailed technical RFI/RFP requests from customer and provide appropriate answers; communicate internally with the sales engineering team as well as product management team; consult with customers on processes; help customers understand hardware/software components and requirements; provide guidance on software sizing, cloud based deployment versus on-premise deployment; assist the sales team to formulate a technical proposal; understand customer requests and provide appropriate documentation of the product including installations, architecture, user manuals, etc.; understand the product architecture and future product roadmaps through frequent interactions/meetings; help build external libraries of commands; consult with architects and technical personnel to gain knowledge of product platform built; frequent calls with product management team to understand detailed technical features of all products offered; interact with UI/UX team to provide opinions and feedback on new product releases; conduct Technical Proof of Concepts for prospective/strategic customers; conduct demos for prospective/strategic customers; ensure successful delivery of project as the sole technical resource; facilitate product installation at customer site;

²¹ 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.

provide technical support throughout the project for all technical activities including product installations, development support, best practice guidance, Request for Information documents, etc.; assist and train customers with technical aspects of software installation; attend customer calls for troubleshooting technical issues during the sales cycle; effectively manage project timelines and logistics; meet with key channel partners, system integrators, customers and prospects to review and contribute to revenue opportunities; review use-cases/processes with customer to identify areas for implementing [Petitioner's] products; help prepare visual diagrams/charts depicting areas of implementation; attend customer calls to answer any and all technical questions as part of the sales cycle; consult with implementation partners; assist implementation partners with Proof of Concepts and Technical Demos; propose and lead the optimization of technical training, collaboration tools, and productivity tools to drive efficiency and effectiveness of the pre-sales organization; and train new employees with the product and standard practices require the theoretical and practical application of a body of highly specialized knowledge. While the Petitioner submitted an extensive list of tasks, these listed tasks and duties, when read in combination with the evidence found in record of proceedings, suggest that this particular position is not so complex or unique relative to other sales engineers that the duties can only be performed by an individual with a bachelor's degree or higher in a specific specialty, or its equivalent.

Further, the Petitioner included a list of computer software, skills, and "corresponding coursework" related to each duty. 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. Simply providing a long list of the Beneficiary's coursework, or courses available in a degree program, does not sufficiently develop relative complexity or uniqueness of the particular position.

In addition, the Beneficiary's proposed job duties include collaborations with "customers," a "product engineering team," a "product management team," a "sales engineering team," a "sales team," a "UI/UX team," "architects and technical personnel," and "implementation partners." However, the Petitioner has not identified the individuals the Beneficiary would work with,²² or any "customers" the Beneficiary would support in the proffered position.

On appeal, the Petitioner provides additional details about the specific products and services the Beneficiary would sell to customers. However, most of this new information pertains to the knowledge or skills required for carrying out the duties of the proffered position and does not explain how the job duties require the theoretical and practical application of a body of highly specialized knowledge. For example, the Petitioner adds information about [REDACTED], a proprietary platform of the Petitioner. The Petitioner states that the Beneficiary will personally provide training to educate customers and team members on the technical architecture of [REDACTED] and will develop scripts for customer organizations. The Petitioner then identifies knowledge and skills required in order to perform the duties associated with developing scripts and providing training on [REDACTED], but does not further identify how the job duties or the position itself requires the theoretical and practical application of a body of highly specialized knowledge.

²² While the Petitioner submitted a partial organizational chart listing other "sales engineers," it did not specifically identify any teams or individuals the Beneficiary would work with in the proffered position.

Furthermore, on appeal, the Petitioner submits sample scripts the Beneficiary has completed for customers. We have reviewed the work samples submitted by the Petitioner. However, the Petitioner does not explain why the production of these documents would require a bachelor's degree, or the equivalent, in a specific specialty.

The Petitioner also submitted an expert opinion letter authored by [redacted] Professor of Computer Science and Information Systems at [redacted] University. In his letter, [redacted] (1) describes the credentials that he asserts qualify him to opine upon the nature of the proffered position; (2) lists the duties and tasks proposed for the Beneficiary; and (3) states that these duties require at least a bachelor's degree, or its equivalent, in computer science or a related field. We carefully evaluated [redacted]'s assertions in support of the instant petition but find them insufficient.

In his letter, [redacted] states that his assessment is based upon "the support letter and the detailed job description" provided by the Petitioner. While [redacted] provides a brief, general description of the Petitioner's business activities, he does not demonstrate in-depth knowledge of its operations. Further, [redacted]'s opinion letter does not substantiate his conclusions, such that we can conclude that the Petitioner has met its burden of proof. First, [redacted] repeats the Petitioner's description of the proposed duties and lists 12 major "knowledge areas" used to model bachelor degree programs in engineering science as set out in the 2016 Curriculum Guidelines for Undergraduate Degree Programs in Computer Engineering, published by the Association for Computing Machinery (ACM).²³ Although [redacted] attempts to correlate a few of the knowledge areas to the generally described duties, he does not offer a clear and comprehensive analysis explaining why the duties require a full curriculum of bachelor's-level courses resulting in a bachelor's degree in a specific specialty. For example, [redacted] states "[i]n my opinion, any of the duties listed for the position could be matched to a corresponding knowledge area, suggesting a high degree of competence necessary to perform them" and that "if any of the job duties require competence in a major knowledge area, it stands to reason that the whole of the job's responsibilities could not be performed satisfactorily without Bachelor-level competence in Computer Engineering or a related technical field."²⁴ [redacted] concludes further that because "there is significant overlap between the prescribed duties for the position, and the general knowledge areas covered in Bachelor-level Computer Science program, . . . any individual lacking a Bachelor's degree (or its equivalent) in these fields would not be able to perform these duties to the degree [the Petitioner] requires for the continuous execution of its business operations." [redacted] again however, does not offer a persuasive analysis of why matching any of the duties of the particular position to the broadly described corresponding knowledge areas for a potential curriculum is the same as establishing that the Petitioner's generally described

²³ The curriculum guideline identifies broad concepts of knowledge areas which are not sufficiently concise to correlate to particular courses in an established curriculum of such courses which leads to a baccalaureate or higher degree in a specific specialty, or its equivalent. The relevance of these guidelines in establishing this position is a specialty occupation is not evident.

²⁴ Service records show that [redacted] used a template with similar organization and these verbatim conclusory statements as has been submitted on behalf of other petitioners regarding different occupations. The similarity in conclusions, without clear analysis, strongly suggests that the authors of the opinions were asked to confirm a preconceived notion as to the required degrees, not objectively assess the proffered position and opine on the minimum bachelor's degree required to perform the duties described.

duties and tasks require a bachelor's degree in a specific specialty, or its equivalent. Other than referring to the "wide adoption of the ACM's Curriculum Guidelines," he does not discuss their relevance in establishing that the particular position offered here requires a specific bachelor's degree. Moreover, he does not discuss other relevant research, studies, or authoritative publications he utilized as part of his review and foundation for his opinion. For example, he does not refer to the Handbook's more recent information on this occupation or attempt to distinguish the Handbook's report that several paths, including less than a bachelor's degree in a specific specialty, are available as a minimum to enter this occupation.

Upon review of [REDACTED]'s position evaluation, the evaluation is insufficient to support a claim that the Petitioner's proffered position is complex and specialized. The record does not include probative evidence corroborating his conclusion regarding the minimum entry requirements for this occupation. Without a more thorough analysis of the proffered position that is consistent with the record and with a relevant foundation for his conclusions, his opinion has little probative value.

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)(1) and, for the sake of efficiency, hereby incorporate this finding into our analysis of the remaining specialty-occupation criteria.²⁵

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

C. Third Criterion

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

In response to the RFE, the Petitioner submitted a letter from [REDACTED] VP, Global Talent Acquisition for the Petitioner, for consideration under this criterion. In his letter, [REDACTED] states that he has 25 years of experience as a recruiter and talent acquisition specialist, and specifically two years of experience in the robotic software development industry. In regard to the Petitioner's hiring practices, [REDACTED] states:

²⁵ We hereby incorporate our discussion of [REDACTED]'s letter into our discussion of the other 8 C.F.R. § 214.2(h)(4)(iii)(A) criteria.

. . . I regularly communicate with hiring managers regarding the educational and experience requirements for positions we are recruiting for. I am regularly asked that for the specialty occupation of Sales Engineer and similar positions to look only for candidates that have at least a Bachelor's degree or equivalent in Computer Engineering or a related field. This is standard company practice for Sales Engineer and similar positions.

. . . .

In addition, based on my understanding of and experience in talent acquisition in the robotic software development industry, it is also my professional opinion that a degree requirement of at least a Bachelor's degree or equivalent in Computer Engineering or related field is common to the industry for Sales Engineer and similar positions.

While [] states that a bachelor's degree in a related specialty, which includes computer engineering, is routinely required for this position, his letter is not supported by evidence or the necessary information to determine that the Petitioner routinely employs or recruits only specifically degreed individuals for computer programmer positions (or parallel positions). As such, we find that [] letter is not sufficient to satisfy this criterion.

The Petitioner submitted resumes for four employees in sales engineer positions.²⁶ While each of the resumes state that the employees have at least a bachelor's degree in a related field, these self-generated documents are not sufficient to establish the education credentials of these individuals. Further, it is important to note that these resumes do not include any information about the duties and responsibilities performed by each individual in their positions at the Petitioner's organization. Thus, it is not possible to determine important aspects of the jobs, such as the responsibilities, complexity of the job duties, supervisory duties (if any), and independent judgment required or the amount of supervision received. Accordingly, it is unclear whether the duties and responsibilities of these individuals are the same or similar to the proffered position. Nor does the record establish that these individuals' credentials were prerequisites to their hiring.

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).

D. Fourth Criterion

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

²⁶ Notably, the Petitioner did not submit the academic credentials of these individuals, e.g. copies of diplomas and transcripts. The Petitioner should note that the evidentiary weight of a resume is generally insignificant as it represents a claim by an individual, rather than evidence to support that claim. In the instant case, no further documentation was submitted of the individuals' asserted credentials.

For reasons similar to those discussed under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), we find 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.

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

IV. CONCLUSION

The appeal will be dismissed for the above stated reasons. 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. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.