



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

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

In Re: 8770419

Date: JULY 17, 2020

Appeal of California Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (H-1B)

The Petitioner, a semiconductor development and sales company, seeks to temporarily employ the Beneficiary as a “supply chain business systems analyst” under the H-1B nonimmigrant classification for specialty occupations.¹ 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.² We review the questions in this matter *de novo*.³ Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

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

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

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 Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b)

² Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

³ See *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

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

8 C.F.R. § 214.2(h)(4)(iii)(A). We construe the term “degree” to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

II. PROFFERED POSITION

The Petitioner stated that the Beneficiary will be employed as a “supply chain business systems analyst” and that a minimum of a bachelor’s degree in information systems, computer science, or a related technical field, and relevant experience is required for entry into the position. The Petitioner did not define what or how much relevant experience is required. In articulating its requirements in response to the Director’s request for evidence (RFE), the Petitioner added computer engineering to the named fields. On appeal, the Petitioner articulates its academic requirements as a bachelor’s degree in computer information systems or management information systems. The Petitioner does not acknowledge these modifications and substitutions, which indicates that the Petitioner has not clearly defined what the position requires or what it considers to be a related field and why.

The Petitioner provided multiple lists of duties and while we will not list each duty here, we have reviewed and considered each one. Upon review of the record in its totality and for the reasons set out below, we conclude that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.⁴ Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.

⁴ The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

III. ANALYSIS

A. First Criterion

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. To inform this inquiry, we will consider the information contained in the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* regarding the duties and educational requirements of the wide variety of occupations it addresses.⁵ The Petitioner designated the proffered position on the labor condition application (LCA) as a Standard Occupation Classification (SOC) code 15-1199 "Computer Occupations, All Other" occupation. In its RFE response, the Petitioner asserted that the duties of the proffered position are consistent with the duties of the "Computer Systems Engineers/Architects" corresponding to SOC code 15-1199.02.

The *Handbook* is a career resource offering information on hundreds of occupations. However, there are occupational categories which the *Handbook* does not cover in detail and instead provides only summary data.⁶ The subchapter of the *Handbook* titled "Data for Occupations Not Covered in Detail" states, in relevant part, that the "[t]ypical entry-level education" for a variety of occupations within the category of "[c]omputer and mathematical occupations" is a "Bachelor's degree," without indicating that the bachelor's degree must be in a specific specialty.⁷ Thus, the *Handbook* is not probative in establishing that these positions comprise an occupational group for which the normal minimum requirement for entry is at least a bachelor's degree in a *specific specialty*, or its equivalent.

The Petitioner extensively references the DOL's O*NET summary report for "Computer Systems Engineers/Architects" and emphasizes that the proffered position closely aligns with the duties listed in the report. We acknowledge the Petitioner's chart where each O*NET duty is matched with a proffered position duty. While the Petitioner's chart and the other comparisons it makes may be probative of what occupational category the proffered position falls within, it does not serve to establish that the position is a specialty occupation. The O*NET Summary Report does not establish that a bachelor's degree *in a specific specialty*, or the equivalent, is normally required. It provides general information regarding the occupation, but it does not support a conclusion that the proffered position requires a bachelor's degree in a specific specialty, or the equivalent.

O*NET assigns these positions a "Job Zone Four" rating, which states "most of these occupations require a four-year bachelor's degree, but some do not." Moreover, the Job Zone Four designation does not

⁵ 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. Nevertheless, 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.

⁶ Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Data for Occupations Not Covered in Detail, <https://www.bls.gov/ooh/about/data-for-occupations-not-covered-in-detail.htm> (last visited Jul. 16, 2020). Here, the *Handbook* does not provide specific information for various occupations which might be classified within the occupational category.

⁷ The *Handbook* also indicates that this occupation does not require work experience in a related occupation or typical on-the-job training. *Id.*

indicate that any academic credentials for Job Zone Four occupations must be directly related to the duties performed. In addition, the specialized vocational preparation (SVP) rating designates this occupation as $7 < 8$. An SVP rating of 7 to less than (" $<$ ") 8 indicates that the occupation requires "over 2 years up to and including 4 years" of training. While the SVP rating indicates 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, experience, and formal education. The SVP rating also does not specify the particular type of degree, if any, that a position would require.⁸ Further, although the summary reports provide the educational requirements of "respondents," it does not account for 100% of the "respondents." Moreover, the respondents' positions within the occupation are not distinguished by career level (e.g., entry-level, mid-level, senior-level). Furthermore, the graph in the summary report does not indicate that the "education level" for the respondents must be in a specific specialty. For all of these reasons, O*NET does not establish the proffered position as a specialty occupation.

As the foregoing demonstrates, the Petitioner has not provided sufficient documentation from a probative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

B. Second Criterion

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

1. First Prong

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

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."⁹

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

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

⁹ 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)).

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.

The Petitioner submitted job vacancy announcements for our consideration under this prong. To be relevant for 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 conclude that the Petitioner’s reliance on the job announcements is misplaced.

We will first consider whether the advertised job opportunities could be considered “parallel positions.” The Petitioner provided information on why it believes the proffered position and the positions featured in these announcements are parallel. However, the Petitioner’s characterization of the positions only connects loose underpinnings of the positions, such as “developing technical solutions with proper test plans,” “configuring Oracle systems,” and “working with internal clients.” These generalities do not form a sufficient basis for establishing that the positions parallel one another, as many positions that bear little relation to one another also involve these broad connections. In examining the position descriptions themselves, some do not contain sufficient information with which to draw conclusions as to similarity. For example, the Power Integrations announcement contains a two-sentence description only and no list of duties. Though other announcements provide a bit more, the work appears to be in a different area, such as finance and marketing, rather than in supply chain management, which is the subject of the proffered position. As such, the Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions parallel those of the proffered position.

Nor does the record contain documentary evidence sufficient to establish that these job vacancy announcements were placed by companies that (1) conduct business in the Petitioner’s industry and (2) are also “similar” to the Petitioner. When determining whether the employer posting a job listing and the Petitioner share the same general characteristics, factors to be considered may include information regarding the nature or type of organization and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing. The job descriptions themselves do not contain sufficient information with which to draw conclusions as to similarity. The Petitioner provided its own assessment of why it believes the employers in the announcements are similar to it and operating in the same industry. For example, the Petitioner states that it is similar to one employer due to the number of employees the Petitioner has at its office in [REDACTED]. The Petitioner later uses the number of people it employs globally to draw comparisons to another, much larger employee. However, without providing evidence of the employers’ operations or size, for example, we are unable to interpedently examine how the Petitioner arrived its conclusions.

For all of these reasons, the Petitioner has not established that these job vacancy announcements are relevant. Even if that threshold had been met, we would still conclude that they did 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. The announcements reflect that the employers accept a variety of degrees, including a general-purpose degree in business or business administration, a master’s degree in management, and a bachelor’s degree in the wide ranging and interdisciplinary fields of STEM. As noted above, a requirement of a degree with a

generalized title, such as business, without further specification, does not establish that the position qualifies as a specialty occupation.¹⁰

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.¹¹ That is, not every deficit of every piece of evidence has been addressed.¹² The Petitioner has not provided sufficient probative 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.

Upon review of the totality of the record, the Petitioner has not sufficiently explained or documented why the proffered position is so complex or unique that a bachelor's degree in a specific specialty is required. When determining whether a position is a specialty occupation, we look at whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge attained through at least a baccalaureate degree in a specific discipline.

The position duties, as described, appear to feature work that can be categorized in a variety of occupational categories, including non-specialty occupations. For instance, duties listed for occupations falling within the "computer systems analyst" category include analyzing business requirements, system testing, configuring software, and adapting computer applications to users' needs. The Petitioner's descriptions of the proffered position feature these very duties as well. The "computer systems analyst" occupational category, however, is one that can be entered with a business or liberal arts degree and technical training.¹³ As such, if the proffered position and other non-specialty occupations share similar duties, the Petitioner must define why its particular position is so complex or unique that a bachelor's degree in a specific specialty is required. Though the Petitioner provided multiple lists and extensive descriptions of the duties, the Petitioner failed to sufficiently establish how these duties require specialized knowledge.

¹⁰ *Royal Siam Corp.*, 484 F.3d at 147.

¹¹ 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.

¹² 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 does not demonstrate what statistically valid inferences, if any, can be drawn from the job postings with regard to the common educational requirements for entry into parallel positions in similar organizations. See generally *Earl Babbie, The Practice of Social Research* 186-228 (7th ed. 1995).

¹³ See Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, "How to Become a Computer Systems Analyst," <https://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-4> (last visited Jul. 16, 2020) and DOL's Summary Report for "Computer Systems Analysts" at <https://www.onetonline.org/link/summary/15-1121.00> (last visited Jul. 16, 2020).

In its RFE response, the Petitioner includes headings of why each duty is unique or complex, however the information contained under these headings does not adequately substantiate the Petitioner's claims. To illustrate, the Petitioner writes that the duty to "maintain, support and enhance [redacted] supply chain planning module, Agile Product Life Cycle Management System, as well as other [redacted] supply chain and manufacturing systems" is complex and unique. In its explanation of why this is so, the Petitioner states that Beneficiary "needs to ensure these events and process extensions run properly, as well as makes necessary additions or updates when new automation is needed." Generally ensuring that applications are updated and run smoothly does not convey why the duty requires the theoretical and practical application of a body of highly specialized knowledge attained through at least a baccalaureate degree in a specific discipline. Under other duties, the Petitioner provides similar headings followed by explanations of why the duty is complex or unique. A non-exhaustive verbatim sampling of these explanations include:

- [A]bility to meet the business users' demands is to provide issue resolution and provide guidance and training to [redacted] user community.
- Documenting these requirements in the form of word documents, power-point slides or Visio flow diagrams to present the as-is and to-be systems in clear presentable manner to upper management and business stake-holders.
- [W]orking continuously with the cross functional teams and the development teams to keep up to date with the requirements of the users and the timelines and facilitate the Application development.

We do not agree that having an ability to meet demands; providing training; documenting business requirements in a readily consumable form by using Microsoft Word or Excel; or working with other teams to develop and adhere to timelines readily feature the application of specialized knowledge. In fact, these explanations do not convey how the work requires any academic degree, let alone how it is complex or unique. Though the Petitioner attempts to provide an explanation for why the work is specialized, the actual content of the Petitioner's explanation does not sufficiently convey why the work is complex or unique. The Petitioner labels various supply chain applications and systems as "complex" and "unique," but simply labeling them as such does not establish actual specialization.

The Petitioner also provides explanations for complexity or uniqueness by discussing the Beneficiary's qualifications for the position. Under the explanation for duty two's complexity, the Petitioner discusses the Beneficiary's strong academic background. However, the test to establish a position as a specialty occupation is not the education or experience of a particular beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. Under other duties, the Petitioner includes definitions of what, for example, is a "system upgrade" or what "unit testing" means, rather than providing explanations of why the work is complex. While helpful, defining such concepts does not establish the proffered position as a specialty occupation.

The Petitioner provides many duties and descriptions, followed by lists of the Beneficiary's bachelor's and master's degree courses that the Petitioner claims enable him to perform such duties. By simply listing the duties and listing the courses, the Petitioner bypasses the connection of why the duties require such education or why such knowledge cannot be obtained apart from a degree in one of the qualifying fields. For instance, the Petitioner describes work involving significant usage of third-party

methods or technologies, like Agile, but does not explain why the knowledge required to implement it in furtherance of the position duties could not be gained through certifications and trainings in the product or method, as opposed to a bachelor's degree in a specific specialty.

The Petitioner stated that it will pay the Beneficiary a wage consistent with a prevailing wage survey, and provided a figure which falls between a Level I and Level II wage.¹⁴ Payment of a Level II wage indicates a position for which an employee has a good understanding of the occupation but who will only perform moderately complex tasks that require limited judgment.¹⁵ On several occasions, the Petitioner states that the duties require expert knowledge in areas such as business processes, application components, and application interdependencies. It seems that a position requiring expert knowledge would require a significantly higher prevailing wage. The Petitioner's payment of a wage between a Level I and Level II undermines its assertion that the proffered position has a high level of complexity compared to others located within the occupational category.

Moreover, the Petitioner extensively discusses its in-house technologies and systems, stating that the Beneficiary's duties require in-depth understanding of the Petitioner's own proprietary technologies. This appears to imply that much of the Beneficiary's knowledge and skills were obtained through on-the-job training and not necessarily through a bachelor's degree program in a specific specialty, or its equivalent. To the extent that Petitioner-specific or supply chain-specific duties are construed as comprising a complex or unique position, we once again question whether such a high-level position requires a higher wage.¹⁶

We reviewed the extensive work product printouts, which include explanations of proprietary products, business operations, and processes. There is little indication that these operational documents were created by the Beneficiary and the Petitioner in fact states that at least some of the work product documents were created by others. Even if the documents were representative of the type of work performed in the proffered position, they provide general information that cannot substitute for credible explanations from the Petitioner as to why the work is specialized.

Overall, we observe that the Petitioner uses volume, quantity, or length of documentation rather than submitting quality evidence that is probative of the specialization, complexity, or uniqueness of the position. As previously stated, though the Petitioner attempts to provide an explanation for why the duty is complex or unique, the actual content of the Petitioner's explanations does not sufficiently convey why the work is complex or unique. Simply submitting lengthy descriptions of supply chain processes, general definitions of information technology concepts, along with work product documents from others does not establish why the duties require a bachelor's degree in a specific specialty. Accordingly, we conclude that the Petitioner has not shown that the position is so complex

¹⁴ A wage determination starts with an entry-level wage (Level I) and progresses to a higher wage level (up to Level IV) after considering the experience, education, and skill requirements of the Petitioner's job opportunity. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdatcenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

¹⁵ 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.

¹⁶ Further questions arise in this regard when we read that many of the courses the Petitioner lists as imparting the required knowledge to perform the work are master's degree courses.

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 turn to the opinion letters from [redacted] Professor of Electrical and Computer Engineering at [redacted] University and [redacted] of the Computer Science Department at [redacted] University [redacted]. We address the letters collectively as their content is substantially similar. Both professors spend significant portions of their letters repeating in either list or paragraph form the position duties that were already provided to us by the Petitioner, along with information copied directly from O*NET, and redundant general information about the Petitioner's business operations. In addition to this, the authors provide information about the Petitioner's representatives with whom the authors claim to have spoken with over the phone. Though bearing no apparent relation to the nature of the proffered position, the authors provide an overview of the educational background of those representatives. When factoring in the paragraphs concerning the qualifications of each professor and their signature blocks, very little content is devoted to an actual discussion of the proffered position.

In turning to the content that is relevant, both authors list the duties and then declare the duties to be specialized, rather than providing analysis of why the work is specialized. Simply listing what the position involves, such as "leadership" or "testing and validation" does not explain the complexity or uniqueness of the position. Notably, the authors identify where the knowledge to perform the duties could be obtained, but not why the knowledge is required. For example, the letter from [redacted] contains a heading rhetorically asking why the proffered position is a specialty occupation. In answering his question, the first sentence under the heading states that the "position of Supply Chain Business Systems Analyst requires specialized knowledge of [various areas]." However, this statement contains a significant underlying assumption: that the position requires specialized knowledge. To add any value to this matter, [redacted] analysis must flesh out his fundamental presupposition that the position requires specialized knowledge *before* discussing which areas of knowledge or explaining where the knowledge could be obtained.

Similarly, after repeating the verbatim duties from the Petitioner and discussing the Petitioner's supply chain management operations generally, [redacted] concludes that it "becomes apparent" that a minimum of a bachelor's degree in information systems, computer science or a related field is required "because the nature of these specific responsibilities and knowledge is specialized." Here again, we read a conclusion that the nature of the knowledge and duties is specialized, but lacking from the letter is an explanation of how that conclusion was reached.

Distilling the reasoning of both authors down to its essence, the underlying assumption between both is that the knowledge is specialized because it can be obtained in a bachelor's degree program in the qualifying fields. Absent from the authors' letters is a cogent explanation of why the knowledge is required in the first place. Simply declaring that the duties are specialized and require specialized knowledge does not add to our understanding of why. While the authors may draw inferences that certain courses or knowledge obtained through a bachelor's degree in one of the qualifying fields may be beneficial, the authors do not provide a sufficient basis for their collective inference that a specific degree is required *in order to* perform the duties of the proffered position. Moreover, neither the Petitioner nor the authors have sufficiently substantiated their claims that this knowledge must be

obtained in a bachelor's degree program in one of the qualifying fields, as opposed to a few computer courses and on-the-job training.

While we will review the opinions presented, they have little probative value as they do not include specific analysis of the duties of the particular position. The authors offer conclusory findings that do not feature cogent analysis of the position duties or a sufficient explanatory foundation.¹⁷

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. To satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history.

The record must establish that a petitioner's stated degree requirement is not a matter of preference for high-caliber candidates but is necessitated instead by performance requirements of the position.¹⁸ Were U.S. Citizenship and Immigration Services (USCIS) limited solely to reviewing the 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 created a token degree requirement.¹⁹ Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner's past recruitment and hiring practices, as well as information regarding employees who previously held the position.

The Petitioner submitted a list of three position titles that represent the positions held by three current employees, along with the level of education associated with the person holding the position. We infer that the Petitioner wishes to demonstrate that its employees have specialized degrees. However, the Petitioner did not submit supporting documentation such as the hiring or tax documents of these individuals, copies of their degrees, or even their names. None of the three position titles is the same as the proffered position title and the record does not include any job duties performed by these employees or the job advertisements for their positions. Therefore, we do not know what the recruitment process for hiring these individuals involved or whether specialized degrees were prerequisites. As such, the record contains insufficient evidence that these individuals have or had the same or similar substantive responsibilities, duties, and performance requirements as the proffered position.

¹⁷ 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.* We incorporate by reference our discussion of [] and [] opinions into our discussion of the other 8 C.F.R. § 214.2(h)(4)(iii)(A) criteria.

¹⁸ See *Defensor*, 201 F.3d at 387-88.

¹⁹ *Id.*

Though the Petitioner claims 724 employees in the U.S. and that it has been operating its business since 1980, the Petitioner has not provided the total number of people it has employed in the past to serve in the proffered position nor has it provided information about its past hiring history for the proffered position. We conclude that both the number of employees and the length of time that the Petitioner has been operating suggest that the Petitioner has an ample source from which to draw examples of its recruiting and hiring practices but declined to submit such evidence. Consequently, no determination can be made about the Petitioner's normal recruiting and hiring practices for the proffered position when the submitted employment evidence covers only three current employees who occupy positions different than the proffered one.

We examined the job announcements that the Petitioner contends are for positions similar to the proffered position but disagree with the Petitioner's contention that they represent the hiring practices and degree requirements for the proffered position. Specifically, the job announcements require significantly more experience than the proffered position. Even assuming the various areas of experience could be obtained concurrently, the positions require a bachelor's degree along with five years of experience. If the experience could not be gained concurrently, the positions would require upwards of ten, and in one position, as much as nineteen years of experience on top of a bachelor's degree. Another listing requires a master's degree and two years' experience. Aside from the requirements of these positions far exceeding those of the proffered position, the announcements also state that the Petitioner accepts a variety of degrees, including management, business administration, manufacturing, finance, and economics. In one instance, the degree and experience appear to be a preference rather than a requirement. The variation in the acceptable degrees for entry into the position undermines the Petitioner's assertion that the position is a specialty occupation.

Finally, if these positions are representative of the proffered position, as claimed, then the Petitioner has not resolved how payment of a wage to the Beneficiary, which falls in between a Level I and Level II, correlates to the experience the position requires. If alternatively, the positions are not parallel, but rather represent a different or more specialized position than the proffered position, then the postings have no relevance in establishing eligibility under this criterion.

The Petitioner has not persuasively established that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

D. Fourth Criterion

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

We return to the opinion of [] as both he and the Petitioner state that the duties are complex due to the geographic dispersion of the stakeholders across the globe and the Petitioner's recent merger with []. We have few concrete examples of how the global nature of the work affects the supply chain such that the proffered position would require specialized knowledge. Simply conducting business across time zones or cultures, for example, does not establish why the proffered position's

duties are complex or special. Furthermore, neither [] nor the Petitioner offer concrete examples of how the proffered position's duties will change or become more complex as a result of the merger. The Petitioner claims that the business has experienced beyond normal growth but has not provided a basis for what normal growth is or sufficiently substantiated the impact that the increased growth has on the proffered position.

Though systems and processes must be migrated or standardized to accommodate the merger, which may indicate an increased volume of work, we have little information as to why this additional work would be complex or specialized. Finally, even if we accept that the merger causes the work to become more complex, we question whether the work would remain so after the completion of the merger process. We conclude that the documentation of record does not substantiate a finding that the proffered position or its duties are more complex or special because of the global nature of the Petitioner's supply chain, the company's growth, or its recent merger.

For the same reasons we discussed under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), we conclude that the Petitioner has not established that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). We incorporate our earlier discussion and analysis on this matter.

Consequently, the Petitioner has not satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

IV. CONCLUSION

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

The appeal will be dismissed for the above stated reason. In visa petition proceedings, it is a 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.