



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

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

In Re: 10446098

Date: JULY 23, 2020

Appeal of California Service Center Decision

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

The Petitioner, an information technology consulting and staffing firm, seeks to temporarily employ the Beneficiary as a “business analyst” under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both: (a) the theoretical and practical application of a body of highly specialized knowledge; and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director of the California Service Center denied the petition, concluding that the evidence of record does not establish that the proffered position qualifies as a specialty occupation.

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)(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) 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 “business analyst” for an end-client located at [REDACTED] California. The Petitioner provided a letter from the end-client, which states that the proffered position requires at a minimum:

[T]wo (2) years of experience in product management, process improvement, technical consulting, Business Analysis or similar field and Bachelor of Science in a Science, Technology, Engineering, Mathematics field or related field and Advance degree in a Science, Technology, Engineering or Mathematics field or Master of Business Administration (MBA), a field closely and directly related to the nature of the work.

The end-client letter also includes a job description for the proffered position.

III. ANALYSIS

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. Specifically, the record does not include sufficient consistent, probative evidence establishing that the

job duties require an educational background, or its equivalent, commensurate with a specialty occupation.¹

From the outset, we conclude that the claimed requirement of a bachelor's degree in business administration without further specialization is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988). 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. We interpret the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a conclusion that a particular position qualifies for classification as a specialty occupation. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007). *See also Irish Help at Home LLC v. Melville*, 13-cv-00943-MEJ, 2015 WL 848977 (N.D. Cal. Feb. 24, 2015), *aff'd*, 679 F. App'x 634 (9th Cir. 2017). For this reason alone, the proffered position is not a specialty occupation, and this petition cannot be approved.

Even if we set this foundational deficiency aside, we would still conclude that the proffered position is not a specialty occupation because the evidence of record does not satisfy at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(ii)(1)-(4).²

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. 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.³

¹ 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.

² Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

³ 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.

The Petitioner submitted the required DOL ETA Form 9035 & 9035E, Labor Condition Application for Nonimmigrant Workers (LCA) with this petition, where it classified the proffered position under the occupational title “Computer Occupations, All Other,” corresponding to the Standard Occupational Classification code 15-1199.00.⁴

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.⁵ 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.⁶ 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.

In support of its arguments, the Petitioner cited to various court opinions. Initially, we note that 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 United States district courts in matters arising even within the same district.⁷ 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.⁸

The Petitioner cited to *RELX, Inc. v. Baran*⁹ to support its argument that a position may be specialized even when the position permits more than one specific specialty for entry into it. As the foregoing discussion demonstrates, while we agree that the bachelor’s degree does not have to be a degree in a *single* specific specialty, we do not agree with the analytical framework set forth by the *RELX* court.

In *RELX*, the court did not address the statutory and regulatory provisions as they pertain to the requirement that the bachelor’s degree, or its equivalent, be in a *specific specialty*. To avoid restricting the qualifying occupations to those for which a single, specific specialty exists, the court did not consider the requirement for specialization and overlooked that neither the *Handbook* nor the Occupational Information Network (O*NET) stated that the referenced bachelor’s degree must be in a specific specialty. In overlooking this relevant detail, the court disposed of the precedential authority

⁴ The Petitioner is required to submit a certified LCA to U.S. Citizenship and Immigration Services (USCIS) to demonstrate that it will pay the Beneficiary 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 experience and qualifications who are performing the same services. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

⁵ 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 July 22, 2020). Here, the *Handbook* does not provide specific information for various occupations which might be classified within the occupational category.

⁶ The *Handbook* also indicates that this occupation does not require work experience in a related occupation or typical on-the-job training. *Id.*

⁷ See *Matter of K-S-*, 20 I&N Dec. 715, 719-20 (BIA 1993).

⁸ *Id.*

⁹ *RELX, Inc. v. Baran*, 397 F.Supp.3d 41 (D.D.C. Aug. 5, 2019).

created by *Royal Siam Corp. v. Chertoff*¹⁰ and continued to do so when it examined the evidence presented for the other criteria.

We also disagree with the court's statement that "[the Petitioner] did not just make a general reference to O*NET. Rather, [the Petitioner] stated that the Data Analyst position is aligned with the DOL's "Business Intelligence Analyst" position for which there is a detailed description that is directly relevant to the inquiry of whether the position is specialized."¹¹ While we agree that O*NET is relevant, the court's treatment of O*NET as dispositive simply because the proffered position aligned with the occupational category disregards the *specific specialty* analysis that underpins *Royal Siam Corp.* The *RELX* court further stated that "[s]ince the [*Handbook*] indeed does provide specific detailed information regarding educational requirements for the computer operations category, and the detailed information states most of the occupations require a four-year bachelor's degree, the agency's rationale was both factually inaccurate and not supported by the record."¹² Here, again the court did not undertake the proper inquiry regarding the specific educational requirements of the position and instead regards a general requirement for a bachelor's degree as sufficient to discharge the petitioner's burden.

Because the *Handbook* and O*NET do not describe the normal minimum educational requirements with sufficient specificity to establish that the positions falling within the occupational category are specialized, we disagree with the court's reliance on these sources as establishing the requisite eligibility. Instead, we believe that absent support from the *Handbook* and O*NET, the court should have analyzed whether the petitioner had sufficiently demonstrated that its particular position was one for which a bachelor's degree would normally be required and whether the stated field(s) of study directly related to the performance of the duties.¹³ In other words, though we agree with the *RELX* court that the bachelor's degree does not have to be a degree in a single specific specialty, this agreement is predicated upon the fields of study being closely related to the duties of the position and the record reflecting evidence sufficient to establish such relation.

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 disparate fields, such as philosophy and engineering, 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

¹⁰ *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").

¹¹ *RELX, Inc.*, 397 F.Supp.3d at 54.

¹² *Id.*

¹³ Though the *RELX* court briefly discusses the duties of the position, it did not engage in analysis of whether the duties actually required the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation. Rather, after disposing of the authority set forth in *Royal Siam Corp.*, the court accepted the petitioner's stated standards concerning its position. See generally *Defensor v. Meissner*, 201 F.3d 384, 387.

responsibilities of the particular position.¹⁴ For the foregoing reasons, we cannot agree with the reasoning contained in the *RELX* decision¹⁵ and therefore conclude that the Petitioner's reliance upon the case does not support its eligibility.¹⁶

In addition, the Petitioner submitted printouts from various websites, such as study.com and learnhowtobecome.org. However, the printouts do not establish that at least a bachelor's degree in a specific specialty, or its equivalent, is required for the position. For instance, the printouts state that a bachelor's degree in business or business administration is sufficient for entry into the occupation. Thus, this strongly suggests that a bachelor's degree in a specific specialty is not normally the minimum entry requirement for this occupation.

As the foregoing demonstrates, the Petitioner has not provided sufficient documentation from a probative, authoritative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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 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 attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999)

¹⁴ Section 214(i)(1)(B) of the Act (emphasis added).

¹⁵ The Petitioner also cited to *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012) and *Tapis Int'l v. Immigration and Naturalization Service*, 94 F. Supp. 2d 172 (D. Mass. 2000) for the proposition that "there is no apparent requirement that the specialized study needed be in a single academic discipline...The knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation specific majors." As the Petitioner cited these cases for reasons similar to that which it cites to *RELX*, we incorporate herein by reference our discussion of closely related specialties as it pertains to our analysis of the *RELX* case.

¹⁶ We further note that the Director's decision in *RELX* 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 to address many of the concerns articulated by the district court if they could not have been remedied by us in our *de novo* review of the matter.

(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 previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports a requirement for at least a bachelor’s degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry’s professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner’s industry attesting that such firms “routinely employ and recruit only degreed individuals.”

In support of this criterion, the Petitioner submitted copies of job announcements placed by other employers. However, upon review of the documents, we find that the Petitioner’s reliance on the job announcements is misplaced. First, the Petitioner has not demonstrated that these organizations are similar. When determining whether the Petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the Petitioner to claim that an organization is similar and conducts business in the same industry without providing a legitimate basis for such an assertion. For instance, the Petitioner did not submit information regarding the employers’ revenue. The Petitioner did not sufficiently supplement the record of proceedings to establish that these advertising organizations are similar.

Moreover, many of the advertisements do not appear to involve parallel positions. For example, some of the advertisements appear to advertise more senior, experienced employment than the proffered position.¹⁷ Further, some of the postings do not include sufficient information about the tasks and responsibilities for the advertised positions. Thus, the Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to those of the proffered position.

In addition, 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.¹⁸ For instance, the posting placed by Sapot Systems, Inc. states that a general degree (e.g., bachelor’s degree in business) is acceptable for the position.¹⁹ Moreover, the advertisement placed by Naviant, Inc. states “4-Year College Degree, preferably in Technology or Business-related degrees.” A *preference* for a degree in a field is not necessarily an indication of a minimum *requirement*. Overall, the job postings suggest, at best, that although a

¹⁷ For instance, the posting placed by Unbound Consulting states a requirement for a bachelor’s degree and at least 7-10 years of experience in business analytics, IT vendor management, or IT sourcing.

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. See section 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

¹⁹ Again, although a general-purpose bachelor’s degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *Royal Siam*, 484 F.3d at 147.

bachelor's degree is sometimes required for these positions, a bachelor's degree in a *specific specialty* (or its equivalent) is not.²⁰

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.

Without more, 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.

As recognized in *Defensor*, 201 F.3d at 387-88, it is necessary for the end-client to provide sufficient information regarding the proposed job duties to be performed at its location(s) in order to properly ascertain the minimum educational requirements necessary to perform those duties. In other words, as the employees in that case would provide services to the end-client and not to the petitioning staffing company, the job duties and alleged requirements to perform the duties that the Petitioner provided were irrelevant to a specialty occupation determination. *See id.*

We reviewed the end-client's statements regarding the proffered position; however, while it provided additional information on how the duties would be carried out in response to the Director's request for evidence, the end-client has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. That is, the end-client has not explained in detail how the nature of some of the duties such as:

- Develop stored procedures and complex SQL queries using advanced SQL functionalities such as Pivot, Common Table Expressions (CTE), Temp Tables in SQL server, Oracle Developer (ODS) and TOAD systems

²⁰ It must be noted that 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").

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.

- Develop JIRA dashboards and create product backlogs, sprint backlogs and manage user stories to support development team during the Software Development Life Cycle (SDLC)
- Understand the end-to-end functionality and applicability of systems, softwares and different technical systems (KPHC, FS, ODS, Clarity etc.) used by business teams for current processes to determine the system requirements and feasibility for automation solutions
- Provide insights into reporting requirements/report development, user interfaces, and coordinate UAT and the final evaluation and deployment of the system solution during and after system/BP solution development in test and production environments
- Provide technical guidance to developers and help resolve their technical or process related concerns for the projects current under automation
- Debug code & work closely with software developers, blue prism developers and SQL developers to help them resolve issues/bugs in their codes and logical flows
- Identify business challenges and opportunities for improvement and solve them using problem solving frameworks, to make strategic or tactical recommendations to drive and achieve operational efficiencies
- Document the current state “as is” process and develop future state processes with new technology implementation through software tools such as MS-Visio, MS Excel, SDLC framework
- Develop relationships with upstream and downstream business partners to drive culture change, client communications, and related work regarding system changes, implementations, and related business process impacts
- Manage the intake and discovery process of new opportunities, document processes, identify unique steps and data sources to accomplish automation
- Interact with multiple stakeholders to document, review business requirements and evaluate the feasibility of new technological solutions such as Robotic Process Automation (RPA), Machine Learning & NLP etc. to address inefficiencies
- Identify and make specific recommendations about key performance indicators (KPIs) and how they can be utilized to achieve operational efficiencies
- Create reports, pivot analysis, dashboards and PowerPoint presentations to track progress of ongoing and future projects and present them to management and business owners in weekly status meetings

are so complex and unique that the knowledge required to perform them is usually associated with the attainment of a bachelor’s degree in a specific specialty, or its equivalent.

In addition to the above, the end-client lists one of the duties as “[c]onduct gap analyses to document discrepancies between business requirements and system capabilities to identify programming solutions such as Robotic Process Automation bot development, predictive modelling, batch processing etc. to meet business needs and to drive maximum efficacy.” In addition, the end-client state that the Beneficiary will “[w]ork closely with business users when the automation solution is deployed in production environment to make sure the solution integrated seamlessly with existing systems & functionalities.” However, these duties focus on an outcome or result, rather than the process undertaken to produce such an outcome or result. Such circular descriptions do not meaningfully convey the duties of the position apart from its overall outcome. Thus, these descriptions do not sufficiently convey the nature of the position or why it is so complex.

The Petitioner also submitted copies of the Beneficiary's work products at the end-client's location. However, the Petitioner does not sufficiently explain how these documents distinguish and differentiate the duties of the proffered position from the typical duties performed by other business analysts, and why the proffered duties require a baccalaureate (or higher degree) in a specific specialty, or its equivalent, as claimed.

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.

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

We observe that the record includes inconsistent information regarding the minimum requirements for the proffered position. For instance, the Petitioner initially stated that the proffered position requires a bachelor's degree in computer science. However, the end-client letter from March 2019 states that the position requires at least a "Bachelor's degree (or the equivalent) in Business Analytics & Operations Management." Moreover, the end-client letter from September 2019 and the end-client's job posting states that the proffered position requires the following:

[T]wo (2) years of experience in product management, process improvement, technical consulting, Business Analysis or similar field and Bachelor of Science in a Science, Technology, Engineering, Mathematics field or related field and Advance degree in a Science, Technology, Engineering or Mathematics field or Master of Business Administration (MBA), a field closely and directly related to the nature of the work.

As recognized by the court in *Defensor*, 201 F.3d at 387-88, where the work is to be performed for an entity other than the petitioner, evidence of the client company's job requirements is critical. Here, the end-client states that a degree in business administration is acceptable for the proffered position. As previously discussed, while a general-purpose bachelor's degree, such as a degree in business

administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam*, 484 F.3d at 147. Therefore, the end-client does not normally require a bachelor's degree in a specific specialty for this position.

In sum, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

D. Fourth Criterion

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

In the instant case, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. While the position may require that the Beneficiary possess some skills and technical knowledge in order to perform these duties, the Petitioner nor the end-client have sufficiently explained how these tasks require the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. The record does not include sufficient probative evidence that the duties require more than technical proficiency in the field. Thus, the Petitioner has not demonstrated 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).

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 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.