



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

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

In Re: 9278309

Date: JULY 2, 2020

Appeal of Vermont Service Center Decision

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

The Petitioner, a software development and information technology services company, seeks to temporarily employ the Beneficiary as a “business 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 Vermont 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. ANALYSIS

The Petitioner indicates that the Beneficiary will serve as a business analyst for its end-client located in [REDACTED] New Mexico. It submitted a list of sixteen duties with its initial filing, confirmed by the end-client, and the end-client expanded upon those duties in response to the Director’s request for evidence (RFE) by noting the percentage of time the Beneficiary would devote to each stated duty. The Petitioner also provides additional details regarding the Beneficiary’s duties on appeal. We will not repeat all the duties and descriptions here but have reviewed and considered each one. The Petitioner and end-client claim that the duties of the proffered position require a minimum of a bachelor’s degree in computer science, information systems, engineering management or other closely related field in order to perform them.

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 (1) does not describe the position’s duties with sufficient detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.⁴

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.

A. First Criterion

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

On the labor condition application (LCA)⁶ submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category of "Computer Systems Analysts" corresponding to the Standard Occupational Classification code 15-1121. Though the *Handbook* reports that "[m]ost computer systems analysts have a bachelor's degree in a computer-related field,"⁷ it also recognizes that a range of disparate degrees may be suitable for entering into this occupation. For example, the *Handbook* states that "[a]lthough many computer systems analysts have technical degrees, such a degree is not always a requirement" and that "[m]any analysts have liberal arts degrees and have gained programming or technical expertise elsewhere."⁸ The *Handbook* does not clarify the type of technical degree or liberal arts degree (whether associate or bachelor's) and does not suggest how much programming or technical expertise would generally be required for an individual with a non-computer related degree to enter into the occupation.

On appeal, the Petitioner argues that the Director ignored the following statement in the *Handbook* concerning the educational requirements for computer systems analysts:

Because these analysts also are heavily involved in the business side of a company, it may be helpful to take business courses or major in management information systems. Some employers prefer applicants who have a master's degree in business administration (MBA) with a concentration in information systems. For more technically complex jobs, a master's degree in computer science may be more appropriate.⁹

While we acknowledge the Petitioner's assertions, we nevertheless note that the imprecise and varied information in the *Handbook* regarding the ways to enter into this occupation does not support a

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 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).

⁷ Bureau of Labor Statistics, U.S. Dep't of Labor, Occupational Outlook Handbook, Computer Systems Analysts, <https://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-4> (last visited Jun. 25, 2020).

⁸ *Id.*

⁹ *Id.*

conclusion that there is categorically a normal minimum educational requirement to enter the occupation. Because the *Handbook* indicates that some employers accept less than a bachelor's degree, and that this lesser degree may even be in a non-specific discipline, such as liberal arts, the *Handbook* does not describe the normal minimum educational requirement for the occupation in a categorical manner.¹⁰ For example, the *Handbook* recognizes that “[a]lthough many computer systems analysts have technical degrees, such a degree is not always a requirement” and that “[m]any analysts have liberal arts degrees and have gained programming or technical expertise elsewhere.”¹¹ The *Handbook* does not clarify the type of technical degree or liberal arts degree (whether associate or bachelor's) and does not suggest how much programming or technical expertise would generally be required for an individual with a non-computer related degree to enter into the occupation. Because the *Handbook* indicates that some employers accept less than a bachelor's degree, and that this lesser degree may even be in a non-specific discipline, such as liberal arts, the *Handbook* does not describe the normal minimum educational requirement for the occupation in a categorical manner. Absent support from the *Handbook*, the Petitioner then must demonstrate that its particular position is among the computer systems analyst positions for which a bachelor's degree in a specific specialty, or its equivalent, is normally required.

The Petitioner cites to case law for the proposition that specialized study need not be in a single field and that the knowledge gained, not the title of the degree, is what is important. We generally agree with the proposition in *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), that “[t]he knowledge and not the title of the degree is what is important.” Moreover, we also agree with the district court judge in *Tapis Int'l v. Immigration and Naturalization Service*, 94 F. Supp. 2d 172 (D. Mass. 2000), that in satisfying the specialty occupation requirements, both the Act and the regulations require a bachelor's degree in a specific specialty, or its equivalent, and that this language indicates that the degree does not have to be a degree in a single specific specialty. 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. Because 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 computer science and social sciences, would not meet the statutory requirement that the degree be “in the specific specialty (or its equivalent),”¹² unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position.¹³ It is important to note that in a subsequent case that was reviewed in the same jurisdiction, the court agreed with our analysis of *Residential Finance*.¹⁴

¹⁰ See also *Altimetrik Corp. v. Cissna*, No. 18-10116, 2018, WL 6604258, at *6 (E.D. Mich. Dec. 17, 2018) (also noting that because the *Handbook* “makes it clear that a degree in a computer-related field is not required” for these positions, “USCIS [was] entitled to deference in its finding that systems analysts are not required to have a bachelor's degree in a specific specialty”).

¹¹ *Id.*

¹² Section 214(i)(1)(B) of the Act (emphasis added).

¹³ The courts in *Residential Finance* and *Tapis Int'l* did not eliminate the statutory “bachelor's or higher degree in the specific specialty” language imposed by Congress. Rather, they found that the petitioners in those cases had *satisfied* the requirement.

¹⁴ See *Health Carousel, LLC v. USCIS*, No. 1:13-CV-23, 2014 WL 29591 (S.D. Ohio 2014).

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* or *Tapis Int'l*. 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.¹⁵ 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.¹⁶

The Petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or another authoritative source, indicates that the normal minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. The record lacks sufficient evidence to support a finding that the particular position proffered here would normally have such a minimum, specialty degree requirement or its equivalent. 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.”¹⁷

The Petitioner submitted a letter from the IT Director of [REDACTED] a software development and IT services corporation, in support of the assertion that other firms in the industry routinely employ and recruit only degreed individuals. According to the letter, [REDACTED] requires its business analysts to have at least a bachelor's degree or equivalent in computer science, information systems or engineering, business administration, or engineering management. The letter also provided a brief overview of its requirements for a business analyst position.

¹⁵ See *Matter of K-S-*, 20 I&N Dec. 715, 719-20 (BIA 1993).

¹⁶ *Id.*

¹⁷ 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)).

Upon review, we find this letter unpersuasive to establish that firms in the Petitioner's industry routinely employ and recruit degreed individuals. The letter indicates that [] currently employs one business analyst. While it states its general minimum requirements, which virtually mirrors the Petitioner's educational requirements, it provides no additional documentation to demonstrate that the company in fact employs a business analyst. Nor is there information on the company's business operations to demonstrate that it previously employed business analysts in positions similar to the proffered position, such that we could determine a routine hiring requirement. Finally, we note that [] will accept individuals holding a degree in business administration for the position of business analyst. 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. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988).

The Petitioner also 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. Upon review, however, the submitted job vacancy announcements do not satisfy that threshold.

The Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to those of the proffered position. For example, some of the postings do not include sufficient information about the tasks and responsibilities for the advertised positions. Moreover, the postings provide little to no information about the advertising companies, such that we can determine whether they are entities similar to the Petitioner. 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.

Even if that threshold had been met, we would still find 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. For example, one posting will accept degrees in a number of disparate fields, such as business, math, economics, computer science, or technical equivalent. Another simply requires a bachelor's degree, without further specification. While a general-purpose bachelor's degree 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.*, 484 F.3d at 147. Moreover, several other postings indicate that a bachelor's degree in business administration is an acceptable prerequisite. As noted above, 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. Matter of Michael Hertz Assocs.*, 19 I&N Dec. at 560.

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.¹⁸ That is, not every deficit of every job posting has been addressed.¹⁹

We acknowledge the Petitioner's assertion via the opinion letter provided by [redacted] a faculty member in the College of Management and Technology at [redacted] University in [redacted] Minnesota, which states that a minimum of a bachelor's degree in fields such as computer science, information systems, engineering management or another closely related field is the industry standard. [redacted] repeats monster.com's generic description for a computer systems analyst which does not discuss academic requirements to perform the occupation, provides an overview of study.com's essential information for this occupation, and notes that payscale.com indicates that "the basic educational requirements for employment in this field is a bachelor's degree in computer science or engineering with a programming and design emphasis."

The brief information [redacted] repeats does not include persuasive argument or analysis establishing a common industry requirement for the computer systems analyst occupation; rather, the information listed appears to confirm the *Handbook's* report that the minimum entry-level requirements for this occupation varies. The generic information submitted regarding this occupation does not include detail of duties that are parallel to the proposed position or discuss hiring requirements for organizations similar to the Petitioner. [redacted]'s statement alone, absent corroborating evidence in the record, is insufficient to establish that a degree requirement is common to the industry in parallel positions among similar organizations.

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.

¹⁸ The Petitioner did not provide any independent evidence of how representative the job postings are of the 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.

¹⁹ 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").

We have reviewed the Petitioner's description of the proposed position and observe that this description presents a broad overview of a computer systems analyst. While we note the multiple descriptions of the duties provided by both the Petitioner and the end-client, we find that the descriptions do not adequately convey the level of complexity or uniqueness of the work that the Beneficiary will perform. The descriptions list the duties and the percentage of time the Beneficiary would devote to certain tasks. However, the record does not demonstrate that the necessary knowledge for the proffered position is attained through an established curriculum of particular courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent. While a few related courses may be beneficial in performing certain duties of the position, the Petitioner has not demonstrated how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position. The duties as described by the Petitioner and the end-client do not appear to be so complex or unique such that a degree in one of the fields identified by the Petitioner would be necessary to perform them.

We return to the letter from [redacted] upon whose opinion the Petitioner relies to establish the complexity and uniqueness of the position. [redacted] repeated the Petitioner's description of duties, repeated portions of the DOL's *Occupational Outlook Handbook's (Handbook)* chapter on computer systems analysts and the O*NET Online's summary report for the occupation, and noted he had reviewed the Petitioner's website and information relating to their offered services. [redacted] also referred to several career and recruiting websites for their information on the duties of a computer systems analyst. These references do not establish the minimum requirements needed to perform the duties of the Petitioner's particular position. The relevance of these websites in establishing the proffered position is a specialty occupation has not been established.

[redacted] also lists four "core duties" from the *2013 Curriculum Guidelines for Undergraduate Programs in Computer Science*, published by the Association for Computing Machinery (ACM).²⁰ [redacted] opines that because most, if not all, of the proposed duties fall within the scope of the topics taught in a university level bachelor's degree field, such as computer science or another closely related field curriculum, the position must be considered sufficiently specialized and complex to require a bachelor's degree or the equivalent in a field such as computer science. [redacted] however, does not offer a cogent analysis correlating the duties of the particular position to the broadly described corresponding knowledge areas for a potential curriculum. Other than referring to the 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 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.

Moreover, while [redacted] recites the list of duties for the position upon which he relied, he does not discuss the duties within the context of the end-client project. In fact, there is no mention of

²⁰ The knowledge areas are not sufficiently concise to correlate particular courses in an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, that is required to perform the duties of the proffered position. The guidelines for potential curriculums are too broad to establish a particular position requires a body of highly specialized knowledge attained in a bachelor's degree program in a specific specialty, or its equivalent. The relevance of these guidelines in establishing this position is a specialty occupation is not evident from the opinion's reference to them.

the Beneficiary's assignment at the end-client at all, thereby raising doubts regarding his familiarity with the actual duties to be performed in this matter. [] does not state that he reviewed information regarding whether the end-client requires a bachelor's or higher degree in a specific specialty, or its equivalent, to perform the position's duties, which is critical. *See Defensor*, 201 F.3d at 387-88. Accordingly, []'s opinion, which does not address the end-client project and its requirements, bears minimal probative value.

As a matter of discretion, we may 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, we may give an opinion less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* Upon review of this evaluation, it does not sufficiently correspond to the record and has little probative value.

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

Further, 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.

Here, the Petitioner maintains that it requires a bachelor's degree for the same or similar positions as the one proffered here, and indicates that all computer related employees have a bachelor's degree or higher in a computer related field. In support of this assertion, the Petitioner submitted the educational credentials for several employees, along with copies of their paystubs. We infer that the Petitioner wishes to demonstrate that its employees have specialized degrees. However, while some individuals possess U.S. degrees, many of the degrees are foreign degrees and are not accompanied by a foreign degree evaluation to substantiate such a degree as being the equivalent of a U.S. bachelor's degree or higher.

A more critical deficiency is that the record does not include any job duties performed by these employees, or the job advertisements for their positions. Although the Petitioner submitted a copy of one employment offer letter to [REDACTED] the offer letter indicates that this individual will be employed as a “SharePoint & .NET Developer,” not a business analyst. As such, the record contains insufficient evidence that any of these individuals have or had the same or similar substantive responsibilities, duties, and performance requirements as the proffered position. The Petitioner did not provide the total number of people it has employed in the past to serve in the proffered position. Though it has been in business since 2012, the Petitioner has provided no information about its past hiring history for the business analyst position. 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 current employees who occupy positions different than the proffered one. 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.

The descriptions of the proffered position do not detail the specialized and complex nature of specific duties the Beneficiary will perform. The Petitioner and end-client describe a position that involves knowledge of information technology methods and techniques. The record, however, does not develop relative specialization and complexity as an aspect of the proffered position. The proposed duties do not include meaningful discussion of what the Beneficiary will actually be required to do in the proffered position and how those duties require the theoretical and practical application of a body of highly specialized knowledge.

We have again reviewed [REDACTED]’s opinion in order to ascertain what elements of the particular position are specialized and complex, but again do not find the opinion persuasive. [REDACTED] refers to several of the duties of the particular position as core duties that fit within the topics covered in a computer science curriculum and then concludes that as such the position must be sufficiently specialized and complex as to require a bachelor’s degree, or the equivalent, in a field such as computer science, information science, engineering management, or another closely related field. However, [REDACTED] does not offer an analysis of the proposed duties and a meaningful explanation of why the duties require a bachelor’s degree in a specific specialty, rather than a general degree or experience. Neither the Petitioner nor [REDACTED] have demonstrated how an established curriculum of courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position. Overall, [REDACTED]’s evaluation does not offer a persuasive analysis of the duties of the Petitioner’s particular position sufficient to demonstrate that the duties are specialized and complex or that they comprise the duties of a specialty occupation. Put simply, stating that a person with a bachelor’s degree in

computer science could perform the duties of the proffered position is not the same as establishing that such a degree is required to perform those duties.

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

III. CONCLUSION

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.