



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

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

In Re: 8537441

Date: JULY 17, 2020

Appeal of Vermont Service Center Decision

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

The Petitioner, a provider of alternative payments technology, seeks to temporarily employ the Beneficiary as a “credit operations 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 initially provided a seven-bullet list of duties and it expanded upon those duties in response to the Director’s request for evidence (RFE). For the sake of brevity, we will not quote the most recent version; however, we note that we have closely reviewed and considered the duties. The Petitioner stated that the position requires a bachelor’s degree in computer science, information systems, operations research, or a closely related field or its equivalent.

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.⁴ 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.⁵

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 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.⁶

⁴ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

⁵ The Petitioner submitted documentation to support the petition, including evidence regarding the position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

⁶ We do not maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category “Operations Research Analysts,” corresponding to the Standard Occupational Classification code 15-2031.⁷ The subchapter of the *Handbook* titled “How to Become an Operations Research Analyst” states, in relevant part, “[m]any entry-level positions are available for those with a bachelor’s degree.”⁸ The *Handbook* further states, that while “some schools offer bachelor’s and advanced degree programs in operations research, some analysts have degrees in other technical or quantitative fields, such as engineering, computer science, analytics, or mathematics.”

The *Handbook* indicates further that courses in various fields such as engineering, mathematics, computer science, economics, and political science are useful because “operations research is a multidisciplinary field with a wide variety of applications.” Because the *Handbook* recognizes this occupation as multidisciplinary, and does not identify a specific discipline required to perform the duties of the occupation, the *Handbook* does not support a conclusion 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 its RFE response and on appeal, the Petitioner cited the Occupational Information Network (O*NET) Summary Report for Operations Research Analysts, but does not add anything to rebut the Director’s determination that the O*NET only reflects that this occupation requires a bachelor’s degree without speaking to a concentration within a specific specialty.⁹ As a result, the Petitioner has not demonstrated that the O*NET adds any weight to its arguments under this criterion.

The Petitioner further cites to several district court cases¹⁰ to support the position that the statute and the regulation allow a finding of a specialty occupation even when more than one single field of study qualifies a candidate to perform in the position. Provided the specialties are closely related, 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. We

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.

⁷ The Petitioner is required to submit a certified LCA to 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).

⁸ Bureau of Labor Statistics, DOL, *Occupational Outlook Handbook (Handbook)*, Operations Research Analysts, <https://www.bls.gov/ooh/math/operations-research-analysts.htm#tab-4> (last visited July 16, 2020).

⁹ The Petitioner’s arguments concerning Job Zone 5 are similarly unpersuasive as the zone does not specify any specific specialty.

¹⁰ In contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. *See Matter of K-S*, 20 I&N Dec. 715, 719-20 (BIA 1993). Although the reasoning underlying a district judge’s decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.*

do not take issue with this interpretation. However, if the fields are not sufficiently similar, the Petitioner must explain how those various fields relate to the duties to form together the numerous acceptable disciplines as a body of highly specialized knowledge. On appeal, the Petitioner argues the meaning of “equivalent” when reading section 214(i)(1) and (2) and states that the structure of the section allows for “equivalent field(s) in lieu of the specific specialty.” If we were to use the Petitioner’s reasoning, the Petitioner would be required to demonstrate that each of the various fields are equivalent to each other, which would be applying the incorrect standard. Rather, a petitioner must demonstrate that the various fields comprise a body of highly specialized knowledge and that each field closely relates to the duties.

The Petitioner further concludes that the information in the *Handbook* may be paraphrased as follows: “since a degree program in Operations Research is not available in many schools, the specialty occupation of Operations Research Analysts typically (i.e. normally) requires at least a bachelor’s degree in other technical or quantitative fields, which are closely related to the field of Operations Research and directly related to the duties of Operations Research Analysts.” Pertaining to the *Handbook*, we already noted that even though it includes quantitative fields as a portion of this occupation’s degree requirements, it also includes other multidisciplinary fields that the Petitioner did not demonstrate were sufficiently related. The simple fact that multiple disciplines may incorporate a particular concept should not be interpreted as inherently, or automatically qualifying a broad set of degree programs under the H-1B classification. Numerous disciplines incorporate some form of quantitative analysis into the curriculum, such as anthropology, sociology, social psychology, political science, economics, as well as the physical sciences. For instance, political science programs often include empirical theory and quantitative methodology concentrations, but a political science degree does not appear to relate to the duties of this position.

Further, a bachelor’s degree program in finance or economics also includes quantitative elements that would not seemingly apply to the proffered position’s duties under the Operations Research Analysts category. Were we to rely on the Petitioner’s broad approach—as long as quantitative analysis serves as an underpinning within a particular discipline, that this would sufficiently tie a degree program to a set of quantitative-related duties—any degree program that includes quantitative reasoning within the curriculum could serve to qualify. This would allow the Petitioner to rely on obviously unrelated and disparate degree fields, which appears antithetical to the statutory definition of at least a bachelor’s degree “in the specific specialty (or its equivalent).”¹¹ Even setting this issue aside, the Petitioner still must establish that the duties of the position require the theoretical and practical application of specialized knowledge. As we discuss more fully in the following sections, the Petitioner has not demonstrated that its position meets these requirements.

The Petitioner submitted information from study.com, earnmydegree.com, and the U.S. Department of Education’s Office of Federal Student Aid as corroboration of the information in the *Handbook* and O*NET. Similar to the generic information provided in O*NET and the *Handbook*, these sources provide a range of knowledge that may be helpful, but do not relate this knowledge to the specifics of a position. Study.com states that the preparation for a career in the occupation may be different depending on the particular sector or industry of a position, and uses finance, insurance, or technology as examples. It also notes that the occupational category is interdisciplinary. Earnmydegree.com

¹¹ Section 214(i)(1) of the Act (emphasis added).

directly cites to the *Handbook* and does not appear to provide independent information or research on this matter. While, citing to the *Handbook* may lend credibility to the information in the *Handbook*, the *earnmydegree.com* site does not offer corroborative support to the Petitioner's interpretation of the information. We question the applicability of the Federal Student Aid information, as the purpose of the site is to assist students in budgeting for education, not in defining an occupational category. The website lists general knowledge, skill, and ability areas, but it does not state that these are required areas of study, that a particular level of proficiency in the areas is required, or that the areas are specialized. In its RFE response, the Petitioner mentioned certain knowledge areas favorable to its argument but did not acknowledge that the site lists knowledge in arts and humanities as appropriate for the operations research analyst category as well. Further, the website does not rank any category of knowledge, skill, or ability as being more relevant than any other. As such, this information may serve to corroborate that the occupational category is multidisciplinary, but it does not support the Petitioner's interpretation of the information in the *Handbook* and O*NET.

The Petitioner refers to language from non-precedent AAO decisions in support for its assertion that the requisite knowledge to perform the duties of a specialty occupation position can be imparted through studies in a variety of academic areas. These decisions were not published as a precedent and therefore do not bind USCIS officers in future adjudications.¹² Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

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)(1).

B. Second Criterion

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

¹² See 8 C.F.R. § 103.3(c).

affidavits from firms or individuals in the industry establish that such firms “routinely employ and recruit only degreed individuals.”¹³

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, rather it indicates that the occupational category is multidisciplinary. Also, the Petitioner did not submit evidence from an industry professional association or from firms or individuals in the industry indicating such a degree is a minimum requirement for entry into the position.

In support of this prong, the Petitioner submitted job advertisements from other organizations. The Petitioner asserts that the advertisements satisfy the three main elements that the degree requirement is common: (1) to the industry, (2) among similar organizations, and (3) in parallel positions. When determining whether the Petitioner and other organizations share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the size, scope, or scale of operations, expenditures, 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 in the same industry without providing a legitimate basis for such an assertion. 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.” Many of the advertisements include only a few general bullet points which do not provide us with sufficient information with which to draw any conclusions as to similarity with the proffered position. Bulleted job duties such as, “Ordering Pools” and “Builds and manages lists,” are too vague and general to be useful. Further, other position duties do not readily relate to the duties of the proffered position. Duties involving data warehousing and migration or managing relationships do not feature prominently in the Petitioner’s description of the proffered position. Finally, some of the positions require a bachelor’s degree and two to three years’ experience or a master’s degree. As such, the Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions parallel those of the proffered position, particularly in terms of seniority, responsibility, and supervision.

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. Here, the Petitioner is a provider of alternative payments technology, whereas two of the featured employers are a credit union and an insurance company. On appeal, the Petitioner argues that it is difficult to find other employers that offer the same type and range of unique products and services that the Petitioner provides, in addition to being similar in size, and that this expectation is unrealistic. Though this may present a challenge for the Petitioner in establishing eligibility under this prong, we do not agree that the standard can be lowered to accommodate the Petitioner’s circumstances.

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

¹³ 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)).

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. 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.¹⁴ Other employers accept degrees in risk management, insurance, and marketing research. One employer accepts a bachelor's degree in a STEM field, which suggests that it would accept a wide range of degrees, as the STEM acronym itself implies it is multidisciplinary. 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.¹⁵ That is, not every deficit of every piece of evidence has been addressed.¹⁶

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.

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. 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. A crucial aspect of this matter is whether the Petitioner has submitted sufficient and consistent evidence describing the proffered position such that we may discern the nature of the position. The Petitioner provided many vague and general descriptions including the following verbatim job duties:

- Support CTO's management team with initiatives such as tools eco-system migration, reporting revamp etc. to transform the teams to a durable model.
- Work with leadership to create the portfolios, outcomes and projects in Rally. Developers will contribute to those projects which will ensure alignment to the executive strategy.

¹⁴ *Royal Siam Corp.*, 484 F.3d at 147.

¹⁵ 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.

¹⁶ 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).

- Working with Smartsheet data to create valuable timelines and Gantt views to effectively highlight future blockers.

These descriptions, among others, demonstrate that the Petitioner has not explained in detail how the proffered position's duties require the theoretical and practical application of a body of highly specialized knowledge. Specifically, we have no information on what "reporting revamp" or a "durable model" is or why it requires specialized knowledge that can only be learned in a bachelor's degree program in the specifically identified fields. Moreover, the duties of supporting the management team or working with leadership do not sufficiently convey the Beneficiary's day-to-day activities with regard to each duty. Likewise, we have little information on what "future blockers" are or why highlighting them signifies specialty occupation work.

The Petitioner also states that the Beneficiary will "[m]anage and create new contracts with regards to technological implementations within the [redacted] Credit team" and "[e]ngage with leaders in [redacted] Credit team and facilitate negotiations for large contracts (including software licenses, contingent worker hiring, special events." The Petitioner does not explain how obtaining or facilitating new contracts would require the theoretical and practical application of a body of highly specialized knowledge, nor has it connected why the knowledge needed to perform this duty would be gained in a bachelor's degree program for computer science, information systems, or operations research.

After each section of duties, the Petitioner's states the education and training required to perform that section of duties and how the Beneficiary meets that requirement. This structure is repeated in a letter from [redacted] the Beneficiary's manager, which confirms "the complexity of the offered role as well as COMPANY's minimum qualification" of a bachelor's degree in computer science, information systems, operations research, or a closely related field. Neither this letter, nor the position descriptions appearing in other parts of the record, adequately connect the listed duties to the stated requirements. Vaguely describing the duty and then simply listing the educational requirements does not develop the specialization, complexity, or uniqueness of the position. Accordingly, we conclude that the Petitioner has not shown that the 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 alternative evidence for our consideration under this and the other criteria, the Petitioner submits a position evaluation and opinion letter from [redacted] a professor in the Department of Computer Science and Engineering at the University of [redacted] [redacted] provides an overview of the qualifications he believes enable him to opine on this matter, a repetition of the Petitioner's list of position duties, and a conclusion that the position requires a minimum of a bachelor's degree in computer science, information systems, operations research, or a closely related field. In addition to this, [redacted] provides a brief discussion of how bachelor's degree programs in computer science, information systems, and operations research relate to the performance of the duties of the proffered position.

Though the Director's RFE provided notice to the Petitioner that it must demonstrate how each of its qualifying fields of study relate to the duties of the proffered position, [redacted]'s letter lends little additional support to the Petitioner in this regard. First, we question [redacted]'s understanding of the position as he discusses many duties and responsibilities that the Petitioner does not state are part of the proffered position. For instance, it is not apparent from the Petitioner's description that implementing code for the client or end-user is part of its proffered position, yet [redacted] cites the position's coding

duties as a reason that the proffered position requires a bachelor's degree in information systems. Similarly [] states that the position involves documenting code structure and then discusses tasks that this might require, such as the writing of technical documentation and instruction manuals. [] does not definitively explain whether the documentation of code structure does, in fact, involve writing technical documents and instruction manuals, nor is it readily apparent from the Petitioner's descriptions that the Beneficiary will perform such work. This suggests a limited understanding of the proffered position and undermines []'s overall credibility.

Furthermore, in discussing duties that *do* appear to be the subject of this petition, [] fails to identify why they require specialized knowledge associated with a bachelor's degree in a specific specialty or its equivalent. For instance, [] mentions duties using Excel, but does not sufficiently explain why the duties require specialized knowledge. Rather, he confirms that because of the Excel duties, the Petitioner's requirement for a bachelor's degree in operations research is "highly appropriate." [] simply adopts the Petitioner's statement without providing an explanation to substantiate the conclusion, which suggests that [] was requested to confirm preconceived notions of the position rather than objectively analyze it.

[] references how the Beneficiary will engage in scrum practices and declares that the underlying principles gained in a bachelor's program would be invaluable in performing such duties, but he does not state how or why a bachelor's level education in the specified fields would be required. Instead, he acknowledges that scrum practices are not necessarily the subject of bachelor-level coursework. In this way, [] provides opinions on what the proffered position *might* include and a few courses that *might* teach knowledge relevant to performing such work, but his opinions do not support a conclusion that the position is a specialty occupation.

In addition to the above, [] confuses *the ability* of a degreed individual to perform the duties of the proffered position with a degree requirement *in order to* perform the duties. While [] may draw inferences that certain courses or knowledge obtained through a bachelor's degree program in computer science, information systems, or operations research may be beneficial in performing certain duties of the position, we disagree with the conclusion that a specific degree is required in order to perform them.

In viewing []'s opinion as a whole, we conclude that he does not sufficiently explain or analyze why the duties, though labeled complex and unique, would actually require specialized knowledge. His letter offers little probative value as it does not include sufficient specific analysis of the duties of the particular position nor does it sufficiently relate those duties to the stated educational qualifications required to perform them.¹⁷

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

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.* Here, the opinion presented does not offer a cogent analysis of the duties and why the duties require a bachelor's degree in a specific specialty. We incorporate our discussion of []'s opinion into our discussion of the other 8 C.F.R. § 214.2(h)(4)(iii)(A) criteria.

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.

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.

We return to the letter from [] and acknowledge the minimum qualifications information contained in it. Nevertheless, we conclude that the record does not substantiate the hiring practices claimed in the letter. Further, we question whether [] has the requisite knowledge of the Petitioner's overall hiring and recruitment practices for the proffered position when s/he manages a team of three individuals out of an entire 2,965-employee organization.

The Petitioner submitted resumes for the other two employees managed by []. The record does not include copies of these individuals' degrees, any job duties performed by these individuals, 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. We note that their title is "business analyst," which is different from the proffered position.²⁰ 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. Though it has been in business since 2000, 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. 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 two current employees who occupy positions that have not been established to be the same as or similar to the proffered one.

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

¹⁹ *Id.*

²⁰ The Petitioner also lists the Beneficiary's title in its organizational chart as "business analyst," but does not provide information to establish whether this position is the same as or similar to the proffered position of "credit operations analyst."

We acknowledge the job postings for internal positions within the Petitioner's company. These postings do not advertise similar positions, but rather are for more senior positions than the proffered one. In addition to the titles of the positions being different, the positions respectively require, for example, a bachelor's degree plus five years' experience, a master's degree, or a master's degree plus two to three years' experience. As such, even if it could be established that these positions require specialized knowledge associated with at least a bachelor's degree in a specific specialty, the postings would not establish that the proffered position is one such position.

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.

Though the Petitioner states that the Beneficiary plays an instrumental role in delivering the Petitioner's unique product lines and services to the customer, the Petitioner has not substantiated these claims. We acknowledge the work product printouts which feature charts, graphs, and Excel spreadsheet screenshots. The Petitioner has not sufficiently explained why this work is specialized or complex.

Although some tasks may connote a requirement of familiarity with general operations research principles, including resource planning and Excel knowledge, the record is insufficient to establish that the duties require anything more than a few basic courses and a broad educational background. While a few such courses may be beneficial in performing certain duties of the position, the Petitioner, who bears the burden of proof, 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.

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).

III. 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.