



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

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

In Re: 8908798

Date: JULY 17, 2020

Appeal of California Service Center Decision

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

The Petitioner, a software, information systems, and database development company, seeks to temporarily employ the Beneficiary as a “consultant” under the H-1B nonimmigrant classification for specialty occupations.¹ The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director of the California Service Center denied the petition, concluding that the record did not establish that the proffered position qualifies as a specialty occupation. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.² We review the questions in this matter *de novo*.³ Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

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

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

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

¹ Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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

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

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

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

II. ANALYSIS

The Petitioner stated that the Beneficiary will be employed as a “consultant.” In response to the Director’s request for evidence (RFE), the Petitioner stated that a bachelor’s degree in computer science, computer information systems, management information systems, or a closely related field is required for entry into the position. In other parts of the RFE response, the Petitioner changed its requirements to a bachelor’s degree in in computer science, computer information science, electronics/electrical engineering, or a closely related field. The Petitioner did not acknowledge or explain the change. While we will not list each duty here, we have considered all of the duties in each of the various lists and charts submitted by the Petitioner. 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. 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

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 normally consider the information contained in the U.S. Department of Labor’s (DOL) *Occupational Outlook Handbook (Handbook)*

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.

regarding the duties and educational requirements of the wide variety of occupations it addresses.⁵ The Petitioner designated the proffered position on the labor condition application (LCA) as a Standard Occupation Classification (SOC) code 15-1199 “Computer Occupations, All Other” occupation. In its RFE response, the Petitioner asserted that the duties of the proffered position are consistent with the duties of the “Computer Systems Engineers/Architects” corresponding to SOC code 15-1199.02.⁶

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.⁷ 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.⁸ Thus, the *Handbook* is not probative in establishing that these positions comprise an occupational group for which the normal minimum requirement for entry is at least a bachelor’s degree in a *specific specialty*, or its equivalent.

The Petitioner also references the DOL’s O*NET summary report for “Computer Systems Engineers/Architects.” The O*NET Summary Report does not establish that a bachelor’s degree *in a specific specialty*, or the equivalent, is normally required. It provides general information regarding the occupation, but it does not support a conclusion that the proffered position requires a bachelor’s degree in a specific specialty, or the equivalent.

O*NET assigns these positions a “Job Zone Four” rating, which states “most of these occupations require a four-year bachelor’s degree, but some do not.” Moreover, the Job Zone Four designation does not indicate that any academic credentials for Job Zone Four occupations must be directly related to the duties performed. In addition, the specialized vocational preparation (SVP) rating designates this occupation as $7 < 8$. An SVP rating of 7 to less than (“<”) 8 indicates that the occupation requires “over 2 years up to and including 4 years” of training. While the SVP rating indicates the total number of years of vocational preparation required for a particular position, it is important to note that it does not describe how those years are to be divided among training, experience, and formal education. The SVP rating also does not

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

⁷ 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 16, 2020). Here, the *Handbook* does not provide specific information for various occupations which might be classified within the occupational category.

⁸ The *Handbook* also indicates that this occupation does not require work experience in a related occupation or typical on-the-job training. *Id.*

specify the particular type of degree, if any, that a position would require.⁹ Further, although the summary reports provide the educational requirements of “respondents,” it does not account for 100% of the “respondents.” Moreover, the respondents’ positions within the occupation are not distinguished by career level (e.g., entry-level, mid-level, senior-level). Furthermore, the graph in the summary report does not indicate that the “education level” for the respondents must be in a specific specialty. For all of these reasons, O*NET does not establish the proffered position as a specialty occupation.

On appeal, the Petitioner cites to Study.com and argues that it is a probative source on the requirements of the computer systems engineer position.¹⁰ We have reviewed the Study.com website and materials provided, but we do not agree that Study.com is a reliable source on this issue. Study.com appears to be a for-profit business that offers a flexible way to earn college credit through its in-house courses. Additionally, Study.com connects its customers to specific schools and programs that advertise on the Study.com website in order to assist customers in pursuing their education. As such, it is in the business interest of Study.com to characterize the educational requirements for entry into specific occupations in a manner that would encourage its customers to purchase courses with them or to apply to one of the schools that advertise on its site. While Study.com offers general information on a particular career path, its objectivity and credibility in this matter is undermined because it appears to have a profit interest in encouraging students to complete additional education and to complete it in specific programs. Moreover, the investigative reports, research studies, or data upon which Study.com bases its claims are not readily apparent nor available for our review. Therefore, we cannot independently ascertain the reliability of Study.com’s claims.

The Petitioner further argues that because the degree fields listed by Study.com closely relate to the qualifying fields for the proffered position, it can be reasonably inferred that the Beneficiary’s foreign degree also closely relates to the proffered position. Here, the Petitioner attempts to argue why the Beneficiary is qualified to perform in the proffered position, which is a separate and unrelated issue to the requirements of the position for purposes of a specialty occupation determination.¹¹ We are required to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether the beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed.¹²

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

⁹ For additional information, see the O*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

¹⁰ Study.com states that “a 4-year degree in electrical engineering, computer engineering or informational technology will be needed to launch a career in computer systems engineering.” (last visited July 16, 2020).

¹¹ We further note that Study.com does not discuss the duties of the proffered position, nor has Study.com determined that the proffered position falls within the computer systems engineer occupational category.

¹² *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm’r 1988) (“The facts of a beneficiary’s background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].”).

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.”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. 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.

The Petitioner submitted job vacancy announcements for our consideration under this prong. To be relevant for consideration, the job vacancy announcements must advertise “parallel positions,” and the announcements must have been placed by organizations that (1) conduct business in the Petitioner’s industry and (2) are also “similar” to the Petitioner. These job vacancy announcements do not satisfy that threshold. Upon review of the documents, we conclude that the Petitioner’s reliance on the job announcements is misplaced.

We will first consider whether the advertised job opportunities could be considered “parallel positions.” Many of the employers do not provide sufficient information about the position duties, providing only four or five short bulleted duties in the advertisements. Other postings provide very general or vague duties such as, “Manage mass imports and exports of data.” Some employers included personality traits like working well with others or enjoying technology as part of their position descriptions. Still others advertise positions with a specific focus, such as healthcare or aviation. We note that most of the positions require a bachelor’s degree along with three, four, and five plus years of additional experience. 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 substance.

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)).

Nor does the record contain documentary evidence sufficient to establish that these job vacancy announcements were placed by companies that (1) conduct business in the Petitioner's industry and (2) are also "similar" to the Petitioner. When determining whether the employer posting a job listing and the Petitioner share the same general characteristics, factors to be considered may include information regarding the nature or type of organization and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing. Here, the Petitioner has submitted only the general overview that the employers themselves included in their own announcements. It is not apparent whether these companies are primarily engaged in information technology consulting services for third parties or end clients, or whether they develop in-house technology unrelated to information technology outsourcing. Two employers advertise positions in healthcare or aviation industries, respectively, which are dissimilar industries to the Petitioner. It is unknown whether these employers are healthcare or aviation IT companies or whether only the specific positions advertised are related to those fields. Accordingly, the Petitioner has provided insufficient information with which to determine whether these employers are similar to or operating in the same industry as the Petitioner.

For all of these reasons, the Petitioner has not established that these job vacancy announcements are relevant. Even if that threshold had been met, we would still conclude that they did not satisfy this prong of the second criterion, as they do not indicate that a bachelor's degree in a specific specialty, or the equivalent, is common to the industry in parallel positions among similar organizations. We note some postings indicate that the employer would accept any bachelor's degree with no specific field of academic study at all, whereas another accepts a degree of physics.¹⁴ 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

¹⁴ We note one additional job posting submitted on appeal. This employer accepts a bachelor's degree in business administration for entry into its position. 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. *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).

performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

Upon review of the totality of the record, we conclude that 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. When determining whether a position is a specialty occupation, we also 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.

Not only does the Petitioner fail to explain how its duties require specialized knowledge, many of the duties themselves are described in vague and general terms, not allowing us to understand what the Beneficiary will actually be doing when carrying out the undefined tasks. For example, the following two descriptions contain several undefined terms in addition to not conveying what level of responsibility the Beneficiary will have when carrying out the duty.

- Business Value Benchmarking: Delivers Customer facing report that provides benchmarking data points. The report outlines available peer comparisons and available industry and functional benchmark comparison data points.
- Customer Business Review: Customer Facing review and report delivered periodically to govern the project from a business value perspective. Includes final briefing, which highlights success against key performance metrics.

The Petitioner does not explain the actions taken by the Beneficiary in completing the above duties. For instance, we do not know whether the Beneficiary will conduct a review, create the report, present the report, simply deliver the report, or any combination thereof. We do not know what data points, performance metrics, or business value perspectives are defined as or how they are obtained in the context of the overall business or project. These descriptions in no way allow us to understand the Beneficiary's role or why it would involve specialized knowledge.

Other vague and general job descriptions include the following verbatim tasks:

- To undertake SIP and run till successful implementation. Ensure customer satisfaction by responding to the escalations regarding services offered;
- Work on the Microsoft Social listening functional and workflow;
- Ensuring smooth operations for all systems across the IT teams; and
- Defining and maintaining the Standard Operating procedures.

Again, the Petitioner uses terms such as "SIP" and "Microsoft Social," without explaining them, as well as nebulous concepts like "work on" and "to undertake." We do not have any information about how the Beneficiary will define and maintain the standard operating procedures, nor can we ascertain how he will ensure customer satisfaction or respond to escalations. As described, we cannot determine what the Beneficiary will be doing when performing these duties or why the duties are complex.

Additionally, the duty descriptions indicate that the Beneficiary will be involved in team meetings, customer relationship building, serving as a point of contact, and working flexible hours. The Petitioner has not explained in detail how such responsibilities require the theoretical and practical application of a body of highly specialized knowledge. Nor has the Petitioner explained why the knowledge to perform such work would be learned in a bachelor's degree program in the qualifying fields. As described, it appears the Beneficiary will not be relieved of performing non-qualifying work.

The Petitioner adds further confusion to the nature of the position by providing with the initial filing of the petition a chart that features percentages of time spent on several duty categories. The Petitioner then provided a similar chart in its RFE response featuring different percentages of time for several of the same duties. The Director's decision mentioned this discrepancy and the Petitioner has not addressed it on appeal. As such, the Petitioner has not clearly defined what percentage of time will be spent on these duties, nor has it explained why additional duties were added after the filing of the petition.

The Petitioner claims that its products and services are unique in the industry and that this contributes to the unique and complex nature of the position. In support of its assertion, the Petitioner submitted general marketing and promotion materials as well as a few press releases about other companies that utilize the Petitioner's services. The promotional materials contain mostly graphics and the self-proclaimed descriptions of being "cutting edge" or "world class" are simply not substantiated. The Petitioner broadly characterizes itself as unique but does not discuss how this is so by providing specific examples of products or services that support such a statement. Moreover, the Petitioner does not connect how its uniqueness within the industry has a direct impact on the duties of the proffered position. For instance, it is not apparent how the Beneficiary will use the Petitioner's products as opposed to Microsoft products. Accordingly, we conclude that the Petitioner's assertions as to the unique or complex nature of the position are not supported in the record.

We next discuss the letter from [redacted] of [redacted] University School of Management, who offers his opinion on the requirements of the proffered position and also serves as a foreign degree equivalency evaluator. In his letter, [redacted] (1) describes the credentials that he asserts qualify him to opine upon the nature of the proffered position; (2) lists verbatim information from sources such as O*NET and Study.com; (3) repeats the duties of the position as already provided by the Petitioner; (4) offers his professional opinion on the types of candidates qualified to perform the duties of the proffered position; and (5) evaluates the Beneficiary's foreign degrees to be the equivalent of a U.S. bachelor's degree in computer information systems and a master's degree in computer information systems.

[redacted] asserts that the proffered position is a specialty occupation and that it shares many of the same duties under the "Computer Systems Engineers/Architects" occupational category in O*NET. As discussed, we do not agree that the O*NET or Study.com establish that the proffered position qualifies as a specialty occupation.

In his letter, [redacted] repeats the list of the Beneficiary's duties as submitted by the Petitioner and follows it with a discussion of the coursework involved in typical bachelor's degree programs in computer engineering, computer science, and information technology. [redacted] then links some of Beneficiary's duties in the proffered position to courses of study in these fields. While we

acknowledge that [] may be attempting to demonstrate how an established curriculum of courses leading to a bachelor's degree in a specific specialty is required to perform the duties of the proffered position, we cannot agree with his analysis.

First, [] focuses the bulk of his opinion on how the knowledge to perform the duties of the position are taught in bachelor's degree programs in the qualifying fields, rather than providing analysis of (1) why the education would be required to perform the duties and (2) why the duties would be considered specialized, unique or complex. His letter offers more of an analysis of education programs than it does a discussion of the nature of the duties or the proffered position.

In so doing, [] confuses *the ability* of a degreed person to perform the duties of the proffered position with a degree requirement *in order to* perform the duties. While he may draw inferences that computer science related courses may be beneficial in performing certain duties of the position, we disagree with his inference that such a degree is required in order to perform the duties of the proffered position. Put simply, stating that a person with a computer science related bachelor's degree could perform the duties of the proffered position is not the same as stating that such a degree is required to perform those duties. As such, []'s analysis misconstrues the statutory and regulatory requirements of a specialty occupation.

As stated, [] provides little analysis of the duties of the proffered position. Rather, he offers presumptive conclusions that do not add to our understanding of the nature of the position. For instance, he states that the consultant might need to work flexible hours, operate according to the time zones of customers, and collaborate across teams to resolve escalated issues. [] concludes these duties involve "requirements gathering and analysis." He then states that because standard curriculum in the aforementioned fields involves "requirements gathering and analysis," this establishes that the duties of the proffered position are specialized. Without more specific and detailed information, we cannot agree that working specific hours or in teams inherently involves specialized knowledge, nor can we agree that this work relates to gathering and analyzing requirements.

According to [] the proffered position duties involve developing customer relationships and delivering value through meeting expectations, as well as providing advice on migration, architecture, development and deployment topics. [] characterizes these duties as "coding and unit/integrated testing." He declares that because standard curriculum in the aforementioned fields involves "coding and unit/integrated testing," the duties of the proffered position must be specialized. Once again, without more specific and detailed information, we cannot agree that customer service or providing advice on said topics requires specialized knowledge, nor can we agree that this work involves coding and testing duties.

Based on his experience teaching in the qualifying fields at the collegiate level, as well as the job placement patterns of graduating students and employer recruitment, [] finds the Petitioner's educational requirements to be an industry standard. It is critical to note, however, that [] bases his conclusions on patterns of students already pursuing degrees in those fields and the recruiters that seek to employ them. [] does not appear to recognize that his conclusion inherently arises from the perspective of those already graduating with the claimed education. Without an acknowledgement or examination of those individuals who entered the occupational category without attending an academic program, or without attending a program in the qualifying fields, or of

those recruiters that found talent outside of academia, we cannot agree that [redacted]'s conclusion has merit.

The lack of cogent analysis strongly suggests that [redacted] was asked to confirm a preconceived notion as to the required degrees, not objectively assess the proffered position and opine on the minimum bachelor's degree required, if any. While we will review the opinion presented, it has little probative value as it does not include specific analysis of the duties of the particular position that is the subject of this petition.¹⁷ We may, in our discretion, use opinion statements submitted by the Petitioner as advisory.¹⁸ 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.¹⁹

Accordingly, we conclude that the Petitioner has not shown that the duties of the position are 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. 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 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.²⁰ 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.²¹ Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner's past recruitment and hiring practices, as well as information regarding employees who previously held the position.

The Petitioner submitted a list of ten individuals that it claims all hold the same position of "consultant," along with copies of educational records and academic equivalency evaluations. We infer that the

¹⁷ We hereby incorporate our discussion of [redacted]'s opinion into our discussion of the other 8 C.F.R. § 214.2(h)(4)(iii)(A) criteria.

¹⁸ *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988).

¹⁹ *Id.*

²⁰ *See Defensor*, 201 F.3d at 387-88.

²¹ *Id.*

Petitioner wishes to demonstrate that its employees have specialized degrees. The Petitioner submitted offer letters for those individuals, which contain an overview of the “consultant” positions they occupy. As noted in the Director’s decision, the record does not contain 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. When examining the offer letters for these individuals, we note that many of the duties of the various “consultant” positions differ from the proffered position or are so sparsely and vaguely described that no comparison can be made as to whether these “consultant” positions are the same as or similar to the proffered position. To illustrate, a sampling of the offer letter duty descriptions includes, “understand different application architecture,” “prepare technical documents” “framework finalization,” and “test execution.” Moreover, the offer letters do not indicate that the other consultants will work with the same Microsoft products as the Beneficiary.

Though the Petitioner claims that it normally requires a bachelor’s degree in one of the qualifying fields for entry into the position, the evidence of record leads to a different conclusion. The evidence instead suggests a recruitment practice of petitioning for work visas for individuals educated in the same foreign country, for which one particular academic credential evaluation service provides a perfunctory and templated evaluation that declares equivalency of the foreign degree to a U.S. degree. The evidence further suggests a practice of hiring these individuals for a generalized position labeled “consultant,” which covers a broad range of information technology duties too vaguely described to be determined to be specialized or similar to the proffered position.

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 1992, 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 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.

To the extent that we understand the nature of the position, it appears to involve IT service desk support with an emphasis on diagnosing and resolving customer issues involving Microsoft products. Further, some of these duties appear to overlap with positions falling under the “computer support specialists” occupational category, a category which the *Handbook* indicates may be entered into with less than a

high school education.²² The Petitioner has not explained why Microsoft products and customer relationship development would be knowledge areas taught in a bachelor's degree program in any of the qualifying fields, nor has it adequately explained why the duties of the position are complex and special.

Although some tasks may connote a requirement of familiarity with general information technology principles, including customer service knowledge, the record is insufficient to establish that the duties require anything more than a few basic courses on the discrete Microsoft products 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).²³

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 reasons. 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.

²² For more information, visit "What Computer Support Specialists Do" at <https://www.bls.gov/OOH/computer-and-information-technology/computer-support-specialists.htm#tab-2> and "How to Become a Computer Support Specialist" at <https://www.bls.gov/OOH/computer-and-information-technology/computer-support-specialists.htm#tab-4> (last visited July 16, 2020).

²³ Though not relevant to the discussion of whether the proffered position is a specialty occupation, we further note shortcomings in [redacted]'s discussion of the Beneficiary's qualifications, as well as the [redacted]'s Evaluations academic equivalency evaluation. As the Petitioner has not established the proffered position is a specialty occupation, we need not discuss these evidentiary shortcomings to the Beneficiary's qualifications except to alert the Petitioner that it should be prepared to address such issues in future filings.