



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

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

In Re: 6361155

Date: JULY 17, 2020

Appeal of Vermont Service Center Decision

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

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

The Director of the Vermont Service Center denied the petition, concluding that the record did not establish that the proffered position is 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. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. See *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

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

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

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

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

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

II. PROFFERED POSITION

On the certified labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category of “Financial Analysts,” corresponding to the Standard Occupational Classification code 13-2051.¹ In its initial support letter, the Petitioner stated that its minimum education requirement for entry into the proffered position is a bachelor’s degree in “Economics, Commerce, Business Administration, Finance, or a closely related field.” The petition is not approvable because the Petitioner’s claimed entry requirement for at least a bachelor’s degree, or equivalent, in business administration or commerce, without more, is inadequate to establish that the proffered position qualifies as a specialty occupation.²

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. There must be a close correlation between the required specialized studies and the position. Thus, the mere requirement of a general degree, such as

¹ A petitioner submits the LCA to U.S. Department of Labor 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).

² A general degree requirement does not necessarily preclude a proffered position from qualifying as a specialty occupation. For example, an entry requirement of a bachelor’s or higher degree in business with a concentration in a specific field, or a bachelor’s or higher degree in business combined with relevant education, training, and/or experience could, in certain instances, qualify the proffered position as a specialty occupation. In either case, it must be demonstrated that the entry requirement is equivalent to a bachelor’s or higher degree in a specific specialty that is directly related to the proffered position. The Petitioner has not done so here, nor has the Petitioner stated that it requires a specific concentration or specialization associated with the bachelor’s degrees in business administration or commerce.

business administration or commerce, without further specification, does not establish the position as a specialty occupation.³

Though the Director's second request for evidence (RFE) notified the Petitioner that further specification was necessary in order to establish that the stated requirement of a business administration or commerce degree directly relates to the proffered position, the Petitioner provided insufficient evidence to establish this connection. The Petitioner stated that "financial market knowledge and analytical skills gained through completion of one of these degree programs" underlies the proffered position, however the Petitioner did not sufficiently establish this underlying connection between the proffered position's duties and the attainment of this knowledge through a business administration or commerce degree. Specifically, the Petitioner fails to identify a precise and specific course of study gained from a bachelor's degree in business administration or commerce, nor does the Petitioner adequately substantiate how such study relates directly and closely to the duties of the position. Without this specification, it cannot be concluded that the proffered position requires anything more than a general bachelor's degree, if that.⁴ Accordingly, the proffered position does not qualify under the definition of a specialty occupation.

Even setting aside the foregoing analysis, we still conclude that the proffered position is not a specialty occupation because the evidence of record does not satisfy any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)-(4).

III. ANALYSIS

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.

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

³ *Royal Siam Corp.*, 484 F.3d at 147. Specifically, the judge explained that:

The courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D. Mass. 2000); *Shanti*, 36 F. Supp. 2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

Id. *See also Irish Help at Home LLC v. Melville*, No. 13-cv-00943-MEJ, 2015 WL 848977 (N.D. Cal. Feb. 24, 2015), *aff'd*, 679 F. App'x 634 (9th Cir. 2017).

⁴ It is well established that "permitting an occupation to qualify simply by requiring a generalized bachelor degree would run contrary to congressional intent to provide a visa program for specialized, as opposed to merely educated, workers." *Raj and Co. v. USCIS*, 85 F. Supp. 3d 1241 (W.D. Wash. 2015).

entry into the particular position. To inform this inquiry, we will consider the information contained in the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) regarding the duties and educational requirements of the wide variety of occupations it addresses.⁵

As stated earlier, the Petitioner designated the proffered position under the occupational category of "Financial Analysts." In pertinent part, the *Handbook* states that "[f]inancial analysts typically must have a bachelor's degree. Most positions require a bachelor's degree. A number of fields of study provide appropriate preparation, including accounting, economics, finance, statistics, and mathematics" (emphasis added).⁶ The *Handbook* does not indicate that a bachelor's degree *in a specific specialty*, or its equivalent, is normally *required* for entry into this occupation, nor does it indicate that the named fields comprise an exhaustive list. Based on the various degrees which many financial analysts can possess, the *Handbook* does not support the position's eligibility under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The Petitioner cites *Next Generation Tech., Inc. v. Johnson*⁷ as relevant here and uses it to support a conclusion concerning the meaning of what is "normally" the minimum requirement for the position and what "most" positions falling within the occupational category require. We question the applicability of *Next Generation Tech., Inc.* in the instant matter, as it analyzed our reading of the *Handbook* concerning the entry requirements for positions located within the different and separate occupational category of "Computer Programmers," rather than the "Financial Analysts" category designated by the Petitioner in the LCA relating to this case. As noted above, the *Handbook* does not indicate that a bachelor's degree *in a specific specialty*, or its equivalent, is normally required for entry into this occupation, nor does it indicate that the named fields comprise an exhaustive list.

As recognized by another court, while the *Handbook* may establish the first regulatory criterion for certain professions,⁸ many occupations are not described in such a categorical manner.⁹ For example, "[the *Handbook's*] description for the Computer Programmer occupation does not describe the normal minimum educational requirements of the occupation in a categorical fashion."¹⁰ In such a case, "[the Petitioner] could not simply rely on [the *Handbook*] profile, and instead had the burden to show that the particular position offered to [the Beneficiary] was among the Computer Programmer positions for which a bachelor's degree was normally required."¹¹

⁵ We do not maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and we regularly review the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. Nevertheless, to satisfy the first criterion, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

⁶ Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Financial Analysts, <https://www.bls.gov/ooh/business-and-financial/financial-analysts.htm#tab-4> (last visited July 16, 2020).

⁷ *Next Generation Tech., Inc. v. Johnson*, 328 F. Supp. 3d 252 (S.D.N.Y. Sept. 29, 2017).

⁸ Such professions would include surgeons or attorneys, which indisputably require at least a bachelor's degree for entry into the occupation.

⁹ See *Innova Sols., Inc. v. Baran*, 2019 WL 3753334, at *8 (N.D. Cal. Aug. 8, 2019) (declining to follow *Next Generation Tech., Inc.*).

¹⁰ *Id.*; see also *Xiaotong Liu v. Baran*, 2018 WL 7348851 (C.D. Cal. Dec. 21, 2018).

¹¹ See *Innova Sols., Inc.* 2019 WL 3753334, at *8.

Moreover, the court in *Next Generation Tech., Inc.* relied in part on a U.S. Citizenship and Immigration (USCIS) policy memorandum regarding “Computer Programmers” indicating generally preferential treatment toward computer programmers, and “especially” toward companies in that particular petitioner’s industry. However, USCIS rescinded the policy memorandum cited by the court in *Next Generation Tech. Inc.*¹²

The Petitioner also cites *Residential Finance Corp. v. USCIS*¹³ for the proposition that “there is no apparent requirement that the specialized study needed be in a single academic discipline as opposed to a specialized course of study in related business specialties . . . The knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation specific majors.”¹⁴ We generally agree with the aforementioned proposition in *Residential Finance* that “[t]he knowledge and not the title of the degree is what is important.”¹⁵ In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor’s or higher degree in more than one specialty is recognized as satisfying the “degree in the specific specialty (or its equivalent)” requirement of section 214(i)(1)(B) of the Act. In such a case, the required “body of highly specialized knowledge” would essentially be the same. 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 would not meet the statutory requirement that the degree be “in the specific specialty (or its equivalent),”¹⁶ unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position.¹⁷

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*¹⁸ or any of the other cases cited. 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.¹⁹ 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.²⁰ It is also important to note that in a subsequent case reviewed in the same jurisdiction, the court agreed with our analysis of *Residential Finance*.²¹

¹² See USCIS Policy Memorandum PM-602-0142, *Rescission of the December 22, 2000 “Guidance memo on H1B computer related positions”* (Mar. 31, 2017), <https://www.uscis.gov/sites/default/files/files/nativedocuments/PM-6002-0142-H-1BComputerRelatedPositionsRecission.pdf>.

¹³ *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012).

¹⁴ The Petitioner cites to *Tapis Int’l v. INS*, 94 F. Supp. 2d 172 (D. Mass. 2000) as supporting similar principles, analysis, and conclusions as *Residential Finance*. We incorporate by reference our discussion of *Residential Finance*, as it pertains to *Tapis* as well.

¹⁵ *Residential Finance*, 839 F. Supp. 2d 985.

¹⁶ Section 214(i)(1)(B) of the Act (emphasis added).

¹⁷ The court in *Residential Finance* did not eliminate the statutory “bachelor’s or higher degree in the specific specialty” language imposed by Congress. Rather, it found that the petitioner in that case had *satisfied* the requirement.

¹⁸ The district judge’s decision appears to have been based largely on the many factual errors made by the Director in the decision denying the petition. We further note that the Director’s decision was not appealed to us. Based on the district court’s findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by us in our *de novo* review of the matter.

¹⁹ See *Matter of K-S-*, 20 I&N Dec. 715, 719-20 (BIA 1993).

²⁰ *Id.*

²¹ See *Health Carousel, LLC v. USCIS*, No. 1:13-CV-23, 2014 WL 29591 (S.D. Ohio 2014).

In the instant case, the Petitioner has provided insufficient evidence to establish the requirements for the proffered position and how each of the various fields are comprised of highly specialized knowledge directly related to the position. Moreover, the Petitioner did not adequately address its requirement for a general-purpose degree (business administration and commerce), which precludes a determination that the proffered position is specialized. On appeal, the Petitioner states that it “requires the services of an individual with advanced skills in loan sizing, underwriting, equity fund acquisitions and investments, quantitative analysis, market research, and forecast model development.” If true, the Petitioner then must provide concrete analysis to demonstrate how this knowledge and advanced skill would be gained through a bachelor’s degree program in the specific fields it references. The Petitioner also claims that the knowledge and skill required for its position can *only* be gained in a bachelor’s degree program in economics, commerce, business administration, finance, or a closely related field. As the record stands, there is insufficient evidence to substantiate the Petitioner’s claims as to its educational requirements for the position; that the required knowledge and advanced skill would be gained through the referenced fields; and that these fields are the exclusive sources for obtaining this knowledge and advanced skill.

Additionally, though the Petitioner states that the Beneficiary’s role requires a high level of responsibility and advanced skill as referenced above, we note that the assignment of a Level I wage does not appear to comport with the Petitioner’s claims.²² A petitioner may distinguish its proffered position from others within the same occupation through the proper wage level designation to indicate factors such as the relative complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. Advanced skill and high levels of responsibility may indicate the need for a corresponding wage level increase. As such, the Petitioner’s designation of a Level I wage raises questions as to whether the LCA corresponds to and supports the petition as required.

The Petitioner submits alternative evidence for our consideration under this criterion, including the DOL’s Occupational Information Network (O*NET) summary report for this occupation and citations to case law. We turn first to O*NET and note that though relevant, the information in O*NET does not establish the Petitioner’s eligibility under the first criterion, as it does not establish that a bachelor’s degree *in a specific specialty*, or the equivalent, is normally required. The summary report provides general information regarding the occupation of financial analysts; however, it does not support the Petitioner’s assertion regarding the educational requirements for these positions. For example, the Specific Vocational Preparation (SVP) rating, which is defined as “the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation,” cited within O*NET’s Job Zone designates this position as having an SVP 7 < 8. This indicates that the occupation requires “over 2 years up to and including 4 years” of training.²³ While the SVP rating provides the total number of years of vocational preparation

²² The Petitioner classified the proffered position at a Level I 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://fledatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

²³ This training may be acquired in a school, work, military, institutional, or vocational environment. Specific vocational

required for a particular position, it is important to note that it does not describe how those years are to be divided among training, formal education, and experience – and it does not specify the particular type of degree, if any, that a position would require.²⁴ The O*NET summary report for this occupation also does not specify that a degree is required, but instead states, “most of these occupations require a four-year bachelor’s degree, but some do not.” Similar to the SVP rating, the Job Zone Four designation does not indicate that academic credentials for Job Zone Four occupations must be directly related to the duties performed.

Further, we note that the O*NET summary report provides the educational requirements of “respondents.” The respondents’ positions within the occupation are not distinguished by career level (e.g., entry-level, mid-level, senior-level). Additionally, the graph in the summary report does not indicate that the “education level” for the respondents must be in a specific specialty, which is relevant because a requirement for a bachelor’s degree alone is not sufficient.²⁵ Instead, 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.²⁶ O*NET, therefore, does not support the assertion that at least a bachelor’s degree in a specific specialty, or its equivalent, is normally the minimum requirement for these positions.

On appeal, the Petitioner cites to an unpublished AAO decision from 2007. The Petitioner furnishes no evidence and makes no assertion that the facts in this decision are analogous to the instant petition. Regardless, even if the facts of the case were analogous to those in this matter, it is an unpublished decision and, as such, would not be binding on us. While 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

The Petitioner references the opinion of [redacted] Professor of Finance and Economics at [redacted] University to lend support to its argument that a bachelor’s degree in a specific specialty is normally the minimum entry requirement for the occupation.²⁷ From the outset, we note that [redacted]’s opinion conflates the Beneficiary’s suitability or qualifications for the position with the minimum entry requirements for the position. [redacted] writes that he based his opinion in part upon the academic credentials of the Beneficiary. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor’s degree in a specific specialty, or its equivalent.²⁸

training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

²⁴ For additional information, see the O*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

²⁵ Nor is it apparent whether these credentials were prerequisites to these individuals’ hiring.

²⁶ See *Royal Siam Corp.*, 484 F.3d at 147 (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”).

²⁷ The university letter accompanying his opinion letter states that [redacted] is qualified to opine, make judgments, and issue recommendations concerning the awarding of credit. However, the record contains no evidence that [redacted] has the authority to grant college-level credit for training and/or experience at an accredited college or university which has a program for granting such credit based on an individual’s training and/or work experience.

²⁸ 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. 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].”).

[] lists several courses that students in a bachelor's degree program for economics, commerce, business administration, or finance undertake and then concludes that because of the knowledge learned in such courses, such students would be qualified to perform the duties of the proffered position. Statements such as these indicate that [] confuses *the ability* of a person degreed in the relevant fields to perform the duties of the proffered position with a degree requirement *in order to* perform the duties. Put simply, stating that a person with a bachelor's degree in the referenced fields 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, [] misconstrues the statutory and regulatory requirements of a specialty occupation. While [] may draw inferences that certain courses or knowledge obtained through a bachelor's degree in these particular fields may be beneficial in performing certain duties of the position, we disagree with the inference that a specific degree is required in order to perform the duties of the proffered position.

[] asserts that “[g]eneralized knowledge of these fields alone is not sufficient for the professional to successfully meet all of the functional position requirements. Bachelor's-level education in the specific fields would enable the Associate to bring to bear complete understanding of the methods that must be used” Paradoxically, [] does not address the Petitioner's requirements of a bachelor's degree in business administration or commerce, which are degrees that, by their very nature, provide only a generalized education.²⁹

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.

²⁹ We may, in our discretion, use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Id.* We hereby incorporate our discussion of []'s opinion into our discussion of the other 8 C.F.R. § 214.2(h)(4)(iii)(A) criteria.

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."³⁰ 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.

In addition to the previously discussed opinion letter from [REDACTED] 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." In examining the position descriptions, many of the positions do not contain sufficient information with which to make a determination as to similarity. Some advertisements include only short bullet points featuring very generalized descriptions and do not permit us to draw conclusions as to similarity with the proffered position. Other descriptions indicate positions that are markedly different than the proffered one. For instance, some of the positions focus on investment or financial reporting to the SEC and have no apparent relation to real estate, which the Petitioner has indicated is a primary aspect of the proffered position. In addition to this, many of the positions require two to four years' experience in addition to a bachelor's degree or 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.

Nor does the record contain documentary evidence sufficient to establish that these job vacancy announcements were placed by companies that (1) conduct business in the Petitioner's industry and (2) are also "similar" to the Petitioner. When determining whether the employer posting a job listing and the Petitioner share the same general characteristics, factors to be considered may include information regarding the nature or type of organization and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing. The Petitioner has not provided additional evidence of its similarity with the employers of the advertised positions and therefore we only have the brief descriptions provided in the vacancy announcements themselves with which to draw comparisons. When examining these descriptions, we do not have sufficient information to determine whether these employers operate within the same industry as the Petitioner or are similar. However, one employer, Goldman Sachs, is a global company and a recognized household name. The information provided by the Petitioner about its business does not evidence similarity in scope, revenue, or staffing to an employer such as Goldman Sachs.

³⁰ 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)).

For all of these reasons, the Petitioner has not established that these job vacancy announcements are relevant. Even if that threshold had been met, we would still conclude that they did not satisfy this prong of the second criterion, as they do not indicate that a bachelor's degree in a specific specialty, or the equivalent, is common to the industry in parallel positions among similar organizations.

The announcements reflect that the employers accept a variety of degrees, education, and experience, including bachelor's degrees with no specific specialty and "a strong academic background" in place of a degree. Many of the featured employers accept experience in lieu of education in whole or in part. While the specialty occupation regulations do contemplate that specialized knowledge may be attained through a bachelor's degree or higher *or its equivalent*, thereby indicating that experience may substitute for education, none of the advertisements provide sufficient information with which to determine what experience would be sufficient to perform the duties or whether such experience is equivalent to a bachelor's degree. For instance, one of the employers does not have any academic requirements, but simply states "2+ years relevant experience preferred." This level of experience does not appear to be equivalent to a four-year bachelor's degree, nor do we have information to support a finding that the two years of relevant experience is specialized. Furthermore, a preference for this experience is not the same as a requirement for entry into the position.

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.³¹ That is, not every deficit of every piece of evidence has been addressed.³² The Petitioner states that its industry is highly competitive and increasingly specialized, however these statements have not been sufficiently substantiated with evidence.

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.

³¹ 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.

³² 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).

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.³³ 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. The Petitioner provided many vague and general job duties such as:

- Assist in the creation of thorough and concise investment memorandums;
- Assist in synthesizing firm data in support of the firm's marketing efforts;
- Source new deals from brokers, owner and operators . . . ;
- Review and negotiate loan agreements and ancillary documentation;
- Work directly with the Head of Equity to spearhead a new Equity fund, which focuses on acquisitions and investments for the company. In this role the beneficiary will underwrite and close property-level acquisitions; and
- [P]erform complex quantitative analysis of potential deals.

In examining the foregoing, we do not know what level of involvement the Beneficiary has with a particular task when she "assist[s]" or "review[s]." Moreover, the Petitioner does not define what it means to "source new deals" or "spearhead" a new equity fund. Though the Petitioner states that complex quantitative analysis of potential deals is required, the Petitioner does not explain why it is complex, what specifically she will be analyzing, or how carrying out this task fits into the context of the Petitioner's business. Not only does the Petitioner describe the duties in vague and general terms, it also fails to explain how these duties require specialized knowledge. As described, we have insufficient information with which to determine what the Beneficiary will actually do on a daily basis.

Further, the Petitioner has not explained in detail how the tasks of "bringing in new clients and business for the firm," "[m]anaging junior level resources," or "research[ing] real estate markets" require the theoretical and practical application of a body of highly specialized knowledge. In fact, some duties appear to be administrative or clerical in nature and we question whether they require any specialized knowledge or skill. These include, "liaise with rating agencies," "communicating with originators," and "creation and preparation of annual company client event." As described, it is impossible to determine how the Beneficiary will be relieved of performing non-qualifying duties.

We return now to the opinion letter provide by [REDACTED]. Though [REDACTED]'s letter repeatedly states that it would be "impossible" for someone without at least a bachelor's degree in the one of the required fields to "handle the required job duties" and that the duties "could not possibly be performed" by someone with a degree in another field, he does not provide an adequate foundation for such declarations. Instead of providing an analysis of the why the duties are specialized so that we might understand how he arrived at his conclusions, [REDACTED] simply repeats the Petitioner's list of duties and then declares that the work is specialized. After reiterating the Petitioner's description of the

³³ We acknowledge the Petitioner's promotional materials and platform printouts; however, these documents provide general only information on the Petitioner's services and portfolios. Though listed as part of the real estate team, these documents do not provide sufficient information on the Beneficiary's specific activities within the Petitioner's real estate portfolios.

duties, [] repetitively describes the duties as “highly specific,” “highly sophisticated,” “technical” and involving “quantitative complexity,” yet he does not explain why or how this is so. We conclude that [] classifies the duties and the educational requirements with numerous adjectives to suggest the specialized nature of the work, rather than providing actual analysis of why the work is specialized.

As described, the duties of the proffered position do not appear to be specialized, complex, or unique, nor do they appear to require specialized knowledge commensurate with a specialty occupation. Though a relevant consideration, neither the importance of the work, nor the proffered position’s role within it, can substitute for specialization. Here, [] and the Petitioner have not sufficiently substantiated their claims as to the level of complexity and the importance of the work, nor have they connected such claims to the need for a bachelor’s degree in the stated fields.

It is important to note that it appears as though [] used a template with conclusory findings and little or no analysis to support the Petitioner’s particular position as a specialty occupation. The lack of cogent analysis strongly suggests that [] 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.³⁴ 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.³⁵

On appeal, we observe that that like [], the Petitioner liberally applies the labels “complex,” “in-depth,” “highly specific, technical, and quantitative” to the duties without explaining or providing analysis to support the statements. Many of the above-quoted duties, to the extent that their essential nature can be ascertained, are routine and basic functions, which do not readily exhibit specialization, complexity, or uniqueness. Therefore, without specific analysis as to why the duties require a bachelor’s degree in a specific specialty, the Petitioner has not sufficiently substantiated its conclusions. 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 her qualifications. As stated previously, 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).

³⁴ Service records show that this same template with the same language, organization, and similar conclusory statements regarding different occupations and also without supporting analysis has been submitted on behalf of other petitioners. These similarities lend further support to the suggestion that the authors of the opinions were asked to confirm preconceived notions.

³⁵ We hereby incorporate our discussion of []’s opinion into our discussion of the other 8 C.F.R. § 214.2(h)(4)(iii)(A) criteria.

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.³⁶ Were USCIS limited solely to reviewing a 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.³⁷ 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 thirty-four individuals, along with one paystub for each of them, in addition to a table listing their role as "financial analysis" and their level of education. The Petitioner also provided paystubs of seven unrelated individuals who were not accounted for in the table. We infer that the Petitioner wishes to demonstrate that its employees have specialized degrees, however the educational degrees for these individuals were not provided. Moreover, all of the individuals have the role of "financial analysis," which has not been determined to be the same as or similar to the proffered position of "associate." Because we have no information on the duties performed by these individuals, nor do we have their position descriptions, it cannot be concluded that these individuals work in the same or similar position as 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.

Without the associated job advertisements, we do not know what perquisites were advertised for their positions, nor do we have any information on the individuals' recruitment. 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 2008, the Petitioner has provided no 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 which have not been determined to be the same as 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

³⁶ See *Defensor*, 201 F.3d at 387-88.

³⁷ *Id.*

usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

As discussed, the Petitioner has not sufficiently established its claims as to the specialized nature of the proffered position or its minimum educational qualifications required to perform the duties of the position. Although some tasks may connote a requirement of familiarity with general financial principles, including real estate 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).

IV. CONCLUSION

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

The appeal will be dismissed for the above stated reason. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.