



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

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

In Re: 8990401

Date: JULY 20, 2020

Appeal of California Service Center Decision

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

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

The California Service Center Director denied the petition, concluding that the Petitioner had not established that the proffered position is a specialty occupation. On appeal, the Petitioner asserts that the Director erred and that the proffered position is a specialty occupation.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

## **I. LEGAL FRAMEWORK**

Section 101(a)(15)(H)(i)(b) of the Act defines an H-1B nonimmigrant as a foreign national “who is coming temporarily to the United States to perform *services . . . in a specialty occupation* described in section 214(i)(1) . . .” (emphasis added). Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires “theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(1) of the Act, but adds a non-exhaustive list of fields of endeavor. In addition, 8 C.F.R. § 214.2(h)(4)(iii)(A) provides that the proffered position must meet one of four criteria to qualify as a specialty occupation position.<sup>1</sup> Lastly,

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<sup>1</sup> 8 C.F.R. § 214.2(h)(4)(iii)(A) must be read with the statutory and regulatory definitions of a specialty occupation under section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). We construe the term “degree” to mean not just any

8 C.F.R. § 214.2(h)(4)(i)(A)(1) states that an H-1B classification may be granted to a foreign national who “*will perform services in a specialty occupation . . .*” (emphasis added).

Accordingly, to determine whether the Beneficiary will be employed in a specialty occupation, we look to the record to ascertain the services the Beneficiary will perform and whether such services require the theoretical and practical application of a body of highly specialized knowledge attained through at least a bachelor’s degree or higher in a specific specialty or its equivalent. Without sufficient evidence regarding the duties the Beneficiary will perform, we are unable to determine whether the Beneficiary will be employed in an occupation that meets the statutory and regulatory definitions of a specialty occupation and a position that also satisfies at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The services the Beneficiary will perform in the position determine: (1) the normal minimum educational requirement for entry into the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4. 8 C.F.R. § 214.2(h)(4)(iii)(A).

By regulation, the Director is charged with determining whether the petition involves a specialty occupation as defined in section 214(i)(1) of the Act. 8 C.F.R. § 214.2(h)(4)(i)(B)(2). The Director may request additional evidence in the course of making this determination. 8 C.F.R. § 103.2(b)(8). In addition, a petitioner must establish eligibility at the time of filing the petition and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1).

## II. PROFFERED POSITION

The Petitioner, established in 2013, is an online consumer finance company which offers “online installment loans and revolving credit to non-prime consumers.” The Petitioner seeks to employ the Beneficiary as an “IT support engineer,” who is “responsible for troubleshooting and rectifying any issues that arise with the stability, operability, and security of our network and infrastructure system, both cloud-based and on premises.” The Petitioner provided an outline of the duties of the proffered position based on job function, along with the percentage of time devoted to each job function, as follows: <sup>2</sup>

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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”).

<sup>2</sup> We acknowledge that the Petitioner submitted additional information for each of the job functions, which, for the sake of brevity, have not been included herein. This material has been closely reviewed and considered, as with all evidence in the record. The Petitioner also discusses the Beneficiary’s previous coursework in order to correlate the need for the Beneficiary’s education with the associated job duties of the position. However, we are required to follow long-standing legal standards and determine first, whether the proffered position qualifies for classification 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].”).

1. Administer Azure Active-Directory (10%)
2. Architecting solutions on AWS (12%)
3. Providing the Level III support (12%)
4. Application Performance Testing (5%)
5. Administer Atlassian JIRA (5%)
6. Administer Microsoft O365 Enterprise Mail-Exchange (5%)
7. Administer JAMF-PRO MDM System (5%)
8. System Administration and Maintenance (13%)
9. Maintain and Troubleshoot Networking Solutions (12%)

### III. ANALYSIS

Based on a lack of sufficient and consistent evidence, we conclude that the Petitioner has not established the substantive nature of the position, which precludes a determination that the proffered position qualifies as a specialty occupation under at least one of the four regulatory criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)-(4).

Specifically, we conclude the record provides inconsistent and insufficient information regarding the proffered position, which in turn precludes us from understanding the position's substantive nature and determining whether the proffered position qualifies as a specialty occupation. When determining whether a position is a specialty occupation, we look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the performance of those duties within the context of that particular employer's business operations. The Petitioner indicates that it relies on an internet-based presence to market consumer loans and revolving credit offerings to consumers noting:

[The Petitioner's] entire business is online, with respect to not only the consumer loan and credit card customer accounts but also all of the back-end processes that enable the functionality and maintain the data of all customer accounts and transaction details. Additionally, our company's infrastructure is based 80% in cloud and 20% on-premise systems, and is comprised of hundreds of Linux, windows servers and applications all of which are generating data that must be integrated and securely stored. The [proffered position] plays an instrumental role in ensuring that our business functions smoothly."

The Petitioner designated the proffered position on the labor condition application (LCA)<sup>3</sup> as a Standard Occupation Classification (SOC) code 15-1199 "Computer Occupations, All Other" occupation, and asserts that the duties of the proffered position are consistent with the duties of the "Computer Systems Engineers/Architects" sub-category corresponding to SOC code 15-1199.02.<sup>4</sup>

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<sup>3</sup> A petitioner is required to submit an LCA to the 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).

<sup>4</sup>The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

On appeal, the Petitioner references the DOL's Occupational Information Network (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.<sup>5</sup> Rather, 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 specify the particular type of degree, if any, that a position would require.<sup>6</sup> 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.

The Petitioner also maintains "the SOC code for this position is 15-1199.02 Computer Systems Engineers/Architects," and references the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* for this "occupational code."<sup>7</sup> 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.<sup>8</sup> Here, the *Handbook* does not provide specific information for various occupations which might be classified within the occupational category designed in the LCA.

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<sup>5</sup> See the O\*NET summary report for "Computer Systems Engineers/Architects," <https://www.onetonline.org/link/summary/15-1199.02> (Last visited July 17, 2020).

<sup>6</sup> For additional information, see the O\*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

<sup>7</sup> We often consider the information contained in the (DOL) *Occupational Outlook Handbook (Handbook)* regarding the duties and educational requirements of the wide variety of occupations it addresses. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. All of our references to the *Handbook* may be accessed at the Internet site <http://www.bls.gov/ooh/>.

<sup>8</sup> 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 17, 2020). 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. 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.

Importantly, the Petitioner initially submitted an excerpt from the *Handbook* chapter for a different occupational category, “Computer Network Architects,” SOC 15-1143 for the proposition that “most employers require at least a Bachelor’s degree in Computer Science, Information Systems, Engineering or a related field because candidates need hands-on experience with network security, database design, and working with a wide array of technologies used in networks.”<sup>9</sup> The Director issued a request for evidence (RFE) noting that the Petitioner did not explain why it submitted evidence for the “Computer Network Architects” occupation in support of the petition, when it is not the occupational category designated in the LCA. The Petitioner did not submit narrative or other documentation to address this material conflict in the record in response to the RFE.<sup>10</sup> The Director denied the petition, in part, concluding that the Petitioner’s submission of evidence for this alternate occupational category raises questions regarding whether the LCA actually corresponds to and supports the H-1B petition. We agree. On appeal, the Petitioner does not discuss or otherwise challenge the Director’s determinations about the inconsistent evidence submitted regarding the occupational category designated in the LCA.<sup>11</sup> The Petitioner must resolve this inconsistency and ambiguity in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Nonetheless, collectively considering the material presented by the Petitioner about the proffered position, the Petitioner has not sufficiently substantiated that the duties of the position closely correspond with the sub-occupation of “Computer Systems Engineers/Architects,” or in the alternative, with those typical for the “Computer Network Architects” occupation.<sup>12</sup> For example, the Petitioner claims the position entails “[a]rchitecting solutions on AWS,” by “[d]esigning and developing dynamically scalable, High-available (HA), fault tolerant applications and services on AWS Cloud environment.” However, building network software systems corresponds more closely to the “Computer Network Architects” occupation, than the occupation designated on the LCA. This is important because the occupation of “Computer Network Architects” requires a significantly higher wage. If the Beneficiary will perform duties in part that are more likely the duties of a “Computer Network Architects” occupation, the Petitioner must designate the higher paying position on the certified LCA. The “Computer Network Architects” category

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<sup>9</sup> Actually, the Handbook states “most computer network architects have a bachelor’s degree in a computer related field and experience in a related occupation, such as network and computer systems administrators,” which without more, does not establish that such positions require at least a bachelor’s degree in a specific specialty. See <http://www.bls.gov/ooh/>.

<sup>10</sup> “Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the [petition].” 8 C.F.R. § 103.2(b)(14).

<sup>11</sup> When an appellant fails to properly challenge one of the grounds upon which the Director based his/her overall determination, the filing party has abandoned any challenge of that ground, and it follows that the Director’s adverse determination will be affirmed. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that “courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

<sup>12</sup> The O\*NET summary report for this occupation states that individuals employed in this occupation, among other things, “[d]esign and implement computer and information networks . . . [p]erform network modeling, analysis and planning. . . . [d]esign network and computer security measures. . . . [r]ecommend network and data communications hardware and software.

See the O\*NET summary report for “Computer Network Architects,” <https://www.onetonline.org/link/summary/15-1143> (Last visited July 17, 2020).

has a higher prevailing wage than the “Computer Systems Engineers/Architects” occupational sub-category, and exceeds the level of compensation offered to the Beneficiary in the petition.<sup>13</sup>

It is crucial that an LCA must correspond to the petition in all material aspects, including the prevailing wage and the occupational category certified therein.<sup>14</sup> The regulation at 20 C.F.R. § 655.705(b) requires that U.S. Citizenship and Immigration Services (USCIS) ensure that an LCA actually supports the H-1B petition filed on behalf of the Beneficiary. According to DOL guidance on the LCA, if a proffered position involves a combination of different occupational classifications, then the petitioner should select the relevant occupational code for the highest-paying occupation.<sup>15</sup> For purposes of the LCA, the Petitioner is required to select the occupational code that best represents the nature of the job offer, which in turn determines the appropriate prevailing wage.<sup>16</sup> The Petitioner has not done so here, and has not sufficiently explained why the “Computer Systems Engineers/Architects” occupational sub-category at a level I wage is appropriate for the proffered position, which raises further questions regarding the substantive nature of the position. *Matter of Ho*, 19 I&N Dec. at 591-92.

We have also reviewed the position evaluation of [REDACTED] in order to better understand the Petitioner’s proffered position. The professor repeats the position’s duties and lists 18 “knowledge areas” from the *2013 Curriculum Guidelines for Undergraduate Programs in Computer Science*, published by the Association for Computing Machinery (ACM).<sup>17</sup> These guidelines for potential curriculums are far too broad to establish that a particular position requires a body of highly specialized knowledge that is attained through study at a bachelor-level degree in a specific specialty, or its equivalent. The professor also states “[i]n my opinion, any of the duties listed for the position could be matched to a corresponding knowledge area, suggesting a high degree of competence necessary to perform them” and that “if any of the job duties require competence in a major knowledge area, it stands to reason that the whole of the job’s responsibilities could not be performed satisfactorily without Bachelor-level competence in Computer Science, Computer Information Systems, or a related technical field.” The professor concludes further that because “there is significant overlap between the prescribed duties for the position, and the general knowledge areas covered in Bachelor-level Computer Science programs, . . . any individual lacking a Bachelor’s degree (or its equivalent) in these fields would not be able to perform these duties to the degree [the Petitioner] requires for the continuous execution of its business operations.” The professor, however, does not offer a cogent analysis of why matching any of the duties of the particular position to the broadly described corresponding knowledge areas for a potential curriculum is the same as establishing that the duties require a bachelor’s degree in a specific specialty,

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<sup>13</sup> The prevailing wage in the area and time period of intended employment for “Computer Network Architects” is \$84,245, while the prevailing wage for “Computer Systems Engineers/Architects” as stipulated on the instant LCA is \$59,717 per year. For more information on prevailing wages generally, see the FLC Data Center at <http://www.flcdatacenter.com/OESWizardStart.aspx> (last visited July 17, 2020). The Petitioner indicates that it will pay the Beneficiary \$65,000, an amount substantially less than the prevailing wage for the “Computer Networks Architects” occupation which causes concern regarding whether the submitted LCA corresponds to the petition in all material aspects, including the occupational category and the appropriate prevailing wage certified therein. See Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

<sup>14</sup> *Id.*

<sup>15</sup> See *Prevailing Wage Determination Policy Guidance*, *supra*.

<sup>16</sup> *Id.*

<sup>17</sup> This document or pertinent excerpts were not provided for the record for our review.

or its equivalent. Other than referring to the “wide adoption of the ACM’s Curriculum Guidelines,” he does not discuss their relevance in establishing that the particular position offered here requires a specific bachelor’s degree.<sup>18</sup> Moreover, he does not discuss other relevant research, studies, or authoritative publications he utilized as part of his review and foundation for his opinion.

Additionally, through his analyses the professor confuses *the ability* of a degreed computer science person to qualify for – and be competent in – performing the duties of the proffered position with a degree requirement *in order to* perform the duties. While the professor may draw inferences that certain baccalaureate-level information technology related courses may be beneficial in performing various 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, the professor’s suggestion that a person with a bachelor’s degree in computer science could perform the duties of the proffered position is not the same as stating that a bachelor’s degree in a specific specialty is required to perform those duties. As such, the professor analysis misconstrues the statutory and regulatory requirements of a specialty occupation.

The professor also opines that responsibility for security of the network falls to individuals in systems-related positions, such as the “Computer Systems Engineers/Architects” role but he also appears to acknowledge that “[a]dministrators, architects, and developers” are all involved in network security tasks. The tasks outlined by the Petitioner regarding network security also falls within the occupation of a “Computer Network Architects” as the first task listed for such an occupation in the O\*NET summary report is “[d]evelop or recommend network security measures, such as firewalls, network security audits, or automated security probes.”<sup>19</sup> We also acknowledge that both occupations are involved in security measures. In this matter, the Petitioner’s reliance on material related to the “Computer Network Architects” occupation as well as for the “Computer Systems Engineers/Architects” designated in the LCA compounds the ambiguity in the record regarding the nature of the proffered position and the level of responsibility of the position within the Petitioner’s business operations.

Upon review of the professor’s position evaluation, the evaluation is insufficient to support a claim that the Petitioner’s proffered position is sufficiently complex and specialized to require a minimum of a bachelor’s degree in a specific specialty. The record also does not include probative evidence corroborating the professor’s conclusion regarding the minimum entry requirements for this occupation. Without a more thorough analysis of the proffered position that is consistent with the record and with a relevant foundation for his conclusions, his opinion has little probative value. 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.* For the sake of brevity, we will not address other deficiencies within the professor’s analyses.

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<sup>18</sup> Service records show that the professor used a template with similar organization and these same conclusory statements have been submitted on behalf of other petitioners regarding different occupations. The similarity in conclusions, without cogent analysis, strongly suggests that the authors of the opinions were 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.

<sup>19</sup> See O\*NET’s summary report for “Computer Network Architects” at <https://www.onetonline.org/link/summary/15-1143.00> (last visited July 17, 2020).

Also in support of its arguments, the Petitioner cites to *RELX, Inc. v. Baran*.<sup>20</sup> In contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of United States district courts in matters arising even within the same district.<sup>21</sup> 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.<sup>22</sup>

The Petitioner cites to *RELX* to support the proposition that since O\*NET states that “most of the occupations require a four-year bachelor's degree, and the [*Handbook*] itself explains that the entry level education for Computer Occupations, All Other is a bachelor's degree,” the occupation was found to be a specialty occupation. However as discussed, O\*NET does not establish the proffered position as a specialty occupation. Moreover, as the foregoing discussion demonstrates, while we agree that the bachelor's degree does not have to be a degree in a *single* specific specialty, we do not agree with the analytical framework set forth by the *RELX* court.

In *RELX*, the court did not address the statutory and regulatory provisions as they pertain to the requirement that the bachelor's degree, or its equivalent, be in a *specific specialty*. To avoid restricting the qualifying occupations to those for which a single, specific specialty exists, the court did not consider the requirement for specialization and overlooked that neither the *Handbook* nor O\*NET stated that the referenced bachelor's degree must be in a specific specialty. In overlooking this relevant detail, the court disposed of the precedential authority created by *Royal Siam Corp. v. Chertoff* and continued to do so when it examined the evidence presented for the other criteria.<sup>23</sup>

We also disagree with the court's statement that “[the Petitioner] did not just make a general reference to O\*NET. Rather, [the Petitioner] stated that the Data Analyst position is aligned with the DOL's “Business Intelligence Analyst” position for which there is a detailed description that is directly relevant to the inquiry of whether the position is specialized.”<sup>24</sup> While we agree that O\*NET is relevant, the court's treatment of O\*NET as dispositive simply because the proffered position aligned with the occupational category disregards the *specific specialty* analysis that underpins *Royal Siam Corp.*

The *RELX* court further stated that “[s]ince the [*Handbook*] indeed does provide specific detailed information regarding educational requirements for the computer operations category, and the detailed information states most of the occupations require a four-year bachelor's degree, the agency's rationale was both factually inaccurate and not supported by the record.”<sup>25</sup> Here, again the court did not undertake the proper inquiry regarding the specific educational requirements of the position and instead regards a general requirement for a bachelor's degree as sufficient to discharge the petitioner's burden. Because the *Handbook* and O\*NET do not describe the normal minimum educational requirements with sufficient specificity to establish that the positions falling within the occupational

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<sup>20</sup> *RELX, Inc. v. Baran*, 397 F.Supp.3d 41 (D.D.C. Aug. 5, 2019).

<sup>21</sup> See *Matter of K-S-*, 20 I&N Dec. 715, 719-20 (BIA 1993).

<sup>22</sup> *Id.*

<sup>23</sup> *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”).

<sup>24</sup> *RELX, Inc.*, 397 F.Supp.3d at 54.

<sup>25</sup> *Id.*



category are specialized, we disagree with the court's reliance on these sources as establishing the requisite eligibility. Instead, we believe that absent support from the *Handbook* and O\*NET, the court should have analyzed whether the petitioner had sufficiently demonstrated that its particular position was one for which a bachelor's degree would normally be required and whether the stated field(s) of study directly related to the performance of the duties.<sup>26</sup> In other words, though we agree with the *RELX* court that the bachelor's degree does not have to be a degree in a single specific specialty, this agreement is predicated upon the fields of study being closely related to the duties of the position and the record reflecting evidence sufficient to establish such relation.

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position.<sup>27</sup> For the foregoing reasons, we cannot agree with the reasoning contained in the *RELX* decision and therefore conclude that the Petitioner's reliance upon the case does not support its eligibility.<sup>28</sup>

For the reasons discussed, we conclude that the Petitioner has not established the actual, substantive nature of the proffered position.<sup>29</sup> The Petitioner has not submitted consistent, probative evidence to adequately communicate (1) the actual work that the Beneficiary would perform, (2) the complexity, uniqueness, or specialization of the tasks, and (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty. Accordingly, the Petitioner has not established that the proffered position is a specialty occupation.<sup>30</sup>

#### IV. CONCLUSION

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

**ORDER:** The appeal is dismissed.

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<sup>26</sup> Though the *RELX* court briefly discusses the duties of the position, it did not engage in analysis of whether the duties actually required the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation. Rather, after disposing of the authority set forth in *Royal Siam Corp.*, the court accepted the petitioner's stated standards concerning its position. See generally *Defensor v. Meissner*, 201 F.3d 384, 387.

<sup>27</sup> Section 214(i)(1)(B) of the Act (emphasis added).

<sup>28</sup> We further note that the Director's decision in *RELX* was not appealed to us. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision to address many of the concerns articulated by the district court if they could not have been remedied by us in our *de novo* review of the matter.

<sup>29</sup> *Matter of Chawathe*, 25 I&N Dec. at 376.

<sup>30</sup> As the lack of probative and consistent evidence in the record precludes a conclusion that the proffered position is a specialty occupation and is dispositive of the appeal, we will not further discuss the Petitioner's assertions on appeal.