



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

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

In Re: 6865332

Date: JUNE 17, 2020

Appeal of California Service Center Decision

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

The Petitioner, a real estate investment and management company, seeks to temporarily employ the Beneficiary as a financial analyst 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 California 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.¹ We review the questions in this matter *de novo*.² 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 Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

² 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. MATERIAL INCONSISTENCIES

A. Minimum Qualifications

As a preliminary matter, we conclude that the Petitioner has not clearly defined the educational qualifications required to perform the duties of the position. In its initial filing, the Petitioner did not identify any minimum qualifications for entry into the proffered position. In response to the Director’s request for evidence (RFE), the Petitioner stated that its minimum qualifications to perform the duties of the position are a bachelor’s degree “focusing on quantitative analysis, such as Finance or a closely related business field.” It also stated that it requires a “bachelor’s degree in Finance, Accounting, Economics, or a closely related field.”

Elsewhere within its RFE response, the Petitioner stated that it requires a candidate with demonstrated experience “using Microsoft Office Suite and Advanced Excel proficiency (knowledge of formulas and macros, VLOOKUP, pivot tables); and Financial Analysis and Ad hoc reporting experience” and that the Petitioner requires proficiency with “the Financial Ratios and Calculations utilized by our Financial Team to assess the individual financial strengths and credit worthiness of our lessees and commercial clients.” The Petitioner does not define how it gauges this experience or how much “demonstrated experience” is required. Later in the same response, the Petitioner stated that it requires a candidate with at least a 3.0 GPA. The Petitioner also submitted a prevailing wage determination form ETA-9141 within its RFE response, which states that in addition to the degree requirement, the Petitioner requires twelve months of experience.

It is unclear whether the Petitioner’s disjointed articulation of its requirements in various parts of the record should be taken together. The piecemeal nature of these requirements suggests that the Petitioner has not clearly defined its position, which undermines the overall credibility of the petition.

In addition to this, the Petitioner's table of position duties with the percentages of time the Beneficiary will spend on each duty indicates that the Beneficiary gained the requisite experience to perform the duties through her master's degree courses, her Chartered Financial Analyst (CFA) Level One exam, and her work experience. In fact, the Petitioner pointed to the Beneficiary's master's degree courses as the basis for the Beneficiary's ability to perform all of the position's duties. If required, this level of education, experience, and training is not clearly captured in the Petitioner's articulation of its requirements. At minimum, it raises questions as to whether the Level I wage is appropriate and whether the certified labor condition application (LCA)³ corresponds to and supports the petition as required.⁴

B. Prevailing Wage

In addition to the wage concerns stated above, other documents in the record raise questions as to the proper wage for this position. The purpose of the LCA wage requirement is "to protect U.S. workers' wages and eliminate any economic incentive or advantage in hiring temporary foreign workers."⁵ It also serves to protect H-1B workers from wage abuses. A petitioner submits the LCA to the Department of Labor (DOL) to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the area of employment or the actual wage paid by the employer to other employees with similar duties, experience, and qualifications.⁶ While DOL certifies the LCA, U.S. Citizenship and Immigration Services (USCIS) determines whether the LCA's content corresponds with the H-1B petition.⁷

A petitioner must obtain a certified LCA from the Department of Labor in the occupational specialty in which the H-1B nonimmigrant will be employed before the filing of the Form I-129.⁸ On the LCA submitted with the instant H-1B petition, the Petitioner designated the proffered position under the occupational category "Financial Analysts" corresponding to the Standard Occupational Classification (SOC) code 13-2051 at a Level I wage. The prevailing Level I wage for this occupational category in the relevant geographic location is \$53,976. In its RFE response, the Petitioner submitted a prevailing wage determination form ETA-9141 for the same wage level and geographic location, but which indicates that the prevailing wage is \$58,032. The Petitioner stated in the Form I-129 that it will pay

³ A petitioner submits the LCA to DOL to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the area of employment or the actual wage paid by the employer to other employees with similar duties, experience, and qualifications. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

⁴ If the LCA does not correspond to and support the H-1B petition, this would constitute an additional ground upon which this petition should be denied. If the proffered position requires a master's degree and additional experience then the LCA should have been certified at a Level II wage, at minimum. We will not address the LCA issue in detail because the proffered position is not a specialty occupation. That said, the Petitioner should be prepared to address the issue in any future H-1B filings.

⁵ See Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas in Specialty Occupations and as Fashion Models; Labor Certification Process for Permanent Employment of Aliens in the United States, 65 Fed. Reg. 80,110, 80,110-11 (proposed Dec. 20, 2000) (to be codified at 20 C.F.R. pts. 655-56).

⁶ Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

⁷ See 20 C.F.R. § 655.705(b) ("DHS determines whether the petition is supported by an LCA which corresponds with the petition . . .").

⁸ 8 C.F.R. § 214.2(h)(4)(i)(B)

the Beneficiary \$54,000. The Petitioner has not resolved the discrepancies between the prevailing wage and the actual wage paid to the Beneficiary.

Taken together, the above-mentioned material inconsistencies serve to undermine the overall credibility of this petition.

III. SPECIALTY OCCUPATION

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.

The Petitioner stated that the Beneficiary will be employed as a "financial analyst" and with its initial filing of the petition, the Petitioner provided a five-bullet list of duties and the percentage of time spent on each duty. In its RFE response, the Petitioner expanded upon this list and provided the knowledge and skill required to perform the duty, as well as how and where the Beneficiary gained the requisite knowledge and skill.

A. First Criterion

As previously stated, the Petitioner designated the proffered position under the occupational category "Financial Analysts," corresponding to the Standard Occupational Classification code 13-2051. 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).⁹ 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 submits alternative evidence for our consideration under this criterion, including references to the DOL's Occupational Information Network (O*NET) summary report percentages 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

⁹ 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 Jun. 17, 2020).

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.¹⁰ While the SVP rating provides 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, formal education, and experience – and it does not specify the particular type of degree, if any, that a position would require.¹¹ 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.¹² 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.¹³ 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.

The Petitioner cites *Residential Finance Corp. v. USCIS*¹⁴ 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.” 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

¹⁰ This training may be acquired in a school, work, military, institutional, or vocational environment. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

¹¹ For additional information, see the O*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

¹² Nor is it apparent whether these credentials were prerequisites to these individuals’ hiring.

¹³ 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”).

¹⁴ *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012).

¹⁵ *Id.*

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

responsibilities of the particular position.¹⁷ 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.

Further, the Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Finance*.¹⁸ 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

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).

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

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).

affidavits from firms or individuals in the industry establish that such firms “routinely employ and recruit only degreed individuals.”²²

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.” In examining the position descriptions, we observe that many of the positions do not contain sufficient information with which to make a determination as to whether they parallel the proffered position. Some advertisements include only a few short bullet points or a single sentence featuring very generalized descriptions which do not permit us to draw conclusions as to similarity. Other descriptions indicate positions that are markedly different than the proffered one. For instance, some of the positions focus on insurance and have little apparent involvement with property management or economic markets in China, which the Petitioner has indicated is a primary aspect of the proffered position. In addition to this, many of the positions require two to three years’ experience in addition to a bachelor’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. Though the Petitioner summarized in a table why it believes the employers operate in the same industry and are similar, the record lacks evidence to support this assertion. The advertisements themselves offer little information about the employers that placed them, and we have insufficient independently sourced information in the record with which to draw conclusions as to industry and similarity. According to the limited information provided, the employers in the advertisements focus primarily in real estate investments and do not appear to operate in the property management industry, which the Petitioner has indicated is an integral feature of its business.

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

²² 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)).

equivalent, is common to the industry in parallel positions among similar organizations. Some employers indicate that study in a specific area is a preference, but not a requirement. The announcements also reflect that the employers accept a variety of degrees, including a general-purpose degree in business or *any* type of bachelor's degree, rather than one in a specific specialty. 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.²³

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.²⁴ That is, not every deficit of every piece of evidence has been addressed.²⁵ 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.

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.²⁶ 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.

Some duties appear to be administrative or clerical in nature and we question whether they require any specialized knowledge or skill. The Beneficiary will be responsible for "conference and correspondence," "arrangement of meets, and preparation of meeting reports and presentation."

²³ Again, 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").

²⁴ 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.

²⁵ 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).

²⁶ We acknowledge the Petitioner's financial report work product samples. These documents contain significant amounts of boilerplate leases and contracts, lists of physical dwelling specifications, such as furniture, as well as documents written in a foreign language, for which there does not appear to be an accompanying translation. The Petitioner has not sufficiently established why and how this work product required specialized knowledge to produce.

Further, the Beneficiary will “[c]ommunicate with existing investors and future investors about projects performances and investment opportunities.” The Petitioner has not explained in detail how these tasks require the theoretical and practical application of a body of highly specialized knowledge. As described, these duties suggest that the Beneficiary will not be relieved of performing non-qualifying work.

The Petitioner supplements its table of duties by listing financial ratio analysis concepts and definitions, however, merely listing these concepts does not establish how the Beneficiary uses them to complete her day-to-day work. Similarly, the Petitioner states that the Beneficiary will establish financial modeling and lists several types of models and methods, but simply listing the models does not establish their specialized nature. The Petitioner states that the ability to calculate and analyze financial ratios and perform the requisite credit analysis is “most commonly” obtained through a bachelor’s degree program focusing on quantitative analysis, such as finance or a closely related business field. Moreover, the Petitioner states that students studying these fields would gain this understanding. While it is acknowledged that a bachelor’s degree in such a program could be helpful, the Petitioner does not explain why such an education is required or why such knowledge could only be obtained through a bachelor’s degree program in one of the specified fields.

Though the Petitioner stated that the Beneficiary will “[c]arry out due diligence on investment projects regarding marketing conditions, legal and financial issues, sorting out capital structure of acquired companies and conduct risk management on relating projects to lower down potential risks,” the Petitioner does not define what the Beneficiary will actually do as she carries out this due diligence. We do not know what legal or financial issues the Beneficiary might encounter or how she would deal with them, nor can we ascertain what “sort out” means in the context of the Beneficiary’s daily work. Even if this were explained, the Petitioner has would still need to identify how performance of this work requires specialized knowledge gained through at least a bachelor’s degree in a specific specialty. The Petitioner states that the Beneficiary will “[p]repare investment pitch books” but we have no information on what the Beneficiary will do to complete this duty or why it requires specialized knowledge. Further, the Petitioner states that the Beneficiary will “[p]articipate in business negotiations on investment projects” but provides little information on what level of involvement “participate” entails, which inhibits in our understanding of the Beneficiary’s activities in completing this duty.

The Petitioner claims that the Beneficiary is well-qualified for the position and references her qualifications. However, the test to establish a position as a specialty occupation is not the education or experience of a particular beneficiary, but whether the position itself requires at least a bachelor’s degree in a specific specialty, or its equivalent. The Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position, and it did not identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. Accordingly, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

C. Third Criterion

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor’s degree in a specific specialty, or its equivalent, for the position. To satisfy this

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

Though the Petitioner stated that it “has always required a minimum of a bachelor’s degree in Finance, Accounting, Economics, or a closely related field” for its financial analyst positions, 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.²⁷ 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.²⁸ 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 evidence of two individuals who it states serve in the position of financial analyst, along with copies of their educational records and paystubs. The Petitioner lists the salary earned by these individuals, one of whom earns \$6,000 more per year than the Beneficiary, which indicates their roles may not be the same. The record does not include any job duties performed by these employees, or the job advertisements for their positions. Therefore, we do not know what the recruitment process for hiring these individuals involved or whether specialized degrees were prerequisites. 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 2012, the Petitioner has not provided the total number of people it has employed in the past to serve in the proffered position, nor has it provided information about its past hiring history for the proffered position. Consequently, no determination can be made about the Petitioner’s normal recruiting and hiring practices for the proffered position when the submitted employment evidence covers only two current employees who occupy positions that have not been 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 usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

Though the Petitioner asserts that the success and continued growth of the Petitioner’s business in part hinges upon the financial analyst role, this does not imply that the work performed by the Beneficiary is specialized. Neither the success and growth of the Petitioner, nor the importance of the proffered

²⁷ See *Defensor*, 201 F.3d at 387-88.

²⁸ *Id.*

position in contributing to it, can substitute for specialization. Although some tasks may connote a requirement of familiarity with general real estate principles, including financial 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. BENEFICIARY QUALIFICATIONS

Though not a stated basis for the Director's decision, we conclude that the evidence of record does not establish that the Beneficiary is qualified to perform services in a specialty occupation. Because the Petitioner has not clearly established its minimum educational requirements for the position, resolved the inconsistencies concerning the prevailing wage, or established that the proffered position is a specialty occupation, we need not fully address the beneficiary qualification issue. That said, the Petitioner should be prepared to address this issue in any future filings.

The Petitioner submitted copies of the Beneficiary's foreign master's degree diploma and transcript along with two academic equivalency evaluations, one from [REDACTED] and another from [REDACTED]. Though the Petitioner states that the Beneficiary earned a foreign bachelor's degree, copies of the beneficiary's foreign bachelor's degree diploma and transcripts have not been submitted. The [REDACTED] document does not include an evaluation of the degree the Beneficiary earned prior to the master's degree program. By contrast, the [REDACTED] document concludes that the Beneficiary earned the equivalent of a U.S. bachelor's degree in law and a master's degree in real estate finance.

Furthermore, the [REDACTED] document indicates the Beneficiary's master's degree program included one year of study, which appears to comport with the information in the transcript provided. We question the accuracy of this evaluation in concluding that one year of master's-level study qualifies as the equivalent of U.S. master's degree, which is typically two years of full-time study. The evaluation contains insufficient information and analysis to substantiate how it arrived at this conclusion.

Moreover, we also question the accuracy of the [REDACTED] document, which concludes that the Beneficiary engaged in two years of study for her master's degree, an assertion that conflicts with the [REDACTED] document, and also appears to be unsupported by the transcript. When considering the Petitioner's minimum requirements, we conclude there is

insufficient evidence with which to establish that the Beneficiary earned at least a 3.0 GPA or that she has the experience the Petitioner stated that it requires for entry into the position.²⁹

The lack of sufficient and consistent documentation submitted concerning the Beneficiary's qualifications undermines the overall credibility of the petition. We conclude that the Petitioner has not established that the Beneficiary is qualified to perform the duties of a specialty occupation.

V. 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, with each considered an independent and alternative basis for the decision. 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.

²⁹ We acknowledge the Beneficiary's résumé, however this document does not contain information sufficient to conclude that she possesses the experience the Petitioner stated that it requires for the position.