



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

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

MATTER OF C- LLC

DATE: AUG. 22, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a global investment firm, seeks to temporarily employ the Beneficiary as an “end user support engineer” 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 Director of the California Service Center denied the petition, concluding that the Petitioner did not establish that the proffered position qualifies as a specialty occupation.

On appeal, the Petitioner submits a brief and asserts that the Director erred in denying the petition. 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”).

II. THE PROFFERED POSITION

The Petitioner seeks to employ the Beneficiary as an “end user support engineer.” In response to the Director’s request for evidence (RFE), the Petitioner described the Beneficiary’s duties as follows:

- Provide network analysis support and administration for all internal end-user software, hardware, and connectivity[.] (50% of time)
... perform ad-hoc automation of [the Petitioner’s] proprietary technologies utilizing [redacted] server side technologies such as . . . and other administrative tools such as . . . [The Beneficiary] will also work with teams to develop and maintain technical scripts to improve automation and continue to eliminate low value tasks within the organization She will also be responsible for working directly with business units to identify and resolve technology issues particular to each unit and engaging with the end users of the business units to provide troubleshooting assistance and training.
....
- Identify, diagnose, research, track and resolve network and technology system problems[.] (15% of Time)
. . . [The Beneficiary] will be a part of a team responsible for not only identifying and resolving technical problems, but she will also be developing and testing strategies aimed at preventing technical breakdowns in the future. . . . She will also stay ahead of technological updates to determine upgrades and best tools to support [the Petitioner’s] business as well as track performance, risks and benefits of solutions prior to and after deployment

- Analysis and maintenance of user accounts and permissions on systems in compliance with [the Petitioner’s] security policies[.] (10% of time)
... [the Beneficiary] will serve as a point of contact to design and rebuild the off board process at [the Petitioner], which includes significant Information Security/Security policies responsibility across the firm including the decommission of email addresses, user accounts and access to any [of the Petitioner’s] proprietary technology and services. . . . [The Beneficiary’s] responsibility . . . also encompasses assisting business units with identifying and implementing security policies for end users, which includes protecting and preventing policy violations utilizing . . . and other in-house developed tools. She will also be responsible for communicating with end users to create awareness to minimize policy violations. . . .
- Deploy, manage and document a wide variety of devices and applications running primarily on [redacted] laptops, [redacted] and [redacted] [.] (10% of time)
Among her other duties, [the Beneficiary] will have responsibility for coordinating the build process and firm wide roll-out of an [redacted] She will also perform health check of third party [redacted] servers; identify and troubleshoot server resources bottlenecks; and install [redacted] Operating System to new users and track any issues to completion across the user base. . . .
- Work on a mix of ad-hoc support, shorter-duration maintenance tasks, and longer-duration project work and will operate with increased independence over time[.] (10% of time)
[The Beneficiary] will participate in project work as needed. Additionally, she will serve as a point of contact for re-designing and building the New Hire Onboard (NHO) process and workflow. This includes working across multiple internal teams and developing an automated workflow to ease the inefficiencies in the NHO process. . . .
- Interact independently with vendors and users while meeting all assigned support and IT project commitments and engage in technical collaboration with other Infrastructure groups and Business IT teams as appropriate[.] (5% of time)
[The Beneficiary] will be part of the network analysis team tasked with working with HR, HRIT, Information Security, Windows & Systems Engineering, and other technology development teams to manage IT projects across the organization, such as the New Hire Onboard process referenced above. . . .

The Petitioner also included information about the “coursework that provided the skills necessary to perform [the listed] duties.”

The Petitioner indicated that the minimum entry requirement for the proffered position is a bachelor's degree in computer science, management and information systems, information systems, computer engineering, or a related field.

III. ANALYSIS

For the reasons set out below, we have determined that the proffered position does not qualify as a specialty occupation. Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.¹

A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. We recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.²

On the labor condition application (LCA)³ submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Computer Network Support Specialist" corresponding to the Standard Occupational Classification (SOC) code 15-1152. Thus, we reviewed the *Handbook's* subchapter entitled "How to Become a Computer Support Specialist," which states, in pertinent part, that a bachelor's degree is required for some applicants applying to computer support specialist positions, but an associate's degree or postsecondary classes may be enough for others.⁴ According to the *Handbook*, "[p]ositions that are more technical are likely to require a degree in a field such as computer science, engineering, or information science, but for others, the applicant's field of study is less important." The *Handbook* further states that applicants who have taken some computer-related classes may be qualified as many employers accept

¹ The Petitioner submitted documentation in support of the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

² 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. To satisfy the first criterion, however, 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.

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 Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Computer Network Support Specialists <https://www.bls.gov/ooh/computer-and-information-technology/computer-support-specialists.htm#tab-4> (last visited August 21, 2018).

applicants with an associate's degree.⁵ The *Handbook* 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 also references DOL's Occupational Information Network (O*NET) summary report for "Computer Network Support Specialists," listed as SOC code 15-1152.00 for our consideration under this criterion.

Though relevant, the information the Petitioner submits from 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; 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.⁶ 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.⁷ 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 any academic credentials for Job Zone Four occupations must be directly related to the duties performed.

Further, we note that the summary report provides the educational requirements of "respondents," but does not account for 100% of the "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. Thus, the graph's indication that 47% of "respondents" claim to hold a bachelor's degree is not sufficient to demonstrate that a bachelor's degree is the *normal* requirement for the occupation. We note that the same survey indicates that compared to bachelor's degree respondents almost the same amount of respondents, 36%, reported possessing at most an associate's degree, and further, 17% are unaccounted for. Regardless, a requirement for a bachelor's degree alone is not sufficient. Instead, we construe the term "degree" to mean not just

⁵ *Id.*

⁶ 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.

⁷ For additional information, see the O*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position.⁸ 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”).

Nor is the case law the Petitioner cites sufficient to satisfy the first criterion. On appeal, the Petitioner cites *Next Generation Tech., Inc. v. Johnson*, (S.D.N.Y. Sept. 29, 2017) as relevant here. This case arises out of a different jurisdiction than the instant matter.⁹ Nevertheless, even if we considered the logic underlying the matter, we find that the Petitioner has not demonstrated that the proffered position is a specialty occupation.

First, the court in *Next Generation Tech., Inc.* discussed our reading of the *Handbook's* discussion of the entry requirements for positions located within a different and separate occupational category “Computer Programmers” rather than the “Computer Network Support Specialists” category designated by the Petitioner in the LCA relating to this case. As noted above, the *Handbook* specifically states that “an associate’s degree or postsecondary classes may be enough” and that even for the “more technical” positions, for some employers, “the applicant’s field of study is less important.”

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.*¹⁰

The Petitioner also cites *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012). We agree that “[t]he knowledge and not the title of the degree is what is important.” However, 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 two disparate fields, such as English and business, 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

⁸ Nor is it apparent whether these credentials were prerequisites to these individuals’ hiring.

⁹ In contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. See *K-S-*, 20 I&N Dec. at 719-20. Although the reasoning underlying a district judge’s decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.*

¹⁰ 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>.

duties and responsibilities of the particular position. Section 214(i)(1)(B) of the Act (emphasis added).¹¹ For the aforementioned reasons, however, the Petitioner has not met its burden to establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those tasks.

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*.¹² Again, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. See *K-S-*, 20 I&N Dec. at 719-20. 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*. See *Health Carousel, LLC v. USCIS*, No. 1:13-CV-23, 2014 WL 29591 (S.D. Ohio 2014).

Finally, the Petitioner cites to *Tapis Int'l v. Immigration and Naturalization Service*, 94 F. Supp. 2d 172 (D. Mass. 2000) regarding closely related specialties. Specifically, we note that in *Tapis*, the U.S. district court found that while the former Immigration and Naturalization Service (INS) was reasonable in requiring a bachelor's degree in a specific field, it abused its discretion by ignoring the portion of the regulations that allows for the equivalent of a specialized baccalaureate degree. According to the U.S. district court, INS's interpretation was not reasonable because then H-1B visas would only be available in fields where a specific degree was offered, ignoring the statutory definition allowing for "various combinations of academic and experience based training." *Tapis Int'l v. INS*, 94 F. Supp. 2d at 176. The court elaborated that "[i]n fields where no specifically tailored baccalaureate program exists, the only possible way to achieve something equivalent is by studying a related field (or fields) and then obtaining specialized experience." *Id.* at 177.

We agree with the district court judge in *Tapis*, that in satisfying the specialty occupation requirements, both the Act and the regulations require a bachelor's degree in a specific specialty, or its equivalent, and that this language indicates that the degree does not have to be a degree in a single specific specialty. As previously discussed, 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.

However, the district court judge does not state in *Tapis* that, simply because there is no specialty degree requirement for entry into a particular position in a given occupational category, we must

¹¹ 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.

¹² 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.

recognize such a position as a specialty occupation if the beneficiary has the equivalent of a bachelor's degree in that field. In other words, we do not conclude that *Tapis* stands for either (1) that a specialty occupation is determined by the qualifications of a beneficiary being petitioned to perform it; or (2) that a position may qualify as a specialty occupation even when there is no specialty degree requirement, or its equivalent, for entry into a particular position in a given occupational category.

First, we cannot determine if a particular job is a specialty occupation based on the qualifications of a beneficiary. A beneficiary's credentials to perform a particular job are relevant only when the job is first found to qualify as a specialty occupation. We are required instead 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].").

Second, in promulgating the H-1B regulations, the former INS made clear that the definition of the term "specialty occupation" could not be expanded "to include those occupations which did not require a bachelor's degree in the specific specialty." Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act, 56 Fed. Reg. 61,111, 61,112 (Dec. 2, 1991) (to be codified at 8 C.F.R. pt. 214). More specifically, in responding to comments that "the definition of specialty occupation was too severe and would exclude certain occupations from classification as specialty occupations," the former INS stated that "[t]he definition of specialty occupation contained in the statute contains this requirement [for a bachelor's degree in the specific specialty, or its equivalent]" and, therefore, "may not be amended in the final rule." *Id.*

In any event, the Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Tapis* and, as previously discussed, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. *See K-S-*, 20 I&N Dec. at 719-20.

The record lacks sufficient evidence to support a finding that the proffered position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. For the aforementioned reasons, the Petitioner has not met its burden to establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those tasks. 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 casts its gaze upon the common industry practice, while the alternative prong narrows its focus to the Petitioner’s specific position.

1. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the “degree requirement” (i.e., a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

We generally consider the following sources of evidence to determine if there is such a common degree requirement: whether the *Handbook* reports that the industry requires a degree; whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms “routinely employ and recruit only degreed individuals.” 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)).

The Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative sources) reports an industry-wide requirement for at least a bachelor’s degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry’s professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner’s industry attesting that such firms “routinely employ and recruit only degreed individuals.”

The Petitioner submitted job vacancy announcements for our consideration under this prong. To be relevant for this 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 find 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.” Most of the advertised positions have experience requirements, which the proffered position does not. For example, the systems engineer position requires “[a] minimum of three years professional experience in a corporate IT environment developing and supporting a medium to large network,” along with technical certifications from ██████████ and the desktop user experience engineer position requires five to seven years of desktop engineering experience, along with “[e]xperience leading and or mentoring team members.” Further, some of the advertisements do not include sufficient information about the duties and responsibilities for the advertised positions. Thus, it is not possible to determine important aspects of the jobs, such as the day-to-day responsibilities, complexity of the job duties, supervisory duties (if any), and independent judgment

required or the amount of supervision received. Therefore, 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. The Petitioner is a global investment firm, with 1,500 employees worldwide, whereas: one of the advertisements is for a patient rehabilitation center; a second advertisement is for a community-based credit union; a third advertisement is for a company that manufactures personal care items; a fourth advertisement is for an information technology company; a fifth advertisement is for a permanent placement recruiting firm; and the other advertisement does not provide sufficient information regarding the hiring employer. The Petitioner also did not supplement the record of proceedings to establish that these organizations are similar to it.

When determining whether the Petitioner and the organization share the same general characteristics, such factors 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 (to list just a few elements that may be considered). It is not sufficient for the Petitioner to claim that an organization is similar and in the same industry without providing a basis for such an assertion.

More importantly, one of the advertised positions states that it "will consider [an] associate's degree in electrical technology, electronics or equivalent military experience." In addition, one says it requires a "[b]achelor's degree in Information Technology, Computer Science or equivalent and/or *relevant experience*" (emphasis added), without further explanation. The job postings, therefore, support our previous discussion regarding the stated requirements in the *Handbook*.¹³

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.¹⁴ That is, not every deficit of every job posting has been addressed.

The Petitioner has not provided sufficient 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

¹³ Further, the Petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

¹⁴ 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.

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.

On appeal, the Petitioner provided a chart with a "job responsibilities" column and a "coursework" column, which it describes as "the skills [that] . . . can be obtained in degree programs in Computer Science, Management and Information Systems, Information Systems, Computer Engineering or a related field." In response to the RFE, the Petitioner stated that the same information in the "coursework" column was the "[b]achelor's or higher coursework that provided the skills necessary to perform the[] [accompanying] duties." 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. Simply providing a long list of the Beneficiary's coursework, or courses available in a degree program, does not sufficiently develop relative complexity or uniqueness of the particular position.

We reviewed the Petitioner's statements regarding the proffered position; however, the Petitioner has not explained in detail how tasks such as:

- work with teams to develop and maintain technical scripts
- work directly with business units to identify and resolve technology issues particular to each unit and engag[e] with the end users of the business units to provide troubleshooting assistance and training
- stay ahead of technological updates to determine upgrades and best tools to support [the Petitioner's] business as well as track performance, risks and benefits of solutions prior to and after deployment communicat[e] with end users to create awareness to minimize policy violations, and
- install [REDACTED] Operating System to new users

require the theoretical and practical application of a body of highly specialized knowledge.

Further, the Petitioner stated that the Beneficiary would "participate in project work as needed," but did not identify the projects themselves, the Beneficiary's role in those projects, or an outline of the duties she would perform directly related to those unknown projects.

We also note that the Beneficiary's proposed job duties include collaborations with "teams," "business units," "end users," "vendors," "infrastructure groups," "business IT teams," and "technology development teams." However, the Petitioner has not demonstrated that it employs any

of these specific “teams” or “business units” and has not identified any “end users” or “vendors” the Beneficiary would support in the proffered position.

The Petitioner also submitted an expert opinion letter authored by [REDACTED] Associate Professor in the Department of Computer Systems Technology at the [REDACTED]. In his letter, [REDACTED] (1) describes the credentials that he asserts qualify him to opine upon the nature of the proffered position; (2) describes the duties proposed for the Beneficiary; and (3) states that these duties require at least a bachelor’s degree, or its equivalent, in computer science, management information systems, information technology, or a related field. We carefully evaluated [REDACTED] assertions in support of the instant petition but find them insufficient.

In his letter, [REDACTED] states that his assessment is based upon “the employer’s detailed positional support letter and supplemental job description.” While [REDACTED] provides a brief, general description of the Petitioner’s business activities, he does not demonstrate in-depth knowledge of its operations or how the duties of the position would actually be performed in the context of its business enterprise.

Further, [REDACTED] opinion letter does not substantiate his conclusions, such that we can conclude that the Petitioner has met its burden of proof. First, [REDACTED] does not reference, cite, or discuss any studies, surveys, industry publications, authoritative publications, or other sources of empirical information which he may have consulted to complete his evaluation.

In addition, [REDACTED] states that he reviewed the duties of the proffered position provided by the Petitioner and concluded that the duties are inherently technically complex and “of sufficient sophistication, caliber, and impact to be viewed as “specialty-level” in nature.” However, [REDACTED] does not reference the specifics of the particular projects or tasks upon which the Beneficiary would work in meaningful detail. For example, while we appreciate his brief discussion of several of the bullet-pointed duties provided by the Petitioner, that description still falls short of providing a meaningful discussion of what the Beneficiary would actually do in the proffered position and how those duties actually require the theoretical and practical application of a body of highly specialized knowledge. Furthermore, [REDACTED] stated that the proffered position is a “professional-level position,” which “performs a number of duties beyond those of a lower-level support role.” However, the record does not indicate whether [REDACTED] was aware that, as indicated by the Level I wage on the LCA, the Petitioner considered the proffered position to be for an employee who is expected to have a basic understanding of the occupation that requires limited, if any, exercise of judgment, close supervision, close monitoring of work for accuracy, and specific instructions on required tasks and expected results. As a result, we conclude that the Petitioner has not demonstrated that [REDACTED] possessed the requisite information to adequately assess the nature of the position and appropriately determine parallel positions based upon the job duties and level of responsibilities.

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.* Consistent with *Caron Int'l*, we find that this evaluation does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and, for the sake of efficiency, hereby incorporate this finding into our analysis of the remaining specialty-occupation criteria.¹⁵

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.

The Petitioner provided a copy of its own advertisement for the position of “end user support & technology engineer” indicating that it requires “a bachelor's, master's or PhD degree in computer science *or equivalent experience*” (emphasis added). While USCIS may determine that the equivalent of the degree required has been acquired through a combination of education, specialized training, and/or work experience, we do not know what formulation the Petitioner would use to determine the equivalent of a bachelor's degree (in a specific specialty) and whether the advertisement represented the same “equivalent” standard. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

In addition, the posting is dated October 12, 2017, after the Director's issuance of the RFE. Evidence that the Petitioner creates after an RFE is issued will not be considered independent and objective evidence. Necessarily, independent and objective evidence would be evidence that is contemporaneous with the event to be proven and existent at the time of the Director's notice.

Additionally, the three responsibilities listed for the “end user support & technology engineer” do not sufficiently establish that the proffered position is the same or similar to the advertised position such that we can conclude that the Petitioner normally requires a bachelor's degree in a specific specialty, or its equivalent for this position. Of additional concern, one of the three bulleted duties is “[m]anage and contribute to a team of high-performing technologists that is focused on developing and improving the mobility experience and products offered across the firm.” The Petitioner has repeatedly stated that the position is entry-level and that the Beneficiary will be supervised.

Further, while the Petitioner stated that it hires individuals with bachelor's degrees, it did not submit evidence of its previous or current employees who have served in the proffered position.

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. *See Defensor*, 201 F.3d at 387-88. Were we limited solely to reviewing a petitioner's claimed self-imposed requirements, an organization could bring any individual with a bachelor's degree to the

¹⁵ We hereby incorporate our discussion of [REDACTED] letter into our discussion of the other 8 C.F.R. § 214.2(h)(4)(iii)(A) criteria.

United States to perform any occupation as long as the petitioning entity created a token degree requirement. *Id.* Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner's past recruitment and hiring practices, as well as information regarding employees who previously held the position.

We conclude that the Petitioner did not provide sufficient documentary evidence to support the assertion that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, directly related to the duties of the position. The Petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

For reasons similar to those 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.

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.

ORDER: The appeal is dismissed.

Cite as *Matter of C- LLC*, ID# 1247261 (AAO Aug. 22, 2018)