



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

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

MATTER OF Q-C-, INC.

DATE: SEPT. 12, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a health and medical information technology services company, seeks to temporarily employ the Beneficiary as a “marketing analyst” 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”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

## II. THE PROFFERED POSITION

The Petitioner seeks to employ the Beneficiary as a marketing analyst. In response to the Director’s request for evidence (RFE), the Petitioner described the job duties of the proffered position as follows:

- Responsible for performing market research and providing insights regarding the healthcare market, emerging trends, competitors, potential and existing customer, and target markets ripe for penetration, as well as current campaigns **20%**
  - Research market size and estimating demand
  - Analyze market trends and targets for industry needs and preferences within the oncology industry
  - Analyzing customers’ willingness to pay for services as well as opportunities for price discrimination
  - Measuring, assess and report customer and patients satisfaction
  - Preparing reports of findings, illustrating data graphically and translating complex findings into written text
- Gathering healthcare and medical profession data on consumers, competitors and market place, consolidating information into actionable items and developing reports and recommendations **25%**
  - Utilizing highly specialized tools and software to gather, assess and report findings
  - Collecting and analyze data on customer demographics, preferences, needs, medical related data to identify potential markets and factors affecting product demand
  - Structuring and cleaning data for accuracy

- Formulating and apply mathematical and statistical models for data gathering
- Analyzing product decision with respect to competitive positioning
- Utilizing statistical language and packages such as R and SPSS to analyze trends and to create reports
- Reporting and presenting findings and analysis in a digestible manner
- Performing valid and reliable market research SWOT analysis **10%**
  - Creating user stories
  - Driving interpretation and presentation of research results in a visual and impactful method
  - Analyzing data for business intelligence and forecasting purposes
  - Conducting competitive analysis for current and new markets
  - Assisting in developing and documenting plans for new market entry
- Interpreting healthcare and related data **15%**
  - Monitoring web analytics through various tools such as Google Analytics
  - Reporting findings and trends on web analytics for branding, messaging, and marketing purposes
  - Reporting data findings in graphic manner by using MATLAB
  - Developing marketing collateral based on web analytics such as service brochures and website content
  - Improving marketing materials including presentation materials and processes
- Formulating reports and providing competitive analysis of various companies' market offerings, identifying market trends, pricing and business models, and sales and methods of operation **15%**
  - Forecasting and track marketing and sales trends, analyzing collected data
  - Measuring the effectiveness of marketing advertising and communications programs and strategies
  - Developing and implement procedures for identifying advertising needs
- Evaluating program methodology and key data to ensure that data on release are accurate
  - Managing a flow chart that identifies each team member's role and responsibilities for release of publications and advertising
  - Working in tandem with the quality assurance team to ensure a high quality and accurate publications.
- CMR administrator **10%**
  - Managing multiple accounts for [the Petitioner's] CRM
  - Ensuring proper onboarding of accounts
  - Gathering requirements, analyzing, and presenting functional requirements for CRM system
  - Conveying high-level, conceptual software designs for services and system implementation

The Petitioner indicated that the minimum entry requirement for the proffered position is a bachelor's degree in health policy and management or another 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.<sup>1</sup>

#### 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.<sup>2</sup>

On the labor condition application (LCA)<sup>3</sup> submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Market Research Analysts and Marketing Specialists" corresponding to the Standard Occupational Classification (SOC) code 13-1161. Thus, we reviewed the *Handbook's* subchapter entitled "How to Become a Market Research Analyst," which states, in pertinent part, that market research analysts typically need a bachelor's degree in market research or a related field.<sup>4</sup> According to the *Handbook*, some individuals have degrees in fields such as statistics, math, computer science, business administration, the social sciences, or communications. It continues by stating that some jobs require a master's degree and that many analysts complete degrees in fields such as statistics and marketing or earn a master's degree in business administration (MBA).<sup>5</sup>

The *Handbook* reports that market research analysts have degrees and backgrounds in a wide variety of disparate fields. The *Handbook* further identifies various courses as essential to this occupation, including statistics, research methods, and marketing and further elucidates that courses in

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> The Petitioner is required to submit a certified LCA 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 experience and qualifications who are performing the same services. *See Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542, 545-546 (AAO 2015).

<sup>4</sup> Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Market Research Analysts <https://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-4> (last visited Sept. 12, 2018).

<sup>5</sup> *Id.*

communications and social sciences (such as economics, psychology, and sociology) are also important. Therefore, although the *Handbook* indicates that market research analysts may need an advanced degree, particularly for “leadership positions or positions that perform more technical research,” it also indicates that degrees and backgrounds in various fields are acceptable for jobs in this occupation – including computer science and the social sciences, as well as statistics and communications.<sup>6</sup>

In addition to recognizing degrees in disparate fields, i.e., social science and computer science as acceptable for entry into this field, the *Handbook* also states that “[o]thers have backgrounds in business administration.” Although a general-purpose bachelor’s degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *Royal Siam Corp.*, 484 F.3d at 147. Therefore, the *Handbook*’s recognition that a general, non-specialty “background” in business administration, or one of a number of other fields, math, computer science, or social science, is sufficient for entry into the occupation strongly suggests that a bachelor’s degree *in a specific specialty* is not a standard, minimum entry requirement for this occupation. 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 narrative of the *Handbook* further reports that some employees obtain professional certification to demonstrate a level of professional competency. It continues by outlining the requirements for market research analysts to achieve Professional Researcher Certification (PRC), and states that candidates qualify based upon their experience and knowledge. According to the *Handbook*, the

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<sup>6</sup> 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 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 such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties.<sup>6</sup> Section 214(i)(1)(B) of the Act (emphasis added).

Whether read with the statutory “the” or the regulatory “a,” both readings denote a singular “specialty.” Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. This also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

PRC is granted by the [REDACTED] now known as the [REDACTED]<sup>7</sup> to those who pass an exam and have at least three years of experience working in market research.<sup>8</sup>

We reviewed the [REDACTED] website, which confirms the *Handbook's* statement regarding the requirements for the PRC (i.e., passage of an exam and three years of relevant industry experience), and further specifies that the "education" necessary to apply for PRC is "12 industry-related education hours within the two preceding years."<sup>9</sup> The website includes information regarding "How to Enter the Industry" which lists a variety of possible degrees, such as business administration, liberal arts, computer science and communications, and a variety of "helpful skills," including "attention to detail," and "basic computer skills."<sup>10</sup> It does not indicate that a market research analyst position has any specific minimum academic requirement for entry, nor does it state that it requires any particular level of education to be identified as qualified and possessing a level of expertise or competence. Instead, the [REDACTED] website highlights the importance of professional experience and industry-related professional courses (through conferences, seminars, and webinars). Consequently, neither the *Handbook* nor the Insights Association website support the claim that positions located within the "Market Research Analysts" occupational category normally require at least a bachelor's degree in a specific specialty, or the equivalent.

The Petitioner also references DOL's Occupational Information Network's (O\*NET) summary report for "Market Research Analysts and Marketing Specialists," listed as SOC code 13-1161.00, 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.<sup>11</sup> While the SVP rating provides the total number of years of

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<sup>11</sup> 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.

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.<sup>12</sup> 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.

In addition, the Petitioner submitted a letter from [REDACTED], associate dean at the [REDACTED] [REDACTED] analyzes an abbreviated list of the Petitioner’s duties of the proffered position and opines that the position requires a bachelor’s degree in public health, marketing, or a related area. [REDACTED] bases his opinion on his education and his professional and academic experience working in the academic setting and with various companies, and concludes “that these duties are specialized and require the theoretical and practical application of a body of highly specialized knowledge.”

Though [REDACTED] recites the duties of the proffered position, he does not discuss how they will actually be performed within the context of the Petitioner’s business operations or with clients. His opinion does not demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue.<sup>13</sup> Likewise, he does not provide a substantive, analytical basis for his opinion and ultimate conclusion.

Moreover, the record does not include evidence that [REDACTED] has published, conducted research, run surveys, or engaged in any enterprise, pursuit, or employment - academic or otherwise regarding the minimum education requirements for the performance of the duties of the proffered position. While he may have anecdotal information regarding recruitment by employers for students who study business and technology, the record does not include any relevant research, studies, surveys, or other authoritative publications as part of his review and/or as a foundation for his opinion.

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<sup>12</sup> For additional information, see the O\*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

<sup>13</sup> We note that the list of duties presented to [REDACTED] for review contains only 8 bullet-pointed tasks, which include generalized recitations such as “performing market research” and “identifying market trends.” This list of duties is much more abbreviated than the two-page statement of duties provided to us by the Petitioner in response to the RFE and again on appeal.

For the reasons discussed, we find that [REDACTED] opinion letter does not establish that the Petitioner has met its burden related to this prong. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988) (The service is not required to accept or may give less weight to an advisory opinion when it is “not in accord with other information or is in any way questionable.”).<sup>14</sup>

Nor is the case law the Petitioner cites sufficient to satisfy the first criterion. The Petitioner cites *Residential Finance Corp. v. USCIS*, 839 F.Supp.2d 985 (S.D. Ohio 2012), for the premise 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 duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).<sup>15</sup> 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.

The Petitioner also cites to *Tapis Int'l v. INS*, 94 F.Supp.2d 172 (D. Mass. 2000), noting that the court found that there are occupations where job titles do not line up exactly with fields of study. Specifically, the Petitioner points to the court’s determination that the passage “in a specific specialty, or its equivalent,” should not be interpreted to mean only positions that have a corresponding academic program at the collegiate level can qualify as specialty occupations.

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*, 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

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<sup>14</sup> 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.

<sup>15</sup> 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.



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. We refer to our discussion above, noting again that, since there must be a close correlation between the required “body of highly specialized knowledge” and the position, 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 such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

Moreover, we also agree that, if the requirements to perform the duties and job responsibilities of a proffered position are a combination of a general bachelor’s degree and experience such that the standards at both section 214(i)(1)(A) and (B) of the Act have been satisfied, then the proffered position may qualify as a specialty occupation. We do not conclude, however, that the U.S. district court is stating that any position can qualify as a specialty occupation based solely on the claimed requirements of a petitioner.

Instead, we must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor*, 201 F.3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

In addition, 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 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 *Residential Finance*<sup>16</sup> or *Tapis*. We also note that 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 Matter of K-S-*, 20 I&N Dec. 715, 719-20 (BIA 1993). 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.*

In any event, the Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Tapis*. We also note that, 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.

Finally, the Petitioner cites to a recent district court case, *Raj and Co. v. USCIS*, 85 F.Supp.3d 1241 (W.D. Wash. 2015), and claims that it is relevant here.<sup>17</sup> We reviewed the decision; however, the Petitioner has not established that the duties and responsibilities, level of judgment, complexity,

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<sup>16</sup> 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. 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).

<sup>17</sup> As discussed previously in this decision, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). 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.* at 719.

supervisory duties, independent judgment, or amount of supervision in that case are analogous to the position proffered here.<sup>18</sup> There is little indication that the positions are similar.

Further, in *Raj*, the court stated that a specialty occupation requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent. The court confirmed that this issue is well-settled in case law and with the agency's reasonable interpretation of the regulatory framework. In the decision, the court noted that "permitting an occupation to qualify simply by requiring a generalized bachelor degree would run contrary to congressional intent to provide a visa program for specialized, as opposed to merely educated, workers." The court stated that the regulatory provisions do not restrict qualifying occupations to those for which there exists a single, specifically tailored and titled degree program; but rather, the statute and regulations contain an equivalency provision.<sup>19</sup>

In *Raj*, the court concluded that the employer met the first criterion. We must note, however, that the court stated that "[t]he first regulatory criterion requires the agency to examine the generic position requirements of a market research analyst in order to determine whether a specific bachelor's degree or its equivalent is a minimum requirement for entry into the profession." Thus, the decision misstates the regulatory requirement. That is, the first criterion requires the petitioner to establish that a baccalaureate or higher degree (in a specific specialty) or its equivalent is normally the minimum requirement for entry into the particular position.

Consequently, if the court meant to suggest that any position classified under the occupational category "Market Research Analysts" would, as it stated, "come within the first qualifying criteria" – we must disagree.<sup>20</sup> The occupational category designated by a petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. However, to satisfy the first criterion, the burden of proof remains on the petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement or its equivalent for entry. That is, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title or designated occupational category. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must

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<sup>18</sup> We note that the Director's decision was not appealed to our office. 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 in our *de novo* review of the matter.

<sup>19</sup> We agree with the court that a specialty occupation is one that requires the attainment of a bachelor's or higher degree in a specific specialty or its equivalent. We further note that a petitioner must also demonstrate that the position requires the theoretical and practical application of a body of highly specialized knowledge in accordance with section 214(i)(1)(B) of the Act and 8 C.F.R. § 214.2(h)(4)(ii), and satisfy one of the four criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

<sup>20</sup> In *Raj*, the court quoted a brief excerpt from the *Handbook*; however, the quotation is from the 2012-2013 edition rather than the current edition (which contains several revisions). Further, we observe that the court did not address the section of the *Handbook* indicating that there are no specific degree requirements to obtain the Professional Researcher Certification credential – and therefore to work as a market research analyst.

examine the ultimate employment of the beneficiary, and determine whether the position qualifies as a specialty occupation. *See generally Defensor*, 201 F.3d 384.

Nevertheless, it is important to note that the court in *Raj* determined that the evidence in the record demonstrated that the particular position proffered required a bachelor's degree in market research or its equivalent as a minimum for entry. Further, the court noted that "[t]he patently specialized nature of the position sets it apart from those that merely require a generic degree." The position in *Raj* can, therefore, be distinguished from the instant position. Here, the duties and requirements of the position as described in the record of proceeding do not indicate that this particular position proffered by the Petitioner is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry.

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)(1).

## B. Second Criterion

The second criterion presents two, alternative prongs: "The degree requirement is common to the industry in parallel positions among similar organizations *or, in the alternative*, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree[.]" 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong 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 three 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. The submitted 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.

The postings do not indicate that at least a bachelor's degree in a directly related specific specialty (or its equivalent) is required.<sup>21</sup> For instance, one advertisement simply states that a bachelor's degree is required, and indicates that it will accept "studies in the area of public health, psychology, chemistry, life sciences, or any pharma related study." Another states that a bachelor's degree in business, or a related degree, or an advanced degree related to healthcare or life sciences is required. The third states that a bachelor's degree in a health sciences field or related discipline is required. Overall, the job postings suggest, at best, that although a bachelor's degree is generally required for these positions, a bachelor's degree in a *specific specialty* (or its equivalent) is not.<sup>22</sup>

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 health/medical information technology services company with two employees, whereas one of the advertisements is posted by a major medical center; a second advertisement is posted by a "global leader of in vitro diagnostics" with over 4,300 employees in 120 countries; and the third is for a "refreshingly human customer insights agency" with offices in Europe, the United States, Latin America and Asia. The Petitioner also did

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<sup>21</sup> As discussed, the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but a bachelor's degree in a specific specialty that is directly related to the duties of the position. Section 214(i)(1)(b) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). See *Royal Siam Corp.*, 484 F.3d at 147.

<sup>22</sup> 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 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").

not supplement the record of proceedings to establish that these advertising 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.

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 find that they did not satisfy this prong of the second criterion, as they do not indicate that a bachelor's degree in a specific specialty, or the equivalent, is common to the industry in parallel positions among similar organizations. 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.<sup>23</sup> 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 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

The second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) 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.

The Petitioner does not claim, nor does the record demonstrate, eligibility under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The Petitioner also does not contest this portion of the Director's decision denying the petition on appeal. Thus, 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. The Petitioner does not contest this portion of the Director's decision denying the petition, and confirms

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<sup>23</sup> 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.

that the Beneficiary is the first individual to be employed in the position of marketing analyst at its company. 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.

In the instant case, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. Although the Petitioner provided an expansive list of the duties associated with the proffered position, the Petitioner does not establish how the generally described duties elevate the proffered position to a specialty occupation. While the position may require that the Beneficiary possess some skills and technical knowledge in order to perform these duties, the Petitioner has not sufficiently explained how these tasks require the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. The record does not include sufficient probative evidence that the duties require more than technical proficiency in the field.

Upon review of the totality of the record, the Petitioner has not established that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. While the Petitioner has designated the proffered position as a Level II position on the LCA<sup>24</sup> and we understand that the Beneficiary must have some skills and knowledge in order to perform these duties, the Petitioner has not sufficiently explained how these tasks require the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation.

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<sup>24</sup> A prevailing wage determination starts with an entry-level wage (Level I) and progresses to a higher wage level (up to Level IV) after considering the experience, education, and skill requirements of the Petitioner's job opportunity. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://flcdatacenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf).

The issue here is that the Petitioner's designation of this position as a Level II position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, a low wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a high wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level II position would still require a minimum of an advanced degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty, or its equivalent. That is, a position's wage-level designation may be a relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

*Matter of Q-C-, Inc.*

We conclude therefore 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).

#### 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 Q-C-, Inc.*, ID# 1583704 (AAO Sept. 12, 2018)