



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

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

In Re: 21286101

Date: JUN. 22, 2022

Appeal of Vermont Service Center Decision

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

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

The Vermont Service Center Director denied the petition, concluding the Petitioner did not establish that the proffered position is a specialty occupation. The matter is now before us on appeal. On appeal, the Petitioner asserts that the Director erred by denying the petition.

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

**I. LAW**

Section 101(a)(15)(H)(i)(b) of the Act defines an H-1B nonimmigrant as a foreign national “who is coming temporarily to the United States to perform *services . . . in a specialty occupation* described in section 214(i)(1) . . .” (emphasis added). Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires:

- (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.

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

## II. ANALYSIS

The Petitioner is “a media website and mobile application [redacted] [redacted] who seeks to employ the Beneficiary as a “product analyst.” The Petitioner provided a list of duties, along with the relevant percentage of time devoted to each duty, as follows:

1. Perform deep dive analysis using SQL and Python programming languages to understand and optimize the key levers of the search product team. 40%
2. Partner closely with data science teams and cross functional teams to generate insights and define strategy for search product roadmap. 5%
3. Create compelling jupyter reports and dashboards to better interpret results of A/B experiments, inform launch review decisions and keep tracking core business metrics. 20%
4. Design success and guardrail search metrics that serve as the North Stars for team efforts and model trade-off decisions. 5%
5. Use Airflow to run data jobs that generate tables for team to query data and automatically report daily metrics on dashboards. 10%
6. Work with product managers and software engineers to design data products, prove

- their value by running experiments and release into production. 5%
7. Perform frontend and backend logging audit, metrics drop investigation, and data requests/tickets to support tech foundation. 15%

The Petitioner contends that to perform the duties of the position, a candidate must possess at least a bachelor's degree, or its equivalent, in information technology, analytics, or a closely related field. Upon review of the record in its totality and for the reasons set out below, we conclude that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. Specifically, the record does not include sufficient consistent, probative evidence establishing 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 a useful source of information regarding the duties and educational requirements of the wide variety of occupations that it addresses. The Petitioner designated the proffered position on the labor condition application (LCA) as an Occupational Information Network (O\*NET) Standard Occupation Classification (SOC) code 15-1199.08 "Business Intelligence Analysts" under the SOC occupation 15-1199 "Computer Occupations, All Other" occupation.<sup>2</sup> On appeal, the Petitioner asserts that the "[*Handbook*], O\*NET, [industry job postings],<sup>3</sup> and [the] Beneficiary's [education credentials] prove by the preponderance of the evidence" that the proffered position meets the first criterion. For the following reasons, we disagree.

The *Handbook* is a career resource offering information on hundreds of occupations. However, there are occupational categories which the *Handbook* does not cover in detail, and instead provides only summary data.<sup>4</sup> The subchapter of the *Handbook* titled "Data for Occupations Not Covered in Detail" states, in relevant part, that the "[t]ypical entry-level education" for a variety of occupations within the category of "[c]omputer occupations, all other" is a "[b]achelor's degree," without indicating that the bachelor's degree must be in a specific specialty. Thus, the *Handbook* is not probative in establishing that these positions comprise an occupational group for which the normal minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent.

---

<sup>1</sup> The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position. While we may not discuss every document submitted, we have reviewed and considered each one.

<sup>2</sup> O\*NET Online has updated the occupation code of SOC 15-1199.08, "Business Intelligence Analysts," to SOC 15-2051.01. For the purposes of this decision, we will refer to the occupation code used in the Director's decision, SOC 15-1199.08. See generally [https://www.onetonline.org/Archive\\_ONET-SOC\\_2010\\_Taxonomy\\_09\\_2020](https://www.onetonline.org/Archive_ONET-SOC_2010_Taxonomy_09_2020).

<sup>3</sup> We will discuss the submitted job postings by other employers under the first prong of the second criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

<sup>4</sup> See Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Data for Occupations Not Covered in Detail, <https://www.bls.gov/ooh/about/data-for-occupations-not-covered-in-detail.htm>. Here, the *Handbook* does not provide specific information for the occupations which might be classified within the occupational category.

The Petitioner maintains that O\*NET demonstrates the positions located within this occupation are specialty occupation positions, because the occupation's job zone and required education suggests a bachelor's degree is normal. Contrary to the assertion of the Petitioner, O\*NET does not state a requirement for a bachelor's degree for this occupation. Rather, it assigns this occupation a job zone "four" rating, which groups it among occupations for which "most . . . require a four-year bachelor's degree, but some do not." Even if O\*NET stated that a bachelor's degree is required to enter positions located within SOC 15-1199.08, "Business Intelligence Analysts" (which it does not), O\*NET does not describe the normal minimum educational requirements with sufficient specificity to establish that the positions falling within the occupational category are specialized. The O\*NET summary report for "Business Intelligence Analysts" includes general information about the occupation.<sup>5</sup> For example, O\*NET includes specialized vocational preparation (SVP), job zone, education, and the knowledge or skills generally associated with the occupation. However, O\*NET does not specify particular fields of study when discussing the type of preparation or degrees that might be needed to perform a particular occupation. Accordingly, O\*NET does not establish that a bachelor's degree in a specific specialty, or the equivalent, is normally required.

The Petitioner cites to *Tapis Int'l v. Immigration and Naturalization Service*, 94 F. Supp. 2d 172 (D. Mass. 2000) for the proposition that "the [normally required] degree does not have to be a degree in a single specific specialty." While we agree with the Petitioner that the regulatory provisions do not restrict qualifying occupations to a single, specifically tailored, and titled degree program, that is not the issue. The issue is that neither the *Handbook* nor O\*NET discuss the type of preparation or degrees that might be needed to perform the duties of positions in the "Business Intelligence Analysts" occupation. Therefore, this material is not probative evidence sufficient to establish that a bachelor's degree in a specific specialty, or the equivalent, is normally required to satisfy the first criterion.

Lastly, while the Petitioner suggests on appeal that we examine the Beneficiary's education credentials to conclude that a bachelor's degree in a specific specialty or its equivalent are normally required for entry into the occupation, we are required to follow long-standing legal standards and determine first, whether the proffered position qualifies for classification as a specialty occupation, and second, whether the Beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].").

The Petitioner has not provided sufficient documentation from a probative source to substantiate its assertions regarding the normal minimum requirement for entry into this particular position. Therefore, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). We incorporate our discussion regarding the *Handbook*, O\*NET, and the Beneficiary's education credentials into our analyses of the other criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

## B. First Prong of the 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

---

<sup>5</sup> See [https://www.onetonline.org/Archive\\_ONET-SOC\\_2010\\_Taxonomy\\_09\\_2020/link/summary/15-1199.08](https://www.onetonline.org/Archive_ONET-SOC_2010_Taxonomy_09_2020/link/summary/15-1199.08).

that its particular position is so complex or unique that it can be performed only by an individual with a degree[.]” 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong contemplates common industry practice, while the alternative prong narrows its focus to the Petitioner’s specific position.<sup>6</sup>

To satisfy the 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 (which in this case it does not); whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry establish that such firms “routinely employ and recruit only degreed individuals.”<sup>7</sup>

The Petitioner contends that the job postings by other companies submitted in its response to the Director’s request for evidence (RFE) confirm that the Petitioner’s degree requirements are similar to those normally required in their industry, internet media. Specifically, the Petitioner avers the job postings were placed by its competitors and their duties are parallel to those of the proffered position. On appeal, the Petitioner submits additional information to demonstrate the companies placing the job postings conduct business in the internet media industry. However, even if these companies *are* similar organizations within the Petitioner’s industry, we would still conclude the Petitioner has not established that the positions offered in the job postings are parallel to the proffered position.

Here, the Petitioner does not require prior work experience and indicates that the proffered position is a Level II position on the labor condition application (LCA).<sup>8</sup> Collectively considering all of the job postings by other employers in the record, we conclude that the information provided about the advertised jobs does not support the Petitioner’s assertion that they qualify as parallel positions to the instant position. We summarize information about the advertised position prerequisites from a sampling of the job postings below:

- A- posted a *Senior Business Analyst* position, which requires a master’s degree in business administration degree (MBA), *or* a bachelor’s degree in a technical major (business analytics, statistics, econometrics, computer science, engineering, finance) *or* comparable years of experience; and 5 years product management. . . . experience.
- A- posted a *Sr. Business Analyst* position, which requires bachelor’s degree in economics, statistics, engineering, related discipline, *or* equivalent experience; and 6+

---

<sup>6</sup> We will discuss the second prong of the second criterion in section D below.

<sup>7</sup> 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)).

<sup>8</sup> A petitioner submits the LCA to the Department of Labor (DOL) to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the area of employment or the actual wage paid by the employer to other employees with similar duties, experience, and qualifications. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a). A prevailing wage determination starts with an entry-level wage and progresses to a higher wage level 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://flcdatcenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://flcdatcenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf).

years' experience in making business recommendations and influencing stakeholders . . . ., gathering business requirements. . . .; 4+ years' experience building dashboards using data visualization. . . ., 4+ years' experience in developing business analytics models. . . .

- A- posted a *Business Analyst* position, which requires a bachelor's degree preferably in an analytical field, (e.g., economics, business, mathematics, statistics, finance); and 5+ years' experience in working with databases and relational data set in a business setting.
- M- posted a *Business Analyst* position, which requires a master's degree in business analytics, management information systems, operational research, statistics, or related field; and 24 months of work experience in the job offered.
- M- posted a *Business Planning and Operations Analyst* position, which requires a master's degree in analytics, business logistics, or engineering or a closely related field; and one year of experience in the job offered or related occupation.
- M- posted a *Business Analyst* position, which requires a bachelor's degree in an analytical field (e.g., computer science, engineering, mathematics, business) or a related field; and 5+ years' experience in business analytics, operations analytics, and/or strategy consulting, or 3+ years' experience with MBA/master's degree.
- I- posted a *Technical Program Manager. . . . Ads Measurement* position, which requires bachelor's degree in computer science or a related technical discipline, *or* equivalent experience; and 4+ years of software engineering, systems engineering, or technical production/program management experience.
- F- posted a *Technical Program Manager, Ads Ranking* position, which requires a bachelor's degree in computer science or a related technical discipline, *or* equivalent experience; and 7+ years' experience in software engineering or technical product/program management.
- G- posted a *Business Analyst Lead, Go to Market* position, which requires a bachelor's degree in mathematics, economics, engineering, data science, or a related field, *or* equivalent practical experience; and 5 years' experience working as an analyst or related role in data, consulting, or financial services environment.
- G- posted a *Data Analyst, Ads Marketing* position, which requires a bachelor's degree in computer science, *or* equivalent practical experience, and 1 year of relevant work experience.

Notably, most of the postings appear to be for more senior, experienced positions than the proffered position. Moreover, even if we assume that the job postings include duties and responsibilities that are parallel to the duties listed for the proffered position, these job postings confirm that there are a variety of paths available to enter the occupation (to include simply work experience). The job postings also raise significant concerns that if the proffered position is parallel to the majority of the positions posted - as the Petitioner contends, that the Petitioner has not submitted a certified LCA that supports the petition.<sup>9</sup>

For example, the Petitioner identified the proffered position as a wage Level II position on the certified LCA. The "Business Intelligence Analysts" position for a Job Zone Four occupation with a Specialized

---

<sup>9</sup> See 20 C.F.R. § 655.705(b), which requires that USCIS ensure that an LCA supports the H-1B petition filed on behalf of the Beneficiary.

Vocational Preparation (SVP) rating of “7.0 < 8.0” requires a three-level increase in wage level for positions requiring more than four years of experience (as many of the job postings do).<sup>10</sup> Thus, even though some of the job postings may have included duties similar to the duties of the proffered position, the majority of the postings are for more senior positions than the proposed position; or, if the duties and levels of responsibility truly correspond to the proffered position, the Petitioner has not provided a certified LCA that includes a wage level that is commensurate with the duties and responsibilities required of its position.

Further, the degree requirements presented in the job postings (such as computer science, data science, engineering, economics, business, mathematics, statistics, finance, and business administration) are too varied and broad to be considered a degree in a specific discipline, or its equivalent. To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor’s or higher degree in a specialized field of study or its equivalent. Again, we interpret the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. For instance, a general degree in business, without more, is insufficient to establish a position qualifies as a specialty occupation. Although a general-purpose bachelor’s degree, such as a degree in business, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a conclusion that a particular position qualifies for classification as a specialty occupation. *Royal Siam Corp.*, 484 F.3d at 147. Therefore, the advertisements do not support a conclusion that there is a common industry requirement for parallel positions to the instant position within organizations that are similar to the Petitioner.

For these reasons, the Petitioner has not established that the job postings are pertinent to the matter at hand. As the job postings do 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. That is, not every deficit of every job posting has been addressed.

On appeal, the Petitioner also presents an opinion letter from K-, a professor at D- University. He opines:

[Through] my own professional experience, and the evidence gathered by PayScale’s survey of more than two million civilian employees in the United States, both confirm that a [b]achelor’s degree in Information Technology, Analytics and related fields is an industry-standard for positions relating to the design, construction, implementation, maintenance, management, and operation of data and information systems, such as the Product Analyst position discussed herein.

While the professor outlines his professional experience in the fields of mathematics, statistics, computer science, and related fields, he does not identify the aspects of his professional experience that informed him regarding “industry standards data” that “confirms” the degree requirements for parallel positions within the Petitioner’s particularly industry. Moreover, he does not discuss or present the evidence “gathered by PayScale’s survey” to supports his assertions. The professor also

---

<sup>10</sup> See [https://www.onetonline.org/Archive\\_ONET-SOC\\_2010\\_Taxonomy\\_09\\_2020/link/summary/15-1199.08](https://www.onetonline.org/Archive_ONET-SOC_2010_Taxonomy_09_2020/link/summary/15-1199.08). See also *Prevailing Wage Determination Policy Guidance*, *supra*.

does not define the Petitioner's industry other than to generally allude to positions that relate to a wide array of information technology functions (such as design, management, and operation) for "data and information systems." We conclude that the professor's ambiguous and unsupported statements regarding common degree requirements for parallel positions within the Petitioner's industry lend little probative value to the matter here.

The Petitioner also submits a letter from C-, a professor at B- University, who indicates that he has conducted research regarding "the industry standards for hiring for roles similar to the Product Analyst with [the Petitioner]." He also opines that a bachelor's degree or its equivalent in information technology, analytics, or a related field is the industry standard for parallel positions within the Petitioner's industry. The professor notes that his conclusions "can be borne out by examining readily accessible labor statistics and other available information." He specifically references the O\*NET summary report for the "Business Intelligence Analysts" occupation, noting that according to its survey data, "approximately ninety-six percent of respondents affirmed that the appropriate minimum education requirement for a Business Intelligence Analysts is, at least a bachelor's degree."

Notably, the referenced O\*NET 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). Finally, the graph in the summary report does not indicate that the "education level" for the respondents must be in a specific specialty. Therefore, O\*NET respondent data does not substantiate the professor's conclusions in this regard.

We also note that while both professors indicate that they conducted research about the Petitioner and its industry, reviewed its job descriptions for the proffered position, and interviewed A-, the Beneficiary's supervisor, they make no mention of reviewing the job postings submitted by the Petitioner's competitors to establish eligibility under the first prong of the second criterion. As discussed above, the job postings suggest that for entry into the advertised positions a wide variety of degrees (such as computer science, data science, engineering, economics, business, mathematics, statistics, finance, and business administration) appear to suffice for entry into the position; and that in many instances even relevant work experience alone seems to be sufficient.

We acknowledge that the professors each contend that a bachelor's degree or its equivalent in information technology, analytics, or a related field is the common industry standard for parallel positions to the proffered position within the Petitioner's industry. However, the professors did not analyze or discuss the submitted job advertisements by the Petitioner's competitors, which appear to collectively present position prerequisites that are contrary to their own conclusions. The Petitioner must resolve these inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Without more, the opinion letters are not sufficiently probative towards satisfying 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or any other criterion in this regard. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988) (finding 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.").



We therefore conclude that the Petitioner has not met the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). We incorporate the above discussion and analyses regarding the job postings by the Petitioner's competitors, as well as the opinion letters, into our discussion of the other 8 C.F.R. § 214.2(h)(4)(iii)(A) criteria.

### C. Third Criterion

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. Evidence provided in this criterion may include, but is not limited to, an organizational chart showing the Petitioner's hierarchy and staffing levels with corresponding and experience requirements for this position, as well as documentary evidence of past employment practices for the 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 United States to perform any occupation as long as the petitioning entity created a token degree requirement. *Id.*

The Petitioner did not provide sufficient documentation in support of this criterion with the petition. In her RFE, the Director requested documentary evidence regarding the Petitioner's historical recruiting practices, including but not limited to, copies of present and past job postings or announcements for the proffered position showing that the Petitioner requires applicants to have a minimum of a bachelor's or higher degree in a specific specialty or its equivalent; and, an organizational chart showing the Petitioner's organizational hierarchy and staffing levels with corresponding educational experience requirements for the positions.

In the RFE response, the Petitioner provided a letter from A-, the Beneficiary's supervisor, who explained that the proffered position is within the Petitioner's "Data Science and Product Analytics group," noting: "[t]his group contains about 90 employees total, with about 20 employees in positions like the product analyst position being offered to [the Beneficiary]." A- states that "[he] has participated in every hire on [his] team," and indicates that of the three individuals hired for the team, "all had a college degree." He describes the hiring process for the team members, as follows:

Hiring procedures include reviewing resumes and identifying candidates with the required educational background (bachelor's degree or above in analytics or related quantitative fields) phone screens and on-site interviews that focus on the ability to pull and manipulate data, perform data analysis, develop models, design experiments and present findings.

The Petitioner also provided organization charts and social media printouts for A-'s supervisory team members which show that he supervises nine employees, including two individuals in product analyst positions. However, the Petitioner's reliance on this material to establish the prerequisites for its product analyst position is misplaced. On appeal, the Petitioner contends that to meet this criterion under the preponderance of evidence standard:

[The Petitioner] only has to show that it ‘probably’ hired individuals with at least a bachelor’s degree for this position. Petitioner met this standard because it provided the LinkedIn profiles of nine (9) employees currently working in roles (similar) to the proffered position. . . . The LinkedIn profiles carry probative value because they each (1) list the employees’ degrees; and (2) list the employee’s employment experience with job titles and dates of hire.

To begin with, the Petitioner’s proposition that it only has to show that it “probably hires persons with at least a bachelor’s degree for this position” is not sufficient to demonstrate that it normally requires *a bachelor’s degree in a specific specialty, or its equivalent* for the position, as required by 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). *Cf. Royal Siam Corp.*, 484 F.3d at 147.

Further, while the Petitioner has provided information about other employees on A-’s team, it has not shown that the incumbents are employed in positions that are substantively similar to the instant position for the purposes of determining its *normal* position prerequisites. While the organization chart for A-’s supervisory team notes each person’s job title and the degrees that they hold, the chart does not provide the Petitioner’s prerequisites for entry into their positions, nor does it give a description of the job duties performed by these individuals. Turning specifically to the evidence provided for the two product analysts (Q- and E-) on A-’s team, the documentation suggests that Q- held a bachelor’s degree in economics and statistics, a master’s degree in computer science, and at least two years of relevant work experience at the time of her hire. Likewise, it appears that E- held a bachelor’s degree in mathematics and economics and at least three years of relevant work experience at the time of her hire. If so, then their product analyst positions would be more senior to the instant position, (which as previously discussed was identified as a wage Level II position on the certified LCA.) *See Prevailing Wage Determination Policy Guidance, supra.*

On appeal, the Petitioner points to its letters, organization charts, and employees’ social media profiles, suggesting that the employees’ qualifications at hire were synonymous with its minimum requirements for the product analyst positions that they were hired into. However, it has not shown that the academic and experiential credentials of its employees at the time of their hire were more than a matter of its preference for high-caliber candidates, instead of the substantive performance requirements of the positions for which they were hired. Notably, even if the Petitioner always requires a bachelor’s degree in a specific specialty to perform the duties of the proffered position, the record must still establish that its stated degree requirement is needed by the performance requirements of the position. *Defensor, supra.*

Though requested by the Director in her RFE, the Petitioner has not provided copies of the job announcements used to hire individuals employed in its product analyst positions, or submitted other probative, contemporaneous evidence to show what prerequisites were *actually* specified during their hiring process. Absent information about the prerequisites utilized when hiring its employees, and evidence regarding what their positions entail, the Petitioner has not substantiated, more likely than not, that their qualifications at hire were the prerequisites for the duties and responsibilities that that they were hired to perform, and not a matter of its preference for high-caliber candidates. *Matter of Chawathe*, 25 I&N Dec. at 376. “Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the [petition].” 8 C.F.R. § 103.2(b)(14).

For these reasons, we agree with the Director’s determination that the record does not establish that the Petitioner normally requires a bachelor’s degree in a specific specialty, or its equivalent, for the position.

Moreover, we take administrative notice that while conducting a routine, pre-adjudication search of publicly available sources, we discovered the Petitioner’s job posting on its own website for its product analyst position,<sup>11</sup> which specifies prerequisites for the position, such as “4+ years of experience analyzing data in fast-paced, data driven environment with proven ability to apply scientific methods to solve real-world problems on web-scale data,” and the “ability to manipulate large data sets with high dimensionality and complexity; fluency in SQL (or other database languages) and a scripting language (Python or R),” but does not require *any* level of post-secondary education, such as a bachelor’s degree in a specific specialty. The Petitioner should be prepared to address the inconsistent information in the record regarding its prerequisites for the proffered position in any future H-1B filings. *Matter of Ho*, 19 I&N Dec. at 591-92.

The Petitioner in this matter has not established that it normally requires at least a bachelor’s degree in a specific specialty, or its equivalent, for the position proffered here. Therefore, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). We incorporate our discussion regarding the Petitioner’s letters, organization charts, and employee social media profiles into our analyses of the other criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

#### D. Second Prong of the Second Criterion and Fourth Criterion

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 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.

To make such determinations, we must review the actual duties the Beneficiary will be expected to perform to ascertain whether those duties require at least a baccalaureate degree in a specific specialty, or its equivalent, due to their complexity, uniqueness, or specialization. To accomplish this task in this matter, we review the duties in conjunction with the specific project(s) or work assignments to which the Beneficiary will be assigned. To allow otherwise results in generic descriptions of duties that, while they may appear (in some instances) to comprise the duties of a specialty occupation, are not related to any actual services the Beneficiary is expected to provide.

The Petitioner paraphrases the statutory definition of a “specialty occupation” found at section 214(i)(1) of the Act, indicating that “this position requires theoretical and practical application of a body of highly specialized knowledge in Information Technology, Analytics, or a closely related field.” It further contends: “The duties required for this position are extremely complex and ensure [the Petitioner] continues to deliver high quality services, this position must be filled by an individual who meets these minimum education and experience requirements.”

---

<sup>11</sup> See [https://\[redacted\]](https://[redacted]), (last visited Jun. 22, 2022).

On appeal, the Petitioner points to the letter from the Beneficiary's supervisor, A-, submitted in its RFE response, asserting that the information detailed in the letter "was more than enough for USCIS to find that the [proffered position's duties] are sufficiently complex or unique." In the letter, A- expounded upon the duties of the instant position, the skills and knowledge to perform them, and the relevant academic courses that the Beneficiary took while pursuing his education. For instance, with regard to the first job duty - in which the Beneficiary will spend 40% of his work time, A- highlights the need for the Beneficiary to have SQL and Python programming skills and indicates that the Beneficiary gained the requisite knowledge to perform these tasks through courses such as "Databases and Info Retrieval," and "Introduction to Java and Python." As evidence of this work A- included an exemplar of a SQL query and a SPL user data pull that was run by the Beneficiary. Likewise for the fifth job duty - which will encompass 10% of his time, A- indicates that the Beneficiary must have knowledge of "datatypes/structure, data pipeline/workflow/lineage," and SparkSQL programming skill" which he gained through academic courses such as "Data Structure" and "Analytics for Big Data." A- provided exemplars of data jobs to create reporting metrics for search data as evidence of this work.

While we acknowledge that the Petitioner may be attempting to demonstrate how an established curriculum of courses leading to a bachelor's degree in a specific specialty is required to perform the duties of the proffered position, we cannot agree with his analysis. Here, the Petitioner confuses *the ability* of a degreed information technology person to qualify for – and be competent in - performing the duties of the proffered position with a degree requirement *in order to* perform the duties. While the Petitioner may draw inferences that certain information technology related courses may be beneficial in performing various duties of the position, we disagree with its inference that such a degree is required in order to perform the duties of the proffered position. Put simply, stating that a person with a bachelor's degree could perform the duties of the proffered position is not the same as stating that a degree in a specific specialty is required to perform those duties. As such, the Petitioner's analysis misconstrues the statutory and regulatory requirements of a specialty occupation.

Moreover, on a fundamental level, we conclude that the Petitioner has not provided sufficient material about the information technology initiatives that will require the Beneficiary's services. When determining whether a position is a specialty occupation, we look at whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge attained through at least a baccalaureate degree in a specific discipline.

For instance, the Petitioner emphasizes that the Beneficiary will coordinate, liaise or interact with various internal stakeholder groups, to include "[p]artner[ing] closely with data science teams and cross functional teams to generate insights and define strategy for search product roadmap," and "[w]ork[ing] with product managers and software engineers to design data products, prove their value by running experiments and release into production." A- also indicates that in his supervisory role he "works with cross functional partners such as engineering, product, design, marketing etc. to make sure that the insights being produced by the team through data are used across different functions." Further, the members of the Beneficiary's team hold titles such as "data scientist," "ads insights TL," "head of measurements & insights," as well as the aforementioned product analysts. Though the Petitioner described the job duties of the position, the evidence does not adequately show the operational structure within this information technology construct in a manner that would establish the specialization, complexity, or uniqueness of the Beneficiary's role therein.

The duties and descriptions also feature use of tools for which the Petitioner has not adequately explained why skills using such technologies could not be gained through certifications in these technologies, through a vocational (associate's) degree, or a computer bootcamp. For example, the Petitioner states that the Beneficiary would "[u]se Python to randomly sample a subset of users and get engagement data (metrics we are interested in" and that he must be "[f]amiliar with all kinds of data types/structures and use appropriate ones for fields/columns in a data scheme." The Petitioner indicates that the Beneficiary must be well-versed in technological languages and approaches, such as SQL, Python, Spark , regression analysis, and Hadoop clusters, as well as understand database management system (DBMS). However, the Petitioner does not sufficiently explain how use of these tools makes the position "specialized and complex" or "complex or unique" or requires a bachelor's degree in a specific specialty or its equivalent.

We now turn again to the opinion letters from professors' K- and C-. In their letters, the professors (1) describe the credentials that they assert qualify them to opine upon the nature of the proffered position; (2) quote verbatim the position descriptions that the Petitioner provided in the RFE response; and (3) state, among other things, that the position requires highly specialized knowledge of information technology or analytics which would *only* be possessed by a candidate with no less than a bachelor's degree in information technology, analytics, a related field, or its equivalent. The professors assert the responsibilities of the position corresponds to some of the knowledge contained in the *2017 Curriculum Guidelines for Baccalaureate Degree Programs in Information Technology (Curriculum)*, published by the Association of Computing Machinery (ACM). In their opinion, the Petitioner's product analyst position would require one of the listed degrees; they maintain that it requires a high degree of technical knowledge and that the job duties can only be satisfactorily performed by an individual with bachelor's-level competence in these fields.

However, the professors' assertions are not persuasive. Although the proffered position may require certain knowledge competencies within the information technology field that are found in the aforementioned university curriculum guideline, the professor does not adequately explain why the specific duties themselves require knowledge associated with at least a bachelor's degree in a specific specialty. Also, the *Curriculum* does not indicate that a bachelor's degree in a specific specialty is necessary to obtain the knowledge for the particular position; rather its purpose is to develop a postsecondary computer science curriculum.<sup>12</sup> The professors similarly rely on INFORMS Analytical Body of Knowledge (ABok) as "a valuable resource for instructors who are developing or revising/modernizing analytics courses and programs."<sup>13</sup> The professors' reliance on the *Curriculum* and *ABok* documentation is not persuasive as it does not support a conclusion that the Petitioner's particular position is so complex or unique that only a specifically degreed individual could perform them or that the duties are specialized and complex such that the duties are usually associated with a bachelor's degree in a specific specialty.

Moreover, while the professors opine that the duties of the Petitioner's position are so complex and unique that "*only*" a candidate who has attained at least a bachelor's degree in information technology, analytics, a related field, or its equivalent, they do not acknowledge or discuss other methods that could also lead to

---

<sup>12</sup> Association for Computing Machinery, *2017 Curriculum Guidelines for Baccalaureate Degree Programs in Information Technology*, <https://www.acm.org/binaries/content/assets/education/curricula-recommendations/it2017.pdf>

<sup>13</sup> See generally <https://info.informs.org/abok>.

a sufficiently similar knowledge set, for example, the amount of required training or experience to gain this knowledge, alternate degrees, or certifications that would be acceptable. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791. However, we are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (“[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to ‘fact’ but rather is admissible only if ‘it will assist the trier of fact to understand the evidence or to determine a fact in issue.’”). Here, the opinion letters, without more, do not provide a sufficient basis to establish that the duties described are “complex or unique” or “specialized and complex” such that the position requires a bachelor's degree in a specific specialty.

On appeal, the Petitioner looks to articles about the business intelligence analyst occupation submitted in its RFE response to support its assertion that the proffered position satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). It indicates that the articles “clearly provide that the [occupation], and by extension [the] Petitioner's [proffered] position is usually associated with a [bachelor's degree in a specific specialty, or its equivalent].” As previously discussed, the Petitioner has not shown that this occupation is one that normally requires such a prerequisite for entry into the position. Additionally, while the referenced articles generally discuss various attributes about the business intelligence analyst occupation, the articles do not explain how the *instant position* is so specialized and unique, or complex and unique that the knowledge required to perform the duties of the position is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

In light of all the above, the Petitioner did not sufficiently develop relative specialization and complexity or uniqueness as an aspect of the duties of the position, and it did not identify any tasks that are so specialized and complex or unique that only a specifically degreed individual could perform them. Accordingly, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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. Moreover, the record does not establish that the Petitioner satisfied the statutory and regulatory definitions of specialty occupation.

### III. CONCLUSION

As set forth above, we conclude that the evidence of record does not establish, more likely than not, that the proffered position qualifies for classification as a specialty occupation. Accordingly, the appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.