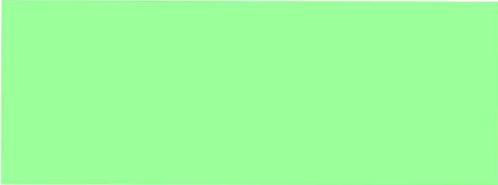


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

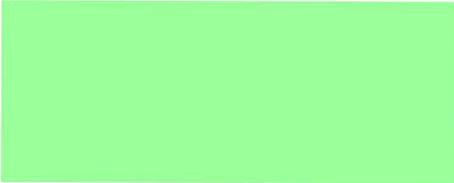


DATE: JUN 30 2014 OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center (the "director"), denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a "Custom wigs & hair pieces design, distribution" business established in 1999, with 10 employees. In order to employ the beneficiary in what it designates as a "Business Systems Administrator" position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition determining that the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation in accordance with the applicable statutory and regulatory provisions. The director also found that the petitioner had made material changes to the beneficiary's position description in response to the RFE.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's notice of decision; and (5) the petitioner's Form I-290B, Notice of Appeal or Motion, and supporting documentation. We reviewed the record in its entirety before issuing our decision.

Upon review of the entire record of proceeding, we find that the petitioner has failed to overcome the director's grounds for denying this petition.¹ Accordingly, the appeal will be dismissed and the petition will remain denied.

I. PROCEDURAL AND FACTUAL BACKGROUND

In this matter, the petitioner indicated in the Form I-129 and supporting documentation that it seeks the beneficiary's services in a position that it designates as a Business System Administrator, to work on a part-time basis at a salary of \$25.32 per hour. In addition, the petitioner indicated that the beneficiary would be employed at its office location in [REDACTED] California. The petitioner stated that the dates of intended employment are from October 1, 2013 to September 9, 2016.

The petitioner appended the requisite Labor Condition Application (LCA) to the petition, which indicates that the occupational classification for the position is "Network and Computer Systems Administrators" SOC (ONET/OES) Code 15-1142, at a Level I (entry level) wage. The LCA was certified for a validity period beginning September 9, 2013 to September 9, 2016.

In a letter of support, dated March 19, 2013 the petitioner explained that it manufactures and

¹ We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

distributes human and synthetic wigs and hair pieces. The petitioner noted that internet sales had "increased dramatically" in the past few years. The petitioner stated that the position of Business Systems Administrator will include the following duties:

- Manage inventory database, sales invoices, customer information, and product registration;
- Study, analyze, and improve business operations, accounting, information systems and general management;
- Organize and analyze company sales reports which reflect sales volume, as well as pending sales;
- Conduct analysis of sales data to forecast future supply and sales trends;
- Monitor the performance, integrity and security of databases;
- Manage and develop company website and update postings and advertisements;
- Diagnose technology and network related problems and recommend solutions;
- Research and analyze network data, traffic systems, purchasing trends, and other relevant information to formulate models for business decision-making and operational improvement; and
- Assist in developing business strategy to reduce costs and increase profitability, as well as ensure that information systems are properly maintained to facilitate efficient orders by customers[.]

The petitioner stated that the position of Business Systems Administrator requires at least a "Bachelor's degree in Business Administration in Management Information Systems, Computer Science, or a related field." The petitioner stated that the beneficiary holds a degree in Business Administration from the [REDACTED] in South Korea. The petitioner listed the coursework the beneficiary had completed and that it deemed relevant to the position.

The petitioner also included a credentials evaluation stating that the beneficiary's degree is equivalent to the U.S. degree of "Bachelor of Business Administration with a concentration in Management Information Systems." The petitioner provided samples of its inventory database management, sales record management and reporting, as well as on-line sales system maintenance and internet marketing.

The director issued an RFE on April 25, 2013. The petitioner was asked to submit, in relevant part, evidence to establish that the proffered position qualifies as a specialty occupation.

In response to the director's RFE, counsel for the petitioner submitted a letter dated May 23, 2013. Counsel noted that the petitioner had provided a more detailed job description for the position of Business Systems Analyst. Counsel asserted that the job duties described "involve a complex combination of technical computer and business analytical skills." Counsel referenced a letter from Professor [REDACTED]

[REDACTED] in support of the conclusion that the position of Business Systems Administrator requires a degree in Computer Information Systems, Management Information

Systems, or a related field. Additionally, counsel relied on a letter from Ms. [REDACTED] President of [REDACTED] for the conclusion that the job duties initially described would require skills acquired through the attainment of a Bachelor's Degree in Business Administration, Management Information Systems, Computer Information Systems or a related area. Finally, counsel referenced the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* and the DOL's O*Net OnLine Summary Report regarding the occupation of a network and computer systems administrator to support the conclusion that the position requires at least a bachelor's degree.

In addition to the evidence described above, the petitioner submitted a letter from its President, dated May 21, 2013. The letter described the need for the position of Business Systems Analyst due to the petitioner's business expansion and increased international sales. The President also discussed the beneficiary's qualifications and the knowledge required to fill the position. The President stated that the position required "at least a Bachelor's Degree in Business Administration, Management Information System [sic], Computer Science, or related field."

The petitioner also submitted a more detailed job description for the position of Business Systems Analyst. The petitioner stated that as a Business Systems Analyst, the beneficiary will manage and provide hardware and software maintenance, training and consultation, and recommendations about future planning and development of resources. The petitioner noted specifically that the beneficiary will perform the following duties:

1. Manage business information technology and computer systems

- Plan, organize, direct, control and evaluate the operations of business information systems and electronic data processing
- Develop and implement policies and procedures for electronic data processing and computer systems operations and development
- Meet with managers to discuss system requirements, specifications, costs, and timelines
- Be able to develop, otherwise, hire and manage business information systems contractors to design, develop, implement, operate and administer computer and telecommunications software, networks and information systems
- Study, analyze, and improve business operations, accounting, information systems and general management
- Conduct analysis of sales data to forecast future supply and sales trends
- Manage and develop company website and update postings and advertisements
- Research and analyze data, traffic systems, purchasing trends, and other relevant information to formulate models for business decision-making and operational improvement
- Assist in developing business strategy to reduce costs and increase

- profitability, as well as ensure that business information systems are properly maintained to facilitate efficient orders by customers
- Control the computer systems budgets and expenditures
2. Ensure technology is accessible and equipped with current hardware and software
 - Troubleshoot hardware, software and network operating system as they related to inventory control, sales invoices, customer information, and product registration
 - Be familiar with all hardware, software, and web technology
 - Be familiar with network operating system, database, and enterprise system
 - Provide orientation to new users of existing technology
 - Train staff about potential uses of existing technology
 - Train staff about new and potential use
 - Provide individual training and support on request
 - Provide recommendations about accessing information and support
 - Maintain current and accurate inventory of technology hardware, software, and resources
 3. Monitor and maintain technology to ensure maximum access
 - Troubleshoot all technology issues
 - Maintain log and/or list of required repairs and maintenance
 - Research current and potential resources and services
 - Provide network access to all staff
 - Install work stations
 - Connect and set up hardware
 - Load all required software
 - Provide network accounts and passwords as required
 - Monitor security of all technology
 - Advise staff of security breach and /or change in password security status
 4. Perform other related duties as required during working hours

The petitioner provided an organization chart showing the proffered position reporting to an "Account (manager)." The organization chart shows the position of Account (manager) reporting to the President. The petitioner also included a chart showing the proffered position's interaction with the WebServer, customers, sales representatives, and Quick Book Enterprise System. Finally, the petitioner provided a three-page document showing tasks of the position as well as the beneficiary's coursework and related application to the duties provided.

Upon review, the director denied the petition for the reasons recited above.

On appeal, the petitioner submits a brief and additional evidence. On appeal, counsel claims that the director's denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements. The petitioner also submits a letter from Mr. [REDACTED] stating that the two descriptions provided by the petitioner "speak to the same position."

The sole issue on appeal is whether the petitioner has established that the duties of the proffered position comprise a specialty occupation.

II. Law

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) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must also meet one of the following criteria:

- (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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered 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"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

III. ANALYSIS

A. Preliminary Findings that Preclude Approval

When determining whether a position is a specialty occupation, USCIS looks at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, USCIS looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency

can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

Thus, a crucial aspect of this matter is whether the petitioner has adequately described the duties of the proffered position, such that USCIS may discern the nature of the position and whether the position indeed requires the theoretical and practical application of a body of highly specialized knowledge attained through at least a baccalaureate degree in a specific discipline. We find that the petitioner has not done so here.

The initial description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's assertion that the position is a specialty occupation. The abstract level of information provided about the proffered position and its constituent duties is exemplified by the petitioner's assertion that the beneficiary will "organize and analyze company sales report," "monitor the performance, integrity, and security of databases," and "study, analyze, and improve business operations." The petitioner's statements – as so generally described – do not illuminate the substantive application of knowledge involved or any particular educational attainment associated with such application.

In its response to the director's request for evidence, the petitioner expanded the beneficiary's duties, adding items such as: manage business information technology and computer systems; plan, organize, direct, control and evaluate the operations of business information systems and electronic data processing; develop and implement policies and procedures for electronic data processing and computer systems operations and development; be able to develop, otherwise, hire and manage business information systems contractors to design, develop, implement, operate and administrator computer and telecommunications software, networks and information systems; and control the computer systems budgets and expenditures. The petitioner also added that the beneficiary will ensure technology is accessible and train staff as well as perform tasks such as troubleshooting all technology issues, loading software, connecting and setting up hardware, installing work stations, monitoring security of all technology and providing network accounts and passwords as required.

Furthermore, the second iteration of the beneficiary's job duties does not include the duty of managing inventory databases, sales invoices, customer information, and product registration. The petitioner provides no explanation as to why the beneficiary's duties in response to the request for evidence no longer include the duty related to its inventory management database, its sales record management and reporting database, and its on-line sales system maintenance and internet marketing database. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998).

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position, but rather added new generic duties to the job description and deleted other duties without explanation.

We have reviewed [REDACTED] letter submitted on appeal and his statement that the two position descriptions are "two different approaches to the same description." The letter from Mr. [REDACTED] lists the beneficiary's initial described duties and the duties listed under the heading "Manage business information technology and computer systems" provided in response to the RFE as a basis to formulate his opinion. Notably, Mr. [REDACTED] letter excludes the second page of duties provided in response to the director's RFE including the sub-duties related to ensuring technology is accessible and equipped with current hardware and software, as well as, the main duty of monitoring and maintaining technology to ensure maximum access and the related sub-duties. As such, the reliability of Mr. [REDACTED] opinion is called into question as it appears the complete position description in response to the director's request for evidence was not taken into account. We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

As the petitioner has submitted a second description that adds a significant number of new duties to the proffered position and has not offered adequate clarification of the material changes, our analysis will be based on the job description submitted with the initial petition.

In the instant case, it is not evident that the proposed duties as described in this record of proceeding, and the position that they comprise, merit recognition of the proffered position as a specialty occupation. To the extent that they are described, we find that the proposed duties do not provide a sufficient factual basis for conveying the substantive matters that would engage the beneficiary in the actual performance of the proffered position for the entire period requested. The petitioner has not provided a description that persuasively supports the petitioner's claim that the position's actual work would require the theoretical and practical application of any particular educational level of highly specialized knowledge in a specific specialty directly related to the duties and responsibilities of the proffered position, or its equivalent. The job description fails to communicate (1) the actual work that the beneficiary would perform on a day-to-day basis; (2) the complexity, uniqueness and/or specialization of the tasks; and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific

specialty. Moreover, as the petitioner has not allocated the amount of time the beneficiary would spend on the proposed duties, we are further inhibited in our analysis of the beneficiary's actual duties.

Further, upon review of the record, we note that there are discrepancies in the record of proceeding with regard to the proffered position. In that regard there is a significant discrepancy between the level of responsibility the petitioner claims is inherent in the proffered position set against the contrary level of responsibility conveyed by the wage level indicated on the LCA submitted in support of petition. That is, the petitioner provided an LCA in support of the instant petition that indicates the occupational classification for the position is "Network and Computer Systems Administrators" at a Level I (entry) wage.

Wage levels should be determined only after selecting the most relevant O*NET code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance, Nonagric. Immigration Programs* (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

Prevailing wage determinations start with an entry level wage (Level I) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties.² The DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received as indicated by the job description.

The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels. A Level I wage rate is described by DOL as follows:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform

² A point system is used to assess the complexity of the job and assign the wage level. Step 1 requires a "1" to represent the job's requirements. Step 2 addresses experience and must contain a "0" (for at or below the level of experience and SVP range), a "1" (low end of experience and SVP), a "2" (high end), or "3" (greater than range). Step 3 considers education required to perform the job duties, a "1" (more than the usual education by one category) or "2" (more than the usual education by more than one category). Step 4 accounts for Special Skills requirements that indicate a higher level of complexity or decision-making with a "1" or a "2" entered as appropriate. Finally, Step 5 addresses Supervisory Duties, with a "1" entered unless supervision is generally required by the occupation.

routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

In the instant case, the petitioner claims that the duties of the proffered position are complex, unique and/or specialized. Furthermore, the proposed duties in response to the RFE involve managerial and supervisory duties. For example, the beneficiary will "be able to develop, otherwise, hire and manage business information systems contractors," "manage and develop company website," and "plan, organize, direct, control and evaluate the operations of business information systems and electronic data processing."

However, we must question the level of complexity, independent judgment and understanding actually required for the proffered position as the LCA is certified for a Level I entry-level position. The characterization of the position and the claimed duties and responsibilities as described by the petitioner and counsel conflict with the wage-rate element of the LCA selected by the petitioner, which, as reflected in the discussion above, is indicative of a comparatively low, entry-level position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; that he will be expected to perform routine tasks that require limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results.

The petitioner is required to provide, at the time of filing the H-1B petition, an LCA certified for the correct wage level in order for it to be found to correspond to the petition. To permit otherwise would result in a petitioner paying a wage lower than that required by section 212(n)(1)(A) of the Act, by allowing that petitioner to simply submit an LCA for a lower prevailing wage than the prevailing wage that actually corresponds to the duties of the position the petitioner claims it is offering to the beneficiary.

This aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the petitioner's assertions regarding the demands, level of responsibilities and requirements of the proffered position. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies

will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

As noted below, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(2) specifies that certification of an LCA does not constitute a determination that an occupation is a specialty occupation:

Certification by the Department of Labor [DOL] of a labor condition application in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation. The director shall determine if the application involves a specialty occupation as defined in section 214(i)(1) of the Act. The director shall also determine whether the particular alien for whom H-1B classification is sought qualifies to perform services in the specialty occupation as prescribed in section 214(i)(2) of the Act.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a valid LCA that corresponds to the claimed duties and requirements of the proffered position, that is, specifically, that corresponds to the level of work, responsibilities and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work, responsibilities and requirements in accordance with the pertinent LCA regulations.

The statements regarding the claimed level of complexity, independent judgment and understanding required for the proffered position are materially inconsistent with the certification of the LCA for a Level I entry-level position. This conflict undermines the overall credibility of the petition. We find that, fully considered in the context of the entire record of proceedings, the petitioner failed to establish the nature of the proffered position and in what capacity the beneficiary will actually be employed.

A review of the enclosed LCA indicates that the information provided does not correspond to the level of work and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work and requirements in accordance with the pertinent

LCA regulations. As a result, even if it were determined that the petitioner overcame the other independent reason for the director's denial (which it has not), the petition could still not be approved.

B. Specialty Occupation

We will now address the director's basis for denial of the petition, namely that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, we agree with the director and find that the evidence fails to establish that the position as described constitutes a specialty occupation. It should be noted that, for efficiency's sake, we hereby incorporate the above discussion and analysis regarding the duties and requirements of the proffered position into each basis discussed below for dismissing the appeal.

To make its determination whether the proffered position qualifies as a specialty occupation, we turn to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), 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.

The petitioner indicated that the beneficiary would be employed as a Business Systems Administrator. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. 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 examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether 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 the specific specialty as the minimum for entry into the occupation, as required by the Act.

We recognize the DOL's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³ The petitioner attests on the LCA that the proffered position falls under the occupational category "Network and Computer Systems Administrators."

We have reviewed the chapter in the *Handbook* entitled "Network and Computer Systems Administrators," including the sections regarding the typical duties and requirements for this

³ All of our references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>. We hereby incorporate into the record the excerpt of the *Handbook* regarding the occupational category "Network and Computer Systems Administrators."

occupational category. However, the *Handbook* does not indicate that "Network and Computer Systems Administrators" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

The subchapter of the *Handbook* entitled "How to Become a Network and Computer Systems Administrators" states, in pertinent part:

Education

Although some employers require just a postsecondary certificate, most require a bachelor's degree in a field related to computer or information science. However, because administrators work with computer hardware and equipment, a degree in computer engineering or electrical engineering usually is acceptable as well. Such a degree usually entails classes in computer programming, networking, or systems design.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, Network and Computer Systems Administrators, on the Internet at <http://www.bls.gov/ooh/computer-and-information-technology/network-and-computer-systems-administrators.htm#tab-4> (last visited June 27, 2014).

When reviewing the *Handbook*, we must note again that the petitioner designated the wage level of the proffered position as a Level I position on the LCA. As previously discussed, this designation is indicative of a comparatively low, entry-level position relative to others within the occupation and signifies that the beneficiary is only expected to possess a basic understanding of the occupation and will perform routine tasks that require limited, if any, exercise of judgment. In accordance with the relevant DOL explanatory information on wage levels, the beneficiary will be closely supervised and his work closely monitored and reviewed for accuracy. Furthermore, he will receive specific instructions on required tasks and expected results. DOL guidance states that a job offer for a research fellow, a worker in training, or an internship is an indication that a Level I wage should be considered. Thus, the petitioner's designation of the proffered position as a Level I (entry) position strongly suggests that the beneficiary will not serve in a high-level or senior position within the occupation.

It is noted that, even if the proffered position had been established as being that of a network and computer systems administrator, a review of the *Handbook* does not indicate that such a position qualifies as a specialty occupation in that the *Handbook* does not state a normal minimum requirement of a U.S. bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation. Specifically, the *Handbook* only states that "most [employers] require a bachelor's degree in a field related to computer or information science." The *Handbook* does not state that such a degree is a normal minimum entry requirement for all network and computer systems analyst positions. The first definition of "most" in *Webster's New College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree."

As such, if merely 51% of network and computer systems analyst positions require at least a bachelor's degree in computer or information science or a closely related field, it could be said that "most" network and computer systems analyst positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "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." § 214(i)(1) of the Act. Furthermore, the *Handbook* states that some employers require *just* a postsecondary certificate with no specific discipline required. [Emphasis added.]

Thus, for the reasons discussed above, we do not find that the *Handbook* supports a claim that "Network and Computer Systems Administrators" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

In addition, the Occupational Information Network (O*NET) Summary Report for this occupational classification is also insufficient to establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor's degree or its equivalent in a specific specialty. On June 28, 2014, we accessed the pertinent section of the O*NET OnLine Internet site relevant to 15-1142.00, Network and Computer Systems Administrators. A designation of Job Zone 4, indicates that a position requires considerable preparation. It does not, however, indicate that a bachelor's degree in any specific specialty is required, and does not, therefore, demonstrate that a position so designated is in a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

See O*NET OnLine Help Center, at <http://www.onetonline.org/help/online/zones>, for a discussion of Job Zone 4, which explains that this Zone signifies only that most but not all of the occupations within it require a bachelor's degree.

Further, the Help Center's discussion confirms that Job Zone 4 does not indicate any requirements for particular majors or academic concentrations. Therefore, despite counsel's assertions to the contrary, the O*NET information is not probative of the proffered position qualifying as a specialty occupation.

In response to the RFE, the petitioner submitted a letter from Ms. [REDACTED] President of [REDACTED]. The letter is dated May 8, 2013. The petitioner also submitted a letter from Professor [REDACTED] Ph.D dated May 14, 2013. We have reviewed the letters but, for the reasons discussed below, find that they are not persuasive in establishing the proffered position qualifies as a specialty occupation position. Ms. [REDACTED] claims that her opinion in this matter is based upon her "academic qualifications and professional experience in the field of international education, including transfer credit assessment and foreign credential evaluation." Mr.

claims that his opinion is based on the positions he holds, and has held, at as a Professor, Graduate School of Computer and Information Sciences.

Based upon a complete review of both Ms. and Professor letters, we note that although the two authors may, in fact, be recognized authorities on various topics; they have failed to provide sufficient information regarding the basis of their claimed expertise on this particular issue. That is, they have not established their expertise pertinent to the hiring practices of organizations seeking to fill positions similar to the proffered position in the instant case. Without further clarification, it is unclear how their education, training, skills or experience would translate to expertise or specialized knowledge regarding the *current recruiting and hiring practices* of organizations similar to the petitioner's custom wigs and hair pieces sales, distribution, and manufacturing (as designated by the petitioner in the Form I-129 and NAICS code) business or other similar sales and distribution companies. The opinion letters do not cite specific instances in which the author's past opinions have been accepted or recognized as authoritative *on this particular issue*. There is no indication that either author has published any work or conducted any research or studies pertinent to the educational requirements for such positions (or parallel positions) in the petitioner's industry for similar organizations, and no indication of recognition by professional organizations that Ms. or Professor are authorities on those specific requirements.

The opinions are both based upon the same job duties for the beneficiary submitted in the initial submission. Neither opinion relied on the revised job description provided in response to the RFE. As previously determined, the duties described in the initial submission lack specificity and detail. Thus, the tasks are general to the occupation rather than specific to the petitioner and its business operations.

Both Ms. and Professor provide limited statements regarding their knowledge of the petitioner's involvement in the "manufacture and distribution of finely crafted human and synthetic wigs and hair pieces." Upon review of the opinion letters, there is no indication that either author possesses any knowledge of the petitioner's proffered position beyond the rudimentary description and information submitted initially in support of this petition. They do not demonstrate or assert in-depth knowledge of the petitioner's specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise.

Furthermore, the letter from Professor states that the industry educational requirements for the proffered position are a Bachelor's degree in the field of "Computer Information Systems, Management Information Systems, or a related field." This requirement differs from the petitioner's stated requirement of a degree in "Business Administration, Management Information System, Computer Science, or related field." Thus, Professor opinion is at odds with the petitioner's own stated acceptance of an individual with a degree in Business Administration to perform the duties of the proffered position. Moreover, neither Ms. nor Professor reference the petitioner's designation of the proffered position as a Level I (entry-level) position as attested to on the LCA. Such an omission is material and significantly detracts from the credibility of their opinions.

Both Ms. [REDACTED] and Professor [REDACTED] assert a general industry educational standard for organizations similar to the petitioner, without referencing any supporting authority or any empirical basis for the pronouncement. Likewise, they do not provide a substantive, analytical basis for their opinions and ultimate conclusion. Their opinions do not relate their conclusion to specific, concrete aspects of this petitioner's business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue. There is no evidence that Ms. [REDACTED] nor Professor [REDACTED] visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. They have not provided sufficient facts that would support the contention that the proffered position requires at least a bachelor's degree in a specific specialty. Ms. [REDACTED] and Professor [REDACTED] do not provide a sufficiently substantive and analytical basis for their opinions.

In summary, and for each and all of the reasons discussed above, we conclude that the opinion letters prepared by Ms. [REDACTED] and Professor [REDACTED] are not probative evidence to establish the proffered position as a specialty occupation. The conclusions reached by Ms. [REDACTED] and Professor [REDACTED] lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which they reached such conclusions. There is an inadequate factual foundation established to support the opinions and we find that the opinions are not in accord with other information in the record. Therefore, we find that the letters from Ms. [REDACTED] and Professor [REDACTED] do not establish that the proffered position is a specialty occupation. As such, neither of their findings nor their ultimate conclusions are worthy of any deference, and their opinion letters are not probative evidence towards satisfying any criterion of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: 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. at 1102).

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports an industry-wide requirement for at least a bachelor's degree in a specific specialty, or its equivalent. Further, the opinion letters provided in response to the RFE are not probative to establish that organizations similar to the petitioner routinely employ and recruit only degreed individuals. We hereby incorporate by reference our previous discussion on the opinions submitted as expert testimony.

The petitioner did not provide job listings from organizations similar to the petitioner, evidence that any professional association from the industry has made a degree a minimum entry requirements, or letter or affidavits from firms or individuals in the industry which attest that such firms routinely employ and recruit only degreed individuals. As noted above, we accord no probative weight to the opinion letters submitted and thus these letters do not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the industry for positions that are both (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that the particular position proffered in this petition 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.

We find that the petitioner has not provided sufficient documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent. This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, the LCA indicates a wage level based upon the occupational classification "Network and Computer Systems Administrator" at a Level I (entry level) wage. Without further evidence, it is simply not credible that the petitioner's proffered position is complex or unique as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage. For example, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."⁴

⁴ For additional information regarding the prevailing wage level, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

It is further noted that although the petitioner asserts that a bachelor's degree is required to perform the duties of the proffered position, the petitioner failed to sufficiently demonstrate how the duties require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. That is, the record of proceeding does not establish that the petitioner's required knowledge for the proffered position can only be obtained through a baccalaureate or higher degree program in a specific specialty, or its equivalent. In response to the RFE, the petitioner submitted a spreadsheet showing specific tasks and related coursework necessary to perform those tasks. There appears to be, however, only three main tasks listed in that the coursework relates to: business system analysis and management; web based online sale system management; and computerized supply management. The petitioner has failed to show how these three tasks relate to the overall list of duties provided either in the initial petition or even in the response to the RFE. Without further explanation, it appears that these three duties may take only a minimum amount of the beneficiary's time. Furthermore, while a few related courses may be beneficial, or even required, in performing certain duties of the position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position.

The evidence of record does not establish that this position is significantly different from other network and computer systems analyst positions such that it refutes the *Handbook's* information to the effect that a bachelor's degree is not the minimum requirement for entry into the occupation. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

We also observe that the petitioner has indicated that the beneficiary is "fully-qualified for employment with [the] company" and noted that the beneficiary "has the broad and intricate skills necessary to fulfill our present job requirements." However, the test to establish a position as a specialty occupation is not the experience or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. The petitioner does not explain or clarify at any time in the record which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. Upon review of the record of proceeding, the petitioner has failed to establish the proffered position as satisfying the second prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We next review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), to determine whether the evidence establishes that the petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the position. In that regard we usually review the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position. To satisfy this criterion, it should be noted that the record must establish that a petitioner's imposition of a degree requirement is not merely a

matter of preference for high-caliber candidates but is necessitated by performance requirements of the position.

That is, while a petitioner may believe or otherwise assert that a proffered position requires a specific degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree, or its equivalent, to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

Moreover, to satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS 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 v. Meissner*, 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 the specific specialty or its equivalent as the minimum for entry into the occupation as required by section 214(i)(1) of the Act. To interpret the regulation any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position – and without consideration of how a beneficiary is to be specifically employed – then any alien with a bachelor's degree in specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. See *id.* at 388.

The petitioner stated in the initial filing that it has not previously hired for the position of Business Systems Administrator. As a result, the petitioner has no hiring history to establish that it normally requires a degree or its equivalent for the position.

The evidence submitted by the petitioner is insufficient to satisfy this criterion of the regulations. The record does not establish that the petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the position. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

Upon review of the record of the proceeding, we note that the petitioner has not provided probative evidence to satisfy this criterion. As reflected in this decision's earlier comments and findings with regard to the generalized level at which the proposed duties are described, the petitioner has not presented the proposed duties with sufficient specificity and substantive content to even establish relative specialization and complexity as distinguishing characteristics of those duties, let alone that they are at a level that would require knowledge usually associated with attainment of at least a bachelor's 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.

Furthermore, we incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a low, entry-level position relative to others within the occupational category of "Network and Computer Systems Administrators." The petitioner designated the position as a Level I position (the lowest of four assignable wage-levels), which DOL indicates is appropriate for "beginning level employees who have only a basic understanding of the occupation." That is, the proffered position's Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category, and hence one not likely distinguishable by relatively specialized and complex duties. Without further evidence, it is simply not credible that the petitioner's proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage.

The petitioner has not established that the duties of the position are 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. The petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

IV. CONCLUSION

The petition must be denied for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *see e.g., Matter of Otiende*, 26 I&N Dec. at 128. Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition is denied.