



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

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

MATTER OF RJH- LLC

DATE: MAR. 1, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

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

The Director, Vermont Service Center, denied the petition. The Director concluded that the Petitioner did not establish that the job offered qualifies as a specialty occupation.

In its appeal, the Petitioner asserts that the Director abused her discretion when she determined that the proffered position is not a specialty occupation.¹

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

¹ We note that although the Petitioner indicated that it would submit a brief “within 30 calendar days of filing this appeal,” we have not received anything further. Accordingly, the record is considered complete.

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 have consistently interpreted 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 proposed position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

II. PROFFERED POSITION

The Petitioner initially provided the following job duties for the position of market research analyst:

- Prepare reports of findings and illustrate the collected data graphically.
- Translate the complex findings into written text for easy management.
- Assist to devise and evaluate methods and procedures for collecting data, such as surveys, opinion polls, or questionnaires, or arrange to obtain existing data.
- Gathering of data on competitors and analyzing their prices, sales, and method of marketing and distribution and making strategies accordingly to overcome the weaknesses in the system.
- Seek and provide information to help companies determine their position in the marketplace.
- Identify potential markets and factors affecting product demand and collect and analyze data on customer demographics, preferences, needs and buying habits.²

² The identical duties were listed on the submitted online job posting for the proffered position.

The Petitioner further stated that “[t]he usual minimum requirement for performance of the job duties of this proffered position, with our company, as with any other similar organization, is a [b]achelor’s degree in [s]cience, computer science, computer engineering, electronics, engineering, physical sciences or equivalent.”

In response to the Director’s request for evidence (RFE), the Petitioner indicated that the position requires an individual with a bachelor’s degree in business administration.

III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.³ Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.⁴

The Petitioner initially indicated that it requires an individual with a bachelor’s degree, or its equivalent, in science, computer science, computer engineering, electronics, engineering, or the physical sciences. However, in response to the Director’s RFE, the Petitioner stated that the position requires a bachelor’s degree in business administration. The Petitioner did not provide any explanation for the discrepancies between the degree requirements submitted with the initial petition and in response to the RFE. “[I]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence.” *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Further, if the Petitioner’s degree requirement can be satisfied by a wide variety of degrees in disparate fields, such as business and engineering, then this indicates that the proffered position does not require a degree *in a specific specialty*. In general, provided the specialties are closely related, e.g., sales and marketing, a minimum of a bachelor’s or higher degree in more than one specialty is recognized as satisfying the “degree in the specific specialty (or its equivalent)” requirement of section 214(i)(1)(B) of the Act. In such a case, the required “body of highly specialized knowledge” would essentially be the same. Since there must be a close correlation between the required “body of highly specialized knowledge” and the position, however, a minimum entry requirement of degrees in disparate fields, such as business and engineering, would not meet the statutory requirement that the degree be “in *the* specific specialty (or its equivalent),” unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required “body of highly specialized knowledge” is essentially an amalgamation of these different specialties.⁵ Section 214(i)(1)(B) of the Act (emphasis added). The Petitioner has not made this showing.

³ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

⁴ The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

⁵ While the statutory “the” and the regulatory “a” both denote a singular “specialty,” we do not so narrowly interpret

Moreover, if the Petitioner's degree requirement can be satisfied by a general bachelor's degree in business, without further specialization, then it is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. There must be a close correlation between the required specialized studies and the position; thus, the mere requirement of a general business degree, without further specification, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam*, 484 F.3d at 147 (recognizing a business administration degree as a "general-purpose bachelor's degree"); *cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility.").

On this basis of the position's educational requirement alone, we cannot find that the proffered position qualifies as a specialty occupation.

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. To inform this inquiry, we recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁶

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Market Research Analysts and Marketing Specialists," corresponding to the Standard Occupational Classification code 13-1161.⁷

these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. *See* section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

⁶ All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

⁷ The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). We will consider this selection in our analysis of the position. The "Prevailing Wage Determination Policy Guidance" issued by the DOL provides a description of the wage levels. A Level I wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. This wage rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that she will be closely supervised and her work closely monitored and reviewed for accuracy; and (3) that she will receive

We reviewed the section of the *Handbook* covering “Market Research Analysts,” including the section entitled “How to Become a Market Research Analyst,” which states the following:

Most market research analysts need at least a bachelor’s degree. Top research positions may require a master’s degree. Strong math and analytical skills are essential.

Education

Market research analysts typically need a bachelor’s degree in market research or a related field. Many have degrees in fields such as statistics, math, and computer science. Others have backgrounds in business administration, the social sciences, or communications.

Courses in statistics, research methods, and marketing are essential for these workers. Courses in communications and social sciences, such as economics or consumer behavior, are also important.

Some market research analyst jobs require a master’s degree. Several schools offer graduate programs in marketing research, but many analysts complete degrees in other fields, such as statistics and marketing, and/or earn a master’s degree in business administration (MBA). A master’s degree is often required for leadership positions or positions that perform more technical research.

Licenses, Certifications, and Registrations

Certification is voluntary, but analysts may pursue certification to demonstrate a level of professional competency. The Marketing Research Association offers the Professional Researcher Certification (PRC) for market research analysts.⁸ Candidates qualify based on experience and knowledge; they must pass an exam, be a member of a professional organization, and have at least 3 years working in opinion and marketing research. Individuals must complete 20 hours of industry-related continuing education courses every 2 years to renew their certification.

U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., “Market Research Analysts,” <https://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-4> (last visited Feb. 28, 2017).

specific instructions on required tasks and expected results. U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://fledatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf. 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. *Id.*

⁸ As of January 2017, the PRC is offered by the Insights Association.

The *Handbook* reports that market research analysts have degrees and backgrounds in a wide variety of disparate fields. That is, while the *Handbook* states that employees typically need a bachelor's degree in market research or a related field, it continues by specifying that many individuals in this occupational category have degrees in fields such as statistics, math, or computer science. According to the *Handbook*, other market research analysts have backgrounds in fields such as business administration, the social sciences, or communications. This passage of the *Handbook* identifies various courses as essential to this occupation, including statistics, research methods, and marketing. It further elucidates that courses in communications and social sciences (such as economics and consumer behavior) are also important. Therefore, although the *Handbook* indicates that market research analysts typically need a degree, it also indicates that degrees and backgrounds in various fields are acceptable for jobs in this occupation – including computer science and the social sciences, as well as statistics and communications.

As noted, since there must be a close correlation between the required “body of highly specialized knowledge” and the position, a minimum entry requirement of a degree in disparate fields would not meet the statutory requirement that the degree be “in *the* specific specialty (or its equivalent),” unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added). Here, the Petitioner has not done so.

The *Handbook* also states that “others have a background in business administration.” Again as we noted, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam*, 484 F.3d at 147. Therefore, the *Handbook*'s recognition that a general, non-specialty “background” in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not normally the minimum entry requirement for this occupation.

The narrative of the *Handbook* further reports that some employees obtain professional certification to demonstrate a level of professional competency. It continues by outlining the requirements for market research analysts to achieve the PRC, and states that candidates qualify based upon their experience and knowledge. The credential is granted by the Insights Association (IA) to those who pass an exam and have at least 3 years of experience working in the survey and opinion process.⁹

We reviewed the IA website, which confirms the *Handbook*'s statement regarding the requirements for professional certification (i.e., passage of an exam and 3 years of relevant industry experience). It further emphasizes that the credentialing program differentiates the individual who takes it and

⁹ According to its website, the IA was formed in January 2017 when the Marketing Research Association (founded in 1957) and the Council of American Survey Research Organization (founded in 1975) merged. For additional information, see <http://www.insightsassociation.org/about> (last visited Feb. 28, 2017).

provides a “‘badge’ of competence in the given areas and an assurance that the individual is current in knowledge and experience.” The narrative continues by stating that the credential “provides a vehicle for developing a pool of well-trained, competent marketing researchers, thereby improving both perceived and substantive standards.” The website includes information regarding “How to Enter the Industry” which lists a variety of “[p]ossible [d]egrees,” such as business administration, liberal arts, computer science and communications, and a variety of “[h]elpful [s]kills,” including “attention to detail,” and “basic computer skills.” It does not indicate that a market research analyst position has any specific minimum academic requirement for entry, nor does it state that it requires any particular level of education to be identified as qualified and possessing a level of expertise/competence. Instead, IA highlights the importance of professional experience and industry-related professional courses (through conferences, seminars, and webinars).

Thus, the *Handbook* and the IA website do not support the claim that the occupational category “Market Research Analysts” is one for which the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent. In addition, the Petitioner must provide evidence to support a finding that the proffered position would normally require, at a minimum, a bachelor’s degree in a specific specialty (or its equivalent).

In response to the Director’s RFE, the Petitioner relies on the Occupational Information Network (O*NET) to assert that it “confirms that 71% [of] employers prefer [a] bachelor’s degree holder for the position . . . and confirms that [] these occupations require a four-year bachelor’s degree.” O*NET, however, is insufficient to establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor’s degree in a specific specialty, or its equivalent, because it 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.”¹⁰ Further, O*NET does not indicate that 4-year bachelor’s degrees required by Job Zone Four occupations must be in a specific specialty directly related to the occupation. Therefore, the O*NET information is not probative of the proffered position being a specialty occupation.

In this case, the Petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that the minimum requirement for entry is normally at least a bachelor’s degree in a specific specialty, or its equivalent. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

B. Second Criterion

The second criterion presents two, alternative prongs: “The degree requirement is common to the industry in parallel positions among similar organizations *or, in the alternative*, an employer may

¹⁰ See O*NET Summary Report for “13-1161.00 -Market Research Analysts and Marketing Specialists,” <http://www.onetonline.org/link/summary/13-1161.00> (last visited Feb. 28, 2017); O*NET Help – Job Zones, <http://www.onetonline.org/help/online/zones> (last visited Feb. 28, 2017).

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

1. First Prong

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

USCIS generally considers the following sources of evidence to determine if there is such a common degree requirement: whether the *Handbook* reports that the industry requires a degree; whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry establish that such firms “routinely employ and recruit only degreed individuals.” See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989) (considering these “factors” to inform the commonality of a degree requirement)).

Here, however, neither the *Handbook*, nor the IA, indicates that such a degree requirement is common within the industry for parallel positions among similar organizations. The Petitioner did submit letters from three different companies which all state that 1) the minimum degree requirement in their company for the position of market research analyst is a bachelor’s degree in business administration or its equivalent and 2) that they have never hired anyone in the position who did not meet the stated minimum requirement. The letters, however, do not contain any additional information beyond the name and address of the company and the name and title of the signer.

For the Petitioner to establish that other organizations are similar, it must demonstrate that they share the same general characteristics. Without such evidence, documentation submitted by the Petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the Petitioner. When determining whether the Petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). Notably, it is not sufficient for the Petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion. Further, the Petitioner has not provided any information, such as job duties, to establish that the referenced positions are parallel to the proffered position.

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).

2. Second Prong

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the Petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

The position duties provided with the initial filing come directly from the O*NET for the occupational category "Market Research Analysts and Marketing Specialists." See O*NET at <https://www.onetonline.org/link/details/13-1161.00#Tasks> (last visited Feb. 28 2017). This type of description may be appropriate when defining the range of duties that may be performed within an occupational category, but it does not adequately convey the substantive work that the Beneficiary will perform within the Petitioner's business operations and, thus, generally cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In response to the RFE, the Petitioner expanded on the Beneficiary's duties and indicated that she would spend 35% of her time reporting findings and collecting data, 35% of her time devising and evaluating methods and procedures for collecting data, and 30% of her time identifying potential markets and factors affecting their services. The provided additional information, however, did not sufficiently describe 1) the complexity, uniqueness and/or specialization of the tasks and 2) the correlation between that work and the need for a particular level of education in a specific specialty. As a result, the record does not demonstrate that the proffered position requires a bachelor's degree in a specific specialty, or its equivalent.

Further, as previously discussed, the LCA submitted by the Petitioner in support of the instant petition indicates a wage level at a Level I (entry) wage, which is the lowest of four assignable wage levels. Without further evidence, the record of proceedings does not indicate that the proffered position is complex or unique, as such a position falling under this occupational category would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage.

The Petitioner also claims that the Beneficiary is well-qualified for the position, and references her qualifications. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent.

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

C. Third Criterion

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. The record must also 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. *See Defensor*, 201 F.3d at 387-88. While a petitioner may assert that a proffered position requires a specific degree, that statement alone, without corroborating evidence, cannot establish the position as a specialty occupation. To this end, we usually review a petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position, and any other documentation submitted by a petitioner in support of this criterion of the regulations.

In response to the RFE, the Petitioner, which was founded in 2007, indicated that it has never hired anyone into this position, but refers to "the job advertisement" as evidence that it meets this criterion. The job advertisement, however, includes only the job title, job duties, company name and location. It does not contain any information regarding a degree requirement. Further, as stated above, without corroborating evidence, simply listing a degree requirement on a job posting would not establish the position as a specialty occupation. While a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, it is unclear how an employer that has never recruited and hired for the position would be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it 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).

D. Fourth Criterion

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

As previously discussed, the relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position's duties. In other words, the proposed duties have not established that their nature is more specialized and complex than market research analyst positions whose duties are not of a nature so specialized and complex that their performance requires knowledge usually associated with a degree in a specific specialty. In reviewing the record of proceeding under this criterion, we reiterate our earlier discussion regarding the *Handbook's* findings for positions located within the "Market Research Analysts" occupational category. Again, the *Handbook* does not indicate that a bachelor's degree in a specific specialty, or the equivalent, is a standard, minimum requirement to perform the duties of such positions (to the contrary, it indicates precisely the opposite), and the record indicates no factors that would elevate the duties proposed for the Beneficiary above those discussed for similar positions in the *Handbook*.

With regard to the specific duties of the position proffered here, we find that the record of proceeding lacks sufficient evidence establishing that they are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a bachelor's degree in a specific specialty, or the equivalent.

We also incorporate our earlier discussion and analysis regarding the designation of the proffered position in the LCA as a Level I position (the lowest of four assignable wage-levels) relative to others within the occupational category.¹¹ The Petitioner has not demonstrated in the record that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

IV. BENEFICIARY'S QUALIFICATIONS

The Director also found that the Beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. However, a beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the proffered position does not require a baccalaureate or higher degree in a specific specialty, or its equivalent. Therefore, we need not and will not address the Beneficiary's qualifications further.

V. BENEFICIARY'S STATUS

The Director determined that the record did not establish that the Beneficiary had maintained her nonimmigrant status. We do not have jurisdiction over this matter, as issues surrounding a beneficiary's maintenance of status are within the sole discretion of the Director. Therefore, we will not further address this issue.

¹¹ The Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I, entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty, or its equivalent. That is, a position's wage-level designation may be a relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

VI. CONCLUSION

The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of RJH- LLC*, ID# 242116 (AAO Mar. 1, 2017)