

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: **JUL 14 2014** OFFICE: VERMONT 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 service center director ("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 "record keeping and compliance for pilots and airlines" business established in 2005, with 10 employees. In order to employ the beneficiary in what it designates as an "Operations manager" position, the petitioner seeks to classify her 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 record of proceeding before us 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 a brief. We reviewed the record in its entirety before issuing our decision.¹

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.

For the reasons that will be discussed below, we agree with the director's ultimate decision that the petitioner has not established eligibility for the benefit sought. Accordingly, the appeal will be dismissed, and the petition will be denied.

I. PROCEDURAL AND FACTUAL BACKGROUND

In this matter, the petitioner indicated on the Form I-129 and in the supporting documentation that it seeks the beneficiary's services in a position that it designates as an operations manager, to work on a part-time basis at a salary of \$730.00 per week. In addition, the petitioner indicated that the beneficiary would be employed at its offices. The petitioner stated that the dates of intended employment are from February 25, 2013 to February 14, 2016.

The petitioner also attested on the required Labor Condition Application (LCA) that the proffered position is a part-time position and that the occupational classification for the position is "Operations Manager" SOC (ONET/OES) Code 11-1021.00, at a Level I wage. The LCA was certified on February 7, 2013, for a validity period from February 15, 2013 to February 14, 2016.

In a letter of support, dated February 26, 2013, the petitioner stated that the company provides "aviation compliance solutions and safety management for private industry." The petitioner added that it "provides services such as aviation quality assurance, emissions management services, CBP overflight exemption certification, radio licensing and operator licensing in addition to the sales of

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

aviation safety manuals." The petitioner indicated that as the operations manager of the general maintenance program, the beneficiary will report directly to the company president and will perform the following duties:

- Audit corporate flight departments maintenance logbooks[.]
- Develop and organize each aircraft maintenance history[.]
- Audit maintenance facilities prior to conducting maintenance[.]
- Receive logbook entries and file logbook entries after maintenance is complete.
- Assess our RSVM and special airspace department during aircraft maintenance history records.

The petitioner stated that the position requires at least a Bachelor's degree in aeronautical or aerospace engineering. Furthermore, the petitioner required that the incumbent must also be proficient in graphic design with AutoCAD and be "computer literate."

The director issued an RFE on March 22, 2013. The petitioner was asked to submit evidence to establish, among other things, that the job offered is a specialty occupation as well as a more detailed explanation of the beneficiary's duties.

In response to the director's RFE, the petitioner provided a letter with further details on the beneficiary's assignment. The petitioner stated that the beneficiary's job title would be "Maintenance Quality Assurance Manager." The petitioner also provided a one and a half page explanation of the beneficiary's duties including the percentage of time she would spend on each. The petitioner also identified the skill, background and subject matter knowledge suitable to perform the stated duties. The petitioner provided the following categories of duties as well as the percentage of time the beneficiary would spend performing the duties as follows:

- Receive and audit aircraft maintenance logbooks and flight logs as well as inspection logs; 20%
- Develop a maintenance program for each aircraft; 20%
- Develop aircraft minimum equipment list (MEL) for our customers enrolled in our maintenance quality assurance program; 20%
- Audit maintenance facilities prior to the customer flying an aircraft for repairs; 15%
- Receive and audit aircraft logbook entries and file aircraft logbook entries after maintenance is complete; 5%
- Operating CAMP Aviation Maintenance software program; 5%
- Operating AvPro Software, from Decision Software Systems; 5%
- Attend meetings with the FAA and other countries' Aviation Administration such as [REDACTED]; 5%

The petitioner explained that the beneficiary was selected for the position without any outside solicitation and that this is a new position so the company has no hiring history.

Based on the record, the director denied the petition, finding 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 noted the change in job title in response to the RFE and reclassified the position as an "Aircraft and Avionics Equipment Mechanics and Technicians" position.

On appeal, counsel asserts that the director erred in reclassifying the position. Counsel states that although the job title changed in response to the RFE, the duties remained the same and therefore the classification should not change. Counsel asserts that the job duties submitted in response to the RFE support the conclusion that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree or higher.

II. THE LAW

To meet its burden of proof on this issue, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

As the director noted, 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 evidence in the record of proceeding establishes that performance of the particular proffered position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in a specific specialty as the minimum for entry into the occupation, as required by the Act.

III. ANALYSIS

The petitioner stated on the Form I-129 that the beneficiary would be employed in an "Operations manager" position. When determining whether a position is a specialty occupation, we first look 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."

To make its determination as to whether the employment described by the petitioner qualifies as a specialty occupation, we turn first 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 the normal minimum requirement for entry into the particular position. In that regard, we recognize the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.²

The *Handbook* places the occupation of "operations manager" within its chapter on "Top Executives." The *Handbook* includes the following overview of an "operation manager" occupation in the subcategory of general and operations managers, as follows:

General and operations managers oversee operations that are too diverse and general to be classified into one area of management or administration. Responsibilities may include formulating policies, managing daily operations, and planning the use of materials and human resources. They make staff schedules, assign work, and ensure that projects are completed. In some organizations, the

² Our references to the *Handbook*, are references to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

tasks of chief executive officers may overlap with those of general and operations managers.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-2015 ed., "Top Executives," <http://www.bls.gov/ooh/management/top-executives.htm#tab-2> (last visited July 11, 2014).

In this matter, the petitioner's description of duties corresponds to the *Handbook's* report on the position of an operations manager in only the most general way. However, if in fact the proffered position is an operations manager as described in the *Handbook's* chapter on "Top Executives," the *Handbook* reports the following regarding the education and work experience needed for such a position:

Education

Many top executives have a bachelor's or master's degree in business administration or in an area related to their field of work. Top executives in the public sector often have a degree in business administration, public administration, law, or the liberal arts. Top executives of large corporations often have a master of business administration (MBA). College presidents and school superintendents typically have a doctoral degree in the field in which they originally taught or in education administration.

Work Experience in a Related Occupation

Many top executives advance within their own firm, moving up from lower level managerial or supervisory positions. However, other companies may prefer to hire qualified candidates from outside their organization. Top executives that are promoted from lower level positions may be able to substitute experience for education to move up in the company. For example, in industries such as retail trade or transportation, workers without a college degree may work their way up to higher levels within the company to become executives or general managers.

Chief executives typically need extensive managerial experience. Executives are also expected to have experience in the organization's area of specialty. Most general and operations managers hired from outside an organization need lower level supervisory or management experience in a related field.

Some general managers advance to higher level managerial or executive positions. Company training programs, executive development programs, and certification can often benefit managers or executives hoping to advance. Chief executive officers often become a member of the board of directors.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-2015 ed., "Top Executives," <http://www.bls.gov/ooh/management/top-executives.htm#tab-4> (last visited July 11, 2014).

Here, although the *Handbook* reports that many top executives have a bachelor's degree or master's degree in business administration or in an area related to their field of work, the *Handbook* also reports that other general degrees may also suffice. More significantly, the *Handbook* notes that many top executives are promoted from lower level positions and can substitute experience for education to move up in the company, some without a college degree. Thus, it is possible to obtain a position as a general or operations manager without a college degree by promotion from within the organization based upon performance alone. It is apparent from the *Handbook* that a baccalaureate or higher degree, in a specific specialty, is not the minimum requirement for entry into the offered position. Rather a wide range of educational disciplines is acceptable to perform the duties of a general and operations manager as described in the *Handbook*. Accordingly, the *Handbook's* report does not establish that an operations manager position requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act.

In this matter, we also reviewed the Occupational Information Network (O*NET) Summary Report for the occupation of "General and Operations Manager," SOC (ONET/OES) Code 11-1021.00, the occupation identified and attested to by the petitioner on the certified LCA. Again the summary of tasks described for this occupation by the O*NET corresponds only generally to the petitioner's description of duties for the position proffered here. However, as the petitioner attested that it will pay the beneficiary according to the wage levels established for this occupation, we will review the O*NET's report on this occupation. First, we note that O*NET assigns this occupation a Job Zone "Three" rating, which groups it among occupations of which most "occupations in this zone require training in vocational schools, related on-the-job experience, or an associate's degree." Thus, O*NET does not place this occupation in a category where even most of the occupations require a bachelor's degree. Second, even if O*NET reported that most of the occupations in this Job Zone required a bachelor's degree, which it does not, O*NET does not identify any specific disciplines as necessary to perform the duties of an operations manager. Accordingly, the O*NET information is also not probative of the proffered position being a specialty occupation.

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook* (or other objective, authoritative source) indicates that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. That is, the occupation identified by the petitioner on the Form I-129 and attested to on the LCA is not an occupation that requires 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 is insufficient to establish 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)(I).

Next, we review the record of proceeding regarding the first of the two alternative prongs set out at 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 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1102).

Here and as already 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 of at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference our previous discussion on the matter. The petitioner has not submitted advertisements, information from professional associations, letters or affidavits from firms or individuals in the industry, or other material to establish the industry standard.

Thus, based upon a complete review of the record, we find that the petitioner has not established that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is common to the petitioner's industry for positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. As the record is deficient in this regard, 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 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.

We reviewed the record in its entirety and 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. That is, the petitioner has not developed or established complexity or uniqueness as attributes of the proffered position (through the job duties, the petitioner's business operations or by any other means) that would require the services of a person with at least a bachelor's degree in a specific specialty, or its equivalent.

More specifically, the petitioner failed to demonstrate how the duties described 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. The record lacks sufficient probative evidence 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.

The lack of complexity or uniqueness is further evidenced by the LCA submitted by the petitioner in support of the instant petition. As referenced above, the petitioner designated the proffered position as a Level I (entry-level) position on the LCA. This designation is indicative of a comparatively low, entry-level position relative to others within the occupation.³ That is, 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 and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that she would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she would receive specific instructions on required tasks and expected results. Based upon the wage rate, the beneficiary is only required to have a basic understanding of the occupation.

Additionally, given the *Handbook's* indication that operations manager positions do not normally require at least a bachelor's degree in a specific specialty, or the equivalent, for entry, it is not credible that a position involving limited, if any, exercise of independent judgment, close supervision and monitoring, receipt of specific instructions on required tasks and expected results, and close review *would* contain such a requirement.⁴

³ The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is describes 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 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.

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.

⁴ It is noted that the petitioner would have been required to offer a significantly higher wage to the beneficiary in order to employ her at a Level II (qualified), a Level III (experienced), or a Level IV (fully competent) level. U.S. Dep't of Labor, Foreign Labor Certification Data Center, Online Wage Library, FLC Quick Search, "General and Operations Managers," <http://fldatacenter.com/OesQuickResults.aspx?code=11-1021&area=22744&year=13&source=1> (last visited July 11, 2014).

We observe that the petitioner has indicated that the beneficiary's educational background will assist her in carrying out the duties of the proffered position. However, the test to establish a position as a specialty occupation is not the skill set 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 sufficiently 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 this prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that an employer demonstrate that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. USCIS usually reviews the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position when analyzing this criterion. As the petitioner emphasizes that it has not previously employed anyone in this position, the petitioner cannot establish eligibility under this criterion.

However, for informational purposes, we note that to merit approval of the petition under this criterion, the record must establish that the imposition of a degree requirement by the petitioner (or, in this case, by the client) is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. Moreover, we note that while a petitioner (or client) 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").

The record of proceeding does not include evidence to satisfy 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.

The petitioner asserts that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. In response to the RFE, the petitioner submitted additional information regarding the duties of the position. The petitioner referred to the duties of developing a number of maintenance manuals for specific aircraft and facilities and of auditing logbooks for maintenance quality assurance, among other duties.

On appeal, counsel for the petitioner, when objecting to the director's reclassification of the proffered position, asserts that the proffered position is even more complex than a maintenance supervisor, a position that typically requires at least ten years of work experience as a maintenance technician. Counsel notes that the individual in the proffered position will not directly supervise mechanics and technicians but will develop the maintenance plans that technicians will follow. Counsel claims that it is the development of the maintenance plans that is the higher-level skill acquired which can only be attained through a bachelor's degree in avionics or similar or equivalent combination of education and work experience. Counsel also notes the complexity of modern aircraft and safety standards and asserts that in conjunction with this complexity the expanded and detailed position description submitted in response to the RFE establishes that this is a specialized position. Counsel asserts that it is the nature of the specific duties, as set out in the RFE, which are so specialized and complex that satisfies this criterion.

We find, however, that in the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. We have reviewed the petitioner's response to the RFE and agree that the individual in the proffered position must be technically proficient in developing maintenance plans and programs. However, the petitioner in this matter has not explained how or why the development of maintenance plans and programs, and auditing logbooks and facilities requires a specific course of study resulting in a bachelor's degree, in aeronautical or aerospace engineering, or its equivalent. Although the petitioner's description of duties shows that the individual in the position must be technically proficient, the record does not include probative evidence establishing that the proffered position requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty, or its equivalent. The petitioner and counsel's conclusory claims to the contrary are insufficient to establish eligibility. 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) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Moreover, contrary to claims that the proffered position involves complex and specialized duties, the petitioner has designated the proffered position in the LCA as a low, entry-level position relative to others within the occupational category of "Operations Managers." Given that the LCA submitted in support of the petition is for a Level I wage, it must therefore be concluded that either (1) the position is a low-level, entry position relative to other operations manager and, thus, based on the findings of the *Handbook*, published by the Bureau of Labor Statistics, the proffered position is not a specialty occupation; or (2) the LCA does not correspond to the petition. In other words, even if it were determined that the proffered position requires at least a bachelor's degree in a

specific specialty or its equivalent, such that it would qualify as a specialty occupation, the petition could still not be approved due to the petitioner's failure to submit an LCA that corresponds to a Level IV wage-level position.⁵ Without further evidence, it is 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 substantially higher prevailing wage.⁶

Upon review of the record, we find that the petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. 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, or its equivalent. The petitioner has 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. 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.

⁵ While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the U.S. Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of 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.

⁶ 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."