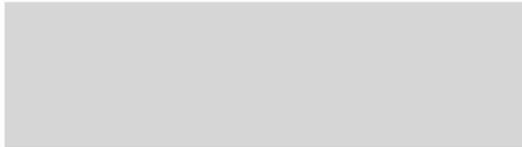




U.S. Citizenship  
and Immigration  
Services

(b)(6)



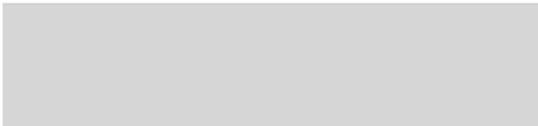
DATE: **AUG 05 2015**

PETITION RECEIPT #:

IN RE: Petitioner:   
Beneficiary:

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

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

## I. FACTUAL AND PROCEDURAL HISTORY

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as an educational service provider established in [REDACTED] with 7 employees. In order to employ the beneficiary in what it designates as an instructional coordinator, 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 Director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued a Request for Evidence (RFE). Thereafter, the petitioner responded to the Director's RFE. The Director denied the petition, finding that the petitioner has not established that it would employ the beneficiary in a specialty occupation position. On appeal, the petitioner asserts that the Director's basis for denial of the petition was erroneous and contends that it satisfied all evidentiary requirements.

The record of proceeding before us contains: (1) the Form I-129 and supporting documentation; (2) the Director's RFE; (3) the petitioner's response to the RFE; (4) the Director's notice of decision; and (5) the Notice of Appeal or Motion (Form I-290B) and supporting documentation. We reviewed the record in its entirety before issuing our decision.<sup>1</sup>

For the reasons that will be discussed below, we agree with the Director's decision that the petitioner has not established eligibility for the benefit sought. Accordingly, the Director's decision will not be disturbed. The appeal will be dismissed.

## II. SPECIALTY OCCUPATION

### A. The 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.

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

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.

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.

#### B. Proffered Position

The petitioner indicated on the Form I-129 that it seeks the beneficiary's services as an instructional coordinator to work on a full-time basis for an annual salary of \$35,131 per year.

In response to the request for evidence, the petitioner stated that the beneficiary will be responsible for the following duties:

- Observe teaching staff to evaluate performance, and to recommend changes that could improve teaching methods and skills. (30%)
- Plan and participate in teacher training workshop regarding new classroom procedures, instructional materials and equipment, and teaching aids. (20%)
- Observe students in the classroom and assess student acceptance and progress with curriculum and observe which teaching materials works best and why. (20%)
- Conduct research and prepare recommendations on curricula, instructional methods, and learning materials and the use of new or different techniques. (15%)
- Recommend, purchase of instructional materials, supplies, equipment, and visual aids designed to meet child's educational needs. (10%)

- Maintain currency on the latest teaching technology and other educational aids. (5%)

The petitioner also submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The LCA designation for the proffered position corresponds to the occupational classification of "Instructional Coordinators" – SOC (ONET/OES) Code 25-9031, at a Level I (entry-level) wage.

### C. Analysis

When determining whether a position is a specialty occupation, we must 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."

For H-1B approval, the petitioner must demonstrate a legitimate need for an employee exists and to substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition. It is incumbent upon the petitioner to demonstrate it has sufficient work to require the services of a person with at least a bachelor's degree in a specific specialty, or its equivalent, to perform duties at a level that requires the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty for the period specified in the petition. 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)).

The petitioner stated on the Form I-129 that it is an "educational service provider" established in 2010, and that the beneficiary would be employed in an instructional coordinator position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, 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.

We find that the record of proceeding lacks documentation regarding the petitioner's business activities and the actual work that the beneficiary will perform to sufficiently substantiate the claim that the petitioner has H-1B caliber work for the beneficiary for the period of employment requested in the petition.

Specifically, the petitioner asserts that it "operates a preschool nursery" and "provides early childhood education to children between the ages of 6 weeks to 12 years of age." In response to the RFE, the petitioner provided a printout from [REDACTED] website where it states that the petitioner offers classes to children to "nurture their creativity through art and music with a caring Japanese staff." The petitioner also stated that it has "distinct and institutionally embedded preschool characteristics – namely, and primarily, its instructional objective and early childhood educational curriculum." To explain the need to hire the beneficiary as an instructional coordinator, the petitioner claims that "it is the sophisticated awareness of the part of its clientele—a demanding set of upscale [REDACTED] parents" and the parents that send their child to its facility "are prepared to invest significantly in their child's early education."

However, the record is devoid of documentary evidence regarding its early childhood educational instruction and curriculum. The petitioner provided its "Rule Sheet" that outlines its policies and requirements. However, the document contains very limited information regarding its educational program. For example, the document states "we might pick a religious topic such as Easter, Christmas, Hanukah, etc. for weekly theme sometimes but we do not talk about God or the religion deeply" and "we sometimes take public transportations for our outside activities." However, no further information regarding its curriculum is provided and the petitioner did not submit other documents to support its claims.

Further, the petitioner provided inconsistent information regarding nature of its business. For example, contrary to its claim that it is a preschool, the petitioner refers to itself as a "daycare" throughout its "Rule Sheet." Further, on the Form I-129, the petitioner designated its NAICS<sup>2</sup> code as 611710, "Educational Support Services," which "comprises establishments primarily engaged in providing noninstructional services that support educational processes or systems." Moreover, the petitioner also submitted the [REDACTED] that certifies the petitioner to "provide childcare." 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

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<sup>2</sup> According to the U.S. Census Bureau, the North American Industry Classification System (NAICS) is used to classify business establishments according to type of economic activity and each establishment is classified to an industry according to the primary business activity taking place there. See <http://www.census.gov/eos/www/naics/> (last visited August 4, 2015).

objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

We also find that the petitioner's job description for the proffered position does not appear to correspond with the size and nature of its business. To determine whether the beneficiary's job duties are consistent with size and nature of its business, we look to the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*. We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>3</sup> As previously discussed, the petitioner asserted in the LCA that the proffered position falls within the occupational category "Instructional Coordinators."

The subchapter of the *Handbook* entitled "What Instructional Coordinators Do" states the following about this occupational category:

Instructional coordinators oversee school curriculums and teaching standards. They develop instructional material, coordinate its implementation with teachers and principals, and assess its effectiveness.

#### **Duties**

Instructional coordinators typically do the following:

- Develop and coordinate implementation of curriculum
- Plan, organize, and conduct teacher training conferences or workshops
- Observe and evaluate teachers' instruction and analyze student test data
- Assess and discuss implementation of education standards with school staff
- Review and recommend textbooks and other educational materials
- Recommend teaching techniques and the use of different or new technologies
- Develop procedures for teachers to implement curriculum
- Train teachers and other instructional staff in new content or programs
- Mentor or coach teachers to improve their skills

Instructional coordinators assess the effectiveness of curriculum and teaching techniques established by school boards, states, or federal regulations. For example, they may observe teachers in the classroom, review student test data, and interview school staff and principals about curriculum. Based on their research, they may recommend changes in curricula to school boards. They also may recommend that teachers use different teaching techniques that can help students learn.

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<sup>3</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet at <http://www.bls.gov/ooh/>. Our references to the *Handbook* are to the 2014-2015 edition available online.

Some instructional coordinators plan and conduct training for teachers related to teaching methods or the use of computers or tablets. For example, when a school district introduces new learning standards, coordinators explain the new standards to teachers and demonstrate effective teaching methods to achieve them.

Instructional coordinators, also known as *curriculum specialists*, *instructional coaches*, or *assistant superintendents of instruction*, may specialize in particular grade levels, such as elementary or high school, or specific subjects, such as language arts or math. Instructional coordinators in elementary and secondary schools may also focus on special education, English as a second language, or gifted-and-talented programs. Some coordinators provide educational support services, such as textbook or standardized test assessment and development.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Instructional Coordinators, on the Internet at <http://www.bls.gov/ooh/education-training-and-library/instructional-coordinators.htm#tab-2> (last visited August 4, 2015).

Specifically, we note that the record contains inconsistent information regarding number of its employees. The petitioner indicated on the Form I-129 that it has 7 employees with a gross income of \$235,000. However, in response to the RFE, the petitioner provided an organization chart, which indicates that it has 15 employees. Further, the above mentioned license certifies the petitioner to provide child care for "12 children, ages 6 weeks to 12 years, AND 4 additional school-aged children." While the petitioner does not provide information regarding the number of children or their age, it appears that the petitioner is licensed to accommodate only 16 children at maximum.

Upon review of the submitted job duties and the documentation on record, the petitioner does not explain how the beneficiary will perform the claimed duties. While the petitioner's job description appears to be consistent with the *Handbook*, we note that the evidence in the record does not adequately convey the substantive work that the beneficiary will perform within the petitioner's business operations. For example, while the petitioner claims that 20% of beneficiary's duties consist of planning and participating in teacher training workshops regarding new classroom procedures, as mentioned, the petitioner is licensed to accommodate 16 children at maximum and there is no information in the record on whether they have separate classrooms available. Further, while the petitioner claims that 30% of the beneficiary's duties consist of observing teaching staff to evaluate performance, the petitioner did not submit any information or documentation regarding its curriculum and teaching standards. The petitioner also stated that the beneficiary will assess student acceptance and progress with curriculum but the petitioner did not provide sufficient information regarding its the curriculum besides its brief reference to art and music. The petitioner also did not explain what types of instructional methods are utilized on a daily basis.

We note that it is reasonable to assume that the size of an employer's business has or could have an impact on the claimed duties of a particular position. See *EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v. Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). Thus, the size of a petitioner may be considered as a component of the nature of the petitioner's

business, as the size impacts upon the actual duties of a particular position. In this matter, the job description provided identifies duties of instructional coordinators, but the record lacks sufficient evidence to demonstrate that the duties as described will actually be performed by the beneficiary or that the petitioner's organization actually has the need for an individual to perform such duties.

In support of the H-1B petition, the petitioner submitted a letter from [REDACTED] Dean of Education and Kinesiology at [REDACTED]. [REDACTED] stated that he was asked to determine whether the industry standard for the position of Instructional Coordinator as described by the petitioner would require a minimum of a bachelor's degree in Education. [REDACTED] concluded that the proffered position and industry standard requires a bachelor's degree in Education to fill the position of instructional coordinator.

We reviewed the opinion letter in its entirety; however, the letter from [REDACTED] is not persuasive in establishing the proffered position qualifies as a specialty occupation position. It does not constitute probative evidence of the proffered position satisfying any criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Specifically, [REDACTED] provides a brief, general description of the petitioner's business activities; however, he does 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. For instance, there is no evidence that he visited the petitioner's premises, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. In fact, [REDACTED] made a distinction between a "daycare" program and a "preschool" program by stating that a "daycare is simple baby sitting" and a preschool is a "school setting with particular curricular aims, instructional techniques, assessment and reporting tools, and with a large responsibility for communicating student progress toward achievement of the curricular goals with parents." However, as mentioned, the petitioner has a New York State license to "provide child care" and can accommodate only up to 16 children maximum, including 4 school aged children. Yet [REDACTED] states that "this job is roughly analogous to the job of Assistant Principal." [REDACTED] also states that "other schools typically hire only individuals with college degrees for the position of Kindergarten Teacher." However, there is no information in the record that the proffered position is a kindergarten teacher position. Thus, it appears that [REDACTED] does not have accurate information regarding the petitioner's business activities.

There is also no indication that the petitioner advised [REDACTED] that it characterized the proffered position as a low, entry-level instructional coordinator position. In accordance with the relevant DOL explanatory information on wage levels, a Level I position is indicative that, relative to other positions falling under the occupational category, the beneficiary is expected to only have a basic understanding of the occupation. The wage-rate indicates that the beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results. It appears that [REDACTED] would have

found this information relevant for his opinion letter. Moreover, without this information, the petitioner has not demonstrated that [REDACTED] possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately determine parallel positions based upon the job duties and responsibilities.

[REDACTED] does not provide a substantive, analytical basis for his opinion and ultimate conclusion. His opinion does not relate his 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. He has not provided sufficient facts that would support the assertion that the proffered position requires at least a bachelor's degree in a specific specialty (or its equivalent).

In summary, and for each and all of the reasons discussed above, the opinion letter rendered by [REDACTED] is not probative evidence to establish the proffered position qualifies as a specialty occupation. The conclusions reached by [REDACTED] lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which he reached such conclusions. Further, the opinion is not in accord with other information in the record.

As such, neither [REDACTED] findings nor his ultimate conclusions are worthy of deference, and his opinion letter is not probative evidence towards satisfying any criterion of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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).

The petitioner did not provide sufficient evidence of its operations to show that the position offered to the beneficiary will complete duties as an instructional coordinator. The petitioner did not submit sufficient evidence regarding the proffered position in order for us to make an assessment of whether the proffered position qualifies as a specialty occupation. Indeed, it is not sufficiently clear what the beneficiary will be doing for the petitioner. Given that the proffered position does not appear to fall within this occupational category, and that the petitioner has not provided sufficient evidence to establish that the proffered position falls within this category, it cannot be found that the proffered position qualifies as a specialty occupation. 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. 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

We also find that the record did not establish relative complexity, specialization and/or uniqueness as distinguishing aspects of either the proposed duties or the position that they are said to comprise. As evident in the job description quoted above, the record of proceeding presents the duties comprising the proffered position in terms of relatively abstract and generalized functions. More specifically, they lack sufficient detail and concrete explanation to establish the substantive nature of the work and associated applications of specialized knowledge that their actual performance would require within the context of

the petitioner's particular business operations. The record does not clarify the substantive work and associated applications of specialized knowledge that would be involved in the referenced duty. Also, the petitioner does not provide substantive information with regard to the particular work, methodologies, and applications of knowledge that would be required for the percentage-assigned duties.

The record's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

As the petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), 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.<sup>4</sup>

### III. CONCLUSION

The evidence of record fails to establish that the proffered position is a specialty occupation. Accordingly, the petition will be denied.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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

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<sup>4</sup> As the grounds discussed above preclude approval of the petition, we will not address additional issues and deficiencies that we observe in the record of proceeding.