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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
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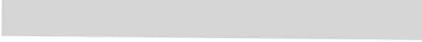


U.S. Citizenship
and Immigration
Services



DATE: **AUG 27 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) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

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

I. PROCEDURAL BACKGROUND

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner describes itself as a three-employee "Franchise restaurant headquarters" established in [REDACTED]. In order to employ the beneficiary in what it designates as a full-time "Interior Designer" 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 Director denied the petition, finding that the evidence of record did not establish that the proffered position constitutes a specialty occupation. The petitioner now files this appeal, and supplements the record with additional evidence.

We base our decision upon our review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the Director's decision denying the petition; and (5) the petitioner's appeal and submissions on appeal.

As will be discussed below, we find that the evidence of record is insufficient to establish that the proffered position constitutes a specialty occupation. Accordingly, the appeal will be dismissed, and the petition will be denied.¹

II. THE PROFFERED POSITION

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position corresponds to Standard Occupational Classification (SOC) code and occupation title 27-1025, Interior Designers, from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I position.

In a letter dated August 29, 2014, the petitioner explained that it is a wholly-owned subsidiary of [REDACTED], a large supermarket chain corporation in Japan. The petitioner further explained that it was established for the purpose of overseeing, administering, managing, controlling, and developing the entire [REDACTED] brand of restaurants to be opened in the United States. The petitioner explained that the [REDACTED] franchise operations will initially be established in New York and then eventually throughout the country. The petitioner stated that it "will be responsible for negotiating and coordinating the construction, design, and franchise maintenance/compliance of our new stores going forward."

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

Regarding the proffered position, the petitioner explained that the beneficiary is being offered the position of interior designer, whose "general job duties are to coordinate, plan, maintain, confirm, advise, design, and consult on behalf of [the petitioner] to ensure that all franchise operations are designed, run, and maintained according to our stringent standards of quality and visual appearance." The petitioner listed the specific job duties of the proffered position as follows:

- Negotiate with, coordinate and oversee local design companies and contractors to facilitate the interior designs suitable for each location
- Design the overall floor plans for the restaurants
- Plan, design, and furnish each restaurant considering space limitations and other factors
- Advise parent company in Japan on interior design factors, such as space planning, layout and utilization of furnishings and equipment, color schemes and color coordination
- Select, design and purchase furnishings, art works and accessories
- Advise on and oversee fabrication, installation and arrangement of carpeting, fixtures, accessories, draperies, paint and wall covering, artwork, furniture and related items; and
- Prepare final plans and create a timeline and estimate project costs

With respect to the minimum educational requirement for the proffered position, the petitioner stated that "[d]ue to the complex nature of the duties to be performed by our Interior Designer, the position requires the incumbent to possess at minimum a Bachelor's degree in Interior Design, Interior Architecture or a related discipline."

In the petitioner's letter dated November 6, 2014 submitted in response to the service center's RFE, the petitioner explained that it is attempting to create "classic Japanese restaurants" in which the interior design elements are essential "to enhance the 'Japanese feel' we want our customers to literally be wrapped in while they dine at our establishments." The petitioner further elaborated in its appeal brief that it is seeking to develop and open a series of Japanese restaurants and a hotel offering "Japanese taste and hospitality . . . in the true Japanese atmosphere, with the spirit of 'omotenashi (spirit of Japanese hospitality).'" For these reasons, the petitioner requires someone "who understands Japanese cultures and skills to present Japanese culture for the US people to digest easily." The petitioner further explained that the beneficiary, who is a bilingual Japanese native, possesses the "appropriate skill sets" the petitioner is seeking.

III. SPECIALTY OCCUPATION

A. Legal Framework

To meet the petitioner's burden of proof with regard to the proffered position's classification as an H-1B specialty occupation, 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 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. Analysis

Upon review, we find the evidence of record insufficient to establish that the proffered position is a specialty occupation that satisfies any of the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

A baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position

We will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is satisfied by establishing that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position that is the subject of the petition.

We recognize the Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² In pertinent part, the *Handbook* states the following with regard to the educational requirements necessary for entrance into the interior designers occupational group:

How to Become an Interior Designer

Interior designers usually need a bachelor's degree with a focus on interior design.

Education

A bachelor's degree is usually required, as are classes in interior design, drawing, and computer-aided design (CAD). A bachelor's degree in any field is acceptable, and interior design programs are available at the associate's-, bachelor's-, and master's-degree levels.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Interior Designers," <http://www.bls.gov/ooh/arts-and-design/interior-designers.htm#tab-4> (last visited Aug. 17, 2015).

The *Handbook* does not support a finding that a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. In particular, the *Handbook* specifically states that "[a] bachelor's degree in any field is acceptable," and that interior design programs are available at the associate's-degree level. *Id.* While the *Handbook* states that a bachelor's degree with a "focus on interior design" and "classes in interior design, drawing, and computer-aided design" are usually needed, it is not evident whether a "focus" on or a few "classes" in interior design are equivalent to a bachelor's degree specifically in the field of interior design or a related field. *Id.*

When reviewing the *Handbook*, it also must be noted that the petitioner designated the proffered position as a Level I (entry level) position on the LCA. The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is described as follows:

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

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.

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

Thus, in designating the proffered position at a Level I wage, the petitioner has indicated that the proffered position is a comparatively low, entry-level position relative to others within the occupation. 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. As noted above, according to DOL guidance, a statement that the job offer is for a research fellow, worker in training or an internship is indicative that a Level I wage should be considered.

In certain instances, the *Handbook* is not determinative. When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the petitioner to provide persuasive evidence that the proffered position more likely than not satisfies this or one of the other three criteria, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other objective, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation.

In the petitioner's November 6, 2014 letter, the petitioner asserted that interior design is "basically a subset" of architecture and/or the arts, both of which are occupational fields specifically listed within the definition of "specialty occupation" at 8 C.F.R. § 214.2(h)(4)(ii). However, the petitioner did not further explain or cite to any authority to support its assertion that interior design

is a "subset" of architecture and/or the arts.³ 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'l Comm'r 1972)).

Although the petitioner has not claimed that the proffered position requires a license as a "certified interior designer," we have nevertheless reviewed the State of New York's licensure requirements for certification as an interior designer. In pertinent part, Title VIII, Article 161, Section 8305 of New York State Education Law states that "[t]o qualify for certification to use the title 'certified interior designer', an applicant shall . . . have received at least seven years of professional training consisting of academic study and work experience relating to interior design and in accordance with the commissioner's regulations." The same regulation further specifies that "[t]hese seven years shall contain at least two but not more than five years of post secondary education, including an associate degree or the equivalent, in an approved program of interior design." As New York law requires only a minimum of an associate's degree for licensure as a certified interior design, we cannot find that the proffered position – for which the petitioner does not claim requires a license as a certified interior designer – normally requires a minimum of a baccalaureate or higher degree in a specific specialty, or its equivalent.

The *Handbook* does not support the claim that the occupational category of interior designers is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent. Even if it did, the record lacks sufficient evidence to support a finding that the particular position proffered here, an entry-level interior designer position (as indicated on the LCA), would normally have such a minimum, specialty degree requirement or its equivalent. The duties and requirements of the position as described in the record of proceeding do not indicate that this particular position proffered by the petitioner 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 has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

*The requirement of a baccalaureate or higher degree in a specific specialty,
or its equivalent, is common to the industry in parallel
positions among similar organizations*

Next, we will review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

³ For instance, the *Handbook* lists "Architects" as a separate occupational group from "Interior Designers." See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Architects," <http://www.bls.gov/ooh/architecture-and-engineering/architects.htm#tab-1> (last visited Aug. 17, 2015).

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Here and as already discussed, the evidence does not demonstrate that the proffered position is one for which the *Handbook* or another authoritative source reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Nor are there submissions from professional associations, firms, or individuals in the petitioner's industry.

The petitioner stated that it is "general industry standard" and "standard in our industry" to require Interior Designers to have a minimum of a bachelor's degree in interior architecture or a related field. However, the petitioner did not submit evidence to support its assertion concerning industry standards. As previously stated, the petitioner has not submitted documentation from companies or individuals in the industry to support the petition. Again, 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. at 165.

The evidence of record is thus insufficient to satisfy the first alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The particular position is so complex or unique that it can be performed only by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent

The evidence of record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." A review of the record of proceeding indicates that the petitioner has not credibly demonstrated that the duties the beneficiary will be responsible for or perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty, or its equivalent. The petitioner has indicated that the beneficiary's educational background will assist her in carrying out the duties of the proffered position. In particular, the petitioner listed the courses completed by the beneficiary "which are directly relevant to the position offered." 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 qualifies as a specialty occupation.

Even when considering the petitioner's descriptions of the proffered position's duties, the evidence of record does not establish why a few related courses or industry experience alone is insufficient

preparation for the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the position, the petitioner has not demonstrated how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position. The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. As noted above, the petitioner attested on the submitted LCA that the wage level for the proffered position is a Level I (entry) wage. Such a wage level which only requires a basic understanding of the occupation; the performance of routine tasks that require limited, if any, exercise of judgment; close supervision and work closely monitored and reviewed for accuracy; and the receipt of specific instructions on required tasks and expected results, is contrary to a position that requires the performance of complex duties.⁴

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for such positions, including degrees not in a specific specialty, and that some positions may require only an associate's degree or experience. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the evidence of record does not demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

⁴ The issue here is that 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, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), an 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 consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

The employer normally requires a baccalaureate or higher degree in a specific specialty, or its equivalent, for the position

We turn next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. To this end, we usually review the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position. In addition, the petitioner may submit any other documentation it considers relevant to this criterion of the regulations.

With respect to this criterion, the petitioner indicates that it has never previously hired for the proffered position. Specifically, the petitioner acknowledged that the beneficiary will be the petitioner's "first Interior Designer position." 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.

The petitioner also certified that it "will always require" at least a minimum of a bachelor's degree in interior design, interior architecture, or a related discipline, for all of its future interior designer positions that it may hire. However, the petitioner's assurances regarding its future hiring practices are insufficient to establish eligibility under this criterion. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the petitioner becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

Moreover, even though the petitioner asserts that the proffered position does and will always require a specific degree, the petitioner's statements alone, without corroborating evidence, cannot establish the position as a specialty occupation. USCIS must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F.3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty, or its equivalent, as the minimum for entry into the occupation as required by section 214(i)(1) of the Act. According to the Court in *Defensor*, "To interpret the regulations any other way would lead to an absurd result." *Id.* at 388. If USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position – and without consideration of how a beneficiary is to be specifically employed – then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or

higher degrees. *See id.*

As the record of proceeding does not demonstrate that the petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the proffered position, it does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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 in a specific specialty, or its equivalent

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. Again, relative specialization and complexity have not been sufficiently developed by the petitioner so as to differentiate the proffered position as more specialized and complex than interior designer positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent.

Here, the petitioner repeatedly emphasizes the "special" and "complex" nature of the proffered duties. For instance, the petitioner states on appeal that the proffered position requires someone "who understands Japanese cultures and skills to present Japanese culture for the US people to digest easily." The petitioner also discusses the "Japanese atmosphere, with the spirit of 'omotenashi (spirit of Japanese hospitality)'" that the petitioner is striving to create in its establishments. The petitioner also references the beneficiary's prior work experience in the Japanese hotel industry and the fact that she is a bilingual Japanese native. However, the petitioner has not explained and documented how a bachelor's degree in or related to interior design would provide the necessary knowledge and understanding of Japanese culture and language required to perform the proffered duties.

In addition, the petitioner accentuates the "immense" and "remarkable" level of responsibility of the proffered position. The petitioner also indicates that the beneficiary would have managerial duties, stating that she "would have to lead a group of architect, designer and interior designer in the future." However, as noted above, the LCA is certified for a Level I, entry-level, position. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that this is for beginning level employees who have only a basic understanding of the occupation and perform tasks requiring limited, if any, exercise of judgment. This characterization of the position and the claimed duties, responsibilities and requirements as described in the record of proceeding is inconsistent with the wage-rate element of the LCA selected by the petitioner, which is indicative of a comparatively low, entry-level position relative to others within the same occupation.

The evidence in the record of proceeding does not establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the petitioner has not satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed, and the petition will be denied.

IV. CONCLUSION AND ORDER

Based upon a complete review of the record of proceeding, we find that the evidence does not establish that the proffered position, as described, more likely than not constitutes a specialty occupation. Accordingly, the appeal will be dismissed and 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.