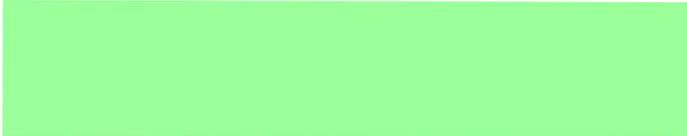


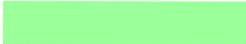
(b)(6)

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



U.S. Citizenship
and Immigration
Services

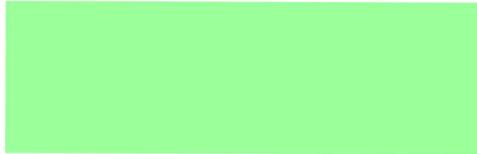


DATE: FEB 25 2015 OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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:

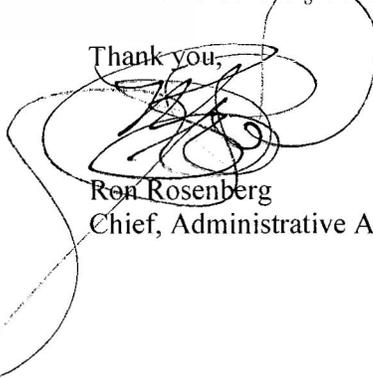


INSTRUCTIONS:

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,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center 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.

I. FACTUAL AND PROCEDURAL HISTORY

On the Form I-129 (Petition for a Nonimmigrant Worker), the petitioner describes itself as an information technology development and software services business, with four employees, that was established in [REDACTED]. In order to employ the beneficiary in what it designates as an accountant 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 petitioner did not establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. 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 request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B (Notice of Appeal or Motion) and supporting materials. We reviewed the record in its entirety before issuing our decision.

For the reasons that will be discussed below, we agree with the director 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, and the petition will be denied.

II. SPECIALTY OCCUPATION

The issue on appeal is whether the petitioner provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

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.

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. The Job Duties for the Proffered Position

To ascertain the intent of a petitioner, USCIS must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

Thus, a crucial aspect of this matter is whether the petitioner has adequately described the duties of the proffered position, such that USCIS may discern the nature of the position and whether the position indeed requires the theoretical and practical application of a body of highly specialized knowledge, and 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.

In the petition, the petitioner indicated that it is seeking the beneficiary's services in a position it designates as a full-time accountant. In the March 28, 2014 letter of support, the petitioner stated the following regarding the proffered position:

The job to be performed by the beneficiary is to analyze financial information and prepare financial reports to determine or maintain record of assets, liabilities, profit and loss, tax liability, or other financial activities within an organization. As an Accountant, beneficiary will be required to perform the following duties:

- Analyze operations, trends, costs, revenues, financial commitments, and obligations incurred, to project future revenues and expenses, using computer.
- Develop, maintain, and analyze budgets, and prepare periodic reports comparing budgeted costs to actual costs.
- Analyze records of financial transactions to determine accuracy and completeness of entries, using computer.
- Prepare balance sheet, profit and loss statement, amortization and depreciation schedules, and other financial reports, using calculator or computer.
- Report finances of establishment to management, and advice management about resource utilization, tax strategies, and assumptions underlying budget forecasts.
- Develop implement, modify, and document budgeting, cost, general, property, and tax accounting systems.
- Predict revenues and expenditures, and submit reports to management.
- Compute taxes owed, ensure compliance with tax payment, reporting, and other tax requirements, and represent establishment before taxing authority.
- Survey establishment operations to ascertain accounting needs.
- Establish table of accounts, and assign entries to proper accounts.
- Audit contracts, and prepare reports to substantiate transactions prior to settlement.
- Appraise, evaluate, and inventory real property and equipment, and record description, value, location, and other information.
- Adapt accounting and record keeping functions to current technology of computerized accounting systems.

We observe that the description of the proffered position, as stated by the petitioner in the letter of support, is recited verbatim for the general occupational category "Accountants" – Code 21114A from the *Dictionary of Occupational Titles (DOT)*.¹ The petitioner did not cite to or otherwise reference *DOT* as the actual source of the duties.²

¹ The *Dictionary of Occupational Titles* lists the following definition and tasks as pertaining to the occupational category Accountants – Code 21114A:

DEFINITION: Analyze financial information and prepare financial reports to determine or maintain record of assets, liabilities, profit and loss, tax liability, or other financial activities within an organization. Exclude auditors.

* * *

1. Analyzes operations, trends, costs, revenues, financial commitments, and obligations incurred, to project future revenues and expenses, using computer.

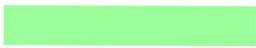
This type of description may be appropriate when defining the range of duties that may be performed within an occupational category, but it fails to adequately convey the substantive work that the beneficiary will perform within the petitioner's business operations, as well as the actual tasks the beneficiary will perform on a day-to-day basis. Accordingly, it generally cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in the context of the petitioner's business activities, as well as

2. Develops, maintains, and analyzes budgets, and prepares periodic reports comparing budgeted costs to actual costs.
3. Analyzes records of financial transactions to determine accuracy and completeness of entries, using computer.
4. Prepares balance sheet, profit and loss statement, amortization and depreciation schedules, and other financial reports, using calculator or computer.
5. Reports finances of establishment to management, and advises management about resource utilization, tax strategies, and assumptions underlying budget forecasts.
6. Develops, implements, modifies, and documents budgeting, cost, general, property, and tax accounting systems.
7. Predicts revenues and expenditures, and submits reports to management.
8. Computes taxes owed, ensures compliance with tax payment, reporting, and other tax requirements, and represents establishment before taxing authority.
9. Surveys establishment operations to ascertain accounting needs.
10. Establishes table of accounts, and assigns entries to proper accounts.
11. Audits contracts, and prepares reports to substantiate transactions prior to settlement.
12. Prepares forms and manuals for workers performing accounting and bookkeeping tasks.
13. Appraises, evaluates, and inventories real property and equipment, and records description, value, location, and other information.
14. Adapts accounting and record keeping functions to current technology of computerized accounting systems.
15. Directs activities of workers performing accounting and bookkeeping tasks.

The description can be found at the following Internet website: <http://www.occupationalinfo.org/onet/21114a.html>.

² In a letter dated August 14, 2014 (submitted in response to the RFE), the petitioner resubmitted this job description. This description is also recited by [REDACTED] in his opinion letter. Further, in the appeal the petitioner again provided these duties as its own. We observe that the petitioner provided an undated chart in response to the RFE with the same description, as well as some new "specific job duties," which we reviewed and considered. However, as the petitioner has submitted the *DOT* description as its own to USCIS multiple times, it appears that it is primarily relying upon this description in this matter.

We note that the petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).



demonstrate a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition.

The proposed duties as provided in the support letter do not provide a sufficient factual basis for conveying the substantive matters that would engage the beneficiary in the performance of the proffered position for the entire period requested. Moreover, the job description fails to communicate (1) the actual work that the beneficiary would perform on a day-to-day basis; (2) the complexity, uniqueness and/or specialization of the tasks; and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty or its equivalent.

Further, it is reasonable to assume that the size of an employer's business has or could have an impact on the 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 duties of a particular position. In matters where a petitioner's operations are relatively small, we review the record for evidence that its operations, are, nevertheless, of sufficient complexity to indicate that it would employ the beneficiary in an H-1B position. Additionally, when a petitioner employs relatively few people, it may be necessary for the petitioner to establish how the beneficiary will be relieved from performing non-qualifying duties. In the instant case, the petitioner stated on the Form I-129 that it has four employees. In response to the RFE, the petitioner submitted an organizational chart, but it did not address how the beneficiary would be relieved from performing non-qualifying duties nor did it provide any further information regarding the duties and responsibilities of the other employees to demonstrate how the beneficiary would be relieved from performing non-qualifying duties.

C. The Requirements for the Proffered Position

When determining whether a proffered position qualifies as a specialty occupation, the applicable statutory and regulatory provisions must be read together. *See* 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) and (iii)(A). Accordingly, the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) is interpreted 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 at 147 (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position").

Here, although the petitioner asserted that the position qualifies as a specialty occupation in the initial letter of support, it must be noted that the petitioner did not identify any specific academic requirements for the proffered position. In response to the RFE, the petitioner claimed that its position qualifies a specialty occupation and further stated that the duties of the proffered position can only be performed by a person with a strong background in finance and accounting. Throughout the record, the petitioner claims that the beneficiary is qualified for the position. However, USCIS cannot determine if a particular job is a specialty occupation based on the qualifications of the beneficiary. A beneficiary's credentials to perform a particular job are relevant only when the job is first found to qualify as a specialty occupation. USCIS is required to follow

long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether an alien beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].") Here, the petitioner has not demonstrated that it requires at least a baccalaureate degree in a specific specialty, or its equivalent, for the proffered position.

D. Analysis

As discussed, the petitioner's job description provided in the letter of support recites the definition and tasks of the occupational category "Accountants" as stated in the *Dictionary of Occupational Titles*. This description does not establish the substantive nature of the work to be performed by the beneficiary within the petitioner's particular business operations and precludes a finding that the proffered position satisfies 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.

Accordingly, 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. Nevertheless, we will continue our evaluation and analysis of the evidence provided by the petitioner. To that end we will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position.

We recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³ The petitioner asserted in the Labor Condition Application (LCA) that the proffered position falls under the occupational category "Accountants and Auditors." The subchapter of the *Handbook* entitled "How to Become an Accountant or Auditor" states, in part, the following about this occupation:

Most accountants and auditors need at least a bachelor's degree in accounting or a related field. Certification within a specific field of accounting improves job

³ All of our references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>. We hereby incorporate into the record of proceeding the chapter of the *Handbook* regarding "Accountants and Auditors."

prospects. For example, many accountants become Certified Public Accountants (CPAs).

Education

Most accountant and auditor positions require at least a bachelor's degree in accounting or a related field. Some employers prefer to hire applicants who have a master's degree, either in accounting or in business administration with a concentration in accounting.

A few universities and colleges offer specialized programs, such as a bachelor's degree in internal auditing. In some cases, those with associate's degrees, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, get junior accounting positions and advance to accountant positions by showing their accounting skills on the job.

Many colleges help students gain practical experience through summer or part-time internships with public accounting or business firms.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Accountants and Auditors, on the Internet at <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-4> (last visited February 24, 2015).

When reviewing the *Handbook*, we must note that 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.⁴ 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

⁴ The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is described 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.

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. DOL guidance indicates that a Level I designation should be considered for positions in which the employee will serve as a research fellow, worker in training, or an intern.

The *Handbook* reports that certification may be advantageous or even required for some accountant positions. However, we note that there is no indication that the petitioner requires the beneficiary to have obtained the designation CPA, Certified Management Accountant (CMA) or any other professional designation to serve in the proffered position.

The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into this occupation. Rather, the occupation accommodates other paths for entry, including less than a bachelor's degree in a specific specialty. The *Handbook* reports that most accountants and auditors need at least a bachelor's degree in accounting or a related field. However, this statement does not support the view that any accountant job, within the wide spectrum of accountant positions, qualifies as a specialty occupation as "most" is not indicative that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.⁵ More specifically, "most" is not indicative that a position normally requires at least a bachelor's degree in a specific specialty, or its equivalent (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)), or that a position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)).

The *Handbook's* narrative states that some graduates from junior colleges or business or correspondence schools obtain junior accounting positions and advance to accountant positions by showing their accounting skills on the job. Accordingly, individuals who have less than a bachelor's degree in a specific specialty, or its equivalent, can obtain junior accounting positions and advance to accountant positions. Furthermore, the *Handbook* reports that bookkeepers and accounting clerks meeting education and experience requirements set by their employers can also advance to accountant positions by demonstrating their accounting skills on the job. The *Handbook* does not indicate that this education and experience must be the equivalent to at least a bachelor's

⁵ For instance, the first definition of "most" in *Webster's New College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of the positions need at least a bachelor's degree, it could be said that "most" of the positions need such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. (We note that the proffered position has been designated by the petitioner in the LCA as a low, entry-level position relative to others within the occupation.) Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States." Section 214(i)(1) of the Act.

degree in a specific specialty. The *Handbook* does not indicate that normally the minimum requirement for positions falling under this occupational category is at least a bachelor's degree in a specific specialty, or its equivalent.

The petitioner asserts that the *Dictionary of Occupational Titles* classifies the occupational category "Cost Accountants" – Code 160.162.026 as a professional position.⁶ We note that *DOT* was last updated in 1991 (approximately 23 years prior to the submission of the H-1B petition) and has been superseded by O*NET.⁷ The chronological element of this resource materially diminishes its evidentiary value as an indication of current practices in the industry and the petitioner has failed to establish how this material is relevant to this proceeding. That is, the petitioner has not established the *DOT's* relevancy here to establish the current educational requirements for entry into the occupation.

Furthermore, the petitioner references the regulation at 8 C.F.R. § 204.5 (which describes the required evidence to be submitted on behalf of "professionals") and claims that it is relevant here. Importantly, the referenced section is for immigrant petitions. The issue before us is whether the petitioner's proffered position qualifies as a nonimmigrant H-1B specialty occupation and not whether it is a profession as that term is defined for immigrant petitions in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32) and 8 C.F.R. § 204.5(k)(2). Further, while a position may qualify as a profession as that term is defined in section 101(a)(32) of the Act (which does not require a degree in a specific specialty or its equivalent), it may not necessarily qualify as a specialty occupation unless it meets the definition of that term at section 214(i)(1) of the Act (which in this case, the petitioner has not established).

In response to the RFE, the petitioner submitted an O*NET OnLine Summary Report for the occupational category "Accountants." We reviewed the Summary Report in its entirety. The petitioner references the "Education" section of the report but appears to misunderstand the data. That is, we disagree with the petitioner's statement that the chart (of percentages scored by the survey of respondents) conveys and is a statistically accurate measure of the percentage of employers requiring a particular degree. We are aware of no such claim by the producers of the O*NET, and we note that the O*NET depicts the percentages as generated only by an unspecified number of *voluntary respondents* to questionnaires. Further, a critical feature of the criterion here is it is satisfied only if the petitioner establishes that the "particular position" - not a percentage of positions within the position's occupational group - normally requires the criterion's educational

⁶ Importantly, the petitioner has not established that the proffered position would fall under the occupational category "Cost Accountants" as described in *DOT*.

⁷ See, for instance, this note at the opening page of the U.S. Department of Labor Internet site at <http://www.oalj.dol.gov/libdot.htm> (last visited on February 24, 2015):

The Dictionary of Occupational Titles (DOT) was created by the Employment and Training Administration, and was last updated in 1991. It is included on the Office of Administrative Law Judges (OALJ) web site because it was a standard reference in several types of cases adjudicated by the OALJ, especially in older labor-related immigration cases. **The DOT, however, has been replaced by the O*NET.**

level. Moreover, this "Percentage of Respondents" upon which the petitioner relies does not indicate that any particular "education level" must be in a *specific specialty* (or its equivalent). It does not distinguish the respondents' positions within the occupation, such as by career level (e.g., entry-level, midlevel, senior-level). Thus, the O*NET "Percentage of Respondents" is not probative evidence that the particular position here proffered is one for which a bachelor's or higher degree in a specific specialty (or its equivalent) is normally the minimum requirement for entry.

The petitioner also references the section of the summary report entitled "Job Zone" and notes that accountants have a designation of "Four." This indicates that a position requires considerable preparation. It does not, however, demonstrate that a bachelor's degree in any *specific specialty* is required, and does not, therefore, demonstrate that a position so designated is in a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). The O*NET OnLine Help Center provides a discussion of the Job Zone Four designation and explains that this zone signifies only that most, but not all of the occupations within it, require a bachelor's degree.⁸ See O*NET OnLine Help Center at <http://www.onetonline.org/help/online/zones>. Further, the Help Center discussion confirms that a designation of Job Zone Four does not indicate any requirements for particular majors or academic concentrations.

Thus, the *Handbook* and O*NET Summary Report do not support the claim that the occupational category of accountants 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 (which it does not), the record lacks sufficient evidence to support a finding that the particular position proffered here (an entry-level accountant position relative to others within the occupation – as indicated on the LCA), would normally have such a minimum, specialty degree requirement, or its equivalent.

The fact that a person may be employed in a position designated by a petitioner as that of an accountant and may apply some accounting principles in the course of his or her job is not in itself sufficient to establish the position as one that qualifies as a specialty occupation.

In the instant case, 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).

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.

⁸ We hereby incorporate by reference our previous discussion on the term "most."

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

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* (or other objective, authoritative source), reports a standard, industry-wide requirement of at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter.

In response to the director's RFE, the petitioner submitted copies of job advertisements in support of the assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. However, upon review of the documents, we find that the petitioner's reliance on the job announcements is misplaced.

In the Form I-129, the petitioner stated that it is an information technology development and software services business established in [REDACTED] with four employees. In addition, the petitioner stated that its gross annual income is "\$3 Million /-." Although required on the petition, the petitioner did not provide its net annual income. The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 541519.⁹ This NAICS code is designated for "Other Computer Related Services." The U.S. Department of Commerce, Census Bureau website describes this NAICS code by stating the following:

This U.S. industry comprises establishments primarily engaged in providing computer related services (except custom programming, systems integration design, and facilities management services). Establishments providing computer disaster recovery services or software installation services are included in this industry.

U.S. Dep't of Commerce, U.S Census Bureau, 2012 NAICS Definition, 541519 – Other Computer Related Services, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited February 24, 2015).

For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the organization share the same general characteristics, such factors may include

⁹ 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 February 24, 2015).

information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). Notably, it is not sufficient for the petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

Upon review of the documentation, the petitioner did not 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.

For instance, the advertisements include a position with [REDACTED] (a leading provider of multi-channel customer experience and contact center solutions, with over 3,500 customers in 80 countries and more than 100 million customer interactions every day). Without further information, this advertisement appears to be for an organization that is not similar to the petitioner and the petitioner has not provided probative evidence to suggest otherwise. Furthermore, the petitioner submitted a job posting placed by a staffing firm [REDACTED] and advertisements for [REDACTED] for which little or no information regarding the employers is provided. Likewise, the advertisement for a position in [REDACTED] California does not contain any information regarding the employer except that it is "an innovative and fast growing internet technology company." Consequently, the record is devoid of sufficient information regarding the employers to conduct a legitimate comparison of the organizations to the petitioner. The petitioner did not supplement the record of proceeding to establish that the employers are similar to it. That is, the petitioner has not provided sufficient information regarding which aspects or traits (if any) it shares with the organizations.

Moreover, some of the advertisements do not appear to be for parallel positions. More specifically, the job posting by [REDACTED] is for a senior accountant and requires a degree in accounting and at least seven years of relevant experience. Similarly, the job posting for the accountant position in [REDACTED] California requires the candidates to possess a degree in accounting or finance and 3 to 4 years of accounting experience. The position with [REDACTED] is described as a "Senior General Ledger Accountant" who will collaborate with accounting and financing teams globally. The position requires a degree and 4+ years of experience (and a CPA is preferred). As previously discussed, the petitioner designated the proffered position as an entry-level position on the LCA. The advertised positions appear to be for more senior positions than the proffered position. More importantly, the petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed. The evidence does not establish that similar organizations in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.¹⁰

¹⁰ Although the size of the relevant study population is unknown, the petitioner does not demonstrate what statistically valid inferences, if any, can be drawn from these advertisements with regard to determining the

In support of the assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner also provided a letter from [REDACTED] in response to the RFE. The letter is dated July 24, 2014. In the letter, [REDACTED] claims that the proffered position is "a professional position and would normally be filled by a graduate with a minimum of a Bachelor's Degree in Accounting or a related area, or the equivalent."

[REDACTED] provided a summary of his education and experience and attached his curriculum vitae. He described his qualifications, including his educational credentials and professional experience, as well as provided a list of the publications he has written. However, based upon a complete review of [REDACTED] letter and curriculum vitae, he has not provided sufficient information regarding the basis of his claimed expertise on this particular issue. [REDACTED] claims that he is qualified to comment on the position of accountant because of the position he holds at [REDACTED] as well as his professional experience and academic training. Without further clarification, it is unclear how his education, training, skills or experience would translate to expertise or specialized knowledge regarding the current recruiting and hiring practices of information technology development and software services companies similar to the petitioner for accountant positions (or parallel positions).

[REDACTED] opinion letter and curriculum vitae do not cite specific instances in which his past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that he has published any work or conducted any research or studies pertinent to the educational requirements for accountants (or parallel positions) in the petitioner's industry for similar organizations, and no indication of recognition by professional organizations that he is an authority on those specific requirements. The opinion letter contains no evidence that it was based on scholarly research conducted by [REDACTED] in the specific area upon which he is opining. In reaching this determination, [REDACTED] provides no documentary support for his ultimate conclusion regarding the education required for the position (e.g., statistical surveys, authoritative industry or government publications, or professional studies). [REDACTED] asserts a general industry educational

common educational requirements for entry into parallel positions in similar companies. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error.")

As such, even if the job announcements supported the finding that the position of accountant for companies that are similar to the petitioner requires a bachelor's or higher degree in a specific specialty, or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty, or its equivalent, for entry into the occupation in the United States.

standard for organizations similar to the petitioner, without referencing any supporting authority or any empirical basis for the pronouncement.

Upon review of the opinion letter, there is no indication that [REDACTED] possesses any knowledge of the petitioner's proffered position beyond the job description.¹¹ The fact that he attributes a degree requirement to such a generalized treatment of the proffered position undermines the credibility of his opinion. [REDACTED] 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. 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. For instance, there is no evidence that [REDACTED] has visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. [REDACTED] provides general conclusory statements regarding accountant positions, but he does not provide a substantive, analytical basis for his opinion and ultimate conclusions.

Importantly, there is no indication that the petitioner advised [REDACTED] that it characterized the proffered position as a low, entry-level position (as indicated by the wage-level on the LCA). As previously discussed, 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 similar positions based upon job duties and responsibilities.

In summary, and for each and all of the reasons discussed above, we conclude that the advisory opinion rendered by [REDACTED] is not probative evidence to establish the proffered position 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. There is an inadequate factual foundation established to support the opinion and we find that the opinion is not in accord with other information in the record.

We may, in our discretion, use as advisory opinions or statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). As a reasonable exercise of its discretion, and for the reasons discussed above, the advisory opinion letter is not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, we hereby incorporate the above discussion and analysis regarding [REDACTED] opinion letter into its analyses of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

¹¹ We note again that the petitioner's job description is recited from the *Dictionary of Occupational Titles*.

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common 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. 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 will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

To begin with and as discussed previously, the petitioner has not credibly demonstrated exactly what the beneficiary will do on a day-to-day basis such that complexity or uniqueness can be determined. By reciting the job duties from the *Dictionary of Occupational Titles*, it appears, at best, that the beneficiary will perform routine accounting tasks. Furthermore, it must be noted that the record indicates that the petitioner uses an outside certified public accountant to prepare its federal taxes, property taxes, and provide payroll audit consulting.

In the instant case, the petitioner submitted documentation regarding its business operations, including its Forms 1099, brochures, organizational chart, a printout regarding its products and services, and quarterly taxes, corporate income tax return for 2012.¹² However, upon review of the record of proceeding, we find that the petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. That is, the petitioner has not demonstrated how the duties of the position as 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. For instance, while related courses may be beneficial to 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 particular position here.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, the LCA indicates a wage level based upon the occupational classification "Accountants and Auditors" at a Level I (entry level) wage, which is the lowest of four assignable wage levels. The wage level of the proffered position indicates that (relative to other positions falling under this occupational category) the beneficiary is only required to have a basic understanding of the occupation; that she 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.

¹² The petitioner's 2012 tax return states that its officers were compensated (line 7) a total of \$68,472 (one officer received \$26,987 and the other officer received \$28,088); no salaries or wages were paid (line 8); there were no labor costs (line 3 on Form 1125A); and that there were no employee benefit costs (line 18).

Without further evidence, it is simply not credible that the petitioner's proffered position is complex or unique in comparison to others within the occupation; as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage. For instance, 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."¹³

Therefore, the evidence of record does not establish that this position is significantly different from other positions such that it refutes the *Handbook's* information to the effect that a bachelor's degree in a specific specialty, or its equivalent, is not required for entry into the occupation in the United States. 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.

The petitioner claims that the beneficiary's 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 qualifies as a specialty occupation. The petitioner does not sufficiently explain or clarify 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, we find that the petitioner has failed to establish the proffered position as satisfying the second prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. To this end, we review the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position, and any other documentation submitted by a petitioner in support of this criterion of the regulations.

To merit approval of the petition under this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency in its prior recruiting and hiring for the position. Further, it should be noted that the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. While a petitioner may believe or otherwise assert that a proffered position requires a specific degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher

¹³ For additional information on wage levels, 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.

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* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

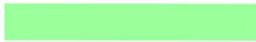
Moreover, to satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in 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.* at 388.

In this matter, on appeal, counsel stated that the "petitioner is hiring an Accountant for the first time." Upon review, the record is devoid of information to satisfy this criterion of the regulations. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

In support of the petition, the petitioner provided documentation regarding its business operations, including documentation previously outlined. We reviewed the record of proceeding and note that the petitioner has not provided sufficient probative evidence to satisfy this criterion of the regulations. In the instant case, relative specialization and complexity have not been developed by the petitioner as an aspect of the proffered position.

Moreover, we incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a low, entry-level position relative to others within the occupation. The petitioner designated the position as a Level I position (the lowest of four assignable wage-levels), which DOL indicates is appropriate for "beginning level employees who have only a basic understanding of the occupation." Without further evidence,



it is simply not credible that the petitioner's proffered position is one with specialized and complex duties compared to others within the occupation as such a position would likely be classified at a higher-level, such as a Level III (experienced) or IV (fully competent) position, requiring a substantially higher prevailing wage. As previously discussed, 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."

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, 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. We, therefore, conclude that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

III. CONCLUSION AND ORDER

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.