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U.S. Citizenship
and Immigration
Services

DATE: **MAR 20 2015**

OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont service center director denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the Vermont Service Center on January 3, 2014. On the Form I-129 visa petition, the petitioner describes itself as a fast food services business, with 20 employees, established in [REDACTED]. In order to continuously employ the beneficiary in what it designates as a director of operations, the petitioner seeks to classify him 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).

On May 29, 2014, the director denied the petition, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. The petitioner subsequently filed an appeal. On the Notice of Appeal of Motion (Form I-290B), Part 3, the petitioner checked Box B, indicating that it was filing an appeal and that a brief and/or evidence would be submitted within 30 days. However, we did not receive a brief and/or additional evidence within the allotted timeframe. Accordingly, the record of proceeding is deemed complete as currently constituted.

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 director's notice of decision; and, (5) the Form I-290B and supporting documentation. We reviewed the record in its entirety before issuing our decision.¹

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

I. FACTUAL AND PROCEDURAL HISTORY

The petitioner indicated on the Form I-129 and in supporting documentation that it seeks the beneficiary's services in a position titled "Director of Operations," to work on a full-time basis at a salary of \$73,000 per year.

The petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The LCA designation for the proffered position corresponds to the occupational classification of "Administrative Services Manager" – SOC (ONET/OES) Code 11-3011, at a Level I (entry level) wage.

In a letter of support, dated December 26, 2013, the petitioner stated that the beneficiary will be responsible for the following duties:

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

[The beneficiary] will continue to oversee and monitor operations of all the three restaurants to ensure they remains [sic] safe, secure, and well-maintained; direct & coordinate all the departments personnel; set goals and targets for all the departments; prepare and review operational reports and schedules to ensure accuracy and efficiency;

[The beneficiary] will continue to establish policies, procedures and methods to resolve customer complaints regarding food quality, service, behavior of staff, etc.

[The beneficiary] will continue to analyze internal processes and recommend and implement procedural and/or policy changes to improve operations from order supplies to final distribution of product & maintaining & safekeeping of records, etc.;

[The beneficiary] will continue to approve and allocate the budget for the supplies to all the restaurants; plan, administer and control budgets for contracts, equipment and supplies;

[The beneficiary] will continue to plan and allocate budget for payroll processing and review financial transactions to ensure that expenditures are authorized and budgeted;

[The beneficiary] will continue to oversee the renovation projects to improve efficiency and to ensure that facilities meet environmental, health, and security standards, and comply with government regulations;

[The beneficiary] will continue to hire and terminate managerial and administrative personnel as needed from time to time and will have full authority over the budget and all administrative operations with wide discretionary authority.

The petitioner added the following regarding the requirements to perform the duties of the position:

Clearly, the nature of the aforementioned duties and responsibilities are of an advanced and sophisticated nature, which could only be performed by an individual possessing at least a baccalaureate degree in Hospitality Management or related [field] coupled with experience. Certainly, an individual holding only a high school education would not be equipped to perform the stated duties.

The petitioner stated that the beneficiary's academic credentials were evaluated by Dr. [REDACTED], Professor of Marketing at [REDACTED] and was found to be the equivalent of a Bachelor's Degree in Hospitality Management from an accredited institution of higher education in the United States. The petitioner submitted copies of the beneficiary's degree, school

transcripts and certificates.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on February 3, 2014. The director, in part, requested that the petitioner provide evidence to establish that the proffered position qualifies as a specialty occupation, including evidence that a bachelor's degree in a specific field of study is required to perform the duties of the position. The director outlined some of the specific types of evidence that could be submitted.

In response, the petitioner provided the same job description and indicated that the director of operations is a "senior level position within the category of administrative service managers." The petitioner also stated that the "field of study requirement is based on the industry specific," and that "[w]e believe that the [*Handbook*] is not exhaustive and did not provide industry specific." Further, the petitioner stated that "[w]e submit that the minimum requirement for this position is based on our business operations and complex nature of job duties."

On May 29, 2014, the director denied the petition concluding that the proposed position does not qualify as a specialty occupation. On appeal, the petitioner states that the "holder of the proposed position of Director of Operations applies both theoretical and practical application of a body of highly specialized knowledge in Hospitality Management or related field."

II. SPECIALTY OCCUPATION

We will now address the director's determination that the proffered position is not a specialty occupation. Applying the preponderance of the evidence standard and based upon a complete review of the record of proceeding, we agree with the director and find that the evidence of record fails to establish that the position as described constitutes a specialty occupation.

A. Law

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 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. Analysis

We will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied by establishing that a baccalaureate or higher degree, or its equivalent, in a specific specialty 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 it addresses.² As noted above, the petitioner submitted an LCA in support of this position certified for a job offer falling within the "Administrative Services Manager" occupational category.

We reviewed the chapter of the *Handbook* titled "Administrative Services Managers" including the sections regarding the typical duties and requirements for this occupational category. However, as will now be discussed, 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 occupational group. Accordingly, the proffered position's inclusion in this occupational group would not be in itself sufficient to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

² The *Handbook*, which is available in printed form, may also be accessed online at <http://www.bls.gov/ooh>. The references to the *Handbook* are from the 2014-15 edition available online.

The subsection of the *Handbook* entitled "How to Become an Administrative Services Manager" states, in pertinent part, the following:

Educational requirements vary by the type of organization and the work they do. They must have related work experience.

Education

A high school diploma or a General Educational Development (GED) diploma is typically required for someone to become an administrative services manager. However, administrative services managers typically enter the occupation with a bachelor's degree. Those with a bachelor's degree typically study business, engineering, or facility management.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Administrative Services Managers," <http://www.bls.gov/ooh/management/administrative-services-managers.htm#tab-2> (last visited on March 4, 2015).

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. The *Handbook* indicates that the educational requirements for the occupational category vary by the type of organization and the work performed. According to this passage of the *Handbook*, employees in this occupation must have related work experience.

Further, the *Handbook* reports that a high school diploma or a General Educational Development (GED) diploma is typically required for an administrative services manager. Thus, the *Handbook* indicates that less than a bachelor's degree is acceptable for entry into this occupation. Moreover, the *Handbook* indicates that while some administrative services managers need at least a bachelor's degree, it continues by stating that employees study subjects in a range of fields—typically business, engineering, or facility management. The fact that only some employees in this occupation need a bachelor's degree (and that a range of disparate disciplines is acceptable) is not sufficient to establish that a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry.³

³ In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

In addition, the petitioner submitted an LCA certified for a job prospect with a wage-level I. 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 Level I wage rate is only appropriate for a position in which the beneficiary is required to have a basic understanding of the occupation and would be expected to perform routine tasks that require limited, if any, exercise of judgment. This wage rate also indicates that the beneficiary would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results.

When, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies the criterion, 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 authoritative sources) that supports a favorable finding with regard to this criterion. 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." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Upon review of the totality of the evidence in the entire record of proceeding, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that a requirement for at least a bachelor's

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

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

degree in a specific specialty, or its equivalent, is normally required for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the particular position that is the subject of this petition is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the petitioner has not satisfied 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 sharing all three characteristics of being (1) within the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

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

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports a standard industry-wide requirement for at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the petitioner did not submit any letters or affidavits from similar firms or individuals in the petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals." Thus, based upon a complete review of the record of proceeding, we find that the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, the evidence of record 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."

In support of its assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted various documents relating to its business including tax returns, photographs of the premises, and lease agreement. While the petitioner submitted documents regarding its business operations, the petitioner did not explain how the documents relate to the beneficiary's duties, and the evidence does not establish the relative complexity or uniqueness of the proffered position.

Further, upon review of the proffered duties, the record of proceeding presents the duties comprising the proffered position in terms of relatively abstract and generalized functions. More

specifically, they lack sufficient detail and concrete explanation to establish the substantive nature of the work and associated applications of specialized knowledge that their actual performance would require within the context of the petitioner's particular business operations. For example, the beneficiary will "establish policies, procedures and methods to resolve customer complaints"; "analyze internal processes"; "approve and allocate the budget for the supplies to all restaurants"; and, "plan and allocate budget for payroll processing and review financial transaction to ensure that expenditures are authorized and budgeted." The evidence of record contains neither substantive explanation nor documentation showing the substantive nature of the work and associated applications of specialized knowledge that would be involved in the referenced tasks.

Upon review, we find that the petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it may believe are so complex and unique. While a few related courses may be beneficial, or even required, in performing certain duties of the position, the petitioner has failed to demonstrate 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.⁵

The petitioner has indicated that the beneficiary's educational background and prior work experience will assist him in carrying out the duties of the proffered position. In response to the RFE, the petitioner asserts that the beneficiary "has completed no less than thirty years of bachelor's level of training and employment experience in management, hotel and restaurant management and related fields." 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. In the instant case, the petitioner has not established 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. The petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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 satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. Additionally, the record must establish that a petitioner's

⁵ Again, we note that the petitioner designated the proffered position on the LCA at a Level I wage level. This designation indicates that the proffered position is a low-level, entry position relative to others within the occupational category "Administrative Services Managers."

imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position.⁶

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 employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). Here, the petitioner did not provide evidence of its hiring history.

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).

Next, the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered position's 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 the specific specialty or its equivalent.

For context, we again refer the petitioner to the *Handbook* and the pertinent sections that we have quoted from it. The *Handbook's* information does not indicate that the performance requirements of the duties of Administrative Services Managers occupational group are usually associated with attainment of at least a bachelor's degree in a specific specialty.

As reflected in this decision's earlier comments and findings with regard to the proposed duties as presented in the record - which we here incorporate into the present analysis - the evidence of record does not establish the nature of the proposed duties as so specialized and complex that their performance would require knowledge usually associated with a particular level of education in a specific specialty. While the petition relates many and varied duties and functions that the beneficiary would have to perform, it does not show that even the aggregate of such duties is usually associated with a particular level of educational attainment in any specific specialty. Thus, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Additionally, we find that both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, by the submission of an LCA certified for a wage-level I, the petitioner effectively attests that the proposed duties are of relatively low complexity

⁶ Any such assertion would be undermined in this particular case by the fact that the petitioner's submission of an LCA certified for a Level I prevailing-wage signifies assessment of the proffered position as a comparatively low, entry-level position relative to others within the same occupation.

as compared to others within the same occupational category. This fact is materially inconsistent with the level of complexity required by this criterion. By virtue of this submission the petitioner effectively attested that the proffered position is a low-level, entry position relative to others within the occupation, and that, as clear by comparison with DOL's instructive comments about the next higher level (Level II), the proffered position did not even involve "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II).

For all of these reasons, the evidence in the record of proceeding fails to 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. Further, we do not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the proffered position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. Therefore, we need not address the beneficiary's qualifications.

III. CONCLUSION AND ORDER

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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