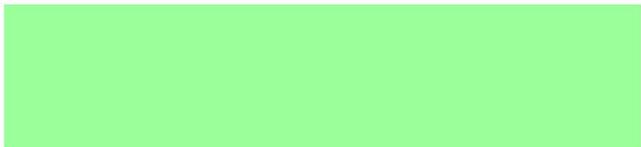
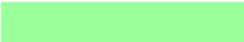


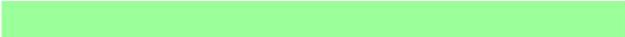


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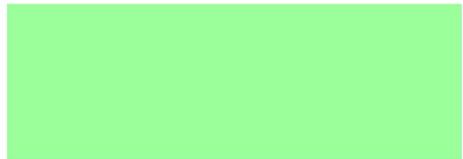


DATE: MAR 20 2015 OFFICE: VERMONT SERVICE CENTER FILE: 

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. PROCEDURAL HISTORY

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a management consultant firm that was established in [REDACTED]. In order to employ the beneficiary in what it designates on the Form I-129 as a "management technician" 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).¹

The director denied the petition, concluding 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 Notice of Appeal or Motion (Form I-290B) 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. THE PROFFERED POSITION

In the Form I-129, the petitioner indicated that it is seeking the beneficiary's services in a position it designates as a "management technician." In the March 18, 2014 unsigned letter of support, the petitioner stated that the beneficiary was currently participating in the Optional Practical Training (OPT) program with the petitioner. In the same letter, the petitioner provided the following information regarding the duties of the proffered position:²

[The beneficiary] is being hired as a Mathematical Technician, with a salary of

¹ In the instant case, the petitioner has provided inconsistent information regarding the job title of the proffered position. For example, in the Form I-129 petition, the petitioner referred to the proffered position as a "Management Technician." In the RFE, the director repeatedly referenced the proffered position by the job title "Management Technician" in accordance with the job title provided by the petitioner on the Form I-129. In the appeal, the petitioner claims that it made a typographical error on the Form I-129, and that the correct job title is "Mathematical Technician." No explanation, however, was provided by the petitioner for failing to notify USCIS of the error on the Form I-129 in the response to the RFE.

² This job description was also provided in the petitioner's response to the RFE and in its appeal brief.

\$42,000.00 per year for a full time position. . . . Her job entails data analysis, using formulas and programs, derived from our client records, reports, and charts, verify data accuracy, prepare reports and participate in reports and presentation based on his findings, maintain and update client and office records, and assist team with additional research as needed. Her background and education make her an excellent candidate for our position.

In the letter of support, the petitioner did not state that there were any particular academic requirements for the proffered position.³

III. LEGAL FRAMEWORK

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.

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,

³ The petitioner indicated that the beneficiary was in F-1 Optional Practical Training program when the petition was filed. In response to the RFE, the petitioner submitted an organizational chart indicating the beneficiary's job title is "Business Analyst" (under the heading "Pool of Consultants and Business Analysts"). The beneficiary's resume indicates under the heading "Work Experience" that she serves as a "Business Analyst II" for the petitioner "at the client organization, [REDACTED]". The petitioner states that the instant H-1B petition is for a new position as a "Mathematical Technician" who will work at its own office location. Thus, it appears that the organizational chart depicts the beneficiary's OPT position at the time the petition was filed, rather than the "new" role the beneficiary will perform if the visa petition is approved.

In response to the RFE, the petitioner submitted several job descriptions. We note, however, that none of the descriptions are for a management technician or for a mathematical technician. Further, none of the job duties correspond to the job description provided by the petitioner for the proffered position. While the printouts provide some insights into the duties of the petitioner's other employees, the petitioner has not established the relevancy of the documents to the proffered position.

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.

In ascertaining 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 proffered position, such that USCIS may discern the nature and duties 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.

IV. ANALYSIS

A. Labor Condition Application

The petitioner submitted a Labor Condition Application (LCA) in support of the instant petition that designated the proffered position under the occupational category of "Mathematical Technicians" – SOC (ONET/OES Code) 15-2091 at a Level I (entry) wage level. The prevailing wage source is listed in the LCA as the OFLC (Office of Foreign Labor Certification) Online Data Center.⁴ The LCA was certified on March 18, 2014 and signed by the petitioner on the same day. We note that

⁴ The Occupational Employment Statistics (OES) program produces employment and wage estimates for over 800 occupations. *See* Bureau of Labor Statistics, U.S. Department of Labor, on the Internet at <http://www.bls.gov/oes/>. The OES All Industries Database is available at the Foreign Labor Certification (OFLC) Data Center, which includes the Online Wage Library for prevailing wage determinations and the disclosure databases for the temporary and permanent programs. The Online Wage Library is accessible at <http://www.flcdatacenter.com/>.

by completing and submitting the LCA, and by signing the LCA, the petitioner attested that the information contained in the LCA was true and accurate.

In the appeal, however, the petitioner claimed that the most similar occupational category to the proffered position is that of a statistician. Specifically, the petitioner stated the following:

The most similar position is that of a Statistician, where a Masters Degree is required. Although the handbook does not specifically list Mathematical Technician, the Service should refer to the statistician listing on the handbook as the most reliable comparison to the proffered position, as the duties and requirements are identical. The Statisticians collect and analyze data in order to resolve problems, which is precisely what the duties are for the Beneficiary. Although the nomenclature of this position the position does not fit squarely with the Occupational Outlook Handbook, the duties associated with the position are identical to the Statistician position, which is in the handbook, and that position requires at least a Bachelor's degree. We have attached government description. of the Statistician position showing the identical duties as of a Mathematical Technician, job descriptions for a Mathematical Technician showing the same duties as a Statistician and requirement of a Bachelor degree.

The petitioner submitted printouts regarding the occupation category "Statisticians" from the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook* (hereinafter the *Handbook*), Occupation Information Network (O*NET) Online Summary Report, and the American Statistician Association. Notably, the petitioner did not provide an explanation for its previous asserting in the LCA that the proffered position falls under the occupational category of "Mathematical Technicians" but now on appeal claiming that "the duties and requirements are identical" to the occupational category "Statisticians."

When the duties of the proffered position involve more than one occupational category, DOL provides specific guidance for selecting the most relevant O*NET code classification. The "Prevailing Wage Determination Policy Guidance" states the following:

In determining the *nature of the job offer*, the first order is to review the requirements of the employer's job offer and determine the appropriate occupational classification. The O*NET description that corresponds to the employer's job offer shall be used to identify the appropriate occupational classification If the employer's job opportunity has worker requirements described in a combination of O*NET occupations, the [determiner] should default directly to the relevant O*NET-SOC occupational code for the highest paying occupation. For example, if the employer's job offer is for an engineer-pilot, the [determiner] shall use the education, skill and experience levels for the higher paying occupation when making the wage level determination.

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

Thus, if the petitioner believed its position was described as a combination of O*NET occupations, then according to DOL guidance the petitioner should have chosen the relevant occupational code for the highest paying occupation.

More specifically, the occupational category "Statisticians" - SOC (ONET/OES) code 15-2041 has a higher prevailing wage than the prevailing wage provided by the petitioner for the occupational category "Mathematical Technicians" - SOC (ONET/OES) code 15-2091 in the LCA. Accordingly, if the petitioner believed the nature of the proffered position was encompassed by the occupational categories "Statisticians" and "Mathematical Technicians," the petitioner should have designated the LCA with the higher paying occupation, in this case "Statisticians."

While the DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. The regulations state:

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the [LCA] is a specialty occupation . . . and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

20 C.F.R. § 655.705(b). Thus, USCIS is required to ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Further, USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(1). The petitioner must establish that the position offered to the beneficiary when the petition was filed merits H-1B classification. See generally *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements.⁵ See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). The petitioner must file an amended or new petition, with fee, with the service center to reflect any material changes in the terms and conditions of employment or the beneficiary's eligibility as specified in the original petition. 8 C.F.R. § 214.2(h)(2)(i)(E).

⁵ If a petitioner's intent changes with regard to a material term and condition of employment or the beneficiary's eligibility, an amended or new petition must be filed. To allow a petition to be amended in any other way would be contrary to the regulations. Taken to the extreme, a petitioner could then simply claim to offer what is essentially speculative employment when filing the petition only to "change its intent" after the fact, either before or after the H-1B petition has been adjudicated.

In the instant case, the petitioner designated the proffered position under the occupational category "Mathematical Technicians" on the LCA. On appeal, the petitioner claimed that the relevant occupational category was "Statisticians." This assertion, however, is not supported by the occupational classification designated by the petitioner in the LCA. Furthermore, as discussed, the petitioner's job description does not sufficiently describe the duties of the position to ascertain the actual day-to-day tasks of the proffered position.

We find it questionable that the petitioner waited until after the petition was filed to change the offered salary and occupational classification for the proffered position – rather than providing such information with the initial petition, and selecting the proper designation for the proffered position on the LCA in accordance with DOL guidance. Because the LCA was certified for the occupational category "Mathematical Technicians," the request by the petitioner to consider the original petition and LCA for a different occupational classification is, therefore, rejected.

B. 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, it must be noted that the petitioner did not identify any specific academic requirements for the proffered position in the initial petition. In response to the RFE, the petitioner stated that because of the technical services it provides, most of its positions require at a minimum a college degree.⁶ Throughout the record, the petitioner claims that the beneficiary is qualified for the position.

USCIS, however, 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].")

⁶ We also note that the petitioner submitted a letter from its counsel stating, "The position requires a B.S. Degree, and years of professional experience. . . . it is the industry norm that mathematical technicians have at least a four-year college degree." This statement does not indicate that a degree in a specific specialty, or its equivalent, is required for the proffered position in accordance with 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

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. Although a general-purpose bachelor's degree may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

C. The Beneficiary's Substantive Work

Furthermore, upon review of the job description, we note that the petitioner has not adequately conveyed 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. For example, the abstract level of information provided about the proffered position and its constituent duties is exemplified by the petitioner's claim that the beneficiary will "assist team with additional research as needed." The petitioner does not sufficiently define how this translates to specific duties and responsibilities as the term "assist" does not delineate the specific work the beneficiary will perform. The petitioner does not explain the beneficiary's role ("assist[ing]") and how such work will be conducted and/or applied within the scope of the petitioner's business operations and the proffered position.

The petitioner also claims that the beneficiary will "maintain and update client and office records." Notably, the petitioner does not demonstrate how the performance of this duty, as described in the record, would require the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent. According to the petitioner, the beneficiary will also "prepare reports and participate in reports and presentation based on [her] findings." Upon review, the statement regarding this task does not establish a necessary correlation between any dimension of the proffered position and a need for a particular level of education, or educational equivalency, in a body of highly specialized knowledge in a specific specialty. The petitioner also asserts that the beneficiary will be responsible for "verify[ing] data accuracy." It is not evident that this proposed duty, as described in this record of proceeding, merits recognition of the proffered position as a specialty occupation.

Moreover, the petitioner did not provide any information with regard to the order of importance and/or frequency of occurrence with which the beneficiary will perform the functions and tasks (e.g., regularly, periodically or at irregular intervals). As a result, the petitioner did not establish the primary and essential functions of the proffered position.⁷

⁷ Moreover, 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 eleven employees. In response to the RFE, the petitioner submitted an organizational chart and job descriptions for some of these

To the extent that the proposed duties are described by the petitioner, they do not provide a sufficient factual basis to persuasively support the claim that the work would require the theoretical and practical application of any particular educational level of highly specialized knowledge in a specific specialty directly related to the demands of the proffered position. In establishing a position qualifies as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in the context of its business activities, as well as 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. The job description does not 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.

The petitioner's job description does not establish the substantive nature of the work to be performed by the beneficiary within the petitioner's particular business operations. As a result, we are precluded from 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. The appeal will be dismissed and the petition denied for this reason.

V. BENEFICIARY'S QUALIFICATIONS

A beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner has not established that the proffered position requires a baccalaureate or higher degree in a specific specialty or its equivalent. Therefore, we need not and will not address the beneficiary's qualifications further.

VI. CONCLUSION AND ORDER

positions, but it did not address how the beneficiary would be relieved from performing non-qualifying duties.

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.