



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF T-T-O-I-, INC.

DATE: NOV. 6, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a food and beverage establishment (restaurant), seeks to temporarily employ the Beneficiary as a “Director of Restaurant Operations” under the H-1B nonimmigrant classification. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the petition, finding that the evidence of record did not establish that the proffered position qualifies as a specialty occupation. On appeal, the Petitioner asserts that the Director’s basis for denial was erroneous and contends that it satisfied all evidentiary requirements.

The record of proceeding 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 letter denying the petition; and (5) the Form I-290B, Notice of Appeal or Motion, and supporting documentation.

We reviewed the record in its entirety before issuing our decision.¹ For 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.

I. SPECIALTY OCCUPATION

The primary issue under consideration is whether the Petitioner has provided sufficient evidence to establish that it will employ the Beneficiary in a specialty occupation.

¹ We conduct appellate review on a *de novo* basis. *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015); *see also* 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

A. Legal Framework

For an H-1B petition to be granted, the Petitioner must provide 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 of a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor’s degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. See *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); see also *COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. See *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, directly related to the duties and responsibilities of the particular position; fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

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B. The Proffered Position

The Petitioner described itself on the Form I-129 as a food and beverage establishment (restaurant) with 10 employees, established in [REDACTED]. The Petitioner indicated on the Form I-129 that the Beneficiary would work as its Director of Restaurant Operations at the address of [REDACTED], New York, and would not work off-site at any other addresses.

The Petitioner submitted a Labor Condition Application (LCA) in support of the instant petition, in which it identified its trade name as [REDACTED]. The Petitioner indicated on the LCA that the proffered position corresponds to the SOC (ONET/OES) code occupational category 13-1161, "Market Research Analysts and Marketing Specialists," at a Level I (entry level) wage. The Petitioner further indicated on the LCA that the Beneficiary's sole place of employment would be [REDACTED] New York.

In a letter dated March 24, 2014, the Petitioner stated that it "owns and operates three restaurants in the [REDACTED] and specifically that the restaurants are located in "New York and Connecticut." The Petitioner further stated that it was established in [REDACTED] currently employs 50 full-time individuals, and has annual revenue of approximately \$4.5 million.

In the same support letter, the Petitioner described the duties of the proffered position as follows:³

In his role as the Director of Restaurant Operations, the beneficiary will continue to provide services essential to operations of the Company's business The job duties of the subject position encompass management, marketing, administration, budgeting, and scheduling. As discussed herein, the beneficiary will provide substantial expertise in connection with the operations of the Company's business that will continue to be critical to the growth and efficient operations of the Company.

The beneficiary will be responsible for managing most major aspects of the Company's operations. As such, he will manage personnel, make decisions regarding the hiring of new personnel, create work schedules, establish reporting responsibilities, coordinating the schedules of the personnel and staff, and direct the organizational structure of the Company. Further, his job duties will include managing the financial and operational systems of the Company. The beneficiary will be responsible for arranging financing for new investments and projects. Additionally, he will implement systems for the operations of the business of the Company. These systems will include systems for planning and managing business operations and for managing the marketing of the Company's services. Additionally, the beneficiary will identify new markets for the Company's services and develop

² The Petitioner confirmed on the Form I-129 H-1B Data Collection Supplement that it currently employs a total of 25 or fewer full-time employees in the United States, including all affiliates and subsidiaries of the company.

³ Errors in the original text have not been changed.

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ideas for new services to be provided by the Company. Further responsibilities in this position will include handling health insurance issues; providing logistics support; liaising with corporate clients; designing brochures for marketing purposes; generating process flow charts; working with the Company's outside accountant to prepare tax returns and financial analyses; and managing insurance matters.

Moreover, the beneficiary will use operations research modeling to major manage aspects of the day-to-day operations and personnel of the Company. This function will require the beneficiary to have managerial oversight over the following: establishing budgets for food, supplies, services and personnel; estimating costs; monitoring expenses as against planned budgets; analyzing inventory and personnel requirements; initiating programs to enhance quality and efficiency; managing accounting methods to track to the Company's financial status; directing the hiring and training of personnel; managing temporary personnel; ensuring customer satisfaction; reviewing financial transactions; planning new business opportunities for the Company; and implementing strategic plans for marketing and public relations. Additionally, the beneficiary will be engaged in formulating administrative and operational policies and procedures. The beneficiary will also determine the major office equipment to be purchased by the Company and will direct and coordinate, through subordinate personnel, the Company's operations in order to obtain the optimal use of equipment, facilities, and personnel.

The Petitioner affirmed that "the [B]eneficiary will work at the office of the Company in [REDACTED] [New York]." The Petitioner attested that the minimum educational requirement for the proffered position is "a bachelor's-level degree in Hotel and Restaurant Management, Hospitality Management, or a closely related discipline."

In response to the Director's RFE, the Petitioner provided a more detailed job description for the proffered position with a breakdown of duties by percentages, which we summarize as follows:

- **Operations management**, including "direct coordination of several restaurant locations," and "devis[ing] and implement[ing] policies and procedures to establish combined operations of the Company's several restaurant locations" (30%);
- **Procurement and inventory management**, including devising and designing policies, standards, procedures, and metrics related to purchase of materials and inventory management functions (10%);
- **Personnel scheduling**, including planning, coordinating, and determining "personnel need at several restaurant locations of the Company" (5%);
- **Management of restaurant operations**, including devising and designing seating plan, ensuring restaurant cleanliness and safety, and ensuring sanitation and food safety standards are met (15%);

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- **Management of kitchen operations**, including ensuring food safety, ingredient quality and readiness for volume, planning menus, selecting entrees, appetizers and desserts, determining and planning kitchen ingredients and supplies (15%);
- **Marketing and business development**, including directing business development operations, direct planning and creation of marketing plans, managing market research, and reviewing and approving marketing plans (15%);
- **Finance, accounting, and budgeting**, including establishing budgets, implementing accounting systems, and reviewing and approving financial statements and tax returns (5%); and
- **Personnel management**, including “direct[ing] work of managers of business operations, marketing, accounting, and all essential functions of the Company,” and overseeing managers and senior staff (5%).

The Petitioner again stated that it owns and operates three restaurants in New York and Connecticut. With respect to the educational requirements, the Petitioner repeated its earlier statement that the proffered position requires at least “a bachelor’s-level degree in Hotel and Restaurant Management, Hospitality Management, or a closely related discipline.”

On appeal, the Petitioner discusses its objection to the Director’s classification of the proffered position as being under the section on “Food Service Managers” of the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)*. The Petitioner asserts that the proffered position falls under the “Market Research Analysts and Marketing Specialists” occupational classification, as the proffered job duties are “primarily focused on overall operations and marketing.” Furthermore, the Petitioner explains that “while the [B]eneficiary will work solely at the Company’s site in [REDACTED] New York, and will principally focus on the operations and marketing of the Company, the [B]eneficiary will also assist in overseeing operations and marketing for the six [REDACTED] restaurants based in Connecticut.” The Petitioner states that the “[B]eneficiary will play a critical role in directing the operations and marketing functions of the Company, as well as six additional restaurants which are also part of the [REDACTED] of restaurants [REDACTED] which operates the Petitioner’s Company as well as six restaurants located in Connecticut.”

The Petitioner also now states on appeal that “a minimum of a bachelor’s-level degree, or its equivalent, in Business Management, Hotel and Restaurant Management, Hospitality Management, or a related discipline” is required for the proffered position.

C. Analysis

In establishing the position as a specialty occupation, the Petitioner must describe the specific duties and responsibilities to be performed by the Beneficiary in the context of the Petitioner’s business operations. USCIS looks at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer, as described in 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, and other salient aspects of the proposed employment.

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Thus, a crucial aspect of this matter is whether the Petitioner has adequately described its operations and 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 attained through at least a baccalaureate degree in a specific discipline. Here, we find that the record of proceeding lacks sufficient, credible documentation regarding the Petitioner's business activities and the actual work that the Beneficiary will perform to credibly substantiate the claim that the Petitioner has H-1B caliber work for the Beneficiary for the period of employment requested in the petition.

The evidence of record is unclear as to the actual size, scope, and nature of the Petitioner's business operations. For instance, on the instant Form I-129, the Petitioner described itself as a restaurant located in [REDACTED] New York, established in [REDACTED] that currently has 10 employees and a gross annual income of \$1.1 million. In some of the documentation submitted in support of the petition, including the Petitioner's menu, food reviews, [REDACTED] awards, and the LCA, the Petitioner is identified as a single restaurant in [REDACTED], New York, doing business as [REDACTED].

However, the Petitioner also stated in its March 24, 2014, support letter that it "owns and operates three restaurants in the [REDACTED]. The Petitioner further attested that its company was established in [REDACTED] currently employs 50 full-time individuals, and has annual revenue of approximately \$4.5 million. In the same letter, the Petitioner stated that "operates restaurants in New York and Connecticut."

On appeal the Petitioner now asserts that it is "part of the [REDACTED] of restaurants" which "[i]n addition to operating the [petitioning] [c]ompany" "operates six restaurants in Connecticut" It is thus not clear whether the Petitioner owns and operates a single restaurant, owns and operates three restaurants, owns and operates six restaurants, owns and operates nine restaurants, or is operated by another company [REDACTED] altogether.

Furthermore, the Petitioner submitted a copy of a Form I-129 petition it claims it filed in 2009 on behalf of [REDACTED] for a position similar to the proffered position. However, that Form I-129 and supporting documentation identify the petitioning company's name as [REDACTED] and indicate that this particular company was established in [REDACTED] and has 25 full-time employees. The Petitioner has not explained and documented the nature of its relationship, if any, to [REDACTED].

The Petitioner has not submitted an explanation, corroborated by independent objective evidence, resolving all of the above inconsistencies. It is incumbent upon the Petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the Petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the Petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

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Not only do these inconsistencies undermine the Petitioner's overall credibility, they also preclude us from comprehending the substantive nature of the proffered position. For example, if the Petitioner is a single restaurant with 10 employees as originally indicated on the Form I-129, then we must question the Petitioner's statements that the Beneficiary would perform duties such as: "direct coordination of several restaurant locations"; establish "combined operations of the Company's several restaurant locations"; and "determine personnel need at several restaurant locations of the Company." If the Petitioner owns and operates three, six, or nine restaurants in New York and Connecticut, then we must question the Petitioner's representations on the Form I-129 and LCA that the Beneficiary's sole place of employment would be [REDACTED] New York. Alternatively, if the Petitioner is being operated by the [REDACTED] (which also operates the other restaurants), then we must question the Petitioner's stated need for the Beneficiary's services, which the Petitioner characterized as "primarily focused on overall operations."⁴

There are additional discrepancies and deficiencies in the evidence of record which further preclude us from comprehending the substantive nature of the proffered position. More specifically, the Petitioner asserts that the proffered position corresponds to the "Market Research Analysts and Marketing Specialists" occupational category at a Level I, entry-level, wage rate. However, we find that the majority of the proffered duties are not marketing functions consistent with the "Market Research Analysts and Marketing Specialists" occupational category. Notably, the Petitioner's minimum educational requirements for the proffered position do not include a bachelor's degree in marketing.

On appeal, the Petitioner asserts that the "Market Research Analysts and Marketing Specialists" occupational category is appropriate because the proffered duties are "primarily focused on overall operations and marketing."⁵ However, the Petitioner's assertions are not persuasive. First, the Petitioner has not sufficiently explained and documented how duties related to operational management are consistent with the "Market Research Analysts and Marketing Specialists" occupational category. Neither the Occupational Information Network (O*NET) nor the *Handbook*, both of which we recognize as authoritative sources on the duties of the occupations that they address, list any duties involving operational management for "Market Research Analysts and Marketing Specialists."⁶

⁴ A claim that the Petitioner is operated as one of many restaurants in a chain of restaurants is significantly different from a claim that the Petitioner itself operates one or more chain restaurants.

⁵ As outlined above, the Petitioner specifically allocated 15% of the duties of the proffered position to "marketing and business development." We note that the Petitioner's brief submitted on appeal reiterated the duties of the proffered position and "underlined duties focused on marketing, which comprise 50% of the duties . . ." While the underlined duties do, indeed, add up to 50%, it is unclear how duties such as "create operating policies and procedures for finance," "implement accounting systems," and "manage relationships with banks" could be considered "marketing" duties.

⁶ O*NET lists the typical duties for "Market Research Analysts and Marketing Specialists" as to "[r]esearch market conditions in local, regional, or national areas, or gather information to determine potential sales of a product or service," "create a marketing campaign," and "gather information on competitors, prices, sales, and methods of marketing and distribution." O*NET Online Summary Report for 13-1161.00, "Market Research Analysts and Marketing Specialists," <http://www.onetonline.org/link/summary/13-1161.00> (last visited Nov. 5, 2015).

Moreover, the Petitioner has not specifically identified which of the proffered duties are “focused on marketing” and the percentage of time spent on that particular duty, so as to show that marketing duties add up to 50% of the proffered duties as claimed. Instead, the Petitioner broadly claims that all of the duties described in “operations management,” “marketing and business development,” and “personnel management” are marketing duties. However, the majority of the duties described in “operations management,” “marketing and business development,” and “personnel management” do not appear consistent with the “Market Research Analysts and Marketing Specialists” occupational category. It is not clear, for example, how duties such as “create and direct plans for managing food product requirement” (which is found under “operations management”) and “manage the preparation and reporting of financial statements” (which is found under “personnel management”) are consistent with the “Market Research Analysts and Marketing Specialists” occupational category.

Moreover, while the Petitioner indicates that the Beneficiary’s marketing duties primarily consist of *managing* the company’s marketing policies and staff, the Petitioner has not documented how such managerial-level marketing duties are consistent with the “Market Research Analysts and Marketing Specialists” occupational category. Neither O*NET nor the *Handbook* list any managerial-type duties for “Market Research Analysts and Marketing Specialists.”⁷

Furthermore, contrary to the Petitioner’s characterization of the proffered position as a “high-level senior position involving the planning and management of all business operational functions,” the Petitioner designated the proffered position as a Level I, entry-level, position (the lowest of four assignable wage levels). In designating the proffered position at a Level I wage, the Petitioner has indicated that the proffered position is a comparatively low, entry-level position relative to others within the occupation.⁸ That is, in accordance with the relevant explanatory information on wage

Similarly, the *Handbook* summarizes the typical duties for “Market Research Analysts” as to “study market conditions to examine potential sales of a product or service” and to “help companies understand what products people want, who will buy them, and at what price.” U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., “Market Research Analysts,” <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-2> (last visited Nov. 5, 2015).

⁷ Compare, for example, the SOC code and category of 11-2021.00, “Marketing Managers,” for which O*NET describes typical duties as to “[p]lan, direct, or coordinate marketing policies and programs” and “[o]versee product development or monitor trends that indicate the need for new products and services.” O*NET Online Summary Report for 11-2021.00, “Marketing Managers,” <http://www.onetonline.org/link/summary/11-2021.00> (last visited Nov. 5, 2015).

⁸ 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

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levels, this wage rate indicates that the Beneficiary is only required to have a basic understanding of the occupation and will perform routine tasks that require limited, if any, exercise of judgment; that he 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. The Petitioner's designation of the proffered position as a Level I, entry-level, position undermines the credibility of the Petitioner's claims regarding the nature of the proffered position and its constituent duties.⁹ Again, it is incumbent upon the Petitioner to resolve any inconsistencies in the record by independent objective evidence, and doubt cast on any aspect of the Petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591-2.

Based on all of the above, we find that the Petitioner has not established the substantive nature of the work to be performed by the Beneficiary. We are thus 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 entry into 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 for classification as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

Finally, we will briefly address why we accord little probative value to the professional position evaluation prepared by [REDACTED] a professor at the [REDACTED].

First, it is not evident how [REDACTED] a Professor of Marketing, can reasonably be considered an "expert" or is otherwise qualified to render an advisory opinion about the proffered position in the restaurant industry. [REDACTED] does not discuss in detail the extent of his experience and knowledge in

http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

⁹ The issue here is that the Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is a particularly high-level and senior one compared to other positions *within the same occupation*. Nevertheless, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), an entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty or its equivalent. That is, a position's wage level designation may be a consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

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the Petitioner's industry, nor does he reference any studies, surveys, publications, or other sources of empirical information about the restaurant industry which he may have consulted.

Moreover, while [REDACTED] states that the proffered position requires the attainment of a bachelor's degree in Business Management, Hotel and Restaurant Management, or Hospitality Management, he does not provide a substantive, analytical basis for his opinion and ultimate conclusion. He does not specifically identify what bodies of highly specialized knowledge are required to perform the proffered duties, which particular courses of study provided such knowledge, and how these courses represent an established curriculum leading to a baccalaureate or higher degree in Business Management, Hotel and Restaurant Management, or Hospitality Management.

In addition, he does not relate his conclusion to specific, concrete aspects of the Petitioner's business operations. In fact, it is not evident that [REDACTED] is aware of the several, significant discrepancies concerning the nature of the Petitioner's operations and the Beneficiary's duties. For example, he refers to the Petitioner as a [REDACTED]-based chain of restaurants" but he does not appear to be aware that the Petitioner described itself as a 10-employee restaurant on the Form I-129, or that the Petitioner also described itself as being operated by another company. Further, he does not appear to be aware that the Petitioner has classified the proffered position as falling under the "Market Research Analysts and Marketing Specialists" occupational classification at a Level I, entry-level, wage rate. We consider these to be significant omissions, in that it suggests an incomplete review of the position in question and a faulty basis for his conclusion.

For these and other reasons, we conclude that [REDACTED] evaluation is not probative evidence to establish the proffered position as a specialty occupation. We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

II. CONCLUSION AND ORDER

The evidence of record is insufficient to establish that the proffered position qualifies for classification as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.¹⁰

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.

¹⁰ Since the identified basis for denial is dispositive of the Petitioner's appeal, we will not address other grounds of ineligibility we observe in the record of proceeding.

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ORDER: The appeal is dismissed.

Cite as *Matter of T-T-O-I, Inc.*, ID# 14314 (AAO Nov. 6, 2015)