



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

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

MATTER OF I- LLC

DATE: AUG. 3, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a technical and strategic consulting services company, seeks to temporarily employ the Beneficiary as a “Chinese market research analyst and sales representative” under the H-1B nonimmigrant classification. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director, Vermont Service Center, denied the petition. The Director concluded that the position offered to the Beneficiary did not qualify as a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred in finding that the proffered position is not a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon *de novo* review, we will dismiss the appeal.

I. LAW

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

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

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

- (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.

8 C.F.R. § 214.2(h)(4)(iii)(A). U.S. Citizenship and Immigration Services (USCIS) has consistently interpreted 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 proposed 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”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

II. PROFFERED POSITION

In support of the petition, the Petitioner submitted a document which outlined the duties of the proffered position as follows:

The Chinese Market Research Analyst and Sales Representative is an entry-level position in the company. This candidate will be responsible for researching and compiling detailed reports on the admissions counseling market in China under the direct supervision of management. The employee will also assist as a liaison between [the Petitioner] and its Chinese partners – many of whom do not speak fluent English.

....

Employee’s responsibilities will include market analysis of the Chinese admissions counseling market, performing the tasks of a sales representative, and assisting with cultural and linguistic translation with students, families, and business partners. These tasks will be closely supervised and reviewed by a member of [the Petitioner’s] management.

In response to the Director’s request for evidence (RFE), the Petitioner provided the following additional duties for the proffered position, summarized briefly below with the percentage of time allocated to each of the tasks:

- Monitor and forecast marketing and sales trends; convert complex data and findings into understandable tables, graphs, and written reports; and gather data about consumers, competitors, and market conditions. (35%)
- Measure the effectiveness of marketing programs and strategies; devise and evaluate methods for collecting data, such as surveys, questionnaires, and opinion polls. (20%)
- Prepare reports and present results to clients and management (45%)

In support of the petition, the Petitioner noted that there was no specific prior work experience or any particular degree required for the position. The Petitioner noted, however, that “a background in Education is valuable for the position.” In response to the RFE, the Petitioner stated that “[the Beneficiary’s] success in this position requires that she have at least a bachelor’s degree in education.”

III. ANALYSIS

Preliminarily, we note that the Petitioner, both in response to the RFE and again on appeal, asserts that the duties of the proffered position reflect the duties of a market research analyst, which falls under the occupational classification of “Market Research Analysts and Marketing Specialists,” Standard Occupational Classification (SOC) Code 13-1161. This assertion, however, is contradicted by the occupational classification selected by the Petitioner on the Labor Condition Application (LCA), which is that of “Sales Representatives, Services, All Others” and which falls under SOC Code 41-3099.

With respect to the LCA, the U.S. Department of Labor (DOL) provides clear guidance for selecting the most relevant Occupational Information Network (O*NET) occupational 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 SWA 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 SWA shall use the education, skill and experience levels for the higher paying occupation when making the wage level determination.¹

¹ U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

The Petitioner indicated on the LCA that the wage level for the proffered position is Level I (entry). The Petitioner provided the prevailing wage that corresponds to the occupation “Sales Representatives, Services, All Others,” which is \$37,835 per year.

We observe, however, that the prevailing wage for the position “Market Research Analyst” at a Level I wage is slightly higher at \$38,626 per year than the prevailing wage for “Sales Representatives, Services, All Others.” Thus, according to DOL guidance, if the Petitioner believed the position was appropriately described in “Market Research Analysts and Marketing Specialists” or was a combination of “Sales Representatives, Services, All Others” and “Market Research Analysts and Marketing Specialists,” it should have chosen the relevant occupational code for the highest paying occupation, in this case, “Market Research Analysts and Marketing Specialists.” However, the Petitioner chose the occupational category for the lower paying occupation, “Sales Representatives, Services, All Others,” for the proffered position on the LCA.

Moreover, we note the Petitioner’s response to the RFE, where it states that “[it] believes that [the Beneficiary] satisfies the requirements for *both* Market Research Analyst *as well as* a Sales Representative.”² (Emphasis in original). It is noted that, where a petitioner seeks to employ a beneficiary in two distinct occupations, the petitioner should file two separate petitions, requesting concurrent, part-time employment for each occupation. While it is not the case here, if a petitioner does not file two separate petitions and if only one aspect of a combined position qualifies as a specialty occupation, USCIS would be required to deny the entire petition as the pertinent regulations do not permit the partial approval of only a portion of a proffered position and/or the limiting of the approval of a petition to perform only certain duties. *See generally* 8 C.F.R. § 214.2(h). Furthermore, a petitioner would need to ensure that it separately meets all requirements relevant to each occupation and the payment of wages commensurate with the higher paying occupation.³ Thus, filing separate petitions would help ensure that a petitioner submits the requisite evidence pertinent to each occupation and would help eliminate confusion with regard to the proper classification of the position being offered.

In the instant case, the Petitioner asserts that the duties of the proffered position most appropriately encompass those of a market research analyst, and it acknowledges that a “colorful argument” could be made for selecting that code in the alternative. We also acknowledge the Petitioner’s statement that it selected the SOC code for the LCA without the assistance of counsel. Nevertheless, while the Petitioner’s acknowledgement of the non-corresponding SOC code is noted, the appropriate remedy here is to file a new petition with an LCA certified for the corresponding SOC code.⁴ A petitioner

² We also note that the Petitioner’s “Team List” and emails submitted in response to the RFE identifies the Beneficiary’s position as “Director of School Outreach and Partnership.” No explanation for these discrepancies was provided.

³ *See generally* 8 C.F.R. § 214.2(h); U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdatacenter.com/download/NP_WHC_Guidance_Revised_11_2009.pdf.

⁴ While 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

must establish that the position offered to the beneficiary when the petition was filed merits the visa classification sought. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make an otherwise deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). If significant changes to the content of a petition changed, a petitioner must file a new petition, with fee, that incorporates these changes. If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of a beneficiary. Based on the Petitioner's assertions that the proffered position is most akin to that of a market research analyst, we find that the Petitioner has not submitted a valid LCA that has been certified for the proper occupational classification, and the petition must be denied for this reason. The Petitioner, however, is not precluded from filing a new petition in accordance with the guidance provided above.

Nevertheless, we will review the record of proceedings in its entirety to determine whether the proffered position as described, designated under the occupational category "Sales Representatives, Services, All Others" (SOC code 41-3099) at a Level I wage,⁵ otherwise qualifies as a specialty occupation.

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position satisfies any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, qualifies as a specialty occupation. Specifically, the record does

responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

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 or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

⁵ We will consider the Petitioner's classification of the proffered position at a Level I wage (the lowest of four assignable wage levels) in our analysis of the position. The "Prevailing Wage Determination Policy Guidance" issued by the DOL provides a description of the wage levels. A Level I wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. This wage rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that he will be closely supervised and his work closely monitored and reviewed for accuracy; and (3) that he will receive specific instructions on required tasks and expected results. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdcenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf. A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner's job opportunity. *Id.* A Level I wage should be considered for research fellows, workers in training, or internships. *Id.*

not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.⁶

A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.⁷ To inform this inquiry, we recognize the DOL's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁸

The information provided by the Petitioner in its response to the RFE did not clarify or provide more specificity to the original duties of the position, but rather affirmed that the proffered position was that of a market research analyst and materially expanded the nature and scope of the duties beyond those comprising the position for which the petition was filed. Therefore, the analysis of this criterion will be based on the job description submitted with the initial petition.

We reviewed the information in the *Handbook* regarding the selected occupational category and note that this occupation is one for which the *Handbook* does not provide detailed data. The *Handbook* states the following about these occupations:

Although employment for hundreds of occupations is covered in detail in the *Occupational Outlook Handbook*, this page presents summary data on additional occupations for which employment projections are prepared but detailed occupational information is not developed. For each occupation, the Occupational Information Network (O*NET) code, the occupational definition, 2014 employment, the May 2015 median annual wage, the projected employment change and growth rate from 2014 to 2024, and education and training categories are presented.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Data for Occupations Not Covered in Detail," <http://www.bls.gov/ooh/about/data-for-occupations-not-covered-in-detail.htm> (last visited Aug. 2, 2016). Accordingly, the *Handbook* does not report

⁶ The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position. While we may not discuss every document submitted, we have reviewed and considered each one.

⁷ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

⁸ All of our references are to the 2016-2017 edition of the *Handbook*, available at <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

that a bachelor's degree in a specific specialty is a requirement for entry into this occupational category.

When the *Handbook* does not support a petitioner's assertion that a position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the petitioner to provide persuasive evidence (e.g., documentation from other objective, authoritative sources) that the proffered position qualifies, notwithstanding the absence of the *Handbook's* support on the issue. Whenever more than one authoritative source exists, an adjudicator will consider and weigh all of the evidence presented. Here, the Petitioner has not provided documentation from an authoritative source that supports its assertion that this particular position qualifies as a specialty occupation. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

B. Second Criterion

The second criterion presents two, alternative prongs: "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[.]" 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong contemplates the common industry practice, while the alternative prong narrows its focus to the Petitioner's specific position.

1. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the "degree requirement" (i.e., a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

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 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."

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In support of the assertion that the degree requirement is common to the Petitioner's industry in parallel positions among similar organizations, the Petitioner submitted copies of screen prints from the websites of [REDACTED] described as a [REDACTED] education consulting firm," and [REDACTED] described as "[REDACTED] life-skills education advisory." The Petitioner notes that all of the employees of these two companies hold degrees or certifications in education, and asserts that this establishes a common degree requirement in the Petitioner's industry.

This evidence, however, is not persuasive. First, there is insufficient evidence to establish that the Petitioner, a technical and strategic consulting services firm, is similar to these two entities. Absent additional information regarding these businesses, we are unable to conduct a legitimate comparison to the Petitioner's operations. It is not sufficient for the Petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion. "[G]oing 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 Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Moreover, there is no evidence that either of these two companies employ a "Chinese market research analyst and sales representative." We find, therefore, that the Petitioner's reliance on these screen shots is misplaced.

Thus, for the reasons discussed above, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

2. Second Prong

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the Petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

We reviewed the Petitioner's job duties and the documentation regarding its business operations. We recall the Petitioner's assertion in its letter of support that the proffered position is an entry-level position which requires no specific prior work experience. Although it initially stated that no particular degree was required to perform the duties of the position, the Petitioner later stated that the minimum education needed for the position is a bachelor's degree in education due to the complexity of the tasks and the nature of its business operations. It also claimed that an "impeccable command of both English and Mandarin" and linguistic translation ability was required.⁹

⁹ It must be noted that a language requirement other than English in a job offer generally is considered a special skill for all occupations (with the exception of Foreign Language Teachers and Instructors, Interpreters, and Caption Writers). In the instant case, the Petitioner has not established that its foreign language requirement has been reflected in the wage-level for the proffered position.

While the Petitioner claims that the proffered position meets this criterion of the regulations, it does not sufficiently demonstrate how the position as described requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent. 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 claims are so complex or unique. While a few related courses may be beneficial in performing certain duties of the position, the Petitioner has not demonstrated how an established curriculum of such courses is required.

Moreover, the Petitioner has not explained its inconsistent claims regarding the complexity of the position. The Petitioner first stated that the position was an entry-level position that required no prior experience and no specific educational background. Later, the Petitioner claimed that the position was complex and unique, and required an individual with a background in education, fluency in English and Mandarin, and linguistic translation ability. “[I]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence.” *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92.

Without more, the record lacks sufficiently detailed information to distinguish the level of judgment and understanding necessary to perform the duties as complex or unique. Rather, it appears that the knowledge to perform the tasks can be obtained by an individual without at least a bachelor's degree in a specific specialty, or its equivalent.

The Petitioner claims that the Beneficiary is well qualified for the position, and references her qualifications. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

C. Third Criterion

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position.

We reviewed the Petitioner's statements regarding the proffered position. The Petitioner, however, specifically asserts that it has not previously employed an individual in the proffered position. Although we note the Petitioner's repeated assertions that a bachelor's degree in education is a prerequisite for the position, such a preference, without more, does not demonstrate a hiring history of specialty-degreed individuals for the proffered position. Therefore, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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D. Fourth Criterion

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

USCIS examines each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence. The evidence submitted, however, does not establish that the Petitioner's proffered position qualifies for the requested classification under the applicable statutory and regulatory provisions. It is not the volume of documentation that establishes eligibility for the benefit sought, but rather the relevance, probative value, and credibility of the documentation – both individually and within the context of the totality of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010).

In response to the RFE, the Petitioner submitted the Beneficiary's work products. However, the record of proceedings lacks evidence supporting a conclusion that the data, evaluation and analysis of some of the reports were prepared by the Beneficiary. The documents do not contain the Beneficiary's name or any other information connecting her to the documents. Notably, some of the reports indicate that they were authored by [REDACTED] of [REDACTED]. Accordingly, without further information, the evidence regarding the reports is of limited probative value.

We also incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a Level I position (of the lowest of four assignable wage-levels) relative to others within the occupational category.⁸ Without further evidence, the Petitioner has not demonstrated that its proffered position is one with specialized and complex duties as such a position within this occupational category would likely be classified at a higher-level requiring a substantially higher prevailing wage.⁹

⁸ The Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I, 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 relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

⁹ A Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems" and requires a significantly higher wage. For additional information regarding wage levels as defined by DOL, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

Although the Petitioner asserts that the nature of the specific duties is specialized and complex, the record lacks sufficient evidence to support this claim. Thus, the Petitioner has submitted inadequate probative evidence to satisfy the criterion of the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

IV. CONCLUSION

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation. The burden is on the Petitioner to show 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.

Cite as *Matter of I- LLC*, ID# 17554 (AAO Aug. 3, 2016)