



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

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

MATTER OF A-P-, LLC

DATE: FEB. 17, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a pharmaceutical company, seeks to temporarily employ the Beneficiary as a “production supervisor” 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. Upon *de novo* review, we will dismiss the appeal.

**I. BENEFICIARY’S STATUS**

The Director determined that the record did not establish the Beneficiary had maintained his nonimmigrant status. The Petitioner submitted an appeal addressing, *intra alia*, the denial of the change of status request. We will not address this issue as we lack jurisdiction over this matter.

The authority to adjudicate appeals is delegated to us by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). The regulations limit our jurisdiction over petitions for temporary workers to those described under 8 C.F.R. §§ 214.2 and 214.6. *See* 8 C.F.R. § 103.1(f)(3)(iii)(J) (2003).

A request for a change of status in an H-1B submission is not a petition within the meaning of section 214(c)(1) of the Act, 8 U.S.C. § 1184(c)(1), and does not confer any of the appeal rights normally associated with a petition. The Form I-129 in this context is merely the vehicle by which information is collected to make a determination on the application for change of status. There is no appeal of the denial of an application for a change of nonimmigrant classification. 8 C.F.R. § 248.3(g).

We do not have jurisdiction over this matter, as issues surrounding the beneficiary's maintenance of nonimmigrant status are within the sole discretion of the director. Therefore, we will not further address this issue.

## II. ISSUE ON APPEAL

The issue before us is whether the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

## III. SPECIALTY OCCUPATION

### A. Legal Framework

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. Fed. 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 individuals 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 individual, 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 or an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

#### B. Proffered Position

In the letter of support, the Petitioner provided the following duties for the proffered position:

- Supervise production line employees of manufacturing, packaging, dispensing, and warehouse.
- Ensure all compliance of production and GMP processes are met[.]
- Plan and schedule operations to ensure projected batches are met as per the deadline.
- Accurately manage material and inventory to ensure that appropriate supplies are on hand.
- Schedule and follow through on cleaning of pharmaceutical equipments [*sic*].
- Ensure compliance of cGMP and SOP[.]
- Must provide SOP training to existing and new hire employees.
- Write and review documentation pertinent to manufacturing documents[.]
- Coordinate with QA, QC, and Purchase departments for planning and availability of materials[.]

In addition, the Petitioner stated that “[t]he minimum educational and experiential requirements necessary to fulfill the position of Production Supervisor is a Bachelor of Science degree in Chemistry, Pharmaceutical Science, Pharmacy, or a related field (or its equivalent), plus relevant experience in field.”

In the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner asserted that the proffered position falls under the occupational category “Compliance Officers” corresponding to the Standard Occupational Classification code 13-1041. The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels).<sup>1</sup>

### C. Analysis

On appeal, the Petitioner provided (1) additional information regarding the duties of the proffered position; (2) the percentage of time the Beneficiary will spend on each duty; and (3) the courses taken by the Beneficiary that relate to the job duties. The Petitioner claims that the new information supports its assertion that the proffered position qualifies as a specialty occupation. We reviewed the record in its totality and determined that the Petitioner provided an insufficient explanation of why the duties require an educational background commensurate with a specialty occupation.<sup>2</sup>

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<sup>1</sup> The “Prevailing Wage Determination Policy Guidance” issued by the U.S. Department of Labor (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://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

<sup>2</sup> 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.

*A baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position*

We will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

USCIS recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>3</sup> In the LCA, the Petitioner asserted that the proffered position corresponds to the "Compliance Officers" occupational category.<sup>4</sup>

Although the *Handbook* covers the employment details for hundreds of occupations, there are additional occupations for which employment projections are prepared but detailed occupational information is not developed.<sup>5</sup> The occupational category "Compliance Officers" is one of the categories for which detailed occupational information was not developed. The *Handbook* states the following:

### **Compliance Officers**

(O\*NET 13-1041.00, 13-1041.01, 13-1041.02, 13-1041.03, 13-1041.04, 13-1041.06, and 13-1041.07)

Examine, evaluate, and investigate eligibility for or conformity with laws and regulations governing contract compliance of licenses and permits, and perform other compliance and enforcement inspection and analysis activities not classified elsewhere. . . .

- 2014 employment: **260,300**
- May 2014 median annual wage: **\$64,950**
- Projected employment change, 2014–24:
  - Number of new jobs: **8,700**

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<sup>3</sup> All references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

<sup>4</sup> 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. However, to satisfy the first criterion, 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.

<sup>5</sup> The occupational categories for which the *Handbook* only includes summary data includes a range of occupations, including for example, postmasters and mail superintendents; farm and home management advisors; clergy; merchandise displayers and window trimmers; radio operators; first-line supervisors of police and detectives; crossing guards; travel guides; agricultural inspectors, as well as others.

- Growth rate: **3 percent (slower than average)**
- Education and training:
  - Typical entry-level education: **Bachelor's degree**
  - Work experience in a related occupation: **None**
  - Typical on-the-job training: **Moderate-term on-the-job training**

*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 Feb. 16, 2016).

The “Compliance Officers” occupational category falls into the group of occupations for which a bachelor’s degree (no specific specialty) is the typical entry-level education. Thus, the *Handbook* does not support the Petitioner’s assertion that a bachelor’s degree *in a specific specialty* is normally the minimum requirement for entry into the occupation. We reiterate that the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor’s or higher degree, but such a degree in a *specific specialty* that is directly related to the duties of the position. See 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

When the *Handbook* does not support a petitioner’s assertion that a position 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, we 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).

*The requirement of a baccalaureate or higher degree in a specific specialty,  
or its equivalent, is common to the industry in parallel  
positions among similar organizations*

Next, we will review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for the Petitioner to establish that a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being (1) in the Petitioner’s industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the Petitioner.

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

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports a standard industry-wide requirement for at least a bachelor's degree in a specific specialty, or its equivalent. 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."

In support of this criterion of the regulations, the Petitioner submitted two job advertisements.<sup>6</sup> More specifically:

- A job posting for a production supervisor. The advertisement states that a bachelor of science degree is preferred. A preference for a degree is not an indication of a minimum requirement. Thus, the job posting does not support the Petitioner's assertion that a bachelor's degree in a specific specialty (or its equivalent) is required.
- A job posting for an equipment services supervisor. The primary tasks and responsibilities of the advertised position, however, do not appear to be parallel to those of the proffered position.

Further, the posting does not indicate the nature or type of organization, but states that the company opened its "manufacturing site and next-generation product development laboratories." For the Petitioner to establish that an organization is similar, it must demonstrate that it shares the same general characteristics with the advertising organization.<sup>7</sup> Without such evidence, the submitted documentation is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the Petitioner. 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.

As the documentation does not establish that the Petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary.<sup>8</sup> That is, not every deficit of every job posting has been addressed.

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<sup>6</sup> The Petitioner does not demonstrate what inferences, if any, can be drawn from these advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Without more, it cannot be found that such a limited number of postings that appear to have been consciously selected outweigh the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not normally require at least a baccalaureate degree in a specific specialty, or its equivalent, for entry into the occupation in the United States.

<sup>7</sup> When determining whether the Petitioner and the advertising organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered).

<sup>8</sup> The Petitioner did not provide any independent evidence of how representative the job postings are of the particular

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

*The particular position is so complex or unique that it can be performed only by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent*

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

To establish eligibility, the Petitioner must describe the specific duties and responsibilities to be performed by the Beneficiary in the context of its business operations, demonstrate that 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.

In support of its assertion that the proffered position qualifies as a specialty occupation, the Petitioner submitted a description of the proffered position, along with information regarding its business operations. The Petitioner designated the proffered position as an entry-level position within the occupational category (by selecting a Level I wage). This designation, when read in combination with the Petitioner's job description and the *Handbook's* account of the requirements for this occupation, further suggests that the particular position is not so complex or unique that the duties can only be performed an individual with bachelor's degree or higher in a specific specialty, or its equivalent. While related courses may be beneficial in performing certain duties of the position, the Petitioner has not demonstrated how an established curriculum of courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position.

The Petitioner claims that the Beneficiary is well-qualified for the position, and references his 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 did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position and it did not identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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advertising employers' recruiting history for the type of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the actual hiring practices of these employers.

(b)(6)

*Matter of A-P-, LLC*

*The employer normally requires a baccalaureate or higher degree in a specific specialty, or its equivalent, for the position*

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

To merit approval of the petition under this criterion, the record must establish that a petitioner's imposition of a degree requirement is not a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. While a petitioner may assert that a proffered position requires a specific degree, that statement alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing the Petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the Petitioner created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

The Petitioner stated in the Form I-129 that it has 1,100 employees and was established in [REDACTED] (approximately [REDACTED] years prior to the filing of the H-1B petition). In response to the RFE, the Petitioner provided a letter from [REDACTED] the vice president of human resources, stating that the Petitioner has four production supervisors and that they all have at least a bachelor's degree or the equivalent level of education.

To begin with, we note that the Petitioner did not provide the total number of people it has employed to serve in the proffered position or any further context. Consequently, it cannot be determined how representative [REDACTED] statement regarding these four individuals is of the Petitioner's normal recruiting and hiring practices.

Moreover, [REDACTED] did not provide any further details regarding the individuals' degree specialties and how closely the disciplines relate to the duties of the position.<sup>9</sup> [REDACTED] also did not state what the Petitioner accepts as the "equivalent level of education" to a bachelor's degree. The submission did not include documentation in support of her statement (e.g., copies of diplomas/transcripts, employment records).<sup>10</sup>

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<sup>9</sup> The Petitioner also submitted a job description for the production supervisor position; however, the document was revised after the H-1B petition was submitted and the request for evidence was issued. Without more, the Petitioner has not demonstrated that it is independent and objective evidence that existed at the time of filing.

Notably, the Petitioner's website indicates that it currently has job openings for production supervisor positions. The academic requirement is a "Bachelors Degree plus 2 years of experience - Preferably in Pharmaceutical industry." Thus, the posting does not indicate that a degree in a specific specialty is required for the position.

<sup>10</sup> [REDACTED] stated that "[d]ue to privacy reasons, we cannot release personal documentation of our employees."

Without more, the Petitioner has not provided sufficient evidence to establish that it normally requires at least a bachelor's degree, or the equivalent, in a specific specialty for the proffered position. Therefore, it has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

*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 in a specific specialty, or its equivalent*

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

While the Petitioner provided a more detailed job description with the appeal, the description does not establish that the duties are more specialized and complex than positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. 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.<sup>11</sup> 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, such as a Level III (experienced) or Level IV (fully competent) position, requiring a substantially higher prevailing wage.<sup>12</sup>

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While a petitioner should always disclose when a submission contains confidential information, the claim does not provide a blanket excuse for failing to provide documentation that is material to the requested benefit. Although a petitioner may always refuse to submit confidential information if it is deemed too sensitive, it must also satisfy the burden of proof or run the risk of a denial. *Cf. Matter of Marques*, 16 I&N Dec. 314 (BIA 1977).

Both the Freedom of Information Act and the Trade Secrets Act provide for the protection of a petitioner's confidential business information when it is submitted to USCIS. *See* 5 U.S.C. § 552(b)(4), 18 U.S.C. § 1905. Additionally, the petitioner may request pre-disclosure notification pursuant to Executive Order No. 12,600, "Predisclosure Notification Procedures for Confidential Commercial Information." Exec. Order No. 12,600, 52 Fed. Reg. 23,781 (June 23, 1987).

<sup>11</sup> 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.

<sup>12</sup> A Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified

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 AND ORDER

Accordingly, the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, 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.

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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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).