



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

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

MATTER OF M-H-S-, INC.

DATE: JULY 19, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a residential healthcare services providing agency, seeks to temporarily employ the Beneficiary as a "human resources and relations specialist" under the H-1B nonimmigrant classification for specialty occupations. *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, approved the nonimmigrant visa petition. However, in response to new evidence and upon subsequent review, the Director issued a notice of intent to revoke (NOIR), and ultimately revoked, approval of the petition.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the petition's approval should be reinstated.

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

I. REVOCATION AUTHORITY

U.S. Citizenship and Immigration Services (USCIS) may revoke the approval of an H-1B petition pursuant to 8 C.F.R. § 214.2(h)(11)(iii), which states the following:

- (A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:
- (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition . . . ; or
 - (2) The statement of facts contained in the petition . . . was not true and correct, inaccurate, fraudulent, or misrepresented a material fact; or

- (3) The petitioner violated terms and conditions of the approved petition; or
- (4) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or
- (5) The approval of the petition violated paragraph (h) of this section or involved gross error.

II. PROFFERED POSITION

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as a “human resources and relations specialist.” On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category “Human Resources, Training, and Labor Relations” corresponding to the Standard Occupational Classification code 13-1079.00.¹

The Petitioner provided the following job duties for the position (note: errors in the original text have not been changed):

- Manage human resources, coordinate workers and maintains human resources related records (2 hrs, 5%);
- Ensure compliance with state and federal regulations related to HR issues including but not limited to applications, on-boarding, wage and hour, etc. (4 hrs, 10%);
- Provide strategic and analytical support on the human resources management to the President (5 hrs, 12.5%);

¹ The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). We will consider this selection 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://flcdatacenter.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.*

Matter of M-H-S-, Inc.

- Develop and implement policies and procedures for pertaining to all human resources functions including recruitment, retention, employee relations, compliance, and employment (4hrs, 10%);
- Produce and maintain an employee handbook and manuals in compliance with federal and state laws (2 hrs, 5%);
- Facilitate process improvements for Sales force utilizing feedback and data from Satisfaction Survey, Early Impression Interview and Exit Interviews (2 hrs, 5%);
- Reviews employment invoices and analyze and negotiate service contracts (2 hrs, 5%);
- Maintain communications between the organization and Maryland department of health and mental hygiene (4 hrs, 10%);
- Establish working relationships with case managers within the state to facilitate and improve business relationships (4 hrs, 10%);
- Assess and act upon workers relations issues, and provide employee relations counseling, outplacement counseling, and exit interviews (2 hrs, 5%);
- Ensures confidentiality of all personnel records in accordance with Federal, State and local requirements (1 hr, 2.5%);
- Implement recruitment plans and advertisements within specified recruiting budget constraints (1 hr, 2.5%);
- Perform 30, 60 and 90 day evaluations on new hire to achieve retention projections (1 hr, 2.5%);
- Maintains current knowledge and understanding of regulations, industry trends, current employment practices, new developments, and applicable human resource related laws (1 hr, 2.5%);
- Responsible for administrative payroll data for compliance and accuracy, coordinating wage garnishments, and distributing paychecks (3 hrs, 7.5%)
- Support, maintain and facilitate development of a compliance-focused culture within the company (2 hrs, 5%).

According to the Petitioner, the position requires a bachelor's degree in human resources management and six months of work experience.

III. POST-APPROVAL

As noted, the Director approved the H-1B petition. The petition was then randomly selected for a post-adjudicative administrative site visit, which took place two months after the petition was approved. The officer conducting the visit interviewed the Beneficiary, who described his duties as follows:

- Recruitment of RN/CAN staff;
- Insuring the documentation is filed and accurate for certifications;
- Filling staffing needs that are contracted to the organization;
- Screening applications;
- Meeting with future clients who may agree to a contract with the organization;
- Handling payroll for all employees;
- Visiting different assisted living facilities to build partnerships and to gain contracts;
- Determining if the petitioning organization's Medicaid status is effective;
- Filing Maryland State referred contracts.

The Director determined that these duties differed from those specified in the H-1B petition. The Director also determined that approval of the H-1B petition had violated subsection (h) of 8 C.F.R. § 214.2 or involved error, because the proffered position is not a specialty occupation. The Director presented these findings, among others, in her NOIR.

The Director offered the Petitioner an opportunity to respond to the NOIR. In response, the Petitioner submitted, *inter alia*, copies of the Beneficiary's 2011, 2012, and 2013 Form 1040, U.S. Individual Income Tax Returns.²

On a Form 2106-EZ, Unreimbursed Employee Business Expenses, attached to the Beneficiary's 2011 Form 1040, the Beneficiary identified his position as that of a home care specialist and claimed that he used his own vehicle for 15,625 miles for business purposes during that year.

On a Form 2106-EZ attached to his 2012 Form 1040 the Beneficiary again stated that he was a home care specialist, and that he had used his vehicle for business purposes for 3,890 miles during that year.

On a Form 2106-EZ attached to his 2013 Form 1040, the Beneficiary stated that he was a home care specialist and that he had used his vehicle for business purposes for 4,910 miles during that year.

² As the period of intended employment was from February 21, 2011 to February 20, 2014, all three of those income tax returns are relevant to the instant matter.

The Petitioner submitted a declaration from the Beneficiary, but it does not address why the Beneficiary described his position as “Home Care Specialist” or why the job duties described in the Petitioner’s February 15, 2011, letter would require significant use of a vehicle for business purposes.

The Director found the Petitioner’s response to the NOIR insufficient, and revoked the petition’s approval.

On appeal, the Petitioner submits, *inter alia*, (1) An organizational chart of the Petitioner’s operations; (2) the Beneficiary’s 2011, 2012, 2013, and 2014 Form 1040X, Amended U.S. Individual Income Tax Returns; (3) a declaration from the Beneficiary; and (4) a brief.

The organizational chart shows that the Beneficiary directly supervises the Petitioner’s registered nurses and medication technicians.

The amended income tax returns show that after the Beneficiary filed income taxes in 2011, 2012, 2013, and 2014, he amended the returns to describe his occupation as “Home Care/Home Visits.”

In his declaration submitted on appeal, the Beneficiary stated, *inter alia*:

I report business expenses in my personal income tax return for gas mileage deduction coverage for commuting to and from with clients providing the following services. The following duties are required to fulfill the functions of managing and coordinating workers and their schedules as HR and relations specialist (and Human Resources Specialist).

- Refer the workers to clients for services by admitting new clients administratively before initial assessment by RN and introducing new aides/RN to clients for their needs;
- Facilitate process improvements utilizing feedback and data from Satisfaction Survey, Early Impression Interview and Exit Interviews through follow up visits with clients to make sure their providers meet company’s quality assurance service standard;
- Establish working relationships with case managers within the state to facilitate and improve business relationships.

In the appeal brief, the Petitioner asserted, pertinent to the Beneficiary’s statement:

The Beneficiary provides a plausible explanation for the reason that he used “Home Care/Home Visit” on the expense report of his income tax return and why the deductions taken were not contrary to his fulfilling the functions of his position as HR & Relations Specialist but in fact demonstrates how he fulfilled those functions in overseeing the Home Health Aides schedules as well as quality control of their performance in meeting the needs of clients of the company.

While we have conducted a thorough review of the entire record of proceedings, we will only address here her decision to revoke approval of the petition on the grounds specified below.

IV. ANALYSIS

We find that the Petitioner has not overcome the grounds of revocation specified by the Director.³

A. The Beneficiary is No Longer Employed in the Capacity Specified in the Petition

The regulation at 8 C.F.R. § 214.2(h)(11)(iii)(A)(I) permits the Director to revoke a petition's approval, upon notice, if she finds that the Beneficiary "is no longer employer by the petitioner in the capacity specified in the petition." We agree with the Director that such is the case here.

The proffered position was titled as a "human resources and relations specialist" on the Form I-129, Petition for a Nonimmigrant Worker, in the LCA, and in its support letter, and it set forth the duties as quoted above. The petition was approved on the basis of those assertions.

However, the site visit and subsequent action by the Director revealed: (1) that the Beneficiary performs many duties exceeding the scope of the duties described in the Petitioner's filing; and (2) that the Beneficiary described his position as that of a "home health aide."

As noted, the Petitioner claimed in the LCA that the proffered position corresponds to SOC code and title 13-1079, Human Resources, Training, and Labor Relations Specialist. We recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook) Handbook*, cited by the Petitioner, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. Although the *Handbook* previously discussed those three position titles in one chapter, it has since separated them.⁴ The *Handbook* states the following with regard to the duties of Human Resources Specialists:

What Human Resources Specialists Do

Human resources specialists recruit, screen, interview, and place workers. They often handle tasks related to employee relations, compensation and benefits, and training.

³ As the grounds for revocation discussed in our decision preclude approval of the petition, we will not discuss the additional issues raised by the Director.

⁴ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Although the Petitioner referenced a previous version of the *Handbook*, our references to the *Handbook* are to the 2016 – 2017 edition available online.

Duties

Human resources specialists typically do the following:

- Consult with employers to identify employment needs
- Interview applicants about their experience, education, and skills
- Contact references and perform background checks on job applicants
- Inform applicants about job details, such as duties, benefits, and working conditions
- Hire or refer qualified candidates for employers
- Conduct or help with new employee orientation
- Keep employment records and process paperwork

Human resources specialists are often trained in all human resources disciplines and perform tasks throughout all areas of the department. In addition to recruiting and placing workers, human resources specialists help guide employees through all human resources procedures and answer questions about policies. They sometimes administer benefits, process payroll, and handle any associated questions or problems, although many specialists may focus more on strategic planning and hiring instead of administrative duties. They also ensure that all human resources functions comply with federal, state, and local regulations.

The following are examples of types of human resources specialists:

Human resources generalists handle all aspects of human resources work. They may have duties in all areas of human resources including recruitment, employee relations, compensation, benefits, training, as well as the administration of human resources policies, procedures, and programs.

Placement specialists match employers with qualified jobseekers. They search for candidates who have the skills, education, and work experience needed for jobs, and they try to place those candidates with employers. They also may help set up interviews.

Recruitment specialists, sometimes known as **personnel recruiters** or “**head hunters**,” find, screen, and interview applicants for job openings in an organization. They search for applicants by posting listings, attending job fairs, and visiting college campuses. They also may test applicants, contact references, and extend job offers.

U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., “Human Resources Specialists,” <http://www.bls.gov/ooh/business-and-financial/human-resources-specialists.htm#tab-2> (last visited July 14, 2016).

The *Handbook* states the following with regard to the duties of Training and Development Specialists:

What Training and Development Specialists Do

Training and development specialists help plan, conduct, and administer programs that train employees and improve their skills and knowledge.

Duties

Training and development specialists typically do the following:

- Assess training needs through surveys, interviews with employees, or consultations with managers or instructors
- Design and create training manuals, online learning modules, and course materials
- Review training materials from a variety of vendors and choose appropriate materials
- Deliver training to employees using a variety of instructional techniques
- Monitor and evaluate training programs to ensure they are current and effective
- Select and assign instructors or vendors to conduct training
- Perform administrative tasks such as monitoring costs, scheduling classes, setting up systems and equipment, and coordinating enrollment

Training and development specialists create, administer, and deliver training programs for businesses and organizations. To do this, they must first assess the needs of an organization. Once those needs are determined, specialists develop custom training programs that take place in classrooms or training facilities. Training programs are increasingly delivered through computers, tablets, or other hand-held electronic devices.

Training and development specialists organize or deliver training sessions using lectures, group discussions, team exercises, hands-on examples, and other formats. Training can be in the form of a video, self-guided instructional manual, or online application. Training also may be collaborative, which allows employees to connect informally with experts, mentors, and colleagues, often through the use of technology.

Training and development specialists may monitor instructors, guide employees through media-based programs, or facilitate informal or collaborative learning programs.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Training and Development Specialists," <http://www.bls.gov/ooh/business-and-financial/training-and-development-specialists.htm#tab-2> (last visited July 14, 2016).

The *Handbook* states the following with regard to the duties of Labor Relations Specialists:

What Labor Relations Specialists Do

Labor relations specialists interpret and administer labor contracts regarding issues such as wages and salaries, healthcare, pensions, and union and management practices.

Duties

Labor relations specialists typically do the following:

- Advise management on contracts, worker grievances, and disciplinary procedures
- Lead meetings between management and labor
- Meet with union representatives
- Draft proposals and rules or regulations
- Ensure that human resources policies are consistent with union agreements
- Interpret formal communications between management and labor
- Investigate validity of labor grievances
- Train management on labor relations

Labor relations specialists work with representatives in a labor union and a company's management. In addition to leading meetings between the two groups, these specialists draft formal language as part of the collective bargaining process. These contracts are called collective bargaining agreements (CBAs), and they serve as a legal and procedural guide for employee/management relations.

Labor relations specialists also address specific grievances a worker might have, and ensure that all labor and management solutions comply within the relevant agreement.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Training and Development Specialists," <http://www.bls.gov/ooh/business-and-financial/training-and-development-specialists.htm#tab-2> (last visited July 14, 2016).

We observe that none of the job duties of any of those positions involve supervising workers or making sales calls. Further, the duties of the proffered position as originally characterized in the Petitioner's support letter did not involve supervising the Petitioner's workers or making sales calls. If the duties described had involved supervision of employees and making sales calls the H-1B petition may not have been approved because the LCA, which was certified for a Human Resources, Training, and Labor Relations Specialist position, would likely been found to not correspond to and support the H-1B petition.⁵

During the site visit, the Beneficiary asserted that his duties include: (1) meeting with future clients who may agree to a contract with the organization, and (2) visiting different assisted living facilities to build partnerships and to gain contracts. However, these duties do not correspond to a human resources specialist position, a training specialist position, or a labor relations specialist position.

Further, the Petitioner indicated in the organizational chart that the proffered position involves supervising employees. On appeal, the Petitioner states that the Beneficiary oversees home health aides' schedules and conducts quality control over their performance, which indicates that the proffered position is a supervisory one. Supervision of employees is also inconsistent with the duties of a human resources specialist position, a training specialist position, and a labor relations specialist position.

Further still, the Beneficiary described his position in his income tax returns as a home care specialist position. Subsequently, in his amended returns, he listed his occupation as "Home Care/Home Visits." Those job titles are both inconsistent with a human resources specialist position, a training specialist position, or a labor relations specialist position.

Yet further, the fact that the Beneficiary claimed mileage expenses on his tax returns is apparently inconsistent with a position as a human resources specialist position, a training specialist position, or a labor relations specialist position for a company with a single location. None of the duties of those positions would likely require travel to client sites.

Even further, the record contains no indication that the supervisory and sales duties of the Beneficiary's positions were incidental to the primary duties of the proffered position, or that they occur only intermittently and infrequently. To the contrary, they appear to be among the usual duties of the proffered position.

In summation, the Petitioner's own evidence does not demonstrate that the Beneficiary has been working as a human resources specialist, a training specialist, or a labor relations specialist, or in a job that combines the duties of those positions. To the contrary, it suggests that the Beneficiary supervises registered nurses and others, and makes sales calls.

⁵ See 8 C.F.R. § 214.2(h)(4)(i)(B)(1) and 20 C.F.R. § 655.705(b).

Thus, the Beneficiary is no longer employed by the Petitioner in the capacity specified in the petition.

For all of the these reasons, the evidence of record is insufficient to establish that the Petitioner employed the Beneficiary in the same capacity specified in the petition for the entire validity period of February 21, 2011 until February 20, 2014. The Director therefore properly revoked the approval of the petition pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(1).

B. The Statement of Facts was Not True and Correct, or Was Inaccurate

The regulation at 8 C.F.R. § 214.2(h)(11)(iii)(A)(2) permits the Director to revoke a petition's approval, upon notice, if she finds that the "statement of facts contained in the petition . . . was not true and correct, inaccurate, fraudulent, or misrepresented a material fact[.]" We agree with the Director that such is the case here.

The record of proceedings establishes that the Petitioner has been performing job duties that were not disclosed at the time of filing. Consequently, we find that the statement was not true and correct, and was inaccurate. The Director therefore also properly revoked the approval of the petition pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(2).

C. The Approval of the Petition Violated Paragraph (h) of this Section or Involved Gross Error

The regulation at 8 C.F.R. § 214.2(h)(11)(iii)(A)(5) permits the Director to revoke a petition's approval, upon notice, if she finds that the approval of the petition violated 8 C.F.R. § 214.2(h) or involved gross error pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(5). We agree with the Director that approval of this petition violated 8 C.F.R. § 214.2(h), because the current record of proceedings does not establish that the proffered position is 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) 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).

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 qualifies as a specialty occupation. Specifically, the record (1) does not describe the position’s duties with sufficient, consistent, detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.⁶

The inconsistencies between the duties as described at the time of filing and the actual duties as revealed as a result of the site visit preclude a meaningful analysis of whether they constitute a specialty occupation position. In other words, those inconsistencies make it impossible for us to ascertain what the Beneficiary would actually be doing: whether he would be performing the duties as initially described, the duties as revealed via the site visit, or some combination of the two sets of duties. We cannot determine whether a position is a specialty occupation absent a clear picture of what the Beneficiary would actually be doing.

Aside from this inconsistency, the introduction of managerial-level responsibilities into the position’s duties raises additional issues regarding the reliability of the Petitioner’s job description, as such responsibilities appear inconsistent with the Level I wage level selected here. Again, 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. In designating the proffered position at a Level I wage, the Petitioner indicated: (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

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

closely monitored and reviewed for accuracy; and (3) that he will receive specific instructions on required tasks and expected results. The Petitioner's designation of the proffered position as a Level I position appears inconsistent with these responsibilities, and raises additional questions regarding the substantive nature of the proffered position.⁷ This inconsistency further undermines the credibility of the position descriptions contained in the record. Because it renders the job descriptions of record even more unreliable, it makes it even more difficult for us to (1) ascertain what the Beneficiary would actually be doing, and (2) determine whether the duties he performs collectively constitute a specialty occupation position.

Inconsistencies aside, the petition could still not be approved even if the Petitioner had established the substantive nature of the position such that we could determine what the Beneficiary is actually doing. Therefore, we will not further address evidence submitted to show that jobs located within the human resources specialists, training and development specialists, or labor relations specialists occupational categories qualify as specialty occupation positions. However, we note that even if the proffered position were established as being located within one of those categories, a review of the *Handbook* does not indicate that, simply by virtue of its classification within one of these occupational categories, such a position qualifies as a specialty occupation in that the *Handbook* does not state a normal minimum requirement of a U.S. bachelor's or higher degree in a specific specialty, or its equivalent, for entry. See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Human Resources Specialists," <http://www.bls.gov/ooh/business-and-financial/human-resources-specialists.htm#tab-4>; "Training and Development Specialists," <http://www.bls.gov/ooh/business-and-financial/training-and-development-specialists.htm#tab-4>; "Labor Relations Specialists," <http://www.bls.gov/OOH/business-and-financial/labor-relations-specialists.htm#tab-4> (last visited July 14, 2016). As such, absent evidence that the position satisfies one of the alternative criteria available under 8 C.F.R. § 214.2(h)(4)(iii)(A), the proffered position has not been shown to be a specialty occupation position for this additional reason.

That the Petitioner did not establish the substantive nature of the work to be performed by the Beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or

⁷ The issue here is that the Petitioner's designation of this position as a Level I undermines any claim that the position is relatively higher than 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), such a 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.

Matter of M-H-S-, Inc.

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. The proffered position is therefore not a specialty occupation position, and the H-1B petition should not have been approved. The Director therefore also properly revoked the approval of the petition pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(5), as the approval violated 8 C.F.R. § 214.2(h).

V. CONCLUSION

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 M-H-S-, Inc.*, ID# 15973 (AAO July 19, 2016)