



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

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

MATTER OF B-I- LLC

DATE: JULY 25, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a coffee and coffee machine distributor with 12 employees, seeks to temporarily employ the Beneficiary as a “sales engineer” 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, denied the petition. The Director concluded that the Petitioner had not demonstrated that the proffered position qualifies for treatment as a specialty occupation position.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director’s determination that the proffered position is not a specialty occupation was reached in error.

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:

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- (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. THE PROFFERED POSITION

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as a “sales engineer.” The Petitioner provided the following job duties for the position (note: errors in the original text have not been changed):

- Identify potential clients to expand our customer base in the Latin, Italian and American Coffees market.
- Develop and implement along with the sales team new products and service systems.
- Identify customer needs an anticipated item.
- Prepare new brochures with technical and quality information (Equipment & Coffee).
- Daily review of the [REDACTED] to produce and predict green coffee requirements.
- Monitor all accounts and reports from the distributors and sales team.
- Develop and installation and demonstration plan.
- Keep up to date with the espresso coffee machines systems and new products at they develop.
- Strong god relationship with espresso coffee machine manufacturers.
- Strong good relationship with spare parts supplies.

- Policies and procedures for customer relations dept.
- Collaborate with sales teams to understand customer requirements, to promote the sale company products, and provide support.

The Petitioner stated that the proffered position requires a degree in systems engineering.

### III. ANALYSIS

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.<sup>1</sup> Specifically, the record (1) does not describe the position's duties with sufficient detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.<sup>2</sup>

#### 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. To inform this inquiry, we recognize 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>

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Sales Engineers" corresponding to the Standard Occupational Classification code 41-9031.<sup>4</sup>

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<sup>1</sup> Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

<sup>2</sup> 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.

<sup>3</sup> All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <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.

<sup>4</sup> We are not convinced that the Petitioner properly classified the proffered position as one located within the "Sales Engineers" occupational category. To the contrary, the LCA likely should have been certified for a position located within the "Wholesaling and Manufacturing Sales Representatives" occupational category. However, in order to provide the Petitioner with a full and complete decision, we will consider the proffered position as falling within the occupational category it selected. As we do not consider the proffered position a specialty occupation under the category selected by the Petitioner, the distinction is irrelevant. However, in the event the Petitioner is able to overcome our decision, this issue must be further explored and resolved before approval of the petition may be considered. A determination would also have to be made as to whether the LCA supports and corresponds to the H-1B petition.

The *Handbook* discusses the means for entry into positions located within this occupational category as follows:

A bachelor's degree is typically required to become a sales engineer. Successful sales engineers combine technical knowledge of the products or services they are selling with strong interpersonal skills.

### **Education**

Sales engineers typically need a bachelor's degree in engineering or a related field. However, a worker without a degree, but with previous sales experience as well as technical experience or training, sometimes holds the title of sales engineer. Workers who have a degree in a science, such as chemistry, or in business with little or no previous sales experience, also may be called sales engineers.

University engineering programs generally require 4 years of study. They vary in content, but all programs include courses in math and the physical sciences. In addition, most programs require developing strong computer skills.

Most engineering programs require students to choose an area of specialization. The most common majors are electrical, mechanical, or civil engineering, but some engineering departments offer additional majors, such as chemical, biomedical, or computer hardware engineering. However, some undergraduate programs offer a general engineering curriculum; students then specialize in a particular area either on the job or in graduate school.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Sales Engineers," <http://www.bls.gov/ooh/sales/sales-engineers.htm#tab-4> (last visited July 21, 2016).

The *Handbook* does not indicate that a bachelor's degree in a specific specialty, or the equivalent, is normally required for entry into sales engineering positions. First, while the *Handbook* indicates that sales engineering positions typically require a bachelor's degree in engineering or a related field, it also states that workers with previous sales experience and technical training, but no degree, could also hold sales engineering positions. Furthermore, the *Handbook* indicates further that a wide range of degrees<sup>5</sup> could also qualify an individual for a career as a sales engineer, including degrees in science, chemistry, or business. For these reasons alone, the *Handbook* does not establish the proffered position as a specialty occupation.

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<sup>5</sup> The *Handbook* does not specify the type of "degree" to which it refers when it indicates that all of these fields of study area acceptable courses of study, and we observe that not all "degrees" are four-year, bachelor's degrees.

The *Handbook's* recognition that non-specialty degrees in "science" or "business" would provide adequate preparation is further evidence that the proffered position is not a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as "business," or "science,"<sup>6</sup> without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).<sup>7</sup>

For all of these reasons, the *Handbook* does not support a finding that a minimum of a bachelor's degree in a specific specialty is normally required for entry into positions located within the occupational category designated by the Petitioner.

When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the petitioner to provide persuasive evidence that the proffered position more likely than not satisfies this or one of the other three criteria, notwithstanding the absence of the *Handbook's* support on the issue. In such cases, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other objective, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider and weigh all of the evidence presented to determine whether the particular

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<sup>6</sup> The discipline of "science" includes, for example, the diverse fields of biology, botany, meteorology, and astronomy.

<sup>7</sup> Specifically, the judge explained in *Royal Siam*, 484 F.3d at 147, that:

The courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D. Mass. 2000); *Shanti*, 36 F. Supp. 2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

position qualifies as a specialty occupation. In the instant case, however, the Petitioner provided no evidence from any other authoritative and persuasive source.

Further, we find that, to the extent that they are described in the record of proceedings, the numerous duties that the Petitioner ascribes to the proffered position do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge as the position requires.

The Petitioner has not demonstrated that a minimum of a bachelor's degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position proffered in this case. 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 casts its gaze upon 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)).

Here and as already discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative source) reports an industry-wide 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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The Petitioner did provide one vacancy announcement as evidence pertinent to this criterion. It pertains to a position entitled "Sales Representative," and was placed by [REDACTED] which does not appear to conduct business within in the Petitioner's industry. As to the qualifications for the position, it states: "Bachelor's degree preferred. High School diploma, GED, or equivalent work experience. Valid driver's license."

The vacancy announcement states that a bachelor's degree is preferred. A preference is not a minimum requirement. The minimum educational requirement for that position appears to be a high school diploma, a GED, or equivalent work experience. Further, that vacancy announcement does not state that the preferred degree must be in any specific subject or even in any range of subjects. Clearly, that vacancy announcement does not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Finally, even if the vacancy announcement provided involved a parallel position at an organization similar to the Petitioner and in the Petitioner's industry and required a minimum of a bachelor's degree in a specific specialty or its equivalent, the Petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from a single announcement with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>8</sup>

Thus, the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to parallel positions with organizations that are in the Petitioner's industry and otherwise similar to the Petitioner. The Petitioner has not, therefore, satisfied the criterion of 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.

The Petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that its "Type of Business" is "Coffee." The Petitioner has provided documentation that demonstrates that it also sells espresso coffee machines that are technologically advanced.

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<sup>8</sup> USCIS "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). As just discussed, the Petitioner has not established the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the Petitioner still would not have demonstrated what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

To establish that a degree in systems engineering is mandatory, the Petitioner stated that the proffered position requires the following (note: errors in the original text have not been changed):

1. A strong mathematical base. Calculus 1, Calculus 2, Calculus 3 and Numerical Calculus 1 and 2 courses are studied in the career. These courses provide the necessary knowledge for:
  - Developing an applicable numerical procedure to problems which cannot be solved analytically, to an end that results in a numerical solution represented by values applied to the respective market to be studied and entered.
  - Identifying and analyzing mistakes when you have an incorrect answer.
  - Presenting methods to solve problems.
  - Providing strong useful mathematical knowledge to develop distribution systems and for making asserted financial decisions which can assure a products success. It is essential that the responsible person for this role has exceptional knowledge in all mathematical fields.
2. A strong background in statistics. In the workload of Systems Engineering, there are four subject areas. Probability, Applied Statistics, Stochastic Processes and Simulation. Our candidate must have knowledge of all areas. This is fundamental in the field of Marketing. All the necessary tools are imparted to plant and analyze the main models to investigate operations such as controlling inventory and waiting lines. Also important is the knowledge of conducting a simulation of probable results in the marketing analysis.
3. The study of optimization subjects such as Linear Optimization, Network Optimization and non Linear Optimization, added to the Decision Support System, assure the requirements for
  - The operational investigation of real event analysis with are applicable to the marketing plan.
  - Finding minimum distances while developing distribution networks using the appropriate tools.
  - Handling the issues of minimizing costs.
4. Some elective subjects are included in the workload like Accounting, Finance, Business Administration, Marketing Optimization, Organizational Consulting, which the applicant must have. The candidate must know how to use this knowledge in the field of marketing. A candidate must be able to:

- Managing the major concepts of general accountability and describing the most relevant concepts of Financial Mathematics.
- Presenting the theoretical base of a company's functionality, as well as its socioeconomic environment.
- Describing and analyzing a company's operation and organization.
- Managing fundamental concepts of marketing.
- Managing and analyzing the fundamental concepts of Organizational Development.

The Petitioner thus asserted that performance of the duties of the proffered position requires a thorough knowledge of, for instance, calculus; probability; applied statistics; stochastic processes; linear, network, and non-linear optimization. The Petitioner's explanation of the need for such knowledge, however, is very abstract. The Petitioner stated that the Beneficiary would, for instance, "[develop] an applicable numerical procedure to problems," "analyze the main models to investigate operations such as controlling inventory and waiting lines," "[perform] operational investigation of real event analysis with are applicable to the marketing plan," "find[] minimum distances while developing distribution networks using the appropriate tools," and "[minimize] costs." The Petitioner did not sufficiently explain the asserted need for an in-depth knowledge of advanced mathematics, probability, and optimization in selling coffee machines in an operation with 12 employees. Notwithstanding the Petitioner's assertions, that performance of the duties of the proffered position would require knowledge of calculus; probability; applied statistics; stochastic processes; linear, network, and non-linear optimization is unclear.

The Petitioner urges us to contemplate the technical aspects of the proffered position, and we have considered all evidence submitted by the Petitioner in that regard as part of our *de novo* review of this matter. However, we do not find it persuasive.

In particular, we observe multiple assertions indicating that the Beneficiary would spend a significant amount of time performing duties related to marketing. Going back to the *Handbook*, we note that DOL addressed the performance of marketing duties by sales engineers as follows:

Many of the duties of sales engineers are similar to those of other salespersons. They must interest the client in buying their products or services, negotiate a price, and complete the sale. To do this, sales engineers give technical presentations during which they explain the technical aspects of the product and how it will solve a specific customer problem.

*Some sales engineers, however, team with salespersons who concentrate on marketing and selling the product, which lets the sales engineer concentrate on the technical aspects of the job.* By working as part of a sales team, each member is able to focus on his or her strengths and expertise. For more information on other sales occupations, see the profile on wholesale and manufacturing sales representatives.

(Emphasis added.)

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Sales Engineers," <http://www.bls.gov/ooh/sales/sales-engineers.htm#tab-2> (last visited July 21, 2016).

That the Beneficiary would be handling so many marketing functions indicates that the proffered position does not entail the performance of more technical duties, or of technical duties performed at a higher level, than those of other positions located within the occupational category. In other words, application of the *Handbook's* findings regarding marketing duties performed by sales engineers undermines the Petitioner's claims regarding the technical aspects of the proffered position. Furthermore, as discussed, the Petitioner has not made clear exactly why the Beneficiary would need to apply the technical skills it claims are necessary for this position. In any event, given the *Handbook's* indication that certain positions within the "Sales Engineer" occupational category do not require a bachelor's degree, or require a bachelor's degree but not necessarily one in a specific specialty, the current evidence of record does not establish the proffered position as more complex or unique than such positions.

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. Accordingly, 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. To this end, we usually review a petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

The Petitioner concedes that it has never previously employed anyone in the proffered position, other than the Beneficiary. While a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, it is unclear how an employer that has never recruited and hired for the position would be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position. We cannot conclude that the Petitioner has satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).<sup>9</sup>

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<sup>9</sup> While a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS

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.

In the instant case, relative specialization and complexity have been asserted, but not sufficiently developed by the Petitioner as an aspect of the proffered position. As was noted above, although the Petitioner asserts that the proffered position requires knowledge of calculus; probability; applied statistics; stochastic processes; linear, network, and non-linear optimization, the record contains insufficient evidence to support that assertion.

Upon review of the totality of the record, the Petitioner has not established that the nature of the specific duties is so specialized and complex that the 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 evidence of record does not, therefore, satisfy the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 B-I- LLC*, ID# 17209 (AAO July 25, 2016)

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limited solely to reviewing a 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 employer artificially 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 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").