



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

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

MATTER OF A-N- INC.

DATE: JULY 25, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

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

The Director, California Service Center, revoked the approval of the petition. The matter is now before us on appeal. On appeal, the Petitioner asserts that the Director erroneously revoked the approval of the petition and submits additional evidence.

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

I. REVOCATION FRAMEWORK

In general, the authority to revoke approval of an H-1B petition is found at 8 C.F.R. § 214.2(h)(11), which states, in pertinent part, the following:

Revocation of approval of petition.

(i) *General.*

- (A) The Petitioner shall immediately notify the Service of any changes in the terms and conditions of employment of a beneficiary which may affect eligibility under section 101(a)(15)(H) of the Act and paragraph (h) of this section. An amended petition on Form I-129 should be filed when the petitioner continues to employ the Beneficiary. . . .

- (B) The Director may revoke a petition at any time, even after expiration of the petition.

.....

(iii) *Revocation on notice*—

- (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.

- (B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the Petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The Director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. . . .

We find that the content of the Director's notice of intent to revoke (NOIR) approval of the petition comported with the regulatory notice requirements, as it provided a detailed statement that conveyed the proposed grounds for revocation encompassed by the regulation at 8 C.F.R. § 214.2(h)(11)(iii)(A), and that it also allotted the Petitioner the required time for the submission of evidence in rebuttal that is specified in the regulation at 8 C.F.R. § 214.2(h)(11)(iii)(B).

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II. ANALYSIS

A. Form I-129

The Petitioner filed the H-1B petition on September 27, 2013. On the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner stated that the basis for requesting H-1B classification was “continuation of previously approved employment without change with the same employer.” The instructions to the Form I-129, specify that a petitioner should check this box if it is applying to continue the employment of the beneficiary in the same nonimmigrant classification the beneficiary currently holds and there has been no change in the employment.¹

In the Form I-129 petition, the Petitioner stated that the Beneficiary had been working in California but would now be working from its office located at [REDACTED] in [REDACTED] Illinois beginning on October 1, 2013. Thus, the Petitioner’s selection on the Form I-129 indicating that there was no change to the employment was inaccurate as the Beneficiary’s work site changed from California to Illinois. An inaccurate statement anywhere on the Form I-129 or in the evidence submitted in connection with the petition mandates its denial. *See* 8 C.F.R. § 214.2(h)(10)(ii); *see also id.* § 103.2(b)(1).

B. Terms and Conditions of the Labor Condition Application

On the Labor Condition Application (LCA) submitted in support of the petition, the Petitioner confirmed that the Beneficiary’s sole place of employment would be at [REDACTED] Illinois, and that this place of employment is in [REDACTED]. The Petitioner also indicated on the LCA that the proffered position falls under the occupational category “Computer Operators” which corresponds to Standard Occupational Category code 43-9011, at a Level I (entry) wage level.

The Director approved the petition on October 1, 2013. Subsequently, on December 12, 2013, and December 18, 2013, USCIS conducted two site visits at the [REDACTED] address provided by the Petitioner in the petition and for which the LCA was certified. During the site visits, USCIS discovered that: the office center responsible for that address did not have any record of the Petitioner as a tenant; the Petitioning organization did not exist at that location; and the Beneficiary was not working at that location. However, during a telephonic interview on December 13, 2013, the Beneficiary stated that he reported to the Petitioner’s [REDACTED] address on a daily basis for a few hours and spent the remainder of his workday off-site.

¹ Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions and such instructions are incorporated into the regulations requiring its submission. 8 C.F.R. § 103.2(a)(1).

² Part G of the LCA states the following regarding the listed place of employment: “**Important Note:** It is important for the employer to define the place of intended employment with as much geographic specificity as possible[.] The place of employment address listed below must be a physical location and cannot be a P.O. Box.”

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The Director issued a NOIR. In response to the NOIR, the Petitioner submitted a letter from [REDACTED] in which he stated that the Beneficiary initially started working at the Petitioner's office, but the Petitioner moved to another location in [REDACTED] Illinois in November 2013. [REDACTED] further stated that the Petitioner moved again to its current location in [REDACTED] Illinois in January 2015. [REDACTED] stated that the Beneficiary works out of this [REDACTED] Illinois location "during normal business hours (except for the days when performing data collection in the field)."

We note several inconsistencies in the information provided by the Petitioner regarding the Beneficiary's work location. First, in the petition, the Petitioner provided conflicting information regarding whether the Beneficiary would work off-site. While the Petitioner stated on page 4, Part 5 of the Form I-129 that the Beneficiary would not work off-site, it also indicated that the Beneficiary would work off-site by answering "yes" to the questions listed in Part D of page 11 of the Form I-129. The Petitioner has not provided an explanation for this inconsistency. It is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence. *Matter of Ho*, 19 I&N Dec. at 591. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92. Moreover, as discussed, an inaccurate statement anywhere on the Form I-129 or in the evidence submitted in connection with the petition mandates its denial. See 8 C.F.R. § 214.2(h)(10)(ii); see also *id.* § 103.2(b)(1).

Further, [REDACTED] statements regarding the Petitioner's Illinois locations and the timeframes during which the Petitioner purportedly occupied a particular Illinois address are in conflict with the information contained in the two documents entitled "Labor Condition Application Posting Information," which were submitted with the NOIR response.

More specifically, [REDACTED] claims that the Petitioner moved from the [REDACTED] Illinois location to [REDACTED] Illinois in November 2013. The Petitioner submitted a document entitled "Labor Condition Application Posting Information" which is signed by [REDACTED]. The notice indicates that it was posted from November 1, 2013 to November 15, 2013 for a position located at [REDACTED] IL [REDACTED]. Notably, the Petitioner was required to provide this notice of the filing of the LCA on or within 30 days before the date the LCA was submitted to the U.S. Department of Labor for certification. 20 C.F.R. § 655.734. The notice must include the location(s) at which the H-1B nonimmigrant will be employed. *Id.* When a petitioner places an H-1B worker at a work site not contemplated at the time of filing the application but which is in the area of intended employment provided on the LCA, the petitioner is required to post notices at the work site on or before the date the individual begins work. *Id.* The Petitioner has not provided an explanation as to why it would post a notice of position availability for a position located at [REDACTED] IL [REDACTED] if the work site had moved to [REDACTED] Illinois.

Further the record contains a second document entitled "Labor Condition Application Posting Information" which is signed by [REDACTED] COO." According to this document, the Petitioner sought an H-1B nonimmigrant worker for the work location at [REDACTED]

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IL and this notice was posted for the period “from 2/1/15 to 2/15/15.” This information is also inconsistent with the Petitioner’s assertion that the Petitioner had relocated its Illinois branch office to Illinois in January 2015. The Petitioner provides no explanation as to why it would post a notice of position availability at a location it claims that it had not occupied for over a year.

We further note that public records indicate that the Petitioner’s claimed branch office at Illinois is a residential single home registered to and . The Petitioner provided insufficient evidence regarding its business operations out of this residential address. For example, the record of proceedings does not contain probative evidence indicating the total number of employees the Petitioner is permitted to employ at this location per local zoning laws and regulations.

Moreover, the Petitioner stated that the Beneficiary had worked out of its Illinois location from November 2013 until January 2015. However, the Petitioner provided no specifics as to the actual address of its location. Nor did it provide an itinerary demonstrating the time spent at the location. Therefore, the record is devoid of sufficient probative evidence with regard to the Beneficiary’s work location for a period of over one year.

Upon review of the entire record of proceedings, we find that the evidence of record does not contain sufficient probative evidence regarding the Petitioner’s business locations³ in Illinois and the time the Beneficiary spent or would spend at each on- and off-site work locations to overcome the Director’s first basis for revoking the approval of the petition.

C. SPECIALTY OCCUPATION

1. 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.

³ We further note that the Petitioner’s claimed primary place of business located at California is also a residential single family home. It is unclear why the Petitioner indicated a suite number for this address.

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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).

2. Proffered Position

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as an “information technology specialist.” In the itinerary it submitted with the initial filing of the petition, the Petitioner stated the following regarding the Beneficiary’s duties and the percentage of time he would spend on each duty (verbatim):

Task	Details	% of Time Spent
KPI (Key Performance Indicator) Implementation:	Testing performance of growing list of KPIs (Each KPI represents as performance indicator for the Wireless Network Technology)	30%
Reporting System	Testing comparison and Implementation work using PYTHON, Shell Scripting, My SQL and calculate the parameters before going to the production release	30%
	This is a new project that will get in to implementation phase in October 2012. He is involved in providing	5%

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	input to Product Requirements for this new project.	
Operational Work	Generate QA Report at the end of the day and maintain Database System and subversion repository	20%
Monitoring Tool	Development, Design and Updates involved in the monitoring tool using PYTHON depend on requirement	15%

However, the Petitioner provided two different versions of the job duties in its NOIR response. While providing the same duties stated above in the second itinerary it submitted for the work location at [REDACTED] Illinois, [REDACTED] the Petitioner also provided the following version of duties in a letter signed by [REDACTED] (verbatim):

- Working with wireless mobile advance technology and services, E.g. VoLTE (Voice over LTE).
- [REDACTED] Testing performance of growing list of KPIs (Each KPI represents as performance indicator for the Wireless Network Technology) in VoLTE network.
- And personally go to the field to verify the VOLTE KPIs with the reported KPIs in [REDACTED] report system.
- Testing comparison and Implementation work using Python script, Shell Scripting, MySQL
- Calculate the parameters before going to the production release
- Generate QA Report at the end of the day and maintain Database System and subversion repository.
- Support Linux System Administration team and Android –JAVA Programming team
- Debugging and analyze the defects related to Mobile Application at Client Server side both by using Agile Techniques
- Troubleshoot with the field team related issue on [REDACTED]
- Develop and design the Monitoring tool for drive testing.
- Testing, analyses and track the bugs until not isolates the defects
- To build the [REDACTED] for production & Debug release
- Perform [REDACTED] tests on new [REDACTED] binary release to verify [REDACTED] product before to goes to production environment.
- Perform [REDACTED] field test to reproduce the scenario to resolve defects with developers.
- To create presentation for special [REDACTED] test depends on costumer request
- Create the python script in Linux environment to Automate QA work and this will saves time to test the data on server side
- Determines quality improvement parameters by identifying statistical methods relevant to Troubleshooting processes.
- Regression testing [REDACTED] performance in the field by going personally at the cell ID location to verify the reliability of the [REDACTED] before it release to the field.

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On appeal, the Petitioner submitted another version of the duties of the proffered position as follows (verbatim):

Task	Details	% Time Spent
<p>Software Product Development</p>	<ul style="list-style-type: none"> • Working with wireless mobile advance technology and services at the software product development field. Software product performance of growing list of KPIs (each KPI represents as performance indicator for the Wireless Network Technology) in wireless network. • Working with software development product to research/invent the wireless technology parameters in order to provide efficient and reliable solution to the client. • Coding in Java android programming to implement/Design/configuration/Integration the wireless software product depends on requirement of the client including choice of application architecture and framework. • Wireless Software development and refinement of throw-away simulations or prototypes of confirm requirements. • QXDM/QMDL/QPST Network software tool use to implement and design the Software product depends on client requirements. • Research parameters on Network protocols (RTP, TCP, and UDP) to design and implement solution on Software product. 	65%
<p>Software Product Management</p>	<ul style="list-style-type: none"> • Working on to management for developing multiple wireless apps in order to collaborating with teams and documentation of the confidential wireless software design, procedure, Configuration and set-up. • Working on management tool for the bug tracking, issue tracking and project management function; to create, share, and discuss your documents, ideas, minutes, and projects. • Debugging and analyze the defects related to Mobile Application at Client and Server side both by using Agile Techniques 	10%
<p>Software Product</p>	<ul style="list-style-type: none"> • Releasing the software product by testing Java codes in the field and documentation of the release product. 	10%

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Release	<ul style="list-style-type: none">• Participation in software release and post-release activities, including support for product launch evangelism (e.g. developing demonstrations and/or samples) and competitive analysis for subsequent product build/release cycles• Regression testing [redacted] performance in the field by going personally at the cell ID location to verify the reliability of the [redacted] which coded in Java before it release to the field.• Determines quality improvement parameters by identifying statistical methods relevant to Troubleshooting processes	
[redacted] Monitoring Tool and Linux Server	<ul style="list-style-type: none">• Invent and create the monitoring tool for wireless software product which has a bunch of advance Python programming code which is needed expertise/specialty in coding as well as wireless technology.• Create the python script in Linux environment to automate the manual job work in order to save time.• Support Linux System Administration team to configure/implement the set-up on Linux server.	10%
[redacted] Reporting System	<ul style="list-style-type: none">• Verify KPIs measurements to the reporting system after implementation/Design of the [redacted] software product.• Verify daily comprehensive reports, Detail Comparison, CDF Plotters, Event Based Reporting View, Network Type Reports and Call Setup reporting.	5%

In a letter dated September 16, 2013, [redacted] stated that “[t]his product development requires hiring professionals with graduate or undergraduate degrees in computer science or computer engineering and should also possess knowledge about the basics of wireless communications.” In response to the NOIR, the Petitioner stated that the position requires a master’s degree in an engineering discipline.

3. Analysis

The duties provided on appeal differ significantly from the versions of the duties provided previously in the proceedings. Notably, while the duties provided previously primarily involve testing of software products, the duties provided on appeal mainly involve software product development. The Petitioner stated that the Beneficiary would spend 65% of his time in duties involving product development. Furthermore, on appeal, the Petitioner changed the percentage of time the Beneficiary would spend on reporting system from 30% to 5%; monitoring tool from 15% to 10%; and reporting duties from 20% to

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5%. The Petitioner also added categories such as software product management and software product release - each comprising 10% of the duties. Moreover, the Petitioner's has modified the requirements for the position.

On appeal, a petitioner cannot offer a new position to the Beneficiary, or materially change its level of authority within the organizational hierarchy, the associated job responsibilities, or the requirements of the position. The Petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg' Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *In re Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

While the Petitioner provides different versions of the duties and requirements of the proffered position, it provides no explanation regarding the inconsistencies in the duties in these various versions. The Petitioner is obligated to clarify the inconsistent and conflicting information by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92. Furthermore, evidence that the Petitioner creates after USCIS points out the deficiencies and inconsistencies in the petition will not be considered independent and objective evidence. Necessarily, independent and objective evidence would be evidence that is contemporaneous with the event to be proven and existent at the time of the director's notice.

Furthermore, considering the totality of the duty description provided by the Petitioner, we find that the evidence of record does not establish the depth, complexity, or level of specialization, or substantive aspects of the matters upon which the Petitioner claims that the Beneficiary will engage. While we acknowledge that the Petitioner has provided rather lengthy descriptions of the duties, we note that the duties of the proffered position, and the position itself, are described in relatively generalized and abstract terms that do not relate substantial details about either the position or its constituent duties. For example, the Petitioner stated that the Beneficiary will be "[t]esting performance of growing list of KPIs." However, the Petitioner provides little insight into the Beneficiary's actual tasks, nor does it sufficiently identify specific skills required to perform such tasks. The abstract nature of the proposed duties is further illustrated by the statement that the Beneficiary will "[g]enerate QA Report at the end of the day and maintain Database System and subversion repository." Again, this statement does not adequately explain the methods the Beneficiary would use to gather data or in generating reports. Nor does it provide sufficient insight into what it considers "maintain[ing]" a database system to involve. Similarly, the Petitioner did not explain the tasks that the Beneficiary would perform in "providing input to Product Requirements" for the project. Even when the Petitioner expanded on the duty description, it continued to use such terms such as "[w]orking with," "[c]alculate," "[s]upport," and "[g]enerate" that reveal very little, if any, insight into the actual tasks the Beneficiary would perform on a day-to-day basis.

The overall responsibilities for the proffered position do not contain sufficient information regarding the particular work, and associated educational requirements, into which the duties would manifest themselves in their day-to-day performance within the Petitioner's business operations. This type of

description may be appropriate when defining the range of duties that may be performed within an occupational category, but it does not adequately convey the substantive work that the Beneficiary will perform within the Petitioner's business operations and, thus, cannot be relied upon by the Petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in the context of the Petitioner's business 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 the NOIR, the Director requested specific information regarding the position description and the skills required to perform the job duties. However, the Petitioner has provided inconsistent duties and requirements throughout the proceedings. Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The tasks as described do not communicate (1) the actual work that the Beneficiary would perform, (2) the complexity, uniqueness and/or specialization of the tasks, and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty.

The Petitioner has not established the substantive nature of the work to be performed by the Beneficiary, which therefore precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for entry into the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.⁴

⁴ We further note that the Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). 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.

The Petitioner's designation of this position as a Level I, entry-level position undermines any 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

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Moreover, as discussed above, the Petitioner provided inconsistent and inaccurate information in this proceeding. An inaccurate statement anywhere on the Form I-129 or in the evidence submitted in connection with the petition mandates its denial. *See* 8 C.F.R. § 214.2(h)(10)(ii); *see also* 8 C.F.R. § 103.2(b)(1).

III. CONCLUSION AND ORDER

When considered both separately and in the aggregate, we conclude that the evidence submitted by the Petitioner in response to the NOIR and on appeal does not overcome the Director's decision revoking approval of the petition. Consequently we affirm the Director's October 6, 2015, decision revoking the petition's approval pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A).

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013) (citing *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966)). Here, that burden has not been met.⁵

ORDER: The appeal is dismissed.

Cite as *Matter of A-N- Inc.*, ID# 17308 (AAO July 25, 2016)

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

⁵ As the petition will remain revoked, we need not address the additional issues we observe in the record of proceedings including, for example, that the Petitioner did not attest that it would be liable for the Beneficiary's reasonable costs of return transportation abroad if the Beneficiary is dismissed before the end of his authorized admission. 214(c)(5) of the Act; 8 CFR § 214.2(h)(4)(iii)(E).