



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

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

MATTER OF A-P-, INC.

DATE: JUNE 1, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

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

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

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director erred in finding that the proffered position is not a specialty occupation.

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

I. LAW

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

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

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

8 C.F.R. § 214.2(h)(4)(iii)(A). U.S. Citizenship and Immigration Services (USCIS) has consistently interpreted the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

II. PROFFERED POSITION

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as a “general manager.” In response to the Director’s request for evidence (RFE), the Petitioner provided the following job duties for the position, along with the approximate percentage of time the Beneficiary will spend on each duty (verbatim):

Managing Property Operations (approximately 30 percent)

- Provides timely, real-time feedback to management and hourly associates on service and operational standards.
- Manages the flow of labor between departments to support effective management of Labor Budget and achievement of profitability goals.
- Creates and support clear lines of responsibility for management team.
- Prepares for quality assurance audits.
- Acts as a project manager for the execution of capital improvements.
- Manages the implementation of major brand standards.

Managing Food and Beverage Operations (approximately 15 percent)

- Provides timely, real-time feedback to management and hourly associates on service and operational standards.
- Establishes and leverages local vendor relationships to support food and beverage operational needs.

- Provides coaching on operations and troubleshooting of Micros and other technology components within property common areas.

Managing and Sustaining Sales and Marketing Strategy (approximately 15 percent)

- Works with the Regional Sales office (RSO) to implement sales strategy for the property.
- Works with Market Sales to establish property sales strategy, goals, and action plans.
- Identifies and champion creative marketing solutions that fit the brand and property needs.
- Participates in the property sales review (PSR).
- Manages relationships with decision makers at top accounts.
- Develops innovative means for capturing new streams of revenue through property amenities.
- Interacts with in-house guests to prospect for new sources of business.
- Identifies key revenue generating stakeholders and customers and communicate information to sales offices.
- Understands and leverage sales and marketing advantages over competitor properties within market.
- Monitors sales strategy with RSO to ensure ongoing effectiveness and compliance.

Managing Profitability (approximately 10 percent)

- Measures, analyzes, and communicates property performance using a variety of financial/non financial data including controllable costs, sales revenue, guest satisfaction, and associate engagement data.
- Reviews Property Distribution Summary (OnDemand) and Purchase Detail Reports; identify, research, and resolve balance issues.
- Consolidates reports needed for period-end review (e.g., P&L, Accounting Scorecard, Banking Report and Statistics, PACE, credit card fraud report).
- Reviews property performance on period basis with Regional Director.

Maintaining Revenue Management Goals (approximately 5 percent)

- Manages the relationship with the revenue management office.
- Reviews and works with appropriate revenue management reports[.]

Managing and conducting Human Resources activities (approximately 15 percent)

- Conducts day-to-day Human Resource transactions to support needs of the property.
- Completes training for management employees.
- Ensures ongoing development of managers.

- Conducts performance review process for associates.

Managing Relationships with Property Stakeholders (approximately 10 percent)

- Keeps brand leadership team, owners, and above property stakeholders updated on property performance in the areas of financials, guest satisfaction, and associate engagement.
- Prepares and presents reports for owners and above property leadership using financial/performance data to show how the Refreshing Business model is affecting property performance.
- Conducts property critique.
- Conducts annual business reviews.
- Participates in ad hoc owner conference calls and respond appropriately to owner requests.

According to the Petitioner, the position requires at least a bachelor's degree in hotel management or hospitality.

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.¹ 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.²

The stated job descriptions do not establish the substantive nature of the work within the specific context of the Petitioner's business operations. For instance, the Petitioner stated on the H-1B petition that it has five employees. The Petitioner claimed that the Beneficiary will work with various departments and offices such as the "Regional Sales office," "Market Sales," and "revenue management office." The Petitioner also stated that the Beneficiary would train "management employees" and would interact with the "brand leadership team, owners, and above property stakeholders." However, the Petitioner has not further identified who these managers, owners, and stakeholders are, or the individuals who constitute the "Regional Sales office," "Market Sales," and "revenue management office," among others, particularly in light of its five-employee operations.³

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

² 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.

³ It is reasonable to assume that the size of an employer's business has or could have an impact on the claimed duties of a particular position. See *EG Enters., Inc. v. Dep't of Homeland Sec.*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). The size of a petitioner may be considered as a component of the nature of the petitioner's business, as the size impacts upon the actual duties of a particular position.

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 in order to demonstrate that a legitimate need for an employee exists, and to substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition. The Petitioner has not adequately done so here.

Accordingly, the record is insufficient to establish the substantive nature of the work to be performed by the Beneficiary. Consequently, we are precluded from 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 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.

Nevertheless, assuming, for the sake of argument, that the proffered duties as described in the record would in fact be the duties to be performed by the Beneficiary, we will analyze them and the evidence of record to determine whether the proffered position as described would qualify as a specialty occupation.

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.⁴

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Property, Real Estate, and Community Association Managers" corresponding to Standard Occupational Classification code 11-9141 at a Level I wage.⁵

⁴ All of our references are to the 2016-17 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.

⁵ We will consider the Petitioner's classification of the proffered position at a Level I wage (the lowest of four assignable wage levels) in our analysis of the position. The "Prevailing Wage Determination Policy Guidance" issued by the DOL

The *Handbook* subchapter entitled “How to Become a Property, Real Estate or a Community Association Manager” states in pertinent part: “Although many employers prefer to hire college graduates, a high school diploma or equivalent is enough for some jobs.”⁶ The *Handbook* does not support the Petitioner’s assertion that a bachelor’s degree is required for entry into this occupation. This passage of the *Handbook* reports that a high school diploma is enough for some jobs in this occupational category. In addition, although the *Handbook* states that “many employers prefer to hire college graduates (emphasis added),” a preference for a degree is not an indication of a requirement.

The Petitioner also referenced the Occupational Information Network (O*NET) reports for “Property, Real Estate, and Community Association Managers.” These O*NET reports provide general information regarding the occupation; however, they do not support the Petitioner’s assertion regarding the educational requirements for the occupation. For example, the Specialized Vocational Preparation (SVP) rating cited within O*NET’s Job Zone designates this occupation as a 7 < 8 rating. An SVP rating of 7 to less than (“<”) 8 indicates that the occupation requires “over 2 years up to and including 4 years” of training. Further, the SVP rating indicates the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and does not specify the particular type of degree (if any) that a position would require.⁷

The Petitioner indicated that the proffered position also falls under the “Lodging Managers” occupational category. The *Handbook* subchapter entitled “How to Become a Lodging Manager” states in pertinent part: “Many applicants can qualify as a lodging manager by having a high school diploma and several years of experience working in a hotel.”⁸ The *Handbook* also states that “[h]otels that provide fewer services generally accept applicants who have an associate’s degree or

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://flcdatcenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf. A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner’s job opportunity. *Id.* A Level I wage should be considered for research fellows, workers in training, or internships. *Id.*

⁶ For additional information regarding the occupational category “Property, Real Estate, and Community Association Managers,” see U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., “Property, Real Estate, and Community Association Managers,” <http://www.bls.gov/ooh/management/print/property-real-estate-and-community-association-managers.htm> (last visited May 12, 2016).

⁷ For more information about SVP ratings, see O*NET Online Help Specific Vocational Preparation (SVP), <https://www.onetonline.org/help/online/svp> (last visited May 12, 2015).

⁸ For additional information regarding the occupational category “Lodging Managers,” see U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., “Lodging Managers,” <http://www.bls.gov/ooh/management/print/lodging-managers.htm> (last visited May 12, 2016).

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certificate in hotel management or operations.”⁹ Thus, the *Handbook* chapter for “Lodging Managers” does not support eligibility under this criterion, either. Instead, the *Handbook* reports that a high school diploma plus an unspecified number of years of experience is enough for “many” jobs in this occupational category, and that an associate’s degree or certificate is “generally sufficient” for hotels that provide fewer services.

The *Handbook* also states that “most large, full-service hotels require applicants to have a bachelor’s degree,” and that “[m]ost full-service hotel chains hire candidates with a bachelor’s degree in hospitality or hotel management.”¹⁰ The Petitioner specifically highlights these passages, and asserts that they demonstrate the proffered position’s qualification as a specialty occupation. However, the Petitioner has not sufficiently established that it is a large, full-service hotel or full-service hotel chain as contemplated by these passages in the *Handbook*.

While the Petitioner has submitted general information about the hotels it claims to manage (including a [REDACTED] and [REDACTED] the Petitioner has not submitted corroborating evidence establishing that these hotels are, in fact, being managed by the Petitioner, and if so, the extent of the Petitioner’s management services over these hotels.¹¹ Further, the Petitioner has not specifically identified which of its properties the Beneficiary would manage, and the nature of that particular hotel’s operations. Thus, the Petitioner has not sufficiently demonstrated the relevance of the passages in the *Handbook* about full-service hotels to the proffered position. For all of these reasons, the Petitioner has not provided sufficient documentation to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

B. Second Criterion

The second criterion presents two, alternative prongs: “The degree requirement is common to the industry in parallel positions among similar organizations *or, in the alternative*, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree[.]” 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong contemplates common industry practice, while the alternative prong narrows its focus to the Petitioner’s specific position.

⁹ *Id.*

¹⁰ *Id.*

¹¹ The Petitioner also lists hotels currently being constructed, and asserts that “[a]fter completion of construction, [the Petitioner] will manage the day-to-day operations of these hotels.” However, the Petitioner has not submitted corroborating evidence of these claimed construction projects and the Petitioner’s involvement in these future hotels’ operations. In any event, we cannot take into consideration these claimed future job duties. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the Petitioner or Beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg’l Comm’r 1978).

1. First Prong

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

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

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* or another authoritative source reports a requirement for at least a bachelor’s degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry’s professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner’s industry attesting that such firms “routinely employ and recruit only degreed individuals.”

In support of this criterion of the regulations, the Petitioner submitted several job advertisements. Upon review, we find that some of the advertisements do not appear to involve parallel positions. For example, one of the postings states that a degree and four to six years of prior hotel management experience is required for the position. Another posting states that a degree and at least eight years of related experience is required. As previously noted, the Petitioner designated its proffered position as a wage level I (entry level) position on the LCA. The advertised positions therefore appear to involve more senior positions than the proffered position. More importantly, the Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to those of the proffered position.

In addition, the postings do not demonstrate that at least a bachelor’s degree in a directly related specific specialty (or its equivalent) is required. The job postings suggest, at best, that although a bachelor’s degree is sometimes required for general manager positions, a bachelor’s degree in a *specific specialty* (or its equivalent) is not.¹²

¹² Even if all of the job postings indicated that a bachelor’s degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations (which they do not), the Petitioner did not demonstrate what inferences, if any, can be drawn from this limited number of advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Further, the Petitioner did not provide independent evidence of how representative the job postings are of the particular employers’ recruiting and employment history for the type of job advertised, as the advertisements are only solicitations for hire, and are not evidence of these companies’ actual hiring practices.

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As the documentation does not establish that the Petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed. Thus, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

2. Second Prong

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

In support of its assertion that the proffered position qualifies as a specialty occupation, the Petitioner submitted a generic description of the proffered position, a list of properties it claims to manage, and general printouts of the properties' websites. However, as previously discussed, the record does not describe the position's duties with sufficient detail to convey substantive information about the relative complexity, uniqueness and/or specialization of the proffered position or its associated duties. Nor does the record contain sufficient, probative evidence to corroborate the Petitioner's claimed scope of operations, including the nature of the hotels it claims to manage (e.g., whether they are full-service or limited service hotels) and to which the Beneficiary would be assigned. We incorporate our previous discussion on the matter.

We also consider the Petitioner's designation of the proffered position as a Level I, entry-level position on the LCA. This designation, when read with the Petitioner's job description and the *Handbook's* narrative, further suggests that the particular position is not so complex or unique that the duties can only be performed an individual with bachelor's degree or higher in a specific specialty, or its equivalent.¹³ Thus, relative complexity or uniqueness as not been established as aspects of the proffered position.

In response to the RFE, the Petitioner submitted printouts of the undergraduate hotel management programs at [REDACTED] and the [REDACTED]. The Petitioner stated that these programs are specifically related to the duties of the proffered position. However, the Petitioner has not specifically identified and explained why these courses would be required to perform the duties of the proffered position. The Petitioner did not submit information relevant to a detailed course of study leading to a specialty degree, and did not establish how such a curriculum is necessary to perform the duties it may believe are so complex and unique.¹⁴ Again, "going on record without

¹³ See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://fcdcenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

¹⁴ The Petitioner submitted seven course descriptions from the [REDACTED]. However, the Petitioner did not demonstrate how these courses are representative of an established curriculum leading to a specialty

supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.” *Matter of Soffici*, 22 I&N Dec. at 165.

In the letter of support, the Petitioner claimed 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.

The Petitioner stated in the H-1B petition that it was established in 2012 (approximately two years prior to the filing of the H-1B petition) and that it has five employees. The Petitioner did not submit information regarding employees who currently or previously held the position. The record therefore does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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.

While the Petitioner provided a more detailed job description in response to the RFE, the description does not establish that the duties are more specialized and complex than positions that are not usually associated with at least a bachelor’s degree in a specific specialty, or its equivalent. We incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the position in the LCA as a Level I position (the lowest of four assignable wage-levels).¹⁵ The Petitioner has not demonstrated in the record that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

degree.

¹⁵ The Petitioner’s designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I, entry-level position would still require a minimum of a bachelor’s degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies

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 A-P-, Inc.*, ID# 16498 (AAO June 1, 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.