



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

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

MATTER OF T-, INC.

DATE: JUNE 1, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an information technology consulting business, seeks to temporarily employ the Beneficiary as an "accounting and financial analyst" under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) § 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, initially approved the petition. Subsequently a U.S. Citizenship and Immigration (USCIS) officer conducted a site visit and follow-up phone interview with regard to the H-1B petition, and the Director ultimately revoked the approval of the petition.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred in the decision. Upon *de novo* review, we will dismiss the appeal.

I. REVOCATION

USCIS may revoke the approval of an H-1B petition, on notice and an opportunity to rebut, pursuant to 8 C.F.R. § 214.2(h)(11)(iii), which states the following:

- (A) Grounds for revocation. The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:
- (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as 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. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

The Director's statements in the NOIR regarding the evidence that the Beneficiary is not employed in a specialty occupation consistent with the terms and conditions of the approved H-1B petition were adequate to notify the Petitioner of the intent to revoke the approval of the petition in accordance with the provision at 8 C.F.R. § 214.2(h)(11)(iii)(A)(I).

As will be evident in the discussion below, we find that, fully considered in the context of the entire record of proceedings, the Petitioner has not established that the Beneficiary is involved in primarily specialty occupation job duties within the petitioning company. The documents submitted in response to the NOIR and on appeal fail to effectively rebut and overcome the basis for revocation specified. Accordingly, the appeal will be dismissed.

II. SPECIALTY OCCUPATION

A. 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:

- (I) 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). 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).

B. The Proffered Position

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as an “accounting and financial analyst.” In response to the Director’s NOIR, the Petitioner provided the following job duties for the position, along with the approximate percentage of time the Beneficiary will spend on each duty:

- Oversee daily accounting activities required to maintain the Authority’s general ledger – Creating/Classifying/Analyzing accounts & transactions. 10%
- Manage check runs for accounts payable & recording of revenue and expenses. 5%
- *Prepare complex invoices to customers on a monthly basis and manage accounts receivables. 15%*
- Organize records and files to document financial transactions, customer and vendor contracts, and state and government papers for bookkeeping & audit purposes. 10%
- Review online bank statements and perform accounts reconciliations for checking accounts and corporate credit card accounts. 10%
- Check credit card accounts for accuracy of expense postings and maintain records. 5%
- *Analyze financial performance to provide P&L/Balance Sheet reporting for executive review. 10%*
- *Perform cost & profitability analysis at company level and at a customer level. 10%*

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- Assist in the payroll runs, state and federal registrations for tax preparation. 5%
- *Create Auditing procedures and develop reconciliation processes, data files and reports and accrual management activities for checking accounts and corporate credit card accounts. 10%*
- Manage Purchase orders/amendments, contracts, billing and payment documentation to make sure for accuracy and discrepancies are resolved. 10%

The Petitioner noted that the duties marked with an asterisk are duties which enable the Beneficiary to calculate and review its tax liability. The Petitioner also submitted an accounting/financial workflow chart and a payroll workflow chart to further detail the Beneficiary's tasks.

On appeal, the Petitioner lists some of the key tasks the Beneficiary performs including: time tracking and reporting for clients' accounts; invoicing; establishment of [requests for purchases] purchase orders; developing statements of work for new and existing clients; daily review of outstanding accounts receivable, aging analysis and follow-up on collections; and participating in the review of existing client margins, providing specific details to show the Petitioner's current financial situation.

According to the Petitioner, the position requires a bachelor's degree in accounting, finance, business administration, or related field.

C. 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 satisfies any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, qualifies as a specialty occupation.¹ Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.²

As a preliminary matter, the Petitioner's claim that a bachelor's degree in business administration is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as 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, 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); *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.³

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. While we may not discuss every document submitted, we have reviewed and considered each one.

³ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

The Petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. Without more, this assertion alone indicates that the proffered position is not in fact a specialty occupation.⁴

1. First Criterion

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we now turn 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 DOL's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁵

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Accountants and Auditors" corresponding to the Standard Occupational Classification code 13-2011 at a Level I wage.⁶ The

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.

Id.

⁴ A general degree requirement does not necessarily preclude a proffered position from qualifying as a specialty occupation. For example, an entry requirement of a bachelor's or higher degree in business administration with a concentration in a specific field, or a bachelor's or higher degree in business administration combined with relevant education, training, and/or experience may, in certain instances, qualify the proffered position as a specialty occupation. In either case, it must be demonstrated that the entry requirement is equivalent to a bachelor's or higher degree in a specific specialty that is directly related to the proffered position. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

⁵ 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.

⁶ 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

Director, however, concluded that the proffered position should have been classified under the occupational category “Bookkeeping, Accounting, or Auditing Clerks.”⁷ According to the *Handbook*, employers generally require some postsecondary education for these jobs, although a high school diploma may be sufficient.⁸ Thus, the *Handbook* does not support that these jobs require the educational background, or its equivalent, commensurate with a specialty occupation

Even assuming, *arguendo*, that the proffered position is an accountant position, the *Handbook* states that “[i]n some cases, those with associate’s degrees, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, get junior accounting positions and advance to accountant positions by showing their accounting skills on the job.” Thus, according to the *Handbook*, the occupation accommodates several paths for entry, including less than a bachelor’s degree in a specific specialty.⁹

On appeal, the Petitioner submits a printout of the O*NET OnLine Summary Report for “Accountants and Auditors.” The summary report provides general information regarding the occupation; however, it does 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 7 < 8. 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. While the SVP rating indicates the total number of years of vocational preparation required for a particular position, it is important to note that it does not describe how those years are to be divided among training, formal education, and experience – and it does not specify the particular type of degree, if any, that a position would require.¹⁰

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 she will be closely supervised and her work closely monitored and reviewed for accuracy; and (3) that she 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://fdcenter.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.*

⁷ For additional information regarding this occupational category, see U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., Accountants and Auditors, available at <http://www.bls.gov/ooh/office-and-administrative-support/print/bookkeeping-accounting-and-auditing-clerks.htm#> (last visited May 16, 2016).

⁸ For additional information regarding this occupational category, see U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., Accountants and Auditors, available at <http://www.bls.gov/ooh/business-and-financial/print/accountants-and-auditors.htm> (last visited May 16, 2016).

⁹ The *Handbook* further states: “Certification within a specific field of accounting improves job prospects.” The *Handbook* reports that certification may be advantageous or even required for some accountant positions. However, we note that there is no indication that the Petitioner requires the Beneficiary to have obtained the designation CPA, Certified Management Accountant (CMA) or any other professional designation to serve in the proffered position.

¹⁰ For additional information, see the O*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

Further, the summary report provides the educational requirements of “respondents,” but does not account for 100% of the “respondents.” The respondents’ positions within the occupation are not distinguished by career level (e.g., entry-level, mid-level, senior-level). Additionally, the graph in the summary report does not indicate that the “education level” for the respondents must be in a specific specialty.

Thus, the Petitioner has not provided documentation from a probative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

2. 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 the common industry practice, while the alternative prong narrows its focus to the Petitioner’s specific position.

a. 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 other 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, the Petitioner submitted copies of job announcements placed by other employers. However, upon review of the documents, we find that the Petitioner’s reliance on the job

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announcements is misplaced. First, we note that some of the job postings do not appear to involve organizations similar to the Petitioner. For example, the Petitioner is a two-person law firm, whereas the advertising organizations include:

- [REDACTED] – a company that specializes in renovation and services for residential and commercial real estate;
- [REDACTED] – a company in the fashion and media business; and
- [REDACTED] – a company in the aluminum manufacturing industry.

Furthermore, some of the postings appear to be for staffing agencies and/or provide little or no information regarding the hiring employers. The Petitioner did not supplement the record of proceeding to establish that the advertising organizations are similar to it.

When determining whether the Petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the Petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

Moreover, many of the advertisements do not appear to be for parallel positions. For example, some of the positions appear to be for more senior positions than the proffered position. Moreover, some of the postings do not include the duties and responsibilities for the advertised positions. Thus, it is not possible to determine important aspects of the jobs, such as the day-to-day responsibilities, complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Therefore, the Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

In addition, some of the postings do not indicate that at least a bachelor's degree in a directly related specific specialty (or its equivalent) is required.¹¹ The job postings suggest, at best, that although a bachelor's degree is sometimes required for budget analyst positions, a bachelor's degree in a *specific specialty* (or its equivalent) is not.¹²

¹¹ As discussed, the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but a bachelor's degree in a specific specialty that is directly related to the duties of the position. *See* section 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). Further, 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 at 147.

¹² It must be noted that even if all of the job postings indicated that a requirement of a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the Petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from the 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). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even

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.¹³ 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).

b. 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.

We reviewed the Petitioner's statements regarding the proffered position; however, in the appeal brief, the Petitioner does not assert that it satisfies this prong of the second criterion. Further, the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. Thus, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

3. 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.

On appeal, the Petitioner references an individual it hired in the position of operations coordinator to support the Beneficiary's role as its accountant.¹⁴ Although the Petitioner refers to the employment of this individual when discussing this criterion, it is not clear the significance of this employment in establishing that the Petitioner requires a baccalaureate or higher degree in a specific specialty, or its equivalent, for the proffered position. That is, it does not appear that the Petitioner hired this individual to perform the duties of the proffered position but rather to support the individual employed in the proffered position.

if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that “[r]andom selection is the key to [the] process [of probability sampling]” and that “random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error”).

¹³ The Petitioner did not provide any independent evidence of how representative the job postings are of the particular advertising employers' recruiting history for the type of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the actual hiring practices of these employers.

¹⁴ The Petitioner's addition of this individual to its staff almost three years subsequent to the filing of the petition is not relevant to the current proceeding as this information does not establish eligibility when the petition was filed. The Petitioner must establish eligibility at the time of filing the nonimmigrant visa petition and must continue to be eligible for the benefit through adjudication. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date 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).

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

4. 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 support of this criterion, the Petitioner provided descriptions of the duties of the proffered position and information regarding its business operations. In addition, the Petitioner submits samples of the Beneficiary's work and emails between the Beneficiary and its vendors. The Petitioner claims that "the duties performed are high level duties requiring an education at the baccalaureate level." However, contrary to the Petitioner's assertion that the position includes "high level duties," the Petitioner designated the proffered position on the LCA as a Level I wage level.¹⁵ As discussed earlier, this designation indicates that the proffered position is a low-level, entry position relative to others within the "Accountants and Auditors" occupational category.¹⁶

While the Petitioner may believe that the proffered position meets this criterion of the regulations, it has not sufficiently demonstrated how the position as described requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent. For instance, 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 tasks. While a few related courses may be beneficial in performing certain duties of the position, the Petitioner has not demonstrated how an established curriculum of such courses is required. The evidence in the record does not refute the *Handbook's* information to the effect that a bachelor's degree in a specific specialty, or its equivalent, is not required for entry into the occupation in the United States. Without more, the

¹⁵ The Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex compared to other positions *within the same occupation*. Nevertheless, a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I, entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty, or its equivalent. That is, a position's wage level designation may be a relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

¹⁶ A Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems" and requires a significantly higher wage. For additional information regarding wage levels as defined by DOL, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

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record lacks sufficiently detailed information to distinguish the level of judgment and understanding necessary to perform the duties as specialized and complex.

In addition, the Petitioner claims that the Beneficiary is well qualified for the position, and references her 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 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).

D. 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 T-, Inc.*, ID# 16718 (AAO June 1, 2016)