



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

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

MATTER OF M-&S-, INC.

DATE: JUNE 13, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an engineering services firm, seeks to temporarily employ the Beneficiary as an "engineer technical staff" 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, California Service Center, denied the petition. The Director concluded that the Petitioner did not establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

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 letter of support, the Petitioner stated that the Beneficiary’s job duties in the proffered position would include the following:

- **Specific Job Duties: 40 hours/week**
 - **Plan Development (50% of time spent per week)** – Assist the registered mechanical engineer in researching, planning, designing, and preparing building construction systems for commercial, institutional, industrial and residential buildings from sketches, calculations, concepts and verbal instructions;
 - **Design Application (30% of time spent per week)** – Assist the registered mechanical engineer in applying engineering principles and theories such as material science, fluid mechanics, structural science and thermodynamics to research and analyze a client’s design criteria, design specifications and design manuals to size, select and layout equipment, ducts and pipes; and
 - **Project Implementation (20% of time spent per week)** – Assist the registered mechanical engineer in utilizing the information obtained from engineering research and analysis to design and prepare shop drawings and as-built drawings for

commercial, institutional, industrial and residential buildings on Auto-Cad for submission to clients.

- **Level of Responsibility** → Assistant Engineer
- **Supervisor** → Mechanical Engineer

In addition, the Petitioner stated that “[t]he minimum requirement for this position is a Bachelor’s Degree in Engineering.”

In the Labor Condition Application (LCA) submitted in support of the H-1B petition, the Petitioner asserted that the proffered position falls under the “Engineering Technicians, Except Drafters, All Other” occupational category corresponding to the Standard Occupational Classification (SOC) code 17-3029. The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels).¹

Thereafter, in response to the Director’s request for evidence (RFE), the Petitioner stated that the Beneficiary would be responsible for the following duties in the proffered position:

- **Specific Job Duties: 40 hours/week**
 - **Plan Development (50% of time spent per week)** – Research, plan, design, and prepare building construction systems for commercial, institutional, industrial and residential buildings from sketches, calculations, concepts and verbal instructions;
 - **Design Application (30% of time spent per week)** – Apply engineering principles and theories such as material science, fluid mechanics, structural science and thermodynamics to research and analyze a client’s design criteria, design specifications and design manuals to size, select and layout equipment, ducts and pipes; and
 - **Project Implementation (20% of time spent per week)** – Utilize the information obtained from engineering research and analysis to design and prepare shop drawings and as-built drawings for commercial, institutional, industrial and residential buildings on Auto-Cad for submission to clients.
- **Level of Responsibility** → Engineering Technical Staff
- **Supervisor** → Senior Project Engineer

¹ The “Prevailing Wage Determination Policy Guidance” issued by the U.S. Department of Labor (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://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

(b)(6)

Matter of M-&S-, Inc.

On appeal, the Petitioner asserts that the Beneficiary will be a “technical staff engineer” who will be “assigned to help the licensed engineer.” The Petitioner explains that while “[a] licensed engineer is usually in a very senior position in an engineering organization[,] . . . [a] technical staff engineer on the other hand is an engineering graduate with some experience or knowledge gained through special training, internships or work experience.”

III. ANALYSIS

As a preliminary matter, the Petitioner appears to have materially changed the duties and other salient aspects of the proffered position. For example, the Petitioner initially stated that the Beneficiary would “[a]ssist the registered mechanical engineer” in performing duties related to plan development, design application, and project implementation. The Petitioner also initially stated that the Beneficiary’s level of responsibility would be that of an “Assistant Engineer,” and would be supervised by a “Mechanical Engineer.” In its response to the Director’s RFE, however, the Petitioner no longer stated that the Beneficiary would be assisting the registered mechanical engineer. Instead, the Petitioner indicated that the Beneficiary would be directly performing the duties he was previously said to “[a]ssist.” The Petitioner also stated that the Beneficiary’s level of responsibility would be an “Engineer Technical Staff” who would report directly to the “Senior Project Engineer.”

At a more basic level, it is unclear whether the proffered position is an engineering *technician* position, or an *engineer* position. As previously stated, the Petitioner asserted on the LCA that the proffered position is a Level I, entry-level, position falling under the “Engineering Technicians, Except Drafters, All Other” occupational category (corresponding to SOC code 17-3029). Thus, according to the LCA, the position is a *technician* position.¹ On the other hand, the Petitioner states on appeal that the proffered position is a “technical staff engineer” and discusses the job duties and requirements for “staff engineers.” Thus, the Petitioner implies that the proffered position is an *engineer* position and not merely a technician position.² The Petitioner has not reconciled these apparently inconsistent descriptions and established which of the job descriptions are accurate.

Furthermore, when responding to an RFE, the Petitioner cannot offer a new position to the Beneficiary, or materially change a position’s title, its level of authority within the organizational hierarchy, its 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

¹ O*NET lists a different SOC code and title for engineering positions. See e.g., O*NET OnLine Summary Report for “Mechanical Engineers,” <http://www.onetonline.org/link/summary/17-2141.00> (last visited June 9, 2016).

² We observe that the Level I prevailing wage for mechanical engineers in the [REDACTED] CA MSA (where the Petitioner’s office is located), for the period 7/2014 – 6/2015, is \$64,376 annually, which is far higher than the proffered wage of \$52,000 per year. For more information regarding the wages for “Mechanical Engineers” – SOC (ONET/OES Code) 17-2141, for the same MSA and time period, see [http://www.flcdatabcenter.com/OesQuickResults.aspx?code=17-2141&\[REDACTED\]&year=15&source=1](http://www.flcdatabcenter.com/OesQuickResults.aspx?code=17-2141&[REDACTED]&year=15&source=1) (last visited June 9, 2016).

Matter of M-&S-, Inc.

for the benefit sought. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l 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 *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Without more, the evidence of record is insufficient to establish the exact nature and duties of the proffered position, and thus, whether it qualifies as a specialty occupation. Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we now turn to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

A baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position

To make our determination as to whether the employment described above qualifies as a specialty occupation, we turn first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied by establishing that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position that is the subject of the petition.

We recognize the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (the *Handbook*) as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.³ As previously discussed, the Petitioner asserted in the LCA that the proffered position corresponds to the "Engineering Technicians, Except Drafters, All Other" occupational category.

There are occupational categories which are not covered in detail by the *Handbook*, as well as occupations for which the *Handbook* does not provide any information. The *Handbook* states the following about these occupations:

Although employment for hundreds of occupations is covered in detail in the *Occupational Outlook Handbook*, this page presents summary data on additional occupations for which employment projections are prepared but detailed occupational information is not developed. For each occupation, the Occupational Information Network (O*NET) code, the occupational definition, 2014 employment, the May 2014 median annual wage, the projected employment change and growth rate from 2014 to 2024, and education and training categories are presented.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-2017 ed., "Data for Occupations Not Covered in Detail," <http://www.bls.gov/ooh/About/Data-for-Occupations-Not-Covered-in-Detail.htm> (last visited June 9, 2016).

³ The *Handbook*, which is available in printed form, may also be accessed online at <http://www.stats.bls.gov/oco/>. Our references to the *Handbook* are from the 2016-2017 edition available online.

(b)(6)

Matter of M-&S-, Inc.

Thus, the narrative of the *Handbook* reports that there are some occupations for which only summary data is prepared but detailed occupational profiles are not developed. The *Handbook* suggests that for at least some of the occupations, little meaningful information could be developed.

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

In support of its claim, the Petitioner submitted a printout of the Occupational Information Network (O*NET) OnLine Summary Report for "Mechanical Engineering Technologists." 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 $6 < 7$. An SVP rating of 6 to less than (" $<$ ") 7 indicates that the occupation requires "over 1 year up to and including 2 years" of training. Moreover, 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.⁴

Further, the summary report provides the educational requirements of "respondents" and indicates that most of the respondents possess an associate's degree or a post-secondary certificate (completed after high school). Further, it is important to note that the respondents' positions within the occupation are not distinguished by career level (e.g., entry-level, mid-level, senior-level).⁶

The Petitioner also submitted an opinion letter prepared by [REDACTED] of [REDACTED] [REDACTED] listed the duties of the proffered position as described by the Petitioner in its October 12, 2015, letter, and concluded that the proffered position is a specialty occupation that requires a bachelor's degree in mechanical engineering, mechatronics engineering, or a related area.

⁴ For additional information, see the O*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

⁶ Even if O*NET were generally probative, we observe that O*NET assigns this occupation a Job Zone "Three" rating, which indicates that "[m]ost occupations in this zone require training in vocational schools, related on-the-job experience, or an associate's degree."

(b)(6)

Matter of M-&S-, Inc.

Upon review of the opinion letter, there is no indication that [REDACTED] possesses sufficient knowledge of the Petitioner's proffered position and its business operations. There is no evidence that [REDACTED] has visited the Petitioner's business, observed the Petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. He does not demonstrate or assert in-depth knowledge of the Petitioner's specific business operations or how the duties of the position would actually be performed in the context of the Petitioner's business enterprise.

Furthermore, it does not appear that [REDACTED] is aware of the Petitioner's inconsistent job descriptions. Nor is it apparent that [REDACTED] is aware of the Petitioner's designation of the proffered position as a Level I (entry) position (the lowest out of four assignable wage-levels) in the LCA. As previously discussed, this designation is indicative of a comparatively low, entry-level position relative to others within the occupation and signifies that the Beneficiary is only expected to possess a basic understanding of the occupation. In contrast, [REDACTED] stated that the proffered position is not a "lower level" position, but rather, has "a great level of responsibility within the company." It appears that [REDACTED] would have found such information relevant for his opinion letter. Accordingly, the Petitioner has not demonstrated that [REDACTED] possesses the requisite information necessary to adequately and accurately assess the nature of the Petitioner's position.

We may, in our discretion, use an advisory opinion or statement submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). As a reasonable exercise of our discretion, we find that the advisory opinion letter is not probative evidence of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, we hereby incorporate the above discussion regarding the opinion letter into our analyses of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In the instant case, the duties and requirements of the position as described in the record of proceeding do not indicate that this particular position proffered by the Petitioner is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

*The requirement of a baccalaureate or higher degree in a specific specialty,
or its equivalent, is common to the industry in parallel
positions among similar organizations*

Next, we will review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for the Petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being (1) in the Petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the Petitioner.

(b)(6)

Matter of M-&S-, Inc.

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 standard industry-wide requirement for at least a bachelor's degree in a specific specialty, or its equivalent. We incorporate by reference the previous discussion on the matter.

In support of this criterion of the regulations, the Petitioner submitted two letters from [REDACTED] of [REDACTED] in response to the RFE and on appeal. We reviewed the letters in their entirety. However, we find that they are not persuasive in establishing the proffered position as a specialty occupation position under this or any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Specifically, although [REDACTED] claims that the company is similar in size and complexity to the Petitioner, the letters lack sufficient information regarding [REDACTED] to conduct a meaningfully substantive comparison of its business operations to the Petitioner. The Petitioner did not provide any supplemental information to establish that the organization is similar to the Petitioner.

Furthermore, [REDACTED] states that her company "only hire[s] applicants who can demonstrate [an] attainment of a Bachelor's Degree in Engineering or the related disciplines" for the engineering technical staff position. However, [REDACTED] did not provide any specific job duties and day-to-day responsibilities for the position. There is no information regarding the complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Accordingly, there is insufficient information regarding the duties and responsibilities of the position to determine whether it is the same or parallel to the proffered position. Moreover, [REDACTED] did not provide documentary evidence to corroborate that she currently or in the past employed individuals in parallel positions to the proffered position, nor did she provide any documentation to substantiate the claimed academic requirements. Further, the [REDACTED] did not submit any probative evidence of her recruitment and/or hiring practices.

The Petitioner also provided two letters from [REDACTED] of the [REDACTED] in response the RFE and on appeal. Notably, the Petitioner did not provide sufficient information regarding the association (e.g., the size of the association and requirements for membership). [REDACTED] did not identify the specific elements of her knowledge and experience that she may have applied in reaching her conclusions here. [REDACTED] did not indicate that she relied on any authoritative sources to support her assertions. She did not include the results of outside formal surveys, research,

(b)(6)

Matter of M-&S-, Inc.

statistics, or any other objective quantifying information to substantiate her opinions. Thus, this prong of the regulations has not been established by the letters from [REDACTED] either.

For the reasons discussed, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The particular position is so complex or unique that it can be performed only by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent

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 description of the proffered position, along with information regarding its business operations. The Petitioner designated the proffered position as an entry-level position within the occupational category (by selecting a Level I wage). This designation, when read in combination with the Petitioner's job descriptions, 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. While related courses may be beneficial in performing certain duties of the position, the Petitioner has not demonstrated how an established curriculum of courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position.

The Petitioner claims that the Beneficiary is well-qualified for the position, and references his qualifications. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position and it did not identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The employer normally requires a baccalaureate or higher degree in a specific specialty, or its equivalent, for the position

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position.

To merit approval of the petition under this criterion, the record must establish that a petitioner's imposition of a degree requirement is not a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. While a petitioner may assert that a

(b)(6)

Matter of M-&S-, Inc.

proffered position requires a specific degree, that statement alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing the Petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the Petitioner created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

In response to the RFE, the Petitioner submitted the academic credentials and payroll summaries for two of its employees. However, the Petitioner has not established whether the duties and responsibilities of these individuals are the same or similar to the proffered position. The Petitioner did not provide the job duties and day-to-day responsibilities for these individuals. The Petitioner also did not submit any information regarding the complexity of their job duties, supervisory duties (if any), and independent judgment required. According to the Petitioner's organizational chart, one of these individuals is employed in a relatively high-level position as an "Associate" of the company, directly subordinate to the Petitioner's President. The other individual is identified as a "Senior Tech. Staff," which is also higher than the proffered position according to the organizational chart. Without more, the documentation does not establish that the Petitioner satisfied this criterion of the regulations.

Moreover, the Petitioner did not provide the total number of people it has employed to serve in the proffered position. Consequently, it cannot be determined how representative the Petitioner's claim regarding *two individuals* is of the Petitioner's normal recruiting and hiring practices.⁷

The Petitioner did not provide sufficient documentary evidence to support the assertion that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, directly related to the duties of the position. Thus, the Petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 in a specific specialty, or its equivalent

⁷ The Petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from the credentials of two employees, taking into consideration the Petitioner's operations since 1977, and the Petitioner's current staffing. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995).

It must be noted for the record that the Petitioner has provided inconsistent information regarding its number of current employees. In the Form I-129, the Petitioner stated that it has eight employees. However, in the letter of support, the Petitioner stated that it has "nine (9) professional employees" plus two administrative staff. In addition, the Petitioner's organizational chart and quarterly reports show nine employees. Further, in the letter from [REDACTED] of [REDACTED] he states that the Petitioner "employs 14 engineers, engineering assistants, and clerical staff." No explanation for these variances was provided.

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.

USCIS examines each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence. The evidence submitted, however, does not establish that the Petitioner's proffered position qualifies for the requested classification under the applicable statutory and regulatory provisions. It is not the volume of documentation that establishes eligibility for the benefit sought, but rather the relevance, probative value, and credibility of the documentation – both individually and within the context of the totality of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010).

In support of this criterion, the Petitioner provided a description of the duties of the proffered position and information regarding its business operations, including copies of several of its engineering projects and contracts. The Petitioner asserted that these documents illustrate how the company's operations are "highly complicated and particularly complex, due to large institutional contracts." However, while the Petitioner submitted various documents relating to its operations, the Petitioner did not establish how these documents and aspects of its operations specifically relate to the Beneficiary's day-to-day responsibilities. The Petitioner also has not sufficiently explained how these aspects of its operations distinguish and differentiate the duties of the proffered position from the typical duties performed by other engineering technicians, and why the proffered duties require a baccalaureate (or higher degree) in a specific specialty, or its equivalent, as claimed.

We also incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a Level I position (of the lowest of four assignable wage-levels) relative to others within the occupational category.⁸ Without further evidence, the Petitioner has not demonstrated that its proffered position is one with specialized and complex duties as such a position within this occupational category would likely be classified at a higher-level requiring a substantially higher prevailing wage.⁹

⁸ 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 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.

⁹ 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.

Matter of M-&S-, Inc.

Although the Petitioner asserts that the nature of the specific duties is specialized and complex, the record lacks sufficient evidence to support this claim. Thus, the Petitioner has submitted inadequate probative evidence to satisfy the criterion of the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A)(/).

IV. CONCLUSION

For the reasons related in the preceding discussion, the Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. 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). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of M-&S-, Inc.*, ID# 17148 (AAO June 13, 2016)