



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

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

MATTER OF M-O-A-, LLC

DATE: MAR. 1, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a Montessori school, seeks to temporarily employ the Beneficiary as a “program director” under the H-1B nonimmigrant classification. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The Director, California Service Center, denied the petition. The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal.

I. ISSUE

The issue before us is whether the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.¹

II. SPECIALTY OCCUPATION

A. Legal Framework

For an H-1B petition to be granted, the Petitioner must provide sufficient evidence to establish that it will employ the Beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the Petitioner must establish that the employment it is offering to the Beneficiary meets the applicable statutory and regulatory requirements.

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.

¹ We reviewed the record in its entirety before issuing our decision. We follow the preponderance of the evidence standard as specified in *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must meet one of the following criteria:

- (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 a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. And Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 387. To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets 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 proffered 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”). Applying this standard, USCIS regularly approves H-1B petitions for qualified foreign nationals who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. USCIS must examine the ultimate employment of the foreign national, and determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

B. The Petitioner and the Proffered Position

The Petitioner is “a private school for children ages 18 months to 6 years, offering Kindergarten program, a Toddler [p]rogram, and Infant program.” The Petitioner also offers infant and early childhood teacher certification programs. The Petitioner stated that in the proffered position, the Beneficiary would direct its teacher education program and instruct the post-high school level students in the “Early Childhood Program.” According to the flyer submitted on appeal, classes for the early childhood certification program meet one weekend each month for ten months, and they are followed by a nine-month practicum.

In its support letter, the Petitioner stated that the duties of the program director position include the following (verbatim):

- Collaborating with other teachers in following the syllabus to ensure the training curriculum adheres to stated standards, competencies, and requirements, and to address any teaching issues

(b)(6)

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- Regularly revising and adding suggestions and enrichment ideas to the syllabus, course content and materials as well as teaching methods to enhance the Teacher Education Program student's learning experience
- Soliciting additional ideas for Program development from other teachers
- Providing other teachers with opportunity for development and encouraging collaboration
- Observing Teacher Education Program classes to support and partner with other teachers and to provide evaluation of their teaching methods
- Being available to support teachers' preparation, instruction, and following-up
- Conducting research in relevant fields of knowledge, such as learning and development, language, children's literature, philosophy, psychology, math, etc.
- Participating in professional development, by attending annual conferences, self-educating by reading professional literature and industry updates, and collaborating with colleagues in and outside of the Program
- Keeping membership in [REDACTED] current
- Preparing materials and delivering classes on relevant subjects such as education, school Montessori principles, child development; psychology, philosophy, children's literature, reading instruction, math and cultural studies among others
- Challenging students with stimulating questions and initiating and moderating discussions
- Preparing lessons, assignment, and handouts as defined by the syllabus, and having all materials and presentations ready prior to the start of class
- Explaining assignments and supporting students in their timely completion
- Reviewing and grading student's theoretical and practical assignments, and providing feedback, advising them on learning and professional development issues
- Filling out evaluation forms and match to homework assignments and filing in student files, while giving a copy to the students
- Taking attendance daily and marking students who are late or unprepared and documenting and to putting in student files

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- Monitoring and tracking the attendance records and assignments to keep all student records and files up-to-date
- Assisting students who need assistance, support, and counseling
- Being responsible for leading a 3-6 classroom and delivering the Montessori curriculum (language, mathematics, geography, botany, zoology) as per [REDACTED] standards in order to continuously further professional development, and insure deliver of practical and experiential-based instruction to [REDACTED] Teacher Education Program students
- Assisting the Executive Administrator with the [REDACTED] and [REDACTED] for Teacher Education annual reports
- Communicating regularly with the Executive Administrator with regards to all aspects of the Teacher Education Program including students and teachers
- Giving input to the Executive Administrator on the yearly budget for the Teacher Education Program

The Petitioner further stated that the proffered position requires “a minimum of a bachelor’s degree in education or a related field, or an equivalent, for entry into this position.”

C. Analysis

Turning to the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), we will now review the Director’s decision denying the petition.

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

USCIS recognizes 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.² The Petitioner asserted in the labor condition application (LCA) that the proffered position falls under the occupational category “Education Teachers, Postsecondary.”

² 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/>. The excerpts of the *Handbook* regarding the duties and requirements of the referenced occupational category are hereby incorporated into the record of proceeding.

The *Handbook* states the following with regard to the educational requirements necessary for entrance into this field:

Educational requirements vary with the subject taught and the type of educational institution. Most commonly, postsecondary teachers must have a Ph.D. However, a master's degree may be enough for some postsecondary teachers at community colleges. In career and technical schools, work experience may be important for getting a postsecondary teaching job.

Education

Postsecondary teachers who work for 4-year colleges and universities typically need a doctoral degree in their field. Some schools may hire those with a master's degree or those who are doctoral degree candidates for some specialties, such as fine arts, or for some part-time positions.

Doctoral programs generally take multiple years after the completion of a bachelor's degree program. They spend time completing a master's degree and then writing a doctoral dissertation, which is a paper presenting original research in the student's field of study. Candidates usually specialize in a subfield, such as organic chemistry or European history.

Community colleges or career and technical schools also may hire those with a master's degree. However, in some fields, there are more applicants than available positions. In these situations, institutions can be more selective, and they frequently choose applicants who have a Ph.D. over those with a master's degree.

Postsecondary teachers who teach career and technical education courses, such as culinary arts or cosmetology, may not be required to have graduate-level education. At a minimum they must hold the degree of the program in which they are teaching. For example, the teacher must hold an associate's degree if they teach a program that is at the associate's degree level. In addition, work experience or certification may be just as important as education for getting a postsecondary teaching job at a career or technical school.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., Postsecondary Teachers, on the <http://www.bls.gov/ooh/education-training-and-library/postsecondary-teachers.htm#tab-4> (last visited Feb. 29, 2016).

The *Handbook* reports that educational requirements for postsecondary teachers vary with the subject taught and the type of educational institution. In particular, the *Handbook* states that postsecondary teachers who teach career and technical education courses must hold, at a minimum,

the degree of the program in which they are teaching. For example, a teacher would be required to hold an associate's degree if they teach a program that is at level of an associate's degree.³ Accordingly, it follows that a postsecondary teacher who teaches a certificate program, as in the Petitioner's case, would be required to hold only a certification in the area in which he or she teaches. Therefore, the *Handbook* does not support that the proffered position is a specialty occupation requiring a minimum of a bachelor's degree in a specific specialty or the equivalent.

Moreover, when reviewing the *Handbook*, we must note that the Petitioner designated the proffered position under this occupational category at a Level I on the LCA.⁴ 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 and will perform routine tasks that require limited, if any, exercise of judgment. In accordance with the relevant U.S. Department of Labor (DOL) explanatory information on wage levels, the Beneficiary will be closely supervised and her work closely monitored and reviewed for accuracy. Furthermore, she will receive specific instructions on required tasks and expected results. DOL guidance indicates that a Level I designation is appropriate for a research fellow, a worker in training, or an internship. Thus, based upon the Petitioner's designation of the proffered position as a Level I position (relative to others with the occupation) it does not appear as though the Beneficiary would be required to hold a more advanced credential than the certification offered through the Petitioner's program, which does not rise to the level of a bachelor's degree in a specific specialty, or the equivalent.

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 case, it is the Petitioner's responsibility to provide probative evidence (e.g., documentation from other objection, authoritative sources) that

³ Moreover, the *Handbook* specifically states that for some positions, work experience or certification may be just as important as education.

⁴ 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 described by DOL as follows:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

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.

supports a finding that the particular position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation.

The Petitioner references DOL's Occupational Information Network (O*NET), "25-1081.00 – Education Teachers, Postsecondary." The materials from O*NET do not establish that the proffered position satisfies the first criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A), either. O*NET is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a requirement for a given position, as O*NET's Job Zone designations make no mention of the specific field of study from which a degree must come. As was noted previously, we interpret 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. The Specialized Vocational Preparation (SVP) rating is meant to indicate only 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 it does not specify the particular type of degree, if any, that a position would require. For all of these reasons, the O*NET excerpt submitted by the Petitioner is of little evidentiary value to the issue presented on appeal.

Upon review of the totality of the evidence in the entire record of proceeding, we conclude that the Petitioner has not established that the proffered position falls within an occupational category for which the *Handbook*, or other authoritative source, indicates that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is normally required for entry into the occupation. Thus, the Petitioner has not satisfied the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

*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 of proceeding 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 a 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.

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative source) reports a standard industry-wide requirement for at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. Nor does the record of proceeding contain any other types of evidence for our consideration under this criterion. The Petitioner has not provided evidence establishing that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to

the Petitioner's industry in positions that are (1) in the Petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the Petitioner. For the reasons discussed above, 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 the instant case, the Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of program director. Specifically, the record does not demonstrate how the program director position described requires the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them.

This is further evidenced by the LCA submitted by the Petitioner in support of the instant petition. The LCA indicates a wage level at a Level I (entry) wage, which is the lowest of four assignable wage levels.⁵ Without further evidence, the evidence does not demonstrate that the proffered position is complex or unique as such a position falling under this occupational category would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage.⁶ For example, 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."⁷ The evidence of record does not establish that

⁵ Again, the wage-level of the proffered position indicates that (relative to other positions falling under this occupational category) the Beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

⁶ 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.

⁷ 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

this position is significantly different from other positions in the occupational category such that it refutes the *Handbook's* information that a bachelor's degree in a specific specialty, or its equivalent is not required for the proffered position.

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 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 this end, we review the Petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position, and any other documentation submitted by a petitioner in support of this criterion of the regulations.

To merit approval of the petition under this criterion, the record must establish that a Petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. While a Petitioner may assert that a 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 a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the Petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388.

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.

The Petitioner does not assert that it normally requires at least a bachelor's degree in a specific specialty or its equivalent for the proffered position. Nor does the record of proceeding contain any other types of evidence for our consideration under this criterion.⁸ Therefore, the Petitioner has not demonstrated that it normally requires at least a bachelor's degree in a specific specialty or its equivalent for the proffered position, it does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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

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.

Upon review of the record of the proceeding, we find that the Petitioner has not provided sufficient probative evidence to satisfy this criterion of the regulations. In the instant case, relative specialization and complexity have not been adequately developed by the Petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than positions in the occupational category that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent.

We further 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. Without more, the position is one not likely distinguishable by relatively specialized and complex duties. That is, without further evidence, the Petitioner has not demonstrated that its proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a substantially higher prevailing wage.⁹

The Petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the Petitioner has not established that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. We

⁸ On the flyer submitted on appeal, the Petitioner lists a position titled "Program Director Instructor/Field Consultant." According to the information in the flyer, the individual who holds this position has a "B.A. degree in Religious Studies." The Petitioner does not assert that the duties of this position are similar to the duties of the proffered position and there is no evidence in the record indicating that the Petitioner has previously employed a program director.

⁹ As previously discussed, 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

therefore, conclude that the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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. The appeal will be dismissed and the petition denied.

III. CONCLUSION AND ORDER

The petition will be denied and the appeal dismissed for the above stated reasons.¹⁰ 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-O-A-, LLC*, ID# 16214 (AAO Mar. 1, 2016)

¹⁰ As the grounds discussed above are dispositive of the Petitioner's eligibility for the benefit sought in this matter, we will not address and will instead reserve our determination on the additional issues and deficiencies that we observe in the record of proceeding with regard to the approval of the H-1B petition.