



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

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

MATTER OF I- CORP.

DATE: MAR. 21, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a software development and testing business, seeks to temporarily employ the Beneficiary as a “Quality Assurance Engineer” 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. ISSUES

The issues before us are whether (1) the proffered position qualifies as a specialty occupation; and (2) the Beneficiary is qualified to serve in a specialty occupation position in accordance with the applicable statutory and regulatory provisions.

II. SPECIALTY OCCUPATION

A. Legal Framework

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) 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 knowledge required to perform the duties is usually associated with the attainment of 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. Fed. 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 384, 387 (5th Cir. 2000). 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 individuals 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 individual, 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 or 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 Proffered Position

The Petitioner identified the proffered position as a "Quality Assurance Engineer" on the Form I-129, and attested on the required labor condition application (LCA) that the occupational classification for the position is "Computer Occupations, All Others," Standard Occupational Classification (SOC) (ONET/OES) Code 15-1199, at a Level I wage.

In its support letter, the Petitioner stated that the Beneficiary would perform the following duties (verbatim):

- Design, create, write and execute test strategies, plans, scenarios, scripts, or procedures to conduct software compatibility tests with programs, hardware, operating systems, or network environments.
- Document and monitor software defects, using a bug tracking system, and report defects to software developers and business analysts using manual or automated tools.
- Identify program deviance from standards, and suggest modifications to ensure compliance. Review software documentation to ensure technical accuracy, compliance, or completeness, or to mitigate risks.
- Create and validate test data for functional components of software applications. Analyze test results to conform or identify the deviance from the expected outcome of the test scenarios.
- Evaluate, recommend, install, and configure software tools, utilities to perform tasks involved in full life cycle testing.

The Petitioner noted that to perform these duties, the Beneficiary "must possess at least a Bachelor of Science degree in Engineering, Computer Science, Telecommunications or Information Technology or a closely related field."

C. Analysis

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

We will first discuss the record of proceedings in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), 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.

We recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹ In the LCA, the Petitioner asserted that the proffered position corresponds to the "Computer Occupations, All Other" occupational category.²

Although the *Handbook* covers the employment details for hundreds of occupations, there are additional occupations for which detailed occupational information is not developed. The *Handbook* suggests that for at least some of the occupations, little meaningful information could be developed.³ The occupational category "Computer Occupations, All Other" is one of these categories.

When the *Handbook* does not support a petitioner's assertion that a position meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the Petitioner to provide persuasive evidence (e.g., documentation from other objective, authoritative sources) that the proffered position qualifies, notwithstanding the absence of the *Handbook's* support on the issue. Whenever more than one authoritative source exists, we will consider and weigh all of the evidence presented.

In that regard we have reviewed the Petitioner's claim that the Dictionary of Occupational Titles (DOT) lists quality assurance analysts' occupations as requiring an SVP value of six and that in SVP terms a bachelor's degree corresponds to the two years set out by the SVP six value. Although we agree that the DOT lists an SVP value of six for a quality assurance analyst occupation, we disagree that an SVP value of six is the equivalent of a requirement of a bachelor's degree. Our conclusion is

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2016 – 2017 edition available online.

² 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. However, to satisfy the first criterion, 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.

³ U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Data for Occupations Not Covered in Detail," <http://www.bls.gov/ooh/About/Data-for-Occupations-Not-Covered-in-Detail.htm> (last visited Mar. 18, 2016).

apparent upon reading Section II of the DOT's Appendix C, Components of the Definition Trailer which addresses the SVP rating system.⁴ The section reads:

SPECIFIC VOCATIONAL PREPARATION (SVP)

Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

Specific vocational training includes training given in any of the following circumstances:

- a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);
- b. Apprenticeship training (for apprenticeable jobs only);
- c. In-plant training (organized classroom study provided by an employer);
- d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);
- e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

Level	Time
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month
3	Over 1 month up to and including 3 months
4	Over 3 months up to and including 6 months
5	Over 6 months up to and including 1 year
6	Over 1 year up to and including 2 years
7	Over 2 years up to and including 4 years
8	Over 4 years up to and including 10 years

⁴ The Appendix can be found at the following Internet site: <http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM>.

9 Over 10 years

Note: The levels of this scale are mutually exclusive and do not overlap.

Thus, an SVP rating of six does not indicate that at least a four-year bachelor's degree is required, or more importantly, that such a degree must be in a specific specialty closely related to the occupation to which this rating is assigned. Rather an SVP value of six is the equivalent of over one year and up to and including two years of vocational preparation. Therefore, the DOT information is not probative of the proffered position qualifying as a specialty occupation.

Similarly, we have reviewed the Petitioner's assertion that a lack of specification by O*NET that all quality assurance engineer positions require a bachelor's degree is not conclusive. We agree. However, we note that the pertinent section of the O*NET OnLine Internet site relevant to 15-1199.01 – Software Quality Assurance Engineers and Testers - does not state a requirement for a bachelor's degree for this occupation. Rather, it assigns this occupation a Job Zone “Four” rating, which groups it among occupations for which “most . . . require a four-year bachelor's degree, but some do not.” O*NET OnLine Summary Report for “15-1199.01 – Software Quality Assurance Engineers and Testers,” <http://www.onetonline.org/link/summary/15-1199.01> (last visited Mar. 18, 2016); O*NET OnLine Help – Job Zones, <http://www.onetonline.org/help/online/zones> (last visited Mar. 18, 2016). Further, O*NET OnLine does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty directly related to the occupation. As stated above, we consistently 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 proffered position. Therefore, O*NET OnLine information is not probative of the proffered position being a specialty occupation.

We have also reviewed the opinion letters authored by [REDACTED] Professor of Computer Science, [REDACTED]. [REDACTED] bases his opinion on his educational and professional background in the field of computer science and his consulting experience in the Information Technology industry. [REDACTED] notes that he reviewed the Petitioner's descriptions of the duties of the proffered position. [REDACTED] noted that the quality assurance field evolved into a specialty field and software was developed to help automate test data. He opined that “QA Engineers now needed to be able to master these programs, and maintain the frameworks for automated tests for many different software products running under different operating systems.” He adds that “QA Engineers would need to have both a significant high-level understanding of programming and a fairly detailed knowledge of implementation detail,” as well as “a detailed knowledge of operating systems.” [REDACTED] claimed that “organizations seeking to employ a Software Quality Assurance Engineer require prospective candidates to possess at least a Bachelor's Degree or its equivalent in Computer Science, Electrical Engineering or a related field from an accredited institution of higher education.” Based upon his review of the Petitioner's initial description of duties, [REDACTED] opined that “[t]his position in particular requires someone with a mastery of the whole gamut of testing competencies; the theory, mathematical sophistication as well as the practice” and that “[t]he technical skills, expertise, knowledge and experience acquired

(b)(6)

Matter of I- Corp.

through the acquisition of a Bachelor's degree in Computer Science or its equivalent are considered necessary by individuals in the industry seeking to hire Software Quality Assurance Engineers for their companies." ██████████ concluded that "the degree or its equivalent is now considered a standard requirement for the position." ██████████ reaches the same conclusion in his second opinion, adding only that a web search for Quality Assurance Engineers "reveals that a Bachelor's degree is an almost universal requirement for the position."

Upon review of ██████████ opinion letters and his attached curriculum vitae, we do not find a sufficient basis to accord deference to his opinions with regard to the minimum education requirements for the performance of the particular position that is the subject of this petition. While ██████████ may have anecdotal information regarding the minimum educational requirements for software quality assurance engineers and other technical occupations, he has not supplied any relevant research, studies, surveys, or other authoritative publications as part of his review and/or as a foundation for his opinion.⁵ "[G]oing on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings." *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Moreover, ██████████ does not indicate whether he visited the Petitioner's business premises or spoke with anyone affiliated with the Petitioner, so as to ascertain and base his opinions upon the substantive nature and educational requirements of the proposed duties as they would be actually performed. Significantly, ██████████ does not discuss the fact that the Petitioner submitted an LCA certified for a wage-level that is appropriate for a comparatively low, entry-level position, relative to others within the same occupation, and which signifies that the Beneficiary is only expected to possess a basic understanding of the occupation. The omission of such important information diminishes the evidentiary value of his opinion.

We may, in our discretion, use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Id.* For the reasons discussed above, the opinion letters are not sufficient probative evidence towards satisfying any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, we hereby incorporate the above discussion and analysis regarding the opinion letter into each of the bases in this decision for dismissing the appeal.

In this case, the Petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. The record lacks sufficient evidence to support a finding that the particular position proffered here, an entry-level position relative to others within the same occupation (as indicated on

⁵ Although ██████████ references a web search for quality assurance engineers, he does not quantify the search results, either by number or actual result.

the LCA), would normally have such a minimum, specialty degree requirement or its equivalent. 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 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.

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 discussed above, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative source) reports an 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.

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."

We have reviewed the printouts of the online job announcements submitted by the Petitioner. This documentation, however, does not establish that the proffered position qualifies as a specialty occupation. We note that the Petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers' recruiting history for the type of jobs advertised. Further, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices.

Also, none of the advertisements submitted provided sufficient information regarding the advertising organizations to establish that the advertising organizations are similar to the Petitioner. The advertisements do not identify the size of the advertising organizations, either in terms of number of

employees or revenue. Additionally, although a number of the advertising organizations appear to be involved in the staffing industry, it is not clear from the information submitted whether the employee in the advertised position would be employed by the advertiser or would be employed by a third party client. Thus, it is not possible to ascertain if the successful candidate would be performing the duties as generally described on the advertisements or duties more specific to the client's industry.

Further, most, if not all, of the advertisements provided appear to be for positions more senior than the proffered position. The majority of the advertisements list between two and six years of required experience in addition to a degree. As previously noted, the Petitioner has characterized the proffered position as a Level I, entry-level position on the LCA. As previously noted, DOL guidance states that Level I positions are appropriate for a worker-in-training or an individual performing an internship, not for a person with established experience.

The job advertisements do not establish that similar organizations to the Petitioner routinely employ individuals with degrees in a specific specialty, in parallel positions in the Petitioner's industry. Further, it must be noted that even if all of the job postings indicated that 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 does not demonstrate 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.

Based upon a complete review of the record, we conclude that the Petitioner has not established 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.

Upon review, we find that the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. 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 duties it may believe are so complex and unique. While a few related courses may be beneficial, or even required, in performing certain

duties of the position, the Petitioner has not demonstrated how an established curriculum of such 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 description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. Further, the LCA submitted by the Petitioner indicates a wage level that is the lowest of four assignable wage levels. Without further evidence, the record of proceeding does not indicate that the proffered position is so 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

The Petitioner did not establish that its particular position is so complex or unique that it can only be performed by an individual with at least a bachelor's degree in a specific specialty, or its equivalent. Therefore, 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 usually review a petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

The Petitioner submitted a "representative sample listing of the Petitioner's employees in the same/similar position as the Beneficiary." The list has the names of 24 individuals holding positions titled, "Quality Assurance Engineer," "Quality Assurance Manager," "Quality Assurance Test Engineer," "Sr. Quality Assurance Analyst," "Automation Engineer," and "QA Manager." Upon review, the record of proceeding does not include sufficient evidence to establish that the Petitioner employs only individuals who possess a bachelor's degree in a specific specialty to perform the duties of the proffered position. We note, for example, that the Petitioner's Forms 941 show that it has employed at various times up to 128 individuals. The Petitioner does not specify how many of

⁶ The issue here is that 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, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), an 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 consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

these 128 individuals were in the position of a quality assurance engineer or analyst position. Thus, it is not possible to discern if the representative sample of 24 employees submitted are the only employees who have held the position of quality assurance engineer or analyst. Moreover, the Petitioner's organizational chart submitted in response to the Director's RFE, shows that the Petitioner's "QA Engineers" are on a different tier from some of the positions on the sample list. It is not possible to ascertain from the information submitted that the individuals on the sample list perform the same or similar duties with similar levels of responsibilities as the proffered position.

While a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, that opinion 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 employer 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 387. If a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree, or its equivalent, to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

Here, the record of proceeding does not establish that the Petitioner normally requires a bachelor's or higher degree in a specific specialty, or its equivalent, for the proffered position. Accordingly, the Petitioner has not established the referenced criterion at 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

Finally, we will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the evidence of record establishes that the nature of the specific duties is so specialized and complex that 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 the instant case, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. The Petitioner does not establish how the generally described duties of its quality assurance engineer elevate the proffered position to a specialty occupation. We also refer to our earlier comments and findings with regard to the implication of the Petitioner's designation of the proffered position on the LCA as warranting only a Level I wage. Such a designation is for a position that is not likely distinguishable by relatively specialized and complex duties. Upon review of the totality of the record, the Petitioner has not established that the nature of the specific duties is 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.

Matter of I- Corp.

For the reasons discussed above, the record does not satisfy the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The Petitioner has not 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 for this reason.

III. BENEFICIARY QUALIFICATIONS

The Director also found that the Beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. However, a beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the proffered position does not require a baccalaureate or higher degree in a specific specialty, or its equivalent. Therefore, we need not and will not address the Beneficiary's qualifications further.

IV. CONCLUSION

As set forth above, we find that the evidence of record does not sufficiently establish that the proffered position qualifies as a specialty occupation. Accordingly, the appeal will be dismissed and the petition denied.

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

ORDER: The appeal is dismissed.

Cite as *Matter of I- Corp.*, ID# 15859 (AAO Mar. 21, 2016)