



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

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

MATTER OF I-B-S-, INC.

DATE: MAR. 22, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

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

The Director, Vermont Service Center, denied the petition. The Director concluded that the proffered position is not a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the proffered position is a specialty occupation. Upon *de novo* review, we will dismiss the appeal.

**I. 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 described the position in its support letter dated March 25, 2015, as follows:

[C]reate policies or procedures for logistics activities; manage stock levels, delivery times and transport costs; resolve problems concerning transportation, logistics systems, imports or exports, or customer issues; negotiate transportation rates or services; coordinate and control the order cycle; evaluate performance and quality; liaise and negotiate with suppliers/manufacturers and retail stores; analyze logistical problems and produce new solutions; assess and organize logistic[s] in terms of transport requirements, receipt, handling, storage and distribution of products; establish proper warehousing and recording systems; analyze statistical information on the tracking of product shipments, returns, and inventory; coordinate international and domestic transportation; ocean, sea, air and domestic, maximizing the cost effectiveness of this function; and maintain appropriate records and reports, and provide the reports to management.

In response to the request for additional evidence (RFE), the Petitioner stated that the Beneficiary would spend 45 percent of his time on coordination and organization, 30 percent of his time on analysis, 15 percent of his time on negotiation, and 10 percent on management. The Petitioner also stated that the proffered position requires at least a “Bachelor’s Degree in Business, Logistics, or Supply Chain Management.”

The Petitioner submitted a labor condition application (LCA) in support of the instant H-1B petition. The Petitioner indicated that the proffered position corresponds to the occupational category “Logisticians” with SOC (ONET/OES) code 13-1081 at a Level I (entry level) wage.

### 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 proffered position in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

USCIS recognizes the U.S. Department of Labor (DOL)’s *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup> We reviewed the section of the *Handbook* covering “Logisticians,” including the section entitled “How to Become a Logistician,” which states the following:

A bachelor’s degree is typically required for most positions, although an associate’s degree may be sufficient for some logistician jobs. Industry certification and work experience in a related field is helpful for jobseekers.

#### **Education**

Logisticians may qualify for some positions with an associate’s degree. However, as logistics becomes increasingly complex, more companies prefer to hire workers who have at least a bachelor’s degree. Many logisticians have a bachelor’s degree in business, systems engineering, or supply chain management.

Bachelor’s degree programs often include coursework in operations and database management, and system dynamics. In addition, most programs offer courses that train students on software and technologies commonly used by logisticians, such as radio-frequency identification (RFID).

U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed. “Logisticians,” <http://www.bls.gov/ooh/business-and-financial/logisticians.htm#tab-4> (last visited Mar. 17, 2016).

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<sup>1</sup> All 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* does not indicate that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into this occupation. Rather, the occupation accommodates other paths for entry, including less than a bachelor's degree in a specific specialty such as an associate's degree. Further, although the *Handbook* states that a bachelor's degree requirement is typical, many logisticians have degrees from disparate fields such as business (with no further specialization), systems engineering, or supply chain management.

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in seemingly disparate fields, such as business (with no specialization), systems engineering, and supply chain management would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties.<sup>2</sup> Section 214(i)(1)(B) of the Act (emphasis added). The Petitioner has not done so here.

Moreover, the requirement of a bachelor's degree in business is inadequate to establish that a position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988). To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

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<sup>2</sup> Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. This also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

(b)(6)

*Matter of I-B-S-, Inc.*

Accordingly, as the *Handbook* does not indicate that a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation, it does not support the particular position proffered here as being a specialty occupation.

In the record of proceedings, the Petitioner refers to the Occupational Information Network (O\*NET) to state that "a bachelor's degree or higher is normally required as a minimum requirement for the position." However, O\*NET is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a standard entry requirement for a given position. O\*NET states that "[m]ost of these occupations require a four-year bachelor's degree, but some do not." Further, it does not state that a degree must be in a specific specialty. Again, 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. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Furthermore, the Specialized Vocational Preparation (SVP) ratings, which are cited within O\*Net OnLine's Job Zone designations, are meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP ratings do 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.<sup>3</sup>

The Petitioner also provided an evaluation and supplementary letter prepared by [REDACTED] a professor of marketing and logistics at the [REDACTED] [REDACTED] concluded that the proffered position requires at least a "baccalaureate education in a specific academic specialty, to include Logistics or Supply Chain Management or other business administration fields featuring substantial statistical and quantitative analysis components."

We fully carefully evaluated [REDACTED] assertions in support of the instant petition, but for the following reasons, find that his opinions have limited probative value. Specifically, [REDACTED] states that "the duties that [the Petitioner] has ascribed to its Import and Logistics Manager position are closely analogous to those listed in the entry for 'Logistics Manager'" in the *Handbook* and "Import and Logistics Manager" in O\*NET. However, we note that the Petitioner indicated on the LCA that the proffered position corresponds to the occupational category "Logisticians" with SOC (ONET/OES) code 13-1081, not "Logistics Managers" with SOC (ONET/OES) code 11-3071.03.<sup>4</sup>

Even if we assume that the proffered position is still that of a logistician who would perform managerial duties, rather than a logistics manager, we note that this is not supported by the entry

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<sup>3</sup> See O\*NET OnLine Summary Report for "13-1081 – Logisticians (last visited Mar. 17, 2016); O\*NET OnLine Help – Job Zones, <http://www.onetonline.org/help/online/zones> (last visited Mar. 17, 2016).

<sup>4</sup> The prevailing wage for a Level I logistics manager for [REDACTED] GA, is \$54,101 per year, which is higher than the Beneficiary's proffered salary at \$45,885. See [http://www.flcdatcenter.com/OesQuickResults.aspx?area=\[REDACTED\]&code=11-3071&year=15&source=1](http://www.flcdatcenter.com/OesQuickResults.aspx?area=[REDACTED]&code=11-3071&year=15&source=1) (last visited Mar. 17, 2016).

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*Matter of I-B-S-, Inc.*

level wage in the LCA.<sup>5</sup> The Level I wage rate indicates that the Beneficiary is only required to have a basic understanding of the occupation and carries expectations that the Beneficiary will perform routine tasks that require limited, if any, exercise of judgment; that he would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results.

It appears that [REDACTED] would have found information regarding the LCA occupational category and the wage level relevant for his opinion letter. Moreover, without this information, the Petitioner has not demonstrated that [REDACTED] possessed the requisite information necessary to adequately assess the nature of the Petitioner's position and appropriately determine the requirements based upon the job duties and responsibilities.

Further, [REDACTED] does not reference, cite, or discuss any studies, surveys, industry publications, authoritative publications, or other sources of empirical information which he may have consulted to complete his evaluation. Furthermore, he did not support his conclusions with citations to or copies of any research material he may have used.

We may, in our discretion, use advisory opinion statements submitted by the Petitioner as expert testimony. *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 efficiency's sake, we hereby incorporate the above discussion regarding the letter into our analysis of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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<sup>5</sup> The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is described 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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

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*Matter of I-B-S-, Inc.*

*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 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.

In support of the assertion that the degree requirement is common to the Petitioner's industry in parallel positions among similar organizations, the Petitioner submitted copies of job advertisements. However, upon review of the documents, we find that the Petitioner's reliance on the job announcements is misplaced.

For the Petitioner to establish that an organization in its industry is also similar to it, it must demonstrate that the Petitioner and the organization share the same general characteristics. Without such evidence, documentation submitted by a Petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the Petitioner.

The advertisements do not contain sufficient information regarding advertising employers to conduct a legitimate comparison of the organizations to the Petitioner. For example, the job posting from [REDACTED] a staffing company, states that its client is an international, specialty food producer, which does not appear to be in the same industry as the Petitioner, and there is no further information such as the level of revenue and staffing to establish that it is similar to the Petitioner.

Further, while some employers require a bachelor's degree, they do not require a bachelor's degree in a specific specialty (or its equivalent). As discussed, although a general-purpose bachelor's degree may be a legitimate prerequisite for a particular position, requiring such a degree, without

more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp.*, 484 F.3d at 147.

Moreover, the positions do not appear to be for parallel positions. For example, a “merchandising manager-European imports” position requires a general bachelor’s degree, plus five to seven years of experience. The Petitioner designated the proffered position on the LCA as a Level I (entry-level) position in comparison to others within the occupation. The advertised position appears to be for more senior position than the proffered position.

As the documentation does not establish that the Petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed. Therefore, 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.

The evidence of record does not establish that 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. Upon review, we find that the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position.

As discussed previously, the LCA submitted by the Petitioner indicates a wage level at a Level I (entry) wage, which is the lowest of four assignable wage levels. Without further evidence, the record of proceeding does not indicate 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.

Moreover, 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 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 the Petitioner's past recruiting and hiring practices, 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 also 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.

The Petitioner has not provided any evidence that it has previously employed or recruited anyone as a logistician to perform the proffered duties. Therefore, the evidence of record does not indicate that the Petitioner normally requires a baccalaureate or higher degree in a *specific specialty*, or its equivalent, for the proffered position under 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*

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

In support of this criterion, the Petitioner provided a description of the duties of the proffered position and information regarding its business operations. Upon review of the record of the proceedings, relative specialization and complexity have not been credibly developed by the Petitioner as an aspect of the proffered position.

We further incorporate our earlier discussion and analysis regarding the Petitioner's characterization of the proffered position in the LCA as a Level I logistician position (the lowest of four assignable wage-levels). Without further evidence, the Petitioner has not demonstrated that its proffered

position is one with specialized and complex duties 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 substantially higher prevailing wage.<sup>6</sup>

The Petitioner has submitted insufficient evidence to satisfy this criterion of the regulations. We, therefore, conclude that the Petitioner did not satisfy 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.<sup>7</sup>

## II. CONCLUSION

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-B-S-, Inc.*, ID# 15887 (AAO Mar. 22, 2016)

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<sup>6</sup> 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.

<sup>7</sup> Since the identified base for denial is dispositive of the Petitioner's appeal, we will not address other grounds of ineligibility we observe in the record of proceeding.