



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

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

MATTER OF U-T-A-C-, INC

DATE: MAY 4, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a restaurant, seeks to temporarily employ the Beneficiary as a “food service 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 Petitioner did not establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director erred in finding the evidence of record insufficient to establish that the proffered position qualifies as a specialty occupation.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

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- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

8 C.F.R. § 214.2(h)(4)(iii)(A). U.S. Citizenship and Immigration Services (USCIS) has consistently interpreted the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

## II. PROFFERED POSITION

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as a “food service manager.” In the letter of support, the Petitioner provided the Beneficiary’s job duties in the proffered position as follows (note: errors in the original text have not been changed):<sup>1</sup>

Coordinate food service activities of the restaurant, catering service and establishment of food services at additional locations. Coordinate and run the daily food service operations of the restaurant to provide high quality service to the customers. Establish the necessary policies related for that service. Be involved in the expansion of business: “take-out & delivery”, “catering” (such as bar & bat mitzvahs, wedding showers, baby showers, graduations birthdays, anniversaries), “establishment of new locations” (one in downtown [REDACTED], with other two in [REDACTED] suburbs i.e. [REDACTED] and [REDACTED]). Monitor receipts vs. sales records and deposits. Make sure regulations, laws, health and safety standards are obeyed. Handle variety of administrative assignments such as employee records, payroll, taxes, licenses and insurance etc. Utilize internet for research, marketing, hiring, training, and buying. Coordinate with the accountant, CPA and food consultants.	40%
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<sup>1</sup> The percentages of time listed in the table do not add up to 100%.

Estimate food and beverage costs and purchases supplies. Prepare food service budgets (actual and projected). Monitor and review food service budget. Conduct research to find reliable suppliers. Make cost analysis. Estimate food and beverage costs. Oversee the inventory. Be involved in financing terms & arrangements. Meet the representatives of restaurant supply companies. Order food items, supplies and equipment (some gross volumes, produce: \$75,000/yr, meat: \$50,000/yr, fish: \$25,000/yr, dairy products, soup, beverage: \$75,000/yr, paper products \$30,000/yr, imported ethnic food: \$30,000/yr, supplies: \$40,000/yr, tea-coffee-soda: \$25,000). Monitor deliveries. Inspect quality. Maintain purchasing records.	20%
Confer with food preparation and other personnel to plan menus for the various operations and the policies to be followed by food service personnel. Be involved in menu planning & development in accordance with the cuisine and high end fine dining standards. Determine food-labor-overhead costs and menu pricing. Monitor food preparation procedures. Coordinate with the executive chef and food consultants	15%
Direct hiring and assignment of personnel. Hiring, training, and replacing the employees: establish standards for personnel performance and customer service. Monitor employee performance and training. Assign duties and schedule hours. Coordinate hiring & assignment of kitchen personnel with executive chef. make recruitment plans to meet employee needs in the near future (such as 4 managers and assistant managers, 4 chefs, 6 cooking personnel, 10 dining room and counter service personnel) in parallel to company's growth plans (2 or 3 more locations in 5 years, catering, dinner expansion, Sunday brunches, take-out & delivery business). confer with top management and coordinate.	10%
Investigate and resolve food quality and service complaints. Ensure customers are satisfied. Handle customer relations properly and with high standards. Investigate and resolve customer complaints regarding food quality or service. Be a good communicator. Be flexible, respectful and show self-confidence.	
	100%

According to the Petitioner, the position requires at least a bachelor's degree in food service management, hospitality management, or a related field.

### III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.<sup>2</sup> Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.<sup>3</sup>

<sup>2</sup> Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

<sup>3</sup> The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

A. First Criterion

We first turn 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. To inform this inquiry, we recognize the U.S. Department of Labor's (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>4</sup>

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Food Services Managers" corresponding to the Standard Occupational Classification code 11-9051, at a Level II wage.<sup>5</sup>

We reviewed the chapter of the *Handbook* regarding the "Food Service Managers" occupational category, including the section entitled "How to Become a Food Service Manager." This section states, in pertinent part: "Most applicants qualify with a high school diploma and several years of work experience in the food service industry as a cook, waiter or waitress, or counter attendant."<sup>6</sup> It

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<sup>4</sup> All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

<sup>5</sup> The "Prevailing Wage Determination Policy Guidance" issued by the DOL provides a description of the wage levels. A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner's job opportunity. We will consider the Petitioner's classification of the proffered position at a Level II wage rate in our analysis of the position. DOL's wage-level guidance specifies that a Level II designation is reserved for positions involving only moderately complex tasks requiring limited judgment. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://flcdatacenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf).

DOL guidance further states that a requirement for years of education and/or experience that are generally required as described in DOL's Occupational Information Network (O\*NET) Job Zones would be an indication that a wage determination at Level II would be proper classification for a position. The occupational category "Food Services Managers," has been assigned an O\*NET Job Zone 3, which groups it among occupations for which medium preparation is needed. More specifically, most occupation in this zone "require training in vocational schools, related on-the-job experience, or an associate's degree." See O\*NET OnLine Help Center, at <http://www.onetonline.org/help/online/zones>, for a discussion of Job Zone 3. The designation of the proffered position at a Level II on the LCA suggests that the petitioner's academic and/or professional experience requirements for the proffered position would be equate to training in a vocational school, related on-the-job experience, or an associate's degree as stated for occupations designated as O\*NET Job Zone 3.

<sup>6</sup> U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Food Service Managers," <http://www.bls.gov/ooh/management/print/food-service-managers.htm> (last visited Apr. 29, 2016).

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also states: “Although a bachelor’s degree is not required, some postsecondary education is increasingly preferred for many manager positions, especially at upscale restaurants.” *Id.*

The *Handbook* does not state that a baccalaureate or higher degree, in a specific specialty, or its equivalent is normally the minimum requirement for entry into the proffered position. In fact, the *Handbook* specifically states that a bachelor’s degree is not required, and that for most applicants, a high school diploma is sufficient for entry into the occupation.

The Petitioner highlights the *Handbook*’s statement regarding “upscale restaurants,” and claims to be such an institution. As a threshold matter, the Petitioner has not submitted sufficient evidence to establish that it is an “upscale” restaurant. However, even assuming, *arguendo*, that the Petitioner is an “upscale” restaurant, the *Handbook* specifically states that a bachelor’s degree is not required for these entities, but rather that some postsecondary education is increasingly preferred by such institutions.<sup>7</sup>

In response to the Director’s request for evidence (RFE), the Petitioner submitted a letter from [REDACTED]. In his letter, [REDACTED] (1) describes the credentials that he asserts qualify him to opine upon the nature of the proffered position; (2) lists the duties proposed for the Beneficiary; and (3) states that these duties require at least a bachelor’s degree in food service management, hospitality management, or its equivalent. We carefully evaluated [REDACTED] assertions in support of the instant petition but, for the following reasons, determined his letter does not have significant weight in this matter.

While [REDACTED] provided a list of duties purportedly for the position, we must question the extent of [REDACTED] knowledge of the position within the context of the Petitioner’s particular operations. First, these job duties are not found in the Petitioner’s descriptions of the proffered position. Second, they are also not consistent with the Petitioner’s designation of the proffered position under the “Food Service Managers” category.<sup>8</sup> That is, they were copied in substantial part from DOL’s Occupational Information Network (O\*NET) OnLine Summary Report for “General and Operations Managers.” For example, the stated duties of “[e]stablish and implement departmental policies, goals, objectives, and procedures, conferring with board members, organization officials, and staff members as necessary,” and “[p]lan and direct activities such as sales promotions, coordinating with other department heads as required,” are virtually verbatim in the O\*NET Online Report for “General and Operations Managers.”<sup>9</sup> Moreover, these job duties are

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<sup>7</sup> A preference is not an indication of a requirement.

<sup>8</sup> With respect to the LCA, DOL provides clear guidance for selecting the most relevant O\*NET occupational code classification. The “Prevailing Wage Determination Policy Guidance” states that if the employer’s job opportunity has worker requirements described in a combination of O\*NET occupations, the determiner should default directly to the relevant occupational code for the highest paying occupation, which would be “General and Operations Managers.” Here, the Petitioner selected “Food Service Managers”; therefore, we must question the reliability of [REDACTED] evaluation.

<sup>9</sup> See O\*NET Online Details Report for “General and Operations Managers,” <http://www.onetonline.org/link/details/11-1021.00> (last visited Apr. 29, 2016).

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not found in, and are beyond the scope of, the job duties described by DOL for “Food Service Managers.”<sup>10</sup>

Even assuming [REDACTED] possessed expertise on the degree requirements for food service managers, his opinion letter does not substantiate his conclusions, such that we can conclude that the Petitioner has met its burden of proof. First, [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. Second, the record does not indicate whether [REDACTED] was aware that, as indicated by the Level II wage on the LCA, the Petitioner considered the proffered position to be for an employee who is expected to perform moderately complex tasks that require limited exercise of judgment.<sup>11</sup> Rather, [REDACTED] states that the Beneficiary will have a high-level of responsibilities and establish and implement departmental policies. The Petitioner has not demonstrated that [REDACTED] possessed the requisite information to adequately assess the nature of the position and appropriately determine parallel positions based upon the job duties and level of responsibilities.

For the reasons discussed, we find that [REDACTED] opinion letter lends little probative value to the matter here. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm’r 1988) (The service is not required to accept or may give less weight to an advisory opinion when it is “not in accord with other information or is in any way questionable.”).

The *Handbook* does not indicate that there are any degree requirements for these jobs. Moreover, the Petitioner has not provided documentation from another probative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

## B. Second Criterion

The second criterion presents two, alternative prongs: “The degree requirement is common to the industry in parallel positions among similar organizations or, *in the alternative*, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree[.]” 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong contemplates common industry practice, while the alternative prong narrows its focus to the Petitioner’s specific position.

### 1. First Prong

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<sup>10</sup> See O\*NET Online Details Report for “Food Service Managers,” <http://www.onetonline.org/link/details/11-9051.00> (last visited Apr. 29, 2016).

<sup>11</sup> Furthermore, we incorporate by reference our earlier discussion that the Petitioner’s Level II designation suggests that training in a vocational school, related on-the-job experience, or an associate’s degree is sufficient to perform the duties of the proffered position.

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To satisfy this first prong of the second criterion, the Petitioner must establish that the “degree requirement” (i.e., a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms “routinely employ and recruit only degreed individuals.” See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source (including [REDACTED] opinion letter), reports a requirement for at least a bachelor’s degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry’s professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner’s industry attesting that such firms “routinely employ and recruit only degreed individuals.”

We reviewed the evidence submitted, however, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

## 2. Second Prong

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the Petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor’s degree in a specific specialty, or its equivalent.

In support of its assertion that the proffered position qualifies as a specialty occupation, the Petitioner described the proffered position and its business operations.<sup>12</sup> The Petitioner claimed in its letter of support that it has plans for expansion and upgrading its services. However, the Petitioner did not provide probative documentation to support its claim (e.g., a business plan; documentation substantiating the expansion of physical facilities; plans to hire staff; evidence substantiating that the Petitioner intends to establish branch, subsidiary or affiliate offices; probative evidence substantiating investments or new revenue sources; or other documentation regarding development/expansion plans).

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<sup>12</sup> The Petitioner stated that it is an upscale/high-end restaurant in “close proximity” to two other restaurants that were owned and operated by world renowned chefs. The Petitioner further claimed that these aspects of its business are relevant to the instant matter.

In any case, a petition cannot be approved to meet potential business expansions. A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the Petitioner or Beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). The H-1B classification is not intended as a vehicle for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. 63 Fed. Reg. 30419, 30419 - 30420 (June 4, 1998).<sup>13</sup>

In addition, the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. Again, it appears that the Petitioner expects the Beneficiary to perform moderately complex tasks that require limited exercise of judgment (by its selection of a Level II wage on the LCA) compared to other positions within the same occupation.<sup>14</sup> The description of the duties provided by the Petitioner does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them and does not refute the *Handbook's* statement that a high school diploma and work experience or some post-secondary education is sufficient.

Accordingly, the Petitioner has not submitted sufficient evidence to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

### C. Third Criterion

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

To merit approval of the petition under this criterion, however, the record must establish that a petitioner's imposition of a degree requirement is not a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. While a petitioner may assert that a proffered position requires a specific degree, that statement alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing the Petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the Petitioner created a token degree requirement, whereby all individuals employed in a particular position

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<sup>13</sup> The agency made clear long ago that speculative employment is not permitted in the H-1B program. *See, e.g.*, 63 Fed. Reg. 30419, 30419 - 30420 (June 4, 1998).

<sup>14</sup> Nevertheless, a low wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a high wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I 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.

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possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

On the H-1B petition, the Petitioner indicated that it was established in [REDACTED] (approximately 16 years before the instant petition was filed). In the letter of support submitted with the petition, the Petitioner states that "there have been three individuals serving as the Food Service Manager": (1) the founder/president – who holds a degree in economics; (2) [REDACTED] – who holds a degree in hospitality management; and (3) the Beneficiary. As a preliminary matter, the fact that the Petitioner would find acceptable individuals with degrees in disparate fields, such as economics and hospitality management, for its food service manager position does not support its assertion that it requires an individual with a bachelor's degree in a specific specialty, or the equivalent.<sup>15</sup>

Further, the Petitioner did not provide the duties of these individual, thus, it is not possible to determine important aspects of the jobs, such as the day-to-day responsibilities, complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. That is, the record indicates that one of the individuals was the Petitioner's owner/founder who, the Petitioner states "wore many hats." The other individual was approved for E-2 classification (treaty trader), which is for an individual (1) who has invested a substantial amount of capital in a U.S. business; (2) is seeking to enter the United States to develop and direct the investment enterprise; (3) is serving in an executive or supervisory position (primarily providing ultimate control and responsibility for the organization's overall operation, or a major component of it). The documentation does not establish that the duties and responsibilities of these positions are the same or parallel to the proffered position.

Thus, without more, the Petitioner's assertion regarding these individuals does not constitute sufficient evidence of the Petitioner's recruiting and hiring history necessary for analysis under this criterion.<sup>16</sup> Therefore, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

#### D. Fourth Criterion

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is

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<sup>15</sup> There must be a close correlation between the required "body of highly specialized knowledge" and the proffered position. Therefore, a minimum entry requirement of degrees in disparate fields, such as economics and hospitality 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. Section 214(i)(1)(B) of the Act (emphasis added). The Petitioner has not done so here.

<sup>16</sup> *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (7th ed. 1995).

usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

The Petitioner claims that the nature of the specific duties of the position in the context of its business operations 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. However, relative specialization and complexity have not been sufficiently 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 other 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 reiterate our earlier comments and findings regarding the insufficiency of evidence of the Petitioner's claimed "upscale" operations and the implications of the position's Level II wage designation on the LCA.

In addition, the Petitioner claims that the Beneficiary is well qualified for the position, and references her qualifications. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner has not demonstrated in the record that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

#### IV. CONCLUSION

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation.<sup>17</sup> The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

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<sup>17</sup> We will not address the Beneficiary's qualifications as a beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.