



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

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

MATTER OF C-(USA), L.P.

DATE: MAY 27, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a plastic raw material wholesaler, seeks to temporarily employ the Beneficiary as a “budget analyst” under the H-1B nonimmigrant classification. *See* Immigration and Nationality Act (the Act) section 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 evidence of record did not establish the proffered position as 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 qualifies as a specialty occupation under the applicable statute and regulations.

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

I. LAW

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

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

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

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

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

II. PROFFERED POSITION

In the initial letter of support, the Petitioner provided a description of the job duties the Beneficiary will perform in the position of a budget analyst. In response to the Director’s request for evidence, the Petitioner reiterated the same job duties, and provided the percentage of time the Beneficiary will spend on each duty, as follows (verbatim):

- Examines budget estimates for completeness, accuracy, and conformance with procedures and regulations. (10%)
- Analyzes monthly department budgeting and accounting reports to maintain expenditure controls in order to improve efficiency and increase profits. (15%)
- Analyzes accounting records to determine financial resources required and submit recommendation for budget allocations. (25%)
- Provides advice and technical assistance with cost analysis, fiscal allocation, and budget preparation. (20%)
- Reviews past and current operating budgets and research economic and financial developments that affect the company’s spending. (10%)
- Performs cost-benefit analyses to review financial requests, assess program trade-offs, and explore alternative funding methods. (15%)
- Reviews reports and records to establish that funds have been spent as directed. (5%)

According to the Petitioner, the proffered position requires at least a bachelor's degree in business administration or a related subject, or its equivalent.

III. ANALYSIS

As a preliminary matter, the Petitioner's claim that a bachelor's degree in business administration is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed 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 and closely 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 administration, 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), *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.¹

We also cannot find that the proffered position qualifies as a specialty occupation because the record does not describe the position's duties with sufficient detail. Here, the Petitioner's descriptions of the proffered job duties were recited almost verbatim from the Department of Labor's (DOL) Occupational Information Network (O*NET) Details Report for the occupational category "Budget Analysts," corresponding to Standard Occupational Classification (SOC) code 13-2031. *See* O*NET Online Details Report for "Budget Analysts," <http://www.onetonline.org/link/details/13-2031.00> (last visited May 26, 2016). This type of description may be appropriate when defining the range of duties that may be performed within an occupational category, but it does not adequately convey the substantive work that the Beneficiary will perform within the Petitioner's business operations and, thus, generally cannot be relied upon by a petitioner when discussing the duties attached to specific employment.

In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in the context of that petitioner's business operations, as well as demonstrate a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition. Simply submitting a generic job description that is not specific to the Beneficiary and the Petitioner's operations is insufficient to establish the substantive nature of the proffered position.

Without more, the record does not describe the position's duties with sufficient detail to convey substantive information about the relative complexity, uniqueness and/or specialization of the

¹ A general degree requirement does not necessarily preclude a proffered position from qualifying as a specialty occupation. For example, an entry requirement of a bachelor's or higher degree in business administration with a concentration in a specific field, or a bachelor's or higher degree in business administration combined with required relevant education, training, and/or experience may, in certain instances, qualify the proffered position as a specialty occupation. In either case, it must be demonstrated that the entry requirement is equivalent to a bachelor's or higher degree in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

proffered position or its associated duties. Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we will discuss the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

A. First Criterion

We turn first 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. To inform this inquiry, 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.²

On the labor condition application submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational classification "Budget Analysts" corresponding to SOC code 13-2031 at a Level I wage.

The *Handbook* subchapter entitled "How to Become a Budget Analyst" states, in pertinent part:

Employers generally require budget analysts to have at least a bachelor's degree. However, some employers may require candidates to have a master's degree. Because developing a budget requires strong numerical and analytical skills, courses in statistics or accounting are helpful. Federal, state, and local governments have varying requirements, but usually require a bachelor's degree in one of many areas, such as accounting, finance, business, public administration, economics, statistics, political science, or sociology.

Sometimes, budget-related or finance-related work experience can be substituted for formal education.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Budget Analysts," <http://www.bls.gov/ooh/business-and-financial/budget-analysts.htm#tab-4> (last visited May 26, 2016).

A review of the *Handbook* does not indicate that, simply by virtue of its occupational classification, a budget analyst position qualifies as a specialty occupation. More specifically, while the *Handbook* reports that budget analysts typically have a bachelor's degree, and some have a master's degree, the

² All of our references are to the 2016-17 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.

Handbook does not specify that the bachelor's or master's degrees must be in a specific specialty. The *Handbook* also reports that budget or finance-related work experience can be substituted for formal education, but does not specify the amount of work experience or the type of formal education that can be substituted. Thus, the *Handbook* does not support the claim that the proffered position falls under an occupational group for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent.

On appeal, the Petitioner asserts that the *Handbook's* statement that budget or finance-related work experience can be substituted for formal education "does not mean that a degree is not required." In support of this assertion, the Petitioner cites the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D), which is relevant to determining a beneficiary's work experience equivalency to an academic degree. This regulation, however, is not relevant to our interpretation of the *Handbook* for purposes of determining a position's normal minimum entry requirements. As previously indicated, work experience equivalency specifications are not included in the *Handbook's* report on the educational and training requirements for budget analysts.

On appeal, the Petitioner also points out that two out of five budget analysts work in federal, state, or local governments. However, the Petitioner is not a government entity; thus, the *Handbook's* statement regarding the usual degrees for government budget analysts is not relevant to the Petitioner's budget analyst position. Even if this statement were relevant, it is not readily apparent that the listed fields of study for government budget analysts (e.g., public administration, political science, or sociology) are all closely related to the duties and responsibilities of the particular position proffered such that these fields of study could be recognized as meeting the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act.³

The Petitioner has not provided documentation from a 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

³ In general, provided the specialties are closely related, e.g., accounting and finance, 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 disparate fields, such as accounting and sociology, 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.

(b)(6)

Matter of C-(USA), L.P.

contemplates common industry practice, while the alternative prong narrows its focus to the Petitioner's specific position.

1. First Prong

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 discussed above, the Petitioner has not established that its proffered position is one for which the *Handbook* or another 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. 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 to their employment and recruitment practices.

We have reviewed the opinion letter by [REDACTED] Adjunct Professor at [REDACTED]. Upon review of [REDACTED] letter, we do not find a sufficient basis to accord deference to her opinion with regard to the minimum educational requirement for the performance of the particular position that is the subject of this petition. Even considered in the aggregate, [REDACTED] professional, academic, and educational experiences do not show that she has published, conducted research, run surveys, or engaged in any enterprise, pursuit, or employment - academic or otherwise - to provide her with expertise in the particular area upon which she opines. Instead, [REDACTED] bases her opinion on her educational and professional background in the broad fields of business administration, marketing, accounting, computer information science, criminal justice, hospitality management, international business and management. While [REDACTED] may have anecdotal information regarding the minimum educational requirements for budget analysts, she has not supplied sufficient research, studies, surveys, or other authoritative publications as part of her review and/or as a foundation for her opinion.

Importantly, [REDACTED] states that she "based[d] [her] assessment that a Budget Analyst would require specialized knowledge and experience after conducting a thorough review of employment websites including www.monster.com, www.jobs.com and www.careerbuilder.com." [REDACTED] then gives examples of five advertisements for budget analysts from these websites, and asserts that "[t]he aforementioned employment listings clearly demonstrate that a Bachelor's degree is the

(b)(6)

Matter of C-(USA), L.P.

industry-standard requirement for such a position.” However, [REDACTED] does not further quantify her search results, either by number or actual result. Thus, she has not demonstrated how representative and statistically significant these five advertisements are to support her conclusion regarding “the industry-standard requirement” for the position.⁴

Moreover, [REDACTED] does not indicate whether she visited the Petitioner’s business premises or spoke with anyone affiliated with the Petitioner, so as to ascertain and base her opinion upon the substantive nature and educational requirements of the proposed duties as they would be actually performed. In this regard, [REDACTED] states that she “base[d] [her] assessment on the fact that the job requires specialized knowledge to perform the following duties,” and then recites the same list of job duties the Petitioner provided. [REDACTED] reliance upon these generally stated duties, which were copied from O*NET, further diminishes the evidentiary value of her opinion regarding the “specialized” nature of the position.

Furthermore, [REDACTED] confirms that the proffered position requires the attainment of a bachelor’s degree in business administration, or its equivalent. As previously discussed, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. at 560. Therefore, the letter from [REDACTED] does not support the finding that the proffered position qualifies as a specialty occupation.

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, [REDACTED] opinion letter is not probative evidence towards satisfying 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), or any other 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.

The Petitioner seems to assert that the five advertisements summarized by [REDACTED] constitute evidence under this criterion. The record does not, however, include copies of the actual advertisements referenced. Thus, we are unable to ascertain the accuracy of [REDACTED] summaries. Moreover, we are unable to ascertain the duties of the five advertised positions and the general characteristics of the advertising organizations to establish that these advertisements are for parallel positions within organizations similar to the Petitioner and in the Petitioner’s industry.⁵ “[G]oing on record without supporting documentary evidence is not sufficient for purposes of meeting the burden

⁴ See generally *Earl Babbie, The Practice of Social Research* 186-228 (7th ed. 1995).

⁵ When determining whether a petitioner and an advertising organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered).

Matter of C-(USA), L.P.

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)).

Based upon a complete review of the record, we conclude that 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.

Upon review, we find that the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. Again, the record does not describe the position’s duties with sufficient detail to convey substantive information about the relative complexity, uniqueness and/or specialization of the proffered position or its associated duties. We hereby incorporate our previous discussion on the matter.

The Petitioner asserts that the proffered position is a “professional” position and that the *Handbook*’s description of the nature of a budget analyst’s work demonstrates the duties are complex and unique.⁶ The Petitioner, however, has not offered sufficient analysis establishing why the duties it describes for its budget analyst requires a detailed course of study in a specific discipline in order to perform those duties. 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 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. In any event, the *Handbook* does not support the Petitioner’s assertion that the nature of a budget analyst’s work is so complex and unique such that a bachelor’s degree in a specific specialty, or its equivalent, is required. As previously discussed, the *Handbook* indicates that an otherwise unspecified bachelor’s degree is the typical educational requirement for budget analyst positions.

When considering the *Handbook*, we must also consider the Petitioner’s designation of the proffered position as a Level I (entry) wage level, which is the lowest of four assignable wage levels.⁷ In

⁶ The Petitioner asserts that the budget analyst position “is considered a member of the profession” and cites to section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32). The issue before us is whether the Petitioner’s proffered position qualifies as a nonimmigrant H-1B specialty occupation and not whether it is a profession.

⁷ For more information about wage levels, see U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

designating the proffered position at a Level I (entry) wage, the Petitioner has indicated that the proffered position is a comparatively low, entry-level position relative to others within the occupation. Based upon the Petitioner's designation of the proffered position as a Level I (entry) position under the "Budget Analysts" occupational category, it does not appear that the Beneficiary will perform duties that are so complex or unique that can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent. In other words, the record does not establish that this position is significantly different from other budget analyst positions such that it refutes the *Handbook's* information to the effect that this position can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.⁸

The Petitioner has indicated that the Beneficiary's educational background will assist her in carrying out the duties of the proffered position, and takes particular note of the Beneficiary's master's degree in business administration and the specific courses she completed to attain her master's degree. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself qualifies as a specialty occupation.⁹ The Petitioner does not sufficiently explain or clarify which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. Therefore, the Petitioner has not satisfied 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.

The "Prevailing Wage Determination Policy Guidance" issued by the DOL describes a Level I wage rate as generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. *Id.* This wage rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that she will be closely supervised and her work closely monitored and reviewed for accuracy; and (3) that she will receive specific instructions on required tasks and expected results. *Id.* 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. *Id.* A Level I wage should be considered for research fellows, workers in training, or internships. *Id.*

⁸ The Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I, entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty, or its equivalent. That is, a position's wage level designation may be a relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

⁹ For this reason, the Petitioner's statements distinguishing the facts of this case from *Matter of Ling*, 13 I&N Dec. 35 (Reg'l Comm'r 1968) are not relevant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which relates to the proffered position's qualification as a specialty occupation, not to the Beneficiary's qualification to perform services in a specialty occupation.

On appeal, the Petitioner references two individuals whom it claims were previously employed as budget analysts. The Petitioner submits copies of their resumes and 2014 W-2 forms.¹⁰ However, the resumes do not list any prior or current employment with the Petitioner, and the Petitioner does not include a description of the duties these individuals purportedly performed while briefly in its employment. Nor does the Petitioner submit copies of their transcripts or degrees to establish their educational qualifications. Accordingly, the record of proceedings is insufficient to establish eligibility under 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 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. Under this criterion, the Petitioner repeats the initially described duties and the allocation of the Beneficiary's time to those duties, but does not offer an analysis of how these generally described duties for its plastic resin distribution business elevate the proffered position to a specialty occupation. We again refer to our comments regarding the generalized position description, as well as to the Petitioner's attestation that the proffered position is for a Level I (entry) position. The record does not establish that a Level I, entry-level, budget analyst position such as this is likely distinguishable by relatively specialized and complex duties. Upon review of the totality of the record, the Petitioner has not satisfied the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

IV. CONCLUSION

The Petitioner has not satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), and has not established that the proffered position qualifies as a specialty occupation. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of C-(USA), L.P.*, ID# 17253 (AAO May 27, 2016)

¹⁰ The W-2 forms show that one individual earned \$688 for the year, and the second earned \$1,200 for the year.