



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

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

MATTER OF N-, INC.

DATE: MAY 31, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a computer company, seeks to temporarily employ the Beneficiary as a "SAP consultant" 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, California Service Center, denied the petition. The Director concluded that the evidence of record is insufficient to establish that: (1) the proffered position qualifies as a specialty occupation; and (2) the Beneficiary is qualified to serve in a specialty occupation position in accordance with the applicable statutory and regulatory provisions.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director's conclusions are erroneous.

Upon *de novo* review, the appeal will be dismissed.

**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.

(b)(6)

*Matter of N-, Inc.*

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.

We note that, as recognized by the court in *Defensor*, 201 F.3d at 387-88, where the work is to be performed for entities other than the petitioner, evidence of the client companies’ job requirements is critical. See *Defensor v. Meissner*, 201 F.3d at 387-88. The court held that the former Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary’s services. *Id.* Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

#### B. The Proffered Position

On the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner described itself as a 22-employee software services company located in [REDACTED] California. The Petitioner seeks to employ the Beneficiary as a “SAP consultant” from October 1, 2015, to July 23, 2018, at a salary of \$63,000 per year. The Petitioner indicated that the Beneficiary will work off-site in Michigan.

The labor condition application (LCA) submitted to support the visa petition states that the proffered position corresponds to Standard Occupational Classification (SOC) code and occupation title 15-1121, “Computer Systems Analysts,” from the Occupational Information Network (O\*NET).

(b)(6)

*Matter of N-, Inc.*

The LCA further states that the proffered position is a Level II position. The LCA lists the sole place of employment as the Michigan address.

In its cover letter, the Petitioner stated that the Beneficiary "will be designated to primarily work at [the Petitioner's] End-Client's business premises located [in] ██████████ MI ██████████. This assignment is based on [the Petitioner's] direct contract with [the End-Client]." The Petitioner then described the proffered position as follows (verbatim):

[The Beneficiary] will be responsible for working with the SAP team for conducting Migration Analysis and Verification Sessions. Proactively identifying issues that may negatively impact a projects deliverables. Planning and establishing after go-live activities including ongoing application support. Working on End-to-end Implementation, Upgrades, Installations, Configurations, Post-Installation Activities, OS/DB Migration, Performance Tuning, Documentation, Defining SLA, Transition, and Managing Delivery of all SAP. Participating in 24\*7 Support of applications and translating business requirements into technical requirements and implementing the solution. Performing analysis, definition, creation and implementation of technical application standards and documentation. Managing the delivery of SAP OS/DB migrations from one hardware platform to another within defined time and adhered to quality standards. Participating in Proof of Concept Development, HANA administration and monitoring, HANA revision and SPS upgrade, HANA studio and client installations, Monitoring of SAP HANA studio for Performance tuning, Activating and deactivating services using SAP HANA studio, Performing OS Migration of the Entire R3, BI, PI Landscape from HP-UX to Linux Environment, Handling Runtime issues during the Export and Import and Upgrade, Monitoring the systems from the SAP Solution Manager, Configuring the OSS settings, and Coordinating with off-shore Basis Support Team.

In response to the Director's request for evidence (RFE), the Petitioner elaborated upon the duties of the proffered position, as well as the time spent on each duty, as follows:

	<b>Tasks</b>	<b>Difficulty Level</b>	<b>% Time to be Spent</b>
1.	Have a good knowledge of all SAP software, Understand the pros and cons of the various SAP software, Be SAP qualified, Solid communication and interpersonal skills. Experience with SAP projects. Analytical and creative thought. Ability to deliver activities to tight timescales	4	20%
2.	Provide expert advice on SAP functionality. The Consultant is supposed to be expert in his SAP module and should be able to provide in detail the functionality available in SAP. He should advice	4	20%

	customer on how to use the best business processes as provided in SAP.		
3.	Collect & analyze customer requirements on the following: oBusiness processes and parameters: This is important for business processes to be covered in SAP and compile the various parameters required for subsequent Configuration. oAssist in data transfer mapping: Data is required to be transferred to SAP from the legacy systems (e.g. Master Data like Material Master, Customer/Vendor master etc..) oDetermining reporting requirements: Standard SAP Reports and any Customized Reporting required.	3	10%
4.	Determine printed forms requirements, Suggest solutions to customer based on best business practices so that Customer gets Business benefits by following these SAP processes.	4	10%
5.	Assist in the development of business processes descriptions. Conduct implementation & training workshops: This is particularly required for SAP Power users and then guidance for end-user training. Most of the implementations follow 'Train the Trainer' approach..	3	5%
6.	Provide guidance on end-user documentation. Provide guidance on test plan.: How to test SAP functionality for the required Business processes and ensure that all scenarios are covered. Conduct unit tests based on customer defined scenarios	4	15%
7.	Coordinate with other module SAP Consultants for Integration requirements.	4	10%
8.	Provide Functional Specifications to Technical team for any Customized developments..	4	10%

**Notes on Difficulty Level**

1	Novice
2	Some Exposure
3	Familiarity with Computers
4	Bachelor's
5	Master's

The Petitioner stated that the proffered position requires a bachelor's degree in computer science, electronics engineering, computer information systems, or a related field, plus a minimum of two to four years of related experience.

(b)(6)

*Matter of N-, Inc.*

In support of the petition, the Petitioner submitted two Employment Agreements with the Beneficiary which contain a lengthy description of duties, as cited below in part (verbatim):<sup>1</sup>

[The Beneficiary] will be responsible for Gathering the security requirements in Preparation Phase with touch base with Customer. Prepared the Security blue print according to the customer requirements and policies. Interacting with the customer during realization phase. Created Project team roles and provided access to Project team based on the equipment. Prepared Role Matrix by gathering the requirements from BPDDs and FTDS Created Business and end user roles through BRM in GRC 10.0 Performed Unit testing of roles and transported them to Production Handled User & role administration using ARM & BRM in GRC 10.0. Configured MSMP work flow for ARM and BRM in Access Control. Prepared the end users access and trained them based on their functionality. Built the SOD Rule set as per customer business specifications and uploaded them to production. Performed the risk analysis for roles and users using ARA in GRC 10.0 Creation of users and roles based on Customer predefined process Resolving authorization issues for Project team and also end users. Performed security testing during SIT2 and made the security section ready as part of preparation phase. Configured de-centralized functionality EAM in GRC Supported the SAP Implementation team during go-live Resolved Access and authorization issues during post go-live [REDACTED] is a Global leader in automobile sector with operations world wide. In the Latin America, Africa, Middle Project/Customer: [REDACTED] General basis administration and Health checks. User administration and Authorization support . . . .

The Petitioner also submitted a letter from the claimed end-client stating that the Beneficiary will work at its business premises in Michigan as a SAP Consultant “for the project entitled [REDACTED] [REDACTED] The end-client letter lists job duties similar to those listed in the Petitioner’s RFE response. The end-client letter further states that the company has “never recruited for [the proffered] position for less than a Bachelor’s degree in the following fields Computer Science, Computer Applications, Information Technology, Mathematics, Business or a closely related field [sic],” along with at least two to three years of related experience.

### C. Analysis

As a preliminary matter, the end-client’s assertion that a bachelor’s degree in “Business” is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation.<sup>2</sup> A petitioner must demonstrate that the

<sup>1</sup> The Petitioner submitted an “amended” Employment Agreement in response to the Director’s RFE which had noted several impermissible provisions relating to the LCA in the original Employment Agreement. Both Employment Agreements contain the same description of duties.

<sup>2</sup> While the Petitioner’s list of acceptable degrees does not contain a degree in business, the Petitioner has not explained why its requirements differ from the end-client’s requirements. Regardless, to the extent that the Petitioner’s descriptions differ from those provided by the end-client, we defer to the end-client’s descriptions. See *Defensor v.*

*Matter of N-, Inc.*

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," 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. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose business 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. *Royal Siam Corp. v. Chertoff*, 484 at 147.<sup>3</sup> Without more, a degree requirement in "Business," alone, indicates that the proffered position is not in fact a specialty occupation.

Moreover, it also cannot be found that the proffered position qualifies as a specialty occupation because the Petitioner has not credibly and sufficiently demonstrated the substantive nature of the proffered position.<sup>4</sup>

Foremost, we find insufficient credible evidence directly from end-client describing the duties of the proffered position. The evidence of record contains two different versions of the "Assigned Personnel Form" signed by the Petitioner and the end-client, both of which were purportedly entered into on October 21, 2013. These two documents contain different descriptions of the services to be performed by the Beneficiary; one of the Assigned Personnel Forms describes the "Services to be performed" as "Design, Coding and unit testing core components and client customization of the

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*Meissner*, 201 F.3d at 387-388 (the petitioner-provided job duties and alleged requirements to perform those duties are irrelevant to a specialty occupation determination).

<sup>3</sup> Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

The courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D. Mass. 2000); *Shanti*, 36 F. Supp. 2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

*Id.*

<sup>4</sup> The California Secretary of State website indicates that the Petitioner's corporate status has been suspended. That is, the Petitioner's powers, rights and privileges, including the right to use its corporate name in California, were suspended. *See* attached print-outs. The Petitioner's corporate status raises questions regarding whether the Petitioner's offer of employment to the Beneficiary is *bona fide*.

(b)(6)

*Matter of N-, Inc.*

product,” while the other Assigned Personnel Form describes the “Services to be performed” as “SAP systems ,BI Security,EP security [sic].” In addition, both Assigned Personnel Forms list the Beneficiary’s end-date as October 12, 2018, even though the Petitioner requested a validity period ending on July 23, 2018.<sup>5</sup> We thus question whether either of the two Assigned Personnel Forms constitute an accurate, legally binding contract between the Petitioner and the end-client for the Beneficiary’s services, as claimed.<sup>6</sup> “[I]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence.” *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92. “Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.” *Id.* at 591.

Even if we were to find either or both of these Assigned Personnel Forms to be credible, these documents do not describe in detail the nature of the proffered duties. As previously stated, the Assigned Personnel Forms simply describe the “Services to be performed” as “Design, Coding and unit testing core components and client customization of the product,” and “SAP systems ,BI Security,EP security [sic].” No further details about these job duties or what “product” or “systems” the Beneficiary will work on were provided in these forms. Notably, the Assigned Personnel Forms do not contain any reference to the [REDACTED] project.

The end-client letter similarly describes the proffered duties in broad and generalized terms, such as “[r]esponsible for having a good knowledge of all SAP software, Understand the pros and cons of the various SAP software, Be SAP qualified, Solid communication and interpersonal skills, Experience with SAP projects.”<sup>7</sup> However, there is no further explanation of what specific tasks the Beneficiary will perform (i.e., what is meant by the vague phrases “[r]esponsible for having a good knowledge” and “Be SAP qualified”). Moreover, while the end-client letter references the [REDACTED] project, it does not provide any additional information and explanation about this project, such as the nature, complexity, and length of this particular project.

In fact, the evidence of record contains apparent references to other projects and/or end-clients. For example, the Petitioner’s Employment Agreements with the Beneficiary describe the proffered job duties as including “[REDACTED] is a Global leader in automobile sector with operations world wide. In the Latin America, Africa, Middle Project/Customer: [REDACTED]”<sup>8</sup> The Petitioner has not explained the meaning of this particular duty, and the relationship

<sup>5</sup> The Petitioner did not request the maximum three years, which would have ended on September 30, 2018.

<sup>6</sup> We also note that these Assigned Personnel Forms list the Beneficiary’s “Primary work Location [a]s [REDACTED] Michigan.” As will be discussed *infra*, the use of the word “Primarily” is problematic and denotes that the Beneficiary may also be assigned to perform work other than at the stated premises.

<sup>7</sup> The Petitioner’s RFE response lists these same duties, and indicates that the Beneficiary will spend 20% of her time on these particular duties.

<sup>8</sup> While petitioner-provided job duties are generally outside the scope of consideration for establishing whether the position qualifies as a specialty occupation, we are considering the Petitioner’s descriptions of the duties here for the purpose of highlighting the inconsistencies and deficiencies in the evidence of record. *See Defensor v. Meissner*, 201

(b)(6)

*Matter of N-, Inc.*

(if any) between [REDACTED] and the Petitioner. The Petitioner's Employment Agreements also contain repeated references to "GRC 10.0" among other undefined terms and acronyms. The Petitioner has not explained what "GRC 10.0" is, and how it relates to the [REDACTED] project. "[G]oing on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings." *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). We note that many of the proffered duties listed in the Employment Agreements are worded in the past tense. This, along with the unexplained references to [REDACTED], GRC 10.0, and other undefined terms and acronyms, lead us to question the credibility of the Petitioner's documents

The Petitioner's cover letter lists job duties such as "SAP HANA studio for Performance tuning, Activating and deactivating services using SAP HANA studio, Performing OS Migration of the Entire R3, BI, PI Landscape from HP-UX to Linux Environment." These job duties involving "SAP HANA studio" are not found elsewhere in the evidence of record. The Petitioner has not explained how these duties are consistent with other stated job duties, and moreover, how they relate to [REDACTED] project. Again, "going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings." *Id.*

The Petitioner asserted that the Beneficiary will perform duties such as "[p]rovide expert advice on SAP functionality" and being an "expert in [her] SAP module." The Petitioner also asserted that the Beneficiary will perform duties such as "Managing Delivery of all SAP." However, the Petitioner designated the proffered position as a Level II position. In designating the proffered position at a Level II (qualified) wage rate, the Petitioner has indicated that the proffered position is a comparatively lower position relative to others within the occupation.<sup>9</sup> That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the Beneficiary has a good understanding of the occupation, but will only perform moderately complex tasks that require limited judgment. 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://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). The Petitioner's Level II wage rate designation is inconsistent with the duties requiring the Beneficiary to be an "expert" and to "[Manage] Delivery of all SAP," and leads us to further question the nature of the proffered position.

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F.3d at 387-88 (stating that the petitioner-provided job duties and alleged requirements to perform those duties were irrelevant to a specialty occupation determination where the nurses in that case would provide services to the end-client hospitals and not to the petitioning staffing company).

<sup>9</sup> The Petitioner's designation of this position as a Level II position undermines its claim that the position is a senior position compared to other positions within the same occupation. Nevertheless, a Level II 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 or Level II 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.

The evidence of record contains other vague statements by the Petitioner and the end-client regarding the Beneficiary's "primary" work duties and location that further lead us to question the nature of the proffered position. For instance, both Assigned Personnel Forms list the Beneficiary's "Primary work location" as the end-client's Michigan premises. The Petitioner states in its cover letter that the Beneficiary "will be designated to primarily work at [the Petitioner's] End-Client's business premises." However, the use of the words "primary" or "primarily" denotes that the Beneficiary may also be assigned to perform work at other, unspecified locations, and that she may be assigned to perform job duties other than those disclosed in the petition. The Petitioner's Employment Agreements with the Beneficiary contain other similar provisions indicating that the Beneficiary may be assigned to perform undisclosed work, such as that the Beneficiary's "duties shall be rendered at [Petitioner's] business premises or at such other places as the [Petitioner] may require" and that she "shall also perform such other duties in the ordinary course of business as performed by other persons in similar such positions, as well as such other reasonable duties as may be assigned from time to time by the [Petitioner]." When considered as a whole, the evidence of record lacks a sufficient, detailed explanation of all the work the Beneficiary will be assigned to perform during the entire validity period requested, including the location(s) of such work and the specific job duties to be performed.

For all of the above reasons, we find the evidence of record insufficient to demonstrate the substantive nature of the proffered position and its constituent duties. Consequently, we are precluded from finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Accordingly, as the evidence does not satisfy any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

## II. BENEFICIARY QUALIFICATIONS

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

*Matter of N-, Inc.*

### III. CONCLUSION

The Petitioner has not established that the proffered position, more likely than not, 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 N-, Inc.*, ID# 16747 (AAO May 31, 2016)