



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

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

MATTER OF C-M-F-

DATE: OCT. 7, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an event design company, seeks to temporarily employ the Beneficiary as an “events manager” under the H-1B nonimmigrant classification for specialty occupations. *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, California Service Center, denied the petition. The Director concluded that the Petitioner had not established 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 Director erroneously concluded that it had not established that the proffered position requires at least a bachelor’s degree in a specific field.

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

I. 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) 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:

(b)(6)

Matter of C-M-F-

- (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 it is a three-employee company and that the Beneficiary will serve as its part-time “events manager.” The Petitioner provided the following description of the duties of the proffered position in response to the Director’s request for evidence (RFE):

- Create promotional items, including referral images of event designs for initial client consultations, sign programs such as [REDACTED] (10%)
- Meet with clients for initial consultation; record all client requests; present referral images of similar event designs; begin process of determining optimum design strategy for event at hand (10%)
- Visit venue at which event will be held to determine measurements where needed and other setting details; aid in preparing sample presentations for client (15%)
- Coordinate services for clients to address latest trends in fashion and design including seasonal visions for displays; coordinate services for client to address budget criteria (15%)
- Aid in artistic design and production including floral arrangements (living trees, indoor hedges, hanging plants); centerpieces (floral, fiber optic, plasma ball, and the like); bridal bouquets, graphic design of printed materials (invitations, table cards, and more), installations (video art, balloons, textile sculptural fixtures, and more), décor (lighting fixtures and more) (20%)

- Aid in on-site installation and set-up; interact with client for additional needs, modifications, additions, adjustments; check displays for any problems; make any necessary changes (30%)

According to the Petitioner, the position of Events Manager requires a minimum of a bachelor's degree in fine arts with a concentration in studio or related.

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.¹ Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.²

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.³

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Meeting, Convention, and Event Planners" corresponding to the Standard Occupational Classification code 13-1121.⁴ The subchapter

¹ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

² 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.

³ 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.

⁴ The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). We will consider this selection in our analysis of the position. The "Prevailing Wage Determination Policy Guidance" issued by the DOL provides a description of the wage levels. A Level I wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. 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. 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. A prevailing wage determination starts

of the *Handbook* entitled “How to Become a Meeting, Convention, or Event Planner” states, in relevant part, the following:

Applicants usually need a bachelor’s degree and some experience related to event planning.

Education

Many employers prefer applicants who have a bachelor’s degree and some work experience in hotels or planning. The proportion of planners with a bachelor’s degree is increasing because work responsibilities have become more complex. Although some colleges offer degree programs in meeting and event management, other common fields of study include hospitality and tourism management. If an applicant’s degree is not related to these fields, employers are likely to require at least 1 to 2 years of related hospitality or planning experience.

Planners who have studied meeting and event management or hospitality management may start out with greater responsibilities than those from other academic disciplines. Some colleges offer continuing education courses in meeting and event planning.

U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., “Meeting, Convention, or Event Planners,” <http://www.bls.gov/ooh/business-and-financial/meeting-convention-and-event-planners.htm#tab-4> (last visited Sept. 30, 2016).

The *Handbook* does not report that a bachelor’s degree in a specific specialty is required to perform the duties of a meeting, convention, or event planner. As the Petitioner noted the *Handbook* does not specifically address the occupation of events manager.⁵ Accordingly, in certain instances, the *Handbook* is not determinative. When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the Petitioner to provide persuasive evidence that the proffered position more likely than not satisfies this or one of the other three criteria, notwithstanding the absence of the *Handbook*’s support on the issue. In such case, it is the Petitioner’s responsibility to provide probative evidence (e.g., documentation from other objective, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider and weigh all of the evidence

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.*

⁵ Although the Petitioner here identified the proffered position on the certified LCA as a meeting, convention, and event planner, we will discuss the Petitioner’s comments indicating that its proffered position is an event manager and not an event planner, in subsequent sections of this decision.

presented to determine whether the particular position qualifies as a specialty occupation. Here, the Petitioner has not submitted other authoritative sources in support of this criterion.

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 concentrates upon the 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.

When 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)).

Here and as already discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative sources) 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.

In support of its assertion that the degree requirement is common to the Petitioner’s industry in parallel positions among similar organizations, the Petitioner submitted copies of advertisements for an assistant event manager, a manager of events and corporate relations, an entry-level event marketing manager, and a public relations assistant. The Petitioner noted that these positions, as they are more marketing and public relations oriented as the duty profiles suggest, required bachelor’s degrees in marketing or public relations or related fields. The Petitioner claims that by analogy, as its event manager is required to focus on artistic event design, it has shown that its event manager must have a bachelor’s degree in fine arts with a concentration in studio similar to the advertised positions that “must have specific educational training to perform company-specific job

Matter of C-M-F-

duties.” However, for the advertisements to be relevant in this determination, the advertisements must be for parallel positions for companies similar to the Petitioner. We cannot determine from the initial advertisements submitted that the Petitioner’s event manager with a different concentration of duties establishes this prong of the second criterion.

We have also reviewed the additional advertisements submitted in response to the Director’s RFE and on appeal. The advertisement for an experienced graphic design manager from [REDACTED] while including some of the same general duties as the proffered position, requires a bachelor’s degree in graphic design or fine art and eight years of experience as a graphic designer and a minimum of three years of management experience. Similarly, the advertisement for an associate creative director for [REDACTED] a paper and gift retailer, requires a bachelor’s degree in fine arts or marketing communication and a minimum of seven plus years of experience. While these positions incorporate both an artistic element and a management element, the actual duties overall are not parallel to the duties the Petitioner expects the Beneficiary to perform for it. Additionally, both positions require a significant amount of experience, also demonstrating the advertised positions are not parallel to the Petitioner’s proffered position. Further, the Petitioner has not established that either company is similar to it in terms of type, scope, and size.

Likewise, the advertisements submitted on appeal, from [REDACTED] and [REDACTED] are not advertisements from companies similar to the Petitioner. While it appears that [REDACTED] may be a company in the Petitioner’s industry, the requirements for its senior event manager are a bachelor’s degree in business, hospitality, or a related field and three to five years of related experience.⁶ [REDACTED] academic and experience requirements include a spectrum of acceptable degrees which are also different from the Petitioner’s claimed requirements, and thus do not establish an events manager position as a specialty occupation.

Upon review of all the advertisements submitted, the advertisements are insufficient to demonstrate 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 Petitioner’s industry in parallel positions among similar organizations. There is insufficient information within the advertisements to establish this prong of the criterion.

We have also reviewed the letters the Petitioner submitted on appeal from other firms in the Petitioner’s industry. In the letter from [REDACTED] the owner states that she requires each of her employees “to have a bachelor’s degree in a field relating to the position occupied within [her] company.” She notes that she has a bachelor’s degree in fine arts and performs many of the

⁶ A general degree in business or business administration alone is insufficient to qualify a beneficiary to perform the services of a specialty occupation, unless the academic courses pursued and knowledge gained is a realistic prerequisite to a particular occupation in the field. *See Matter of Ling*, 13 I&N Dec. 35 (Reg’l Comm’r 1968) (finding that “‘Business administration’ is a broad field, a field which contains various occupations and/or professions, all of which are related to the world of business but each requiring a different academic preparation and experience peculiar to its needs”). Thus, the advertiser’s acceptance of a degree in business, without more, is an acknowledgement that the position is not a specialty occupation.

Matter of C-M-F-

same duties for her company as the Petitioner's event manager does for the Petitioner. She concludes that based on her experience in the industry, positions similar to the Petitioner's proffered position require a Bachelor's degree in fine arts. The president of [REDACTED] provides similar information regarding the Petitioner's proffered position, and notes his bachelor of fine arts degree and his company's requirement that its events managers also have bachelor of fine arts degrees. He also concludes, based on his years of experience in the industry, that positions similar to the Petitioner's proffered position require a bachelor's degree in fine arts. The floral and creative styling director for [REDACTED] provides a similar letter, concluding that in her experience "positions similar to the Events Manager position at [the Petitioner] require a Bachelor's degree in Fine [A]rts." The principal and designer of [REDACTED] also states that "it is essential that [his] Events Managers are highly educated and have at least a BFA."

These four letters all contain similar claims but do not include corroborating evidence of the companies' actual employment practices. The anecdotal information supplied is insufficient to establish that these individuals routinely employ and recruit only degreed individuals in a specific specialty. "[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)). In that regard, we also note that a bachelor's of fine arts degree, like a business degree, is a degree of generalized title. A bachelor's of fine arts degree, without further specialization, 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 fine arts, 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). Here, even if the letter-writers provided corroborating evidence that their event managers possessed fine arts degrees, a bachelor's of fine arts degree is such a broad degree, we cannot conclude it is a degree in a specific specialty.

Thus, 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.

To begin with, the record does not credibly demonstrate exactly what the Beneficiary will do on a day-to-day basis such that complexity or uniqueness can even be determined. That is, while the Petitioner claims that the position involves "artistically and technological complex responsibilities," the Petitioner does not demonstrate how the event manager's duties described require the theoretical

Matter of C-M-F-

and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them.

For instance, the Petitioner initially identified seven courses, including [REDACTED] and [REDACTED] and the Beneficiary's co-op experience as providing the Beneficiary with the "knowledge, skills, and artistic sensibility" to carry out her duties as its events manager. If these courses are sufficient to provide the Beneficiary the necessary background to perform the duties of the position, it is not clear that a four-year bachelor's level course of study in a specific discipline is required. Moreover, it is important to note that a position may not qualify as a specialty occupation based solely on either a preference for certain qualifications for the position or the claimed requirements of a petitioner. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). Instead, the record must establish that the performance of the duties of the proffered position requires both the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as the minimum for entry into the occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

In response to the Director's RFE, and to address this issue, the Petitioner asserted that the proffered position has "a specified list of responsibilities that require a particular set of skills and area of knowledge that are part of the curriculum of any BFA program," and listed four of the above courses. The Petitioner claimed that a bachelor's of fine arts in studio or a related degree requires approximately two-thirds of its course work to focus on the creation and study of visual arts and one-third of the course work to focus on liberal arts. The Petitioner maintained that only a bachelor's of fine arts in studio or a related degree provides the qualities of artistic vision and sensibility and practical knowledge to successfully execute the proffered position. The Petitioner reiterated that an events manager without an artistic educational background is not equipped to perform the services its clients require.

On appeal, the Petitioner added that the job duties commensurate with specific classes taken in pursuit of a college degree are specific and detailed and show the complexity of duties required for the proffered position. The Petitioner provides examples of several of the described duties that relate to specific classes. We find, however, that 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. That is, the Petitioner's reliance on a degree of generalized title with a few specific courses relating to specific artistic skills does not establish the complexity or uniqueness of the proffered position.⁷

⁷ The Petitioner's designation of this position as a Level I, entry-level events planner further 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

In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than an event manager or other closely related positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position, and it did not identify tasks that are so complex or unique that only a specifically degreed individual could perform them.

Accordingly, 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 Petitioner stated in response to the Director's RFE, that the owner of the company has a bachelor's of fine arts degree in arts history and sculpture and that its production designer has a bachelor's of fine arts degree in oil painting. The Petitioner noted that it requires its employees to have a shared vision based on shared knowledge of artistic mediums, artistic materials, and sophisticated design possibilities.

We note here that while a petitioner may assert that a proffered position requires a degree in a specific specialty, that statement alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree, or its equivalent, to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

Here, the Petitioner has not established that the proposed duties of its events manager require a bachelor's degree in a specific specialty. As noted above, the record must establish that the

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.

performance of the duties of the proffered position requires both the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as the minimum for entry into the occupation. *See id.* Here, the Petitioner's preference for an individual with a similar educational background as its owner and production designer does not establish this essential element.

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

The Petitioner asserts that it has detailed the complex and sophisticated job duties of the proffered position and that in response to the Director's RFE identified the corresponding college-level knowledge required to perform the duties. The Petitioner reiterates on appeal that the duties of the proffered position require, in part, artistically focused, independent decision and judgment, marketing promotion and oversight of artistic work, exercise of independent assessments and decisions, creation of promotional items using Adobe Photoshop, and aiding in artistic design and production. Although the Petitioner emphasizes that the duties of the proffered position require independent decision-making and judgment, and that it is a managerial position, the Petitioner has designated the position in the LCA as a Level I position (the lowest of four assignable wage-levels) relative to others within the same occupational category. As footnoted above, a Level I position requires limited, if any, exercise of judgment and is indicative of someone who will be closely supervised and who will have her work closely monitored and reviewed for accuracy. Thus, while the Petitioner is claiming that the proffered position requires the performance of specialized and complex duties, it has identified the wage requirement for the position to be the lowest wage level available for an event planner and not at the managerial level. The Petitioner's designation of this position as a Level I, entry-level event planner undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*.

Upon review of the totality of the record, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity and consistency within the record to show that they are more specialized and complex than an event manager position that is not usually associated with 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).

(b)(6)

Matter of C-M-F-

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.

IV. LCA DOES NOT CORRESPOND TO THE PETITION

Since the identified basis for denial is dispositive of the Petitioner's appeal, we need not address another ground of ineligibility we observe in the record of proceedings. Nevertheless, we will briefly note and summarize it here with the hope and intention that, if the Petitioner seeks again to employ the Beneficiary or another individual as an H-1B employee in the proffered position, it will submit sufficient independent objective evidence to address and overcome this additional ground in any future filing.

As noted above, the certified LCA submitted in support of the instant petition lists a Level I prevailing wage level for meeting, convention, or event planners in [redacted] and [redacted] Illinois. This indicates that the LCA, which is certified for an entry-level position, is at odds with the Petitioner's claim that the position it "seeks to fill is managerial, requiring independent decision making, advanced judgement concerning sophisticated artistic concepts, complex projects and installations."

Given that the LCA submitted in support of the petition was certified for a Level I wage, it must therefore be concluded that either (1) the position is a low-level, entry position relative to other meeting, convention, and event planners and, thus, based on the findings of the *Handbook*, published by the Bureau of Labor Statistics, the proffered position is not a specialty occupation; or (2) the LCA does not correspond to the petition. In other words, even if it were determined that the proffered position requires at least a bachelor's degree in a specific specialty, or its equivalent, such that it would qualify as a specialty occupation, the petition could still not be approved because the Petitioner has not submitted an LCA that corresponds to that Level III or IV position.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL-certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements for H-1B visa classification.*

Matter of C-M-F-

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the Beneficiary. Here, it appears that the Petitioner has not submitted a valid LCA that corresponds to the claimed Level III or IV position.

V. CONCLUSION

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.

Cite as *Matter of C-M-F-*, ID# 10910 (AAO Oct. 7, 2016)