



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

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

MATTER OF G-&G-I-, INC.

DATE: SEPT. 9, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a convenience store, seeks to extend the Beneficiary's temporary employment as an accountant 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, Vermont Service Center, denied the petition. The Director concluded that the Petitioner did not establish that the job offered qualifies as a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts the proffered position qualifies as a specialty occupation.

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

I. LAW

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

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

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

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

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

## II. PROFFERED POSITION

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as an accountant. In the support letter, the Petitioner provided the following job duties for the position:

- Compiling and analyzing financial information and preparing financial reports by applying principles of generally accepted accounting standards;
- Preparing entries and reconciling general ledger accounts, documenting transactions, and summarizing current and projected financial position;
- Setting up policies and procedures and implementing safeguards in check cashing operations to minimize financial losses and preparing entries and reconciling general ledger;
- Auditing orders, contracts, individual transactions and preparing depreciation schedules to apply to capital assets;
- Preparing compliance reports for taxing authorities; and, Analyzing operating statements, review cost control programs, and make strategy recommendations to management.

According to the Petitioner, the position requires “a skilled professional with a Bachelor’s degree in Business Administration, Accounting, Finance, or a related field.”

### III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.<sup>1</sup> Specifically, the record (1) does not describe the position's duties with sufficient detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.<sup>2</sup>

#### 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.<sup>3</sup>

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Accountants and Auditors" corresponding to the Standard Occupational Classification code 13-2011.<sup>4</sup>

We reviewed the chapter of the *Handbook* entitled "Accountants and Auditors," including the sections regarding the typical duties and requirements for this occupational category. However, the *Handbook* does not indicate that "Accountants and Auditors" comprise an occupational group for

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

<sup>2</sup> The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

<sup>3</sup> All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

<sup>4</sup> 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 he will be closely supervised and his work closely monitored and reviewed for accuracy; and (3) that he 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](http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf). 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.*

which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

The subchapter of the *Handbook* entitled "How to Become an Accountants or Auditor" states the following about this occupational category:

Most accountant and auditor positions require at least a bachelor's degree in accounting or a related field. Some employers prefer to hire applicants who have a master's degree, either in accounting or in business administration with a concentration in accounting.

A few universities and colleges offer specialized programs, such as a bachelor's degree in internal auditing. In some cases, those with associate's degrees, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, get junior accounting positions and advance to accountant positions by showing their accounting skills on the job.

The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into this occupation. Rather, the occupation accommodates other paths for entry, including less than a bachelor's degree in a specific specialty. While the *Handbook* states that most accountants and auditors need at least a bachelor's degree in accounting or a related field, it does not indicate that such a degree is a normal minimum requirement. Specifically, the *Handbook* states that those with associate's degrees as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers obtain junior accounting positions and advance to accountant positions by showing their accounting skills on the job. Accordingly, individuals who have less than a bachelor's degree in a specific specialty, or its equivalent, can obtain junior accounting positions and advance to accountant positions. Furthermore, the *Handbook* does not indicate that the education and experience requirements set by the employers must be the equivalent to at least a bachelor's degree in a specific specialty.

Thus, the *Handbook* does not support the claim that the occupational category of accountants is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent. Even if it did (which it does not), the record lacks sufficient evidence to support a finding that the particular position proffered here (an entry-level accountant position relative to others within the occupation – as indicated on the LCA), would normally have such a minimum, specialty degree requirement, or its equivalent.

Furthermore, there are several inconsistencies in the job duties that will be performed by the Beneficiary. For example, on appeal, the Petitioner states that the Beneficiary supervises individuals who perform routine bookkeeping services. However, the submitted organizational chart indicates that the Petitioner employs a president, manager, assistant retail manager, and two cashier/clerks, in addition to the Beneficiary. Thus, it is not clear who performs bookkeeping services. In addition, the organizational chart is not consistent with the Form 941, Quarterly Wage Report, for the third

quarter of 2015 that indicates four employees rather than six, and the Form I-129 that states the Petitioner employs three individuals. Also on appeal, the Petitioner states that it is “engaged in the business of purchasing convenience stores and other retail sales operations,” and the Beneficiary will advise management in financial investment decisions and investment strategies. However, the Petitioner did not provide any documentation evidencing that it is expanding or investing in other operations. “[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.

The Petitioner also provided inconsistent educational requirements for the proffered position. For example, the Petitioner in the support letter stated that the minimum requirement for the proffered position is a “skilled professional with a Bachelor’s degree in Business Administration, Accounting, Finance, or a related field.” However, on appeal, the Petitioner states several times that a “Bachelor’s degree in Business Administration or the equivalent provides the student with the core competencies and skills needed for an Accountant position with the responsibilities listed above.”

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).

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 bachelor’s degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.<sup>5</sup>

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<sup>5</sup> Specifically, the judge explained in *Royal Siam*, 484 F.3d at 147, 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

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Again, the Petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. Without more, this assertion alone indicates that the proffered position is not in fact a specialty occupation.

The Petitioner also referenced O\*NET to indicate the proffered position is a specialty occupation. The O\*NET states that most accountant occupations require a four-year bachelor's degree, and this occupation falls in the Job Zone Four which requires considerable preparation needed. However, O\*NET OnLine is insufficient to establish that the proffered position qualifies as a specialty occupation. In fact, O\*NET does not state a requirement for a bachelor's degree. Specifically, it assigns this occupation a Job Zone "Four" rating, which groups it among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, O\*NET does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty directly related to the occupation. Therefore, O\*NET information is not probative evidence to establish that the proffered position is a specialty occupation.

In support of the H-1B petition, the Petitioner also submitted a letter from [REDACTED] PhD, "presently serving as an Ad Hoc Reviewer for the [REDACTED] section of the [REDACTED] [REDACTED] stated "it is my professional and experienced opinion that the described job duties are of a professional nature and require preparation at the Bachelor's Degree level in Accounting or a related area at a minimum." However, [REDACTED] letter has limited probative value in demonstrating that the proffered position is a specialty occupation.

For example, [REDACTED] provided a list of the job duties, which is virtually verbatim from the Petitioner's job duties. Upon review of the opinion letter, there is no indication that [REDACTED] possesses any knowledge of the Petitioner's proffered position and its business operations beyond the information provided by the Petitioner. [REDACTED] does not demonstrate or assert in-depth knowledge of the Petitioner's specific business operations or how the duties of the position would actually be performed in the context of the Petitioner's business enterprise. There is no evidence that [REDACTED] has visited the Petitioner's business, observed the Petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job.

[REDACTED] asserts a general industry educational standard for accountant positions without referencing any supporting authority or any empirical basis for the pronouncement. His opinion does not relate his conclusion to specific, concrete aspects of the Petitioner's business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue. In addition, [REDACTED] does not cite specific instances in which his past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that he has published any work or conducted any research or studies pertinent to the educational requirements for such positions (or parallel positions) in the Petitioner's industry for

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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.

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similar organizations, and no indication of recognition by professional organizations that he is an authority on those specific requirements.

In addition, there is no indication that the Petitioner advised [REDACTED] that the proffered position is characterized as a low, entry-level accountant, who has only a basic understanding of the occupation (as indicated by the wage-level on the LCA). The wage-rate indicates that the Beneficiary will be expected to perform routine tasks that require limited exercise of judgment. It appears that [REDACTED] may have found this information relevant for his opinion letter.

In summary, and for each and all of the reasons discussed above, we conclude that the opinion letter rendered by [REDACTED] is not probative evidence to establish the proffered position as a specialty occupation. The conclusion reached by [REDACTED] lacks the requisite specificity and detail and is not supported by independent, objective evidence demonstrating the manner in which he reached such conclusion. There is an inadequate factual foundation established to support the opinion and the opinion is not in accord with other information in the record. Therefore, the letter from [REDACTED] does not establish that the proffered position is a specialty occupation.

We may, in our discretion, use advisory opinion statements submitted as expert testimony. 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. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). As a reasonable exercise of our discretion we discount the advisory opinion letter as not probative of any criterion of 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.

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 casts its gaze 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.

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

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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 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.

The Petitioner submitted several job advertisements but they do not satisfy this alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), either. That is, neither the job-vacancy announcements themselves, nor any other evidence within the record of proceedings, establish that those advertisements pertain to positions that meet all of the criterion's elements of being in the Petitioner's industry, in organizations similar to the Petitioner, and also parallel to the proffered position, as required for evidence to merit consideration under this first alternative prong. In this regard, we make several specific findings.

When determining whether the Petitioner and the 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). It is not sufficient for the Petitioner to claim that the organizations are similar and in the same industry without providing a legitimate basis for such an assertion.

In the H-1B petition, the Petitioner stated that it is a retail business with 3 employees. We reviewed the job advertisements submitted by the Petitioner. Notably, the Petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employer's recruiting history for the type of job advertised. Further, as they are only solicitations for hire, they are not evidence of what qualifications were ultimately required for the positions.

We note that although the Petitioner has designated the proffered position as a Level I position, indicating that it is a position for an entry-level position, it has provided several job announcements that appear to be for more senior positions. For example, [REDACTED] advertisement is for a senior accountant and requires "5+ years in accounting/finance" in addition to a bachelor's degree in accounting; [REDACTED] is also advertising for a senior accountant and requires a bachelor's degree and "3-5 years' experience either in industry accounting position or public accounting firm"; and Accounting Principles' position is for a senior accountant and requires "at least 3+ years' experience" and a bachelor's degree. Moreover, several advertisements are for the position of financial analyst rather than accountant. Thus, the job vacancy advertisements do not establish that the advertised positions are "parallel" to the proffered position.

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Further, several job advertisements do not provide information of the advertising companies in order to determine if they are similar to the Petitioner. In addition, several advertisements are for companies that appear to differ from the retail business of the Petitioner, such as [REDACTED] corporate office, and [REDACTED] to name a few. Without further information, the advertisements appear to be for organizations that are not similar to the Petitioner, and the Petitioner has not provided additional information to suggest otherwise. “[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)).

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.

In support of its assertion that the proffered position qualifies as a specialty occupation, the Petitioner submitted various business documents such as tax return, invoices, and financial reports compiled by the Beneficiary. We reviewed the record in its entirety and find that while the documents provide some insight into the Petitioner’s business operations, the Petitioner has not explained how the documents establish that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent.

Notably, the Petitioner designated the proffered position as an entry-level position within the occupational category (by selecting a Level I wage). This designation, when read in combination with the Petitioner’s job description and the *Handbook’s* account of the requirements for this occupation, further suggests that this particular position is not so complex or unique relative to other accountants that the duties can only be performed by an individual with a bachelor’s degree or higher in a specific specialty, or its equivalent. 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 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 support of the petition, the Petitioner claims that the Beneficiary is well-qualified for the position, and references her qualifications. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed Beneficiary, but whether the position itself requires at least a bachelor’s degree in a specific specialty, or its equivalent. The Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position, and it did not identify any 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 did not submit evidence to establish this criterion and 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.

On appeal, the Petitioner states that its most "lucrative part of the business is its check cashing services," and since it "handles large amounts of cash, it is imperative that it employs a professional accountant who can oversee this transfer by cash by ensuring that the Company has sufficient liquidity, preparing/reconciling ledger entries, preparing financial reports, reconciling accounts, auditing transactions and advising President on methods to protect Company from defaults and NSF, working with taxing authorities for compliance reporting since large sums of cash are monitored closely by governmental agencies." The Beneficiary's duties regarding the check cashing services was only brought up on appeal and was not previously mentioned. On appeal, the Petitioner cannot offer a new position to the Beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, the associated job responsibilities, or the requirements of the position. The Petitioner must establish that the position offered to the Beneficiary when the petition was filed merits classification for the benefit sought. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Further, we find that the description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. That is, the Petitioner has not established how the Beneficiary's responsibilities and day-to-day duties are so complex or unique that the position can be performed only by an individual with a bachelor's degree in a specific specialty, or its equivalent.

We also incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the position in the LCA as a Level I position (the lowest of four assignable

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wage-levels) relative to others within the same occupational category.<sup>6</sup> The Petitioner has not demonstrated in the record that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

#### IV. CONCLUSION

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation.

The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

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<sup>6</sup> 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.