



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

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

MATTER OF T-C-S- LTD.

DATE: SEPT. 12, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an information technology consulting firm, seeks to employ the Beneficiary as a “developer user interface” 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 demonstrated that the proffered position qualifies for treatment as a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the evidence of record is sufficient to demonstrate that the instant visa petition should be approved.

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 a “developer user interface.” In a letter of support, the Petitioner provided the following list of duties of the proffered position:

- Design, develop, modify, test and maintain robust, scalable website systems.
- Utilize mark-up and scripting languages as well as programming languages on various platforms to integrate the Internet, database technology and current trends in Web technology with other computer applications and enterprise systems.
- Design, develop and implement new software components to ensure system-wide efficiency, reliability and compatibility and to maximize system performance.
- Analyze user needs to implement website content, graphics, performance, and capacity.

The Petitioner asserted that the duties of the proffered position requires “the application of sophisticated technologies and principals [*sic*] that can only be gained through the attainment of at least a bachelor’s degree or its equivalent in Computer Science, Engineering, Information Systems, or a directly related

field.” The Petitioner stated that the Beneficiary is qualified to perform the duties of the proffered position by virtue of his foreign equivalent to a bachelor’s degree in a relevant discipline, namely, computer engineering.

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

We concur with the Director’s determination that the Petitioner has not established the substantive nature of the work to be performed by the Beneficiary, which precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). For example, the record contains a sample of the Petitioner’s deputation agreement, which the Petitioner claims demonstrates the employment agreement it enters into with its associates, such as the Beneficiary, upon their deputation to the United States. That employment contract states, *inter alia*:

[The Petitioner] shall be entitled to relocate [the Beneficiary] to another location in the United States and/or redefine roles and tasks (including assignments to different project(s) and different customer engagements) during the Deputation Term and/or to shorten or extend the initial Deputation Term. [The Beneficiary] hereby agrees to such relocation and extensions as reasonably required by [the Petitioner].

Because the Petitioner reserves the right to assign the Beneficiary to duties other than those described (and to change other material terms of his employment), the Petitioner has not demonstrated the substantive nature of the duties the Beneficiary would actually perform if the visa petition were approved. That is, the Petitioner has provided the employment agreement described above and indicated that it is relevant to the instant petition. But if the visa petition were approved, the Petitioner has indicated that it might assign the Beneficiary to perform other, unspecified duties. The substantive nature of those other duties that the Beneficiary might perform has not been identified for the record.

On appeal, the Petitioner asserts that, as the Beneficiary’s sole employer, it alone is responsible for determining the Beneficiary’s duties. Specifically, the Petitioner asserts that when examining the duties of the proffered position, USCIS should “look to information provided by the Petitioner; not to documentation from the end client.” The Petitioner further states that “any assertion, or lack thereof, from [the end client] regarding [the proffered position] should bear no weight.” The Petitioner concludes that the Director erred by finding that the end client and its project needs will ultimately determine the duties of the Beneficiary.

We find the Petitioner’s assertions unpersuasive. By the very terms of its master services agreement with the end client, the Petitioner has agreed to conform to the end client’s needs, requirements, policies, and procedures. For example, the Petitioner has agreed “to comply with [the end client’s]

policies and procedures,” to submit “all Services and Developments . . . to [the end client] for approval,” and to “recruit, select, and train its personnel according to the requirements of the applicable [statement of work agreed upon by the end client].” The Petitioner has also agreed that the end client “may change the description of Services to be provided under a [statement of work].” These provisions directly contradict the Petitioner’s assertion that the end client’s needs and requirements are irrelevant, and further support the Director’s finding that the end client’s needs dictate the nature of the Beneficiary’s duties.

We disagree with the Petitioner’s position that *Defensor* is inapplicable here. 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 end client companies’ job requirements is critical. To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a petitioner’s requirements. USCIS must examine the ultimate employment of the individual and the actual job duties to be performed for the end client, and determine whether those particular duties require 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 or its equivalent. Thus, the proper focus is not the Petitioner’s requirements, but the body of knowledge required by the actual duties to be performed for the end client.

In the instant matter, the record does not contain sufficient evidence from the end client specifying the job duties and their requirements for the particular position being offered here. Both the end client’s letter and the master services agreement state that the Beneficiary’s assignment is governed by a statement of work. However, the record does not contain a copy of the actual statement of work which, according to the master services agreement, outlines the nature of the services to be performed. This lack of evidence, coupled with the acknowledgement by the Petitioner that the Beneficiary may be reassigned as necessary to different client projects throughout the course of the requested validity period, precludes us from determining the substantive nature of the work to be performed by the Beneficiary.

On appeal, the Petitioner submits a “Technical Development & Test Business Group Labor Category Definitions” which is attached to the master services agreement. The Petitioner asserts that this document “provide[s] job descriptions and qualifications for various roles involved in executing projects under the [master services agreement],” including the proffered “web developer” position which purportedly “requires a Bachelor’s degree in Computer Science or related field.”

However, we do not find that this document supports the Petitioner’s assertions regarding the proffered position, which the Petitioner entitled a “developer user interface” on the H-1B petition. The “Technical Development & Test Business Group Labor Category Definitions” lists three different web developer positions: Web Developer 1, Web Developer 2, and Web Developer 3. Only the Web Developer 3 position requires a bachelor’s degree in a specific specialty, or its equivalent. Without the actual statement of work or other reliable evidence detailing the

Beneficiary's specific assignment to the end client, we cannot determine which of these three web developer positions correspond to the proffered position.<sup>1</sup> "[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)).

Finally, we note the Petitioner's assertion that the Director's request for evidence (RFE) did not raise the issue of whether the proffered position is a specialty occupation. Specifically, the Petitioner claims that the Director's omission of this issue from the RFE "unfairly denies the Petitioner the opportunity to address USCIS' concerns regarding the issue." As to the Petitioner's perceived error in the Director's failure to identify this issue in the RFE, we note that there is no requirement for USCIS to issue any RFE pertinent to a ground later identified in the decision denying the visa petition. The regulation at 8 C.F.R. § 103.2(b)(8) permits the Director to deny a petition for failure to establish eligibility without having to request evidence regarding the ground or grounds of ineligibility identified by the Director. Also, even if the Director had erred as a procedural matter in not issuing a second RFE or notice of intent to deny (NOID) relative to the Petitioner's lack of evidence to establish the proffered position as a specialty occupation, it is not clear what remedy would be appropriate beyond the appeal process itself. The Petitioner has, in fact, supplemented the record on appeal. Therefore, it would serve no useful purpose to remand the case simply to afford the Petitioner yet another opportunity to supplement the record with new evidence.

That the Petitioner did not establish the substantive nature of the work to be performed by the Beneficiary precludes a finding that the proffered position is a specialty occupation under 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. Because the Petitioner cannot satisfy any of the alternative criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is unable to show that the proffered position qualifies as a specialty occupation position pursuant to the salient regulations. This is sufficient reason to find that the proffered position has not been shown to qualify for treatment as a specialty occupation position.

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<sup>1</sup> Pursuant to the "Technical Development & Test Business Group Labor Category Definitions," the duties of a Web Developer 3 may include "own[ing] responsibility for entire project or web page." It is not evident that this higher-level duty corresponds to the proffered duties, which do not include any project management or similar duties. We also observe that, in another attachment to the master services agreement entitled "Consulting Service Resource Descriptions," a Level 3 position carries the title of "Manager." The proffered position being offered here is classified by the Petitioner on the labor condition application as a Level II position, which is generally appropriate for positions in which the Beneficiary would perform "moderately complex tasks" that require only "limited judgment." U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://flcdatacenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf).

Nevertheless, in order to perform a comprehensive analysis, we will assume *arguendo* that the duty descriptions provided by the Petitioner accurately depict the duties the Beneficiary would actually perform if the visa petition were approved. To continue our analysis of whether the proffered position qualifies as a specialty occupation, we will discuss the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) individually.<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 "Web Developers" corresponding to the Standard Occupational Classification code 15-1134.<sup>4</sup>

The *Handbook* states the following about the educational requirements of positions located within the "Web Developers" occupational category: "Educational requirements for web developers vary with the setting they work in and the type of work they do. Requirements range from a high school diploma to a bachelor's degree. An associate's degree in web design or related field is the most common requirement." U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Web Developers," <http://www.bls.gov/ooh/computer-and-information-technology/web-developers.htm#tab-4> (last visited Sep. 6, 2016). The *Handbook* also states that "for more technical positions . . . some employers prefer workers who have at least a bachelor's degree in computer science, programming, or a related field." *Id.*

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<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> As previously footnoted, the Petitioner classified the proffered position at a Level II wage (the second-lowest of four assignable wage levels). The "Prevailing Wage Determination Policy Guidance" issued by the DOL provides a description of the wage levels. A Level II wage rate is generally appropriate for positions in which the Beneficiary will perform "moderately complex tasks" that require only "limited judgment." U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://flcdatacenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf). 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.*

According to the *Handbook*, the occupation accommodates a wide spectrum of educational credentials, including less than a bachelor's degree in a specific specialty. The *Handbook* states that an associate's degree in web design or a related field "is the most common requirement." It also indicates that a high school diploma is acceptable in certain settings. Furthermore, while the *Handbook's* narrative indicates that some employers prefer web designers with a bachelor's degree, the *Handbook* does not report that such bachelor's degrees are normally required. We note that an employer's *preference* for degreed workers is not the same as a *requirement* of such.

Moreover, given the Petitioner's statement on the LCA that this is a Level II position, and that the Beneficiary would therefore be performing moderately complex tasks requiring only limited judgment, the Petitioner has not provided documentation from another probative source to substantiate that its particular position requires a bachelor's degree in a specific specialty.<sup>5</sup> To the extent that they are described in the record of proceedings, the duties that the Petitioner ascribes to the proffered position indicate a need for a range of technical knowledge in the computer/IT field, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

## 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 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)).

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<sup>5</sup> See *id.*

Here and as already discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or another 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. In addition, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals."

Thus, the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to parallel positions with organizations that are in the Petitioner's industry and otherwise similar to the Petitioner. The Petitioner has not, therefore, satisfied the criterion of 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.

The Petitioner has not credibly demonstrated that the duties the Beneficiary would be responsible for or perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty, or its equivalent. Even when considering the Petitioner's general descriptions of the proffered position's duties, the evidence of record does not establish why a few related courses or industry experience alone is insufficient preparation for the proffered position. While a few related courses may be beneficial, or even required, 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. The description of the duties does not sufficiently identify any tasks that are so complex or unique that only a specifically degreed individual could perform them.

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for such positions, including degrees that are less than a bachelor's degree. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

This is further evidenced by the LCA submitted by the Petitioner in support of the instant petition. Again, the LCA indicates that, relative to other positions located within the "Web Developers" occupational category, the Beneficiary would perform only moderately complex tasks that require

limited judgment. Without further evidence, the evidence does not demonstrate that the proffered position is complex or unique as such a position falling under this occupational category would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage.<sup>6</sup> For example, a Level IV (fully competent) position is designated by DOL for employees who “use advanced skills and diversified knowledge to solve unusual and complex problems.”<sup>7</sup> The evidence of record does not establish that this position is significantly different from other positions in the occupational category such that it refutes the *Handbook's* information that a bachelor's degree in a specific specialty, or its equivalent is not required for the proffered position.

The Petitioner claims that the Beneficiary is well-qualified for the position, and references his 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 claims that its policy is to hire “only individuals who possess at least a bachelor's degree or its equivalent in Computer Science, Engineering, Information Systems, or a directly related field.” The Petitioner, however, submits no independent evidence to support this assertion.

For example, the Petitioner claims to have a total of 300,464 employees “worldwide,” which includes the employees of its parent and affiliated companies. But we do not know how many workers the U.S. petitioning company employs, nor do we know how many web developers performing the same or similar duties the Petitioner currently employs or has previously employed. The Petitioner thus has not demonstrated that it normally requires a minimum of a bachelor's degree in a specific specialty or its

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<sup>6</sup> The issue here is that the Petitioner's designation of this position as a Level II position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, it is important to note that a Level II wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), such a 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 consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

<sup>7</sup> *Id.*

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equivalent for the proffered position, 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.

We find that in the instant case, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. We again refer to our earlier comments and findings with regard to the implication of the Petitioner's designation of the proffered position in the LCA as a Level II (the second lowest of four assignable levels) wage. That is, the Level II wage designation is indicative of a position that entails performing moderately complex tasks that require limited judgment.<sup>8</sup>

Upon review of the totality of the record, the Petitioner has not established that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. The evidence of record does not, therefore, satisfy the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

#### 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.

Cite as *Matter of T-C-S- Ltd.*, ID# 17883 (AAO Sept. 12, 2016)

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<sup>8</sup> See *id.* Again, the Petitioner's designation of this position as a Level II position undermines its claim that the duties of the position are particularly complex, specialized, or unique compared to other positions *within the same occupation*.