



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

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

MATTER OF P-T-G-, INC.

DATE: SEPT. 28, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an information technology consulting company, seeks to temporarily employ the Beneficiary as a “programmer analyst” under the H-1B nonimmigrant classification. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director, California Service Center, denied the petition. The Director concluded that the evidence of record was insufficient to establish that the proffered position qualifies 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’s findings were erroneous.

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).

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

II. PROFFERED POSITION

The Petitioner identified the proffered position as a “programmer analyst” on the H-1B petition. In a letter submitted in support of the petition, the Petitioner indicated that it “employs Programmer Analysts to analyze our client’s IT requirements and computer hardware to design a system that will best process the client’s data in the most timely and inexpensive manner.” In addition, the Petitioner provided the Beneficiary’s job duties in the proffered position.¹

¹ We observe that the wording of the duties provided by the Petitioner for the proffered position in the letter of support is taken almost verbatim from the Occupational Information Network OnLine’s list of tasks associated with the occupation category “Computer Systems Analysts.”

(b)(6)

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With the initial petition, the Petitioner also provided a letter from [REDACTED]. In the letter, [REDACTED] stated that the Beneficiary will work on the [REDACTED] Product development project and provided a different job description from that of the letter of support. Specifically, [REDACTED] stated that “[the Beneficiary] will be performing [the] following duties:”

- Analysis, Design and architecture of [REDACTED] solutions.
- Collecting requirements from business teams and converting requirements into business models.
- Install/configuration and development with WebSphere [REDACTED] v7.5/8.5.
- Developing and Importing business models from [REDACTED] live for implementation in [REDACTED] tools.
- Integrating [REDACTED] with external applications like contract center database, enterprise exception handling framework and enterprise security systems like LDAP.
- Implementing VIEWS & COACHES as per the business requirements.
- Integrating with external Web Services using Java, J2EE or related development techniques (AJAX, DOJO, JavaScript, JSP)[.]
- Deployment of process models in different environments like DEV, TEST, QA, PROD[.]
- Iterative design & development methodology principles[.]
- Security integration – identity management, authentication, authorization, access control.
- Release management and automation with respect to enterprise standards.
- Participate in documentation process through test review, test witnessing & certification of software.
- Provide technical support for [REDACTED] instances deployed in various environments.
- Provide training to business users for enhancement and support.

In addition, [REDACTED] stated that “[t]he requirements for this position are a Bachelor’s Degree or equivalent in Computer Science, Computer Integration Systems, Engineering, Mathematics or related field.”

In response to the Director’s request for evidence (RFE), the Petitioner submitted a revised job description of the proffered position and provided a percentage breakdown for each of the Beneficiary’s primary tasks, as follows:

Daily Activities	% of work in a normal 8 hrs/day
Understand business requirements and the integration between various functions/systems within and outside organization; Design the system and perform any modifications for the design	10%

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Analyze functional problems and determine techniques and requirements most feasible for addressing business problems; Analyze, design, and develop [REDACTED] solutions; Collect requirements from business team and convert requirements into business models; Assist in the development of the prototype solution, especially where it pertains to customization of the solution as against doing a simple configuration	45%
Implement the design and write the new code and develop the programs; Transit the business process knowledge to implementation team and oversee planning and execution; Work on prototyping future Interface rollouts; Implement VIEWS & COACHES as per the business requirements; Iteratively design and develop methodology principles	15%
Create and develop new code for the new functionalities; Install, configure, and develop WebSphere [REDACTED] v7.5/8.51; Develop and import business models from [REDACTED] live for implementation in [REDACTED] tools; Deploy process models in different environments like DEV, TEST, QA, PROD	10%
Download historical data to create the report; Release management and automation with respect to enterprise standards	5%
Participate in unit testing, system testing and integration testing of the interfaces; Integrate with external Web Services using Java, J2EE or related development techniques (AJAX, DOJO, JavaScript, JSP); Analyze user requirements and convert them into design documents; Develop Integration Processes, Message Interfaces/Service Interfaces, Operational Mapping, Inbound & Outbound Interfaces, Data Types, Message Types, Mapping programs/objects using XSLT, Java; Integrate [REDACTED] with external applications like contact center database, enterprise exception handling framework, and enterprise security systems like LDAP; Security integration including identity management, authentication, authorization and access control	10%
Generate management report and provide technical software support; Provide technical support for [REDACTED] instances deployed in various environments; Participate in documentation process through test review, test witnessing and certification of software; Provide training to business users for enhancement and support	5%

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According to the Petitioner, the position requires a bachelor's degree in computer sciences or engineering sciences, or its equivalent.²

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 (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.³

As a preliminary matter, we note the Petitioner's assertion on appeal that the Director mischaracterized the proffered position as a computer programmer, and thus incorrectly evaluated the position under the wrong classification. We will remedy this error in our *de novo* review of the record, and will evaluate the position as that of a computer systems analyst as claimed by the Petitioner.

In this matter the Petitioner has provided a general overview of the proffered position's duties and asserts that the Beneficiary will be assigned to perform this work on project(s) for third-party clients. In the letter dated March 16, 2015, [REDACTED] claims that the Beneficiary will work on the [REDACTED] Product development project, which was scheduled to begin on October 1, 2015, and end on September 6, 2018.⁴ Although the letter and the statement of work (SOW) make references to [REDACTED] the Petitioner's relationship with [REDACTED] and/or [REDACTED] involvement in this project is unclear.

The SOW provides a broadly-stated description of the scope of the project, and a brief, few-word description of the activities associated with the SOW. The SOW does not specifically list the Beneficiary or any programmer analysts as key assigned personnel. Rather, the SOW identifies the responsibilities of the Project Manager, Project Owner, E-Portal Platform Leads, and Infrastructure Representative. Other than the letter from [REDACTED] there is no additional information

² It must be noted that the Petitioner has provided inconsistent information regarding the requirements for the proffered position. Specifically, in the letter of support, the Petitioner stated that the proffered position requires a bachelor's degree in computer sciences or engineering sciences, or its equivalent. However, in response to the RFE, the Petitioner provided a letter from [REDACTED] which states that the "requirements for this position are a Bachelor's Degree or equivalent in Computer Science, Computer Integration Systems, Engineering, Mathematics or related field." The Petitioner provided no explanation for this apparent inconsistency. "[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.

³ 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.

⁴ The SOW provided shows that this project was scheduled to commence on July 1, 2015 and finish on September 28, 2018:

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regarding the Beneficiary's claimed role in this project, which is significant because the SOW breaks down the activity timeline of the project into specific sections, not all of which appear to require the services of a programmer analyst.

According to the Petitioner's employment offer letter, the Beneficiary will provide services either at the Petitioner's offices or at client locations, and may be required to relocate anywhere in the country, depending on the business demands of the company as determined by the company and at the company's sole discretion. Absent additional documentation, the amount and availability of work for the Petitioner and the Beneficiary cannot be ascertained. Therefore, upon review of the totality of the record, it is not possible to ascertain the Beneficiary's assignment, his actual day-to-day duties, and whether the duties comprise specialty occupation work. The submitted document is unclear as to whether the Beneficiary will be performing services to a third party client [REDACTED] or in house for the Petitioner. Again, where the work is to be performed for entities other than the Petitioner, evidence of the client companies' job requirements is critical. *Defensor*, 201 F.3d at 387-88. In addition, "going 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)).

Taken as a whole, the record of proceedings does not contain sufficient, reliable evidence demonstrating the substantive nature of the proffered position and its constituent duties.⁵ Nevertheless, we will review the Petitioner's general description of duties and the evidence of record to determine whether the proffered position as described would qualify for classification as a specialty occupation. To that end and to make our determination as to whether the employment described above qualifies as a specialty occupation, we turn to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), 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's) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁶

⁵ Further, without full disclosure, we are unable to determine whether the requisite employer-employee relationship with exist between the Petitioner and Beneficiary.

⁶ All of our references are to the 2016-17 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

The Petitioner attested on the required labor condition application (LCA) that the occupational classification for the position is “Computer Systems Analysts,” corresponding to the Standard Occupational Classification (SOC) code 15-1121 at a Level II wage.⁷

The *Handbook* subchapter entitled “How to Become a Computer Systems Analyst” states, in pertinent part: “A bachelor’s degree in a computer or information science field is common, although not always a requirement. Some firms hire analysts with business or liberal arts degrees who have skills in information technology or computer programming.” U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., “Computer Systems Analysts,” <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-> (last visited September 28, 2016). The *Handbook* also states: “Although many computer systems analysts have technical degrees, such a degree is not always a requirement. Many analysts have liberal arts degrees and have gained programming or technical expertise elsewhere.” *Id.*

The *Handbook* indicates that a bachelor’s degree in a computer or information science field may be common, but not that it is a *requirement* for entry into these jobs. In fact, this chapter reports that “many” computer systems analysts may only have liberal arts degrees and programming or technical experience, but does not further qualify the amount of experience needed. The *Handbook* also notes that many analysts have technical degrees, but does not specify a degree level (e.g., associate’s degree) for these technical degrees. The *Handbook* further specifies that such a technical degree is not always a requirement. Thus, this passage of the *Handbook* reports that there are several paths for entry into the occupation.

The Petitioner has not provided documentation from a probative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

B. Second Criterion

The second criterion presents two, alternative prongs: “The degree requirement is common to the industry in parallel positions among similar organizations *or, in the alternative*, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree[.]” 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong contemplates the common industry practice, while the alternative prong narrows its focus to the Petitioner’s specific position.

⁷ We will consider this selection in our analysis of the position. The “Prevailing Wage Determination Policy Guidance” issued by DOL provides a description of the wage levels. A Level II wage rate is for a petitioner who expects its employee to perform moderately complex tasks that require 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://flcdcenter.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.*

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1. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the “degree requirement” (i.e., a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms “routinely employ and recruit only degreed individuals.” See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports a 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 vacancy announcements to establish that similar firms or individuals in the Petitioner’s industry routinely employ and recruit only degreed individuals. The Petitioner submits an advertisement for a programmer analyst position for [REDACTED] which seeks the services of a java developer. Although this posting lists a bachelor’s degree or equivalent in computer science under its educational requirements, it also indicates that it will accept an individual who is “working toward degree,” thus indicating that a bachelor’s degree is not an essential prerequisite.

The next posting, by [REDACTED] solicits a [REDACTED] systems analyst with a “bachelor’s degree and related industry curriculum in information systems or business process management.” While this position requires a bachelor’s degree in specific fields, the degree requirement is more specific than the broader requirement of the Petitioner and thus differentiates this position from the proffered position in this matter.

The final advertisement is for a SAP solution architect with [REDACTED] which solicits for the position on behalf of an undisclosed client. This posting requires at least eight years of experience working with SAP, which suggests that this position, while sharing similar attributes to the proffered position, requires a higher-level of experience than the proffered position, which is classified as a Level II position on the LCA and thus indicative of a position that requires an individual to perform only moderately complex tasks that require limited judgment.

For the reasons discussed above, we do not find these three job advertisements sufficient to establish that similar firms in the Petitioner’s industry routinely employ and recruit only degreed individuals. 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 described the proffered position and its business operations. However, the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. Again, it appears that the Petitioner expects the Beneficiary to perform moderately complex tasks that require limited exercise of judgment (by its selection of a Level II wage on the LCA) compared to other positions within the same occupation.⁸ The description of the duties provided by the Petitioner does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them and does not refute the *Handbook's* narrative indicating that a bachelor's degree in a specific specialty, or its equivalent, is not required.

Although the Petitioner claims that the Beneficiary is well-qualified for the position, and references his qualifications, 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.

To merit approval of the petition under this criterion, the record must establish that a petitioner's imposition of a degree requirement is not a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. While a petitioner may assert that a proffered position requires a specific degree, that statement alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing the

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

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 Petitioner 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 388. Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

On appeal, the Petitioner asserts that it normally requires a degree for the proffered position. In support of this assertion, the Petitioner states that all of its employees holding the job title of computer systems analyst possess at least a bachelor's degree in computer science or related fields, or its foreign equivalent. The Petitioner provides a list of 33 employees it claims are currently or have been employed as computer systems analysts for the company.

Although the Petitioner submitted copies of the foreign diplomas, academic credentials evaluations, resumes, and quarterly wage reports for the listed employees, there is insufficient evidence to establish that they are actually employed by the Petitioner in programmer analyst positions that are akin to the position proffered to the Beneficiary. The organizational charts submitted with the petition list many of these individuals, but we are unable to ascertain their position titles and the true nature of their assigned duties, such that we can conclude that they all hold positions akin to the proffered position. This evidence, therefore, is not sufficient to establish that the Petitioner previously hired degreed individuals to fill the proffered position in the past and, therefore, the Petitioner has not satisfied this criterion.

A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty, or its equivalent, as the minimum for entry into the occupation as required by section 214(i)(1) of the Act. According to the Court in *Defensor*, "To interpret the regulations any other way would lead to an absurd result." *Id.* at 388. If USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position – and without consideration of how a beneficiary is to be specifically employed – then any beneficiary with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.*

As discussed previously in this decision, the substantive nature of the Beneficiary's proposed position cannot be determined, and we are precluded from determining whether the performance of the position requires the theoretical and practical application of a body of highly specialized

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knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty, or its equivalent, as the minimum for entry into the occupation. Therefore, without being able to analyze this threshold issue, we consequently cannot determine whether the 33 positions listed here are akin to the proffered position, and establish a routine hiring history by the Petitioner. Accordingly, the Petitioner has not established the referenced 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 asserts that the project upon which the Beneficiary will be assigned “is designed to provide [redacted] and [redacted] integration by leveraging [redacted] platform and guide the classification and fulfillment of customer request while providing end-to-end visibility to the organization of the fulfillment cycle for each individual customer request.” Based on this statement, the Petitioner concludes that the project is complex. However, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than other positions in the occupational category that are not usually associated with at least a bachelor’s degree in a specific specialty, or its equivalent. We also reiterate our earlier comments and findings regarding the implications of the position’s wage level designation on the LCA. Thus, 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.

Cite as *Matter of P-T-G-, Inc.* ID# 94137 (AAO Sept. 28, 2016)