



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

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

MATTER OF N-L-, INC.

DATE: AUG. 3, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a used car dealer, seeks to temporarily employ the Beneficiary as a “marketing specialist” 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 proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred by finding that the proffered position is not 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 support of the petition, the Petitioner submitted a copy of its offer of employment letter to the Beneficiary, which indicated the following job duties for the proffered position:

- Assisting sales and marketing management with advertising materials
- Delivering compelling promotional marketing programs that build the brand and drive sales
- Forecasting and tracking marketing and sales trends; analyzing collected data
- Measuring the effectiveness of marketing, advertising, and communications programs and strategies
- Providing and recommending new marketing tactics
- Researching potential marketing contacts
- Seeking and analyzing competitor marketing and sales materials both on and offline

In response to the Director’s request for evidence (RFE), the Petitioner summarized the duties of the proffered position as follows:

[The Beneficiary] will be responsible for developing and executing marketing programs and strategies for expansion, creating and enhancing customer relationships, leveraging customer-insight data, refining brand management, and

driving profitable sales, brand growth and loyalty for a number of business areas. [The Beneficiary] will also be performing analysis of marketing and sales data, and seeking and analyzing competitors marketing and sales materials.

Regarding the minimum educational requirements for the proffered position, the Petitioner initially indicated that the position requires a master's degree in business administration with a specialization in marketing. In response to the RFE, however, the Petitioner stated that the position requires a bachelor's degree or higher in marketing or business administration marketing.

III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.¹ Specifically, the record (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.²

A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. To inform this inquiry, we recognize the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³

On the labor condition application (LCA) submitted to support the H-1B petition, the Petitioner designated the proffered position under the occupational category "Marketing Research Analysts and Marketing Specialists" corresponding to Standard Occupational Classification (SOC) code 13-1161, at a Level I wage.⁴

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

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

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

⁴ We will consider the Petitioner's classification of the proffered position at a Level I wage (the lowest of four assignable wage levels) 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

The subchapter of the *Handbook* entitled “How to Become a Market Research Analyst” states in pertinent part: “Market research analysts typically need a bachelor’s degree in market research or a related field. Many have degrees in fields such as statistics, math, and computer science. Others have backgrounds in business administration, the social sciences, or communications.”⁵ It further states, “[c]ourses in statistics, research methods, and marketing are essential for these workers. Courses in communications and social sciences, such as economics or consumer behavior, are also important.”⁶

The *Handbook* does not support the assertion that at least a bachelor’s degree in a *specific specialty*, or its equivalent, is normally the minimum requirement for entry into a market research analyst position. Rather, the *Handbook* reports that marketing specialists have degrees and backgrounds in a wide variety of disparate fields. That is, while the *Handbook* states that employees typically need a bachelor’s degree in market research or a related field, it continues by specifying that “[m]any” market research analysts have degrees in fields such as statistics, math, or computer science. According to the *Handbook*, other market research analysts have backgrounds in fields such as business administration, the social sciences, or communications. This passage of the *Handbook* identifies various courses as essential to this occupation, including statistics, research methods, and marketing. It further elucidates that courses in communications and social sciences (such as economics or consumer behavior) are also important.

In general, provided the specialties are closely related, e.g., statistics and math, a minimum of a bachelor’s or higher degree in more than one specialty is recognized as satisfying the “degree in the specific specialty (or its equivalent)” requirement of section 214(i)(1)(B) of the Act. In such a case, the required “body of highly specialized knowledge” would essentially be the same. Since there must be a close correlation between the required “body of highly specialized knowledge” and the position, however, a minimum entry requirement of a degree in disparate fields, such as market research and computer science, would not meet the statutory requirement that the degree be “in *the* specific specialty (or its equivalent),” unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties.⁷ Section 214(i)(1)(B) of the Act (emphasis added). The Petitioner has not done so here.

Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that she will be closely supervised and her work closely monitored and reviewed for accuracy; and (3) that she will receive specific instructions on required tasks and expected results. U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf. A prevailing wage determination starts 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.* A Level I wage should be considered for research fellows, workers in training, or internships. *Id.*

⁵ U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., “Market Research Analysts,” <http://www.bls.gov/ooh/business-and-financial/print/market-research-analysts.htm> (last visited Aug. 2, 2016).

⁶ *Id.*

⁷ Whether read with the statutory “the” or the regulatory “a,” both readings denote a singular “specialty.” Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, we do not so narrowly interpret these provisions to exclude

The *Handbook* also states that some employees have a background in business administration. 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. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139 at 147.

USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty (or its equivalent) that is directly related to the proposed position. 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 Associates*, 19 I&N Dec. 558 (Comm'r 1988). Therefore, the *Handbook's* recognition that a general, non-specialty "background" in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* (or its equivalent) is not normally the minimum entry requirement for this occupation.⁸

The narrative of the *Handbook* further reports that some employees obtain professional certification to demonstrate a level of professional competency. It continues by outlining the requirements for market research analysts and marketing specialists to achieve the Professional Researcher Certification (PRC), and states that candidates qualify based upon their experience and knowledge. According to the *Handbook*, the credential is granted by the Marketing Research Association to those who pass an exam and have at least three years of experience working in opinion and market research.⁹

We reviewed the Marketing Research Association's website, which confirms the *Handbook's* statement regarding the requirements for professional certification (i.e., passage of an exam and three years of relevant industry experience). Specifically, the Market Research Association emphasizes that the credentialing program recognizes the qualifications and expertise of marketing and opinion research professionals, encourages high standards within the profession, and establishes an objective measure of an individual's knowledge and proficiency. According to the association's website, the credential indicates to the public an individual's ability to conduct market research. The

positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. This also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

⁸ A general degree requirement does not necessarily preclude a proffered position from qualifying as a specialty occupation. For example, an entry requirement of a bachelor's or higher degree in business administration with a concentration in a specific field, or a bachelor's or higher degree in business administration combined with relevant education, training, and/or experience may, in certain instances, qualify the proffered position as a specialty occupation. In either case, it must be demonstrated that the entry requirement is equivalent to a bachelor's or higher degree in a specific specialty that is directly related to the proffered position. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

⁹ The Marketing Research Association website states that the association was founded in 1957 and is the leading and largest association of opinion and marketing research professions. For additional information, see <http://www.marketingresearch.org/information> (last visited Aug. 2, 2016).

narrative continues by stating that the credential provides a vehicle for developing a pool of well-trained, competent marketing researchers, thereby improving both perceived and substantive standards. The website does not indicate that market research analyst positions have any particular academic requirements for entry, nor does it indicate that these positions require any particular level of education to be identified as qualified and possessing a level of expertise/competence. Instead, the Market Research Association highlights the importance of professional experience and industry-related professional courses (through conferences, seminars, and webinars).

Thus, the *Handbook* and the Market Research Association website do not support the claim that the occupational category “Market Research Analysts” 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 they did (which they do not), to satisfy the first criterion, the Petitioner must provide evidence to support a finding that the particular position proffered would normally have such a minimum, specialty degree requirement or its equivalent.

The Petitioner also referenced the Occupational Information Network (O*NET) OnLine Summary Report for “Market Research Analysts and Marketing Specialists.” The summary report provides general information regarding the occupation; however, it does not support the Petitioner’s assertion regarding the educational requirements for the occupation. For example, the Specialized Vocational Preparation (SVP) rating cited within O*NET’s Job Zone designates this occupation as 7 < 8. An SVP rating of 7 to less than (“<”) 8 indicates that the occupation requires “over 2 years up to and including 4 years” of training. Further, while the SVP rating indicates the total number of years of vocational preparation required for a particular position, it is important to note that it does not describe how those years are to be divided among training, formal education, and experience – and it does not specify the particular type of degree, if any, that a position would require.¹⁰

Further, the summary report provides the educational requirements of “respondents,” but does not account for 100% of the “respondents.” The respondents’ positions within the occupation are not distinguished by career level (e.g., entry-level, mid-level, senior-level). Additionally, the graph in the summary report does not indicate that the “education level” for the respondents must be in a specific specialty.

In the appeal, the Petitioner cites to *Residential Financial Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), in which the court stated that “[t]he knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge.”

We agree with the aforementioned proposition that “[t]he knowledge and not the title of the degree is what is important.” As we discussed above, there must be a close correlation between the required

¹⁰ For additional information, see the O*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

“body of highly specialized knowledge” and the position, however, a minimum entry requirement of a degree in two disparate fields, such as market research and computer science, would not meet the statutory requirement that the degree be “in *the* specific specialty (or its equivalent),” unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added). As stated above, however, the Petitioner has not met its burden to establish that the particular position offered in this matter requires a bachelor’s or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those tasks. We also note that the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself qualifies as a specialty occupation.

In any event, the Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Finance*.¹¹ We note that, in contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. See *Matter of K-S-*, 20 I&N Dec. 715, 719-20 (BIA 1993). Although the reasoning underlying a district judge’s decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.*

The Petitioner has not provided sufficient 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.

¹¹ It is noted that the district judge’s decision in that case appears to have been based largely on the many factual errors made by the Director in the decision denying the petition. We further note that the Director’s decision was not appealed to us. Based on the district court’s findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by us in our *de novo* review of the matter.

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 another 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. 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.” While we acknowledge the Petitioner’s submission of letters from several of its industry partners, these letters simply verify the legitimacy of the Petitioner’s company and do not state an industry-wide hiring standard for similar positions. 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.

Here, the evidence of record does not credibly demonstrate relative complexity or uniqueness as aspects of the proffered position. Specifically, it is unclear how the proffered marketing specialist position, as described, necessitates the theoretical and practical application of a body of highly specialized knowledge such that a person who has attained a bachelor’s or higher degree in a specific specialty or its equivalent is required to perform them. For instance, the Petitioner did not submit information relevant to a detailed course of study leading to a specialty degree, and did not establish how such a curriculum is necessary to perform the duties of the proffered position.¹² While the Petitioner listed

¹² As previously noted in our decision, the Petitioner has inconsistently stated that it requires a minimum of a *master’s* degree in business administration with a specialization in marketing, as well as a *bachelor’s* degree in marketing or business administration marketing. The Petitioner has not reconciled its inconsistent statements.

a few marketing-related courses that the Beneficiary completed, we again emphasize that 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 evidence of record does not distinguish the proffered position from similar positions within the occupational category which do not require a bachelor's degree *in a specific specialty*, or the equivalent. In this respect, we find that the Petitioner has not described the proffered position and its constituent duties in sufficient detail to convey the actual tasks the Beneficiary will perform within the specific context of the Petitioner's operations. Take, for instance, the proffered job duty of "[a]ssisting sales and marketing management with advertising materials." Considering that the Petitioner claims to have three total employees – and only one person operating the company – the record is insufficient to demonstrate what "sales and marketing management" personnel the Beneficiary will assist, and moreover, how the Beneficiary will be relieved from performing other non-qualifying duties.¹³ As another example, the Petitioner asserts that the Beneficiary "will also be performing analysis of marketing and sales data," but has not explained which of its three employees perform the actual sales for its company or prepare the marketing and sales data which the Beneficiary will then analyze.

The lack of relative complexity or uniqueness as aspects of the proffered position is further evidenced by the LCA submitted by the Petitioner in support of the instant petition. The LCA indicates a wage level at a Level I (entry) wage, which is the lowest of four assignable wage levels. 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.¹⁴ For example, a Level IV (fully competent) position is designated by DOL for

¹³ The letter from the Petitioner's CEO states that she has "successfully operated this company alone for the past five years." While this letter also states that the Petitioning company has "3 employees and a small support team, such as [an] account manager and a secretary," there is no further explanation or evidence regarding the Petitioner's other employees and the "small support team." The Petitioner represented itself as a three-employee company on the Form I-129, Petition for a Nonimmigrant Worker.

It is reasonable to assume that the size of an employer's business has or could have an impact on the claimed duties of a particular position. See *EG Enters., Inc. v. Dep't of Homeland Sec.*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). The size of a petitioner may be considered as a component of the nature of the petitioner's business, as the size impacts upon the actual duties of a particular position. In this matter, the job descriptions provided both initially and in response to the Director's RFE do not contain sufficient detail and corroborating evidence to demonstrate that the duties, as described, will actually be performed by the Beneficiary.

¹⁴ 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

employees who “use advanced skills and diversified knowledge to solve unusual and complex problems.”¹⁵ 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. Thus, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

C. Third Criterion

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor’s degree in a specific specialty, or its equivalent, for the position.

The Petitioner stated that it has not previously hired anyone for the proffered position. Thus, the record does not establish a prior history of hiring for the proffered position of only persons with at least a bachelor’s degree *in a specific specialty*, or its equivalent. Accordingly, the Petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 have reviewed the Petitioner’s statements and documents regarding the proffered position and the Petitioner’s business operations. However, relative specialization and complexity have not been sufficiently developed 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 positions that are not usually associated with at least a bachelor’s degree in a specific specialty, or its equivalent. We incorporate our earlier discussion regarding the insufficiency of the Petitioner’s job descriptions within the specific context of the Petitioner’s operations.

Further, 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 descriptions and the evidence, further suggests that the particular position is not so specialized and complex that the duties can only be performed an individual with bachelor’s degree or higher in a specific specialty, or its equivalent.

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.

¹⁵ For additional information regarding wage levels as defined by DOL, see U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

Matter of N-L-, Inc.

Although the Petitioner asserts that the nature of the specific duties is specialized and complex, it 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 N-L-, Inc.*, ID# 17635 (AAO Aug. 3, 2016)