



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 10106736

Date: SEPT. 3, 2020

Appeal of California Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (H-1B)

The Petitioner, a mortgage and investment wealth management company, seeks to temporarily employ the Beneficiary as a “content and communications director” under the H-1B nonimmigrant classification for specialty occupations. 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 of the California Service Center denied the petition, concluding that the record did not establish that the proffered position is a specialty occupation. On appeal, the Petitioner submits additional evidence and asserts that the Director erred by denying the petition.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.<sup>1</sup> We review the questions in this matter de novo.<sup>2</sup> Upon de novo review, we will dismiss the appeal.

## I. LEGAL FRAMEWORK

Section 214(i)(I) of the Act, 8 U.S.C. § 1184(i)(I), 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.

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<sup>1</sup> Section 291 of the Act; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010).

<sup>2</sup> See Matter of Christo’s Inc., 26 I&N Dec. 537, 537 n.2 (AAO 2015).

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). We construe the term “degree” 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).

## II. PROFFERED POSITION

The Petitioner seeks to employ the Beneficiary as a “content and communications director.” With their request for evidence (RFE) response, the Petitioner describes the duties and responsibilities of the proffered position as follows:

Developing Promotional and Advertising Materials and Content (50% of time devoted to these duties) - includes the following:

- ∑ Plan and prepare advertising and promotional materials to increase leads.
- ∑ Optimize company pages within each social media platform (Facebook, Twitter, blogs, YouTube, Instagram) to increase the visibility of company's social content.
- ∑ Generate, edit, publish, and share daily content (original text, images, and video) for social media platforms.
- ∑ Find interesting stories within the industry and out in the market that can be used on website, social media, and emails[.]
- ∑ Create press releases, media notices, and social media posts about networking and lead generating events.
- ∑ Work independently to draft SEO-friendly and compelling copy for social media and website.
- ∑ Inspect layouts and advertising copy and edit scripts, photographs and videos, and other marketing material.
- ∑ Edit all copy for clarity, grammar and spelling, consistency and accuracy.

- ∑ Produce engaging content which generates new leads and clients.

Developing, Researching and Implementing New Advertising and Promotional Strategies (50% of time devoted to these duties) - includes the following:

- ∑ Build and execute ambitious content marketing strategies through the use of traditional and digital marketing.
- ∑ Coordinate with industry publications [redacted], and local print media [redacted] to disseminate press releases and implement marketing strategies.
- ∑ Monitor trade and industry news channels for trending topics in order to create new content and strategies.
- ∑ Identify and develop contacts for promotional campaigns.
- ∑ Gather and organize information on mortgage rates, financing options, housing market, and other industry news, in order to plan and execute advertising strategies and social media campaigns.
- ∑ Consult trade and industry publications to learn about conferences, trade shows, and networking functions and to organize prospect files for marketing purposes.
- ∑ Plan and maintain a regimented social media schedule.
- ∑ Review, analyze and update all advertising and marketing campaigns to ensure best promotional opportunities.

The March 2019 Petitioner support letter states the position's required education is a bachelor's degree in "either advertising or marketing and communications."<sup>3</sup>

### 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.

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<sup>3</sup> The Petitioner's RFE response includes the following statement, "[The Beneficiary] is fluent in not only English, but Portuguese and Spanish as well, she will be instrumental in exploring multi-language campaigns in order to reach international markets." The Petitioner's job duties or requirements do not state the position requires foreign language knowledge; however, this statement seems to imply Portuguese and Spanish may be used for this position. A language requirement other than English in a job offer generally is considered a special skill. Each language special skill may add an additional wage level on the labor certification application (LCA). (DOL, 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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).)

## 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 will consider the information contained in the U.S. Department of Labor's (DOL) Occupational Outlook Handbook (Handbook) regarding the duties and educational requirements of the wide variety of occupations it addresses.<sup>4</sup>

On the labor condition application (LCA)<sup>5</sup> submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Advertising and Promotions Managers" corresponding to the standard occupational classification code 11-2011 from the Occupational Information Network (O\*NET). The Handbook's subchapter entitled "How to Become an Advertising, Promotions, or Marketing Manager" states, in relevant part, that "[a] bachelor's degree is required for most advertising, promotions, and marketing management positions"<sup>6</sup> (emphasis added). The Handbook does not indicate that (1) at least a bachelor's degree is necessary to enter all advertising, promotion, and marketing managers' positions; and (2) the degrees held by individuals in these occupations must be in a specific specialty, as would be required for the occupational category to be recognized as a specialty occupation.

Rather, the Handbook states "some employers prefer a bachelor's degree in advertising or journalism"<sup>7</sup> (emphasis added) for advertising management positions. However, a preference is not an indication of the normal minimum education requirement for entry into the occupation. The Handbook also states that most marketing managers have a bachelor's degree, but it does not indicate that any specific specialty is normally required for these positions. Instead, the Handbook just identifies a number of courses that might be relevant for these positions, such as "classes in marketing, consumer behavior, market research, sales, communication methods and technology, visual arts, art history, and photography," as well as courses in business law, management, economics, accounting, finance, mathematics, and statistics.<sup>8</sup>

The Handbook does not demonstrate that normally the minimum requirement for entry into these positions is at least a bachelor's degree in a specific specialty, or its equivalent. Thus, the Handbook does not support the assertion that the proffered position falls under an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. The Petitioner has not provided sufficient documentation from other probative

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<sup>4</sup> We do not 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 we regularly review the Handbook on the duties and educational requirements of the wide variety of occupations that it addresses. Nevertheless, to satisfy the first criterion, 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>5</sup> A petitioner submits the LCA to DOL to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the area of employment or the actual wage paid by the employer to other employees with similar duties, experience, and qualifications. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

<sup>6</sup> Bureau of Labor Statistics, U.S. Dep't of Labor, Occupational Outlook Handbook, Advertising, Promotions, and Marketing Managers, at <https://www.bls.gov/ooh/management/advertising-promotions-and-marketing-managers.htm> (last visited Aug. 26, 2020).

<sup>7</sup> Id.

<sup>8</sup> Id.

sources 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 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.

We generally consider the following sources of evidence to determine if there is such a common degree requirement: 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 establish that such firms “routinely employ and recruit only degreed individuals.”<sup>9</sup> As discussed, the Handbook does not indicate that a bachelor’s degree in a specific specialty is a common requirement within the industry for parallel positions among similar organizations. Also, the Petitioner did not submit evidence from an industry professional association or from firms or individuals in the industry indicating such a degree is a minimum requirement for entry into the position.

In support of its assertion that the degree requirement is common to the industry for the position, the Petitioner submitted job vacancy announcements from several industries with their RFE response and with their appeal brief. In their appeal brief, the Petitioner asserts that since the skills to perform the advertising and promotion manager position is found across different industries, the correct standard of proof is to examine if a degree is required of any position with similar duties in any industry. However, the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) specifically state that the degree requirement should be “common to the industry in parallel positions among similar organizations.”

To be relevant for consideration under this prong, the job vacancy announcements must advertise “parallel positions,” and the announcements must have been placed by organizations that (1) conduct business in the Petitioner’s industry and (2) are also “similar” to the Petitioner. Absent such evidence, job postings submitted by a Petitioner are generally outside the scope of consideration for this prong, which encompasses only organizations that are similar to the Petitioner. None of these job vacancy announcements meet this threshold.

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<sup>9</sup> 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) (considering these “factors” to inform the commonality of a degree requirement)).

We will first consider whether the advertised job opportunities could be considered “parallel positions.” As noted, the Petitioner does not require any work experience to enter the proffered position. However, most of the advertised positions included with the RFE response and the appeal brief require work experience, some substantial. For example, one of the positions requires at least eight years of work experience, two of the positions require at least seven years of experience, two require at least six years of experience, seven require at least five years of experience, six require at least four years of experience, five require at least over three years of experience, three positions require at least two years, and two require at least a year of experience. Considered collectively, these factors indicate that the advertised positions are for more senior positions than the position proffered here and thus are not “parallel” to the proposed position.

Also, the variety of job duties described in the submitted job postings undermine the Petitioner’s claim that the duties and the advertising and promotions managers positions are identical across industries. For example, several advertised job opportunities include budgeting duties, such as “being responsible for the efficient administration of an approved budget” or coordinating “the establishment and maintenance of annual budgets.” These budgeting duties are not found in the Petitioner’s proffered position or in other submitted advertised postings. Another posting indicates their responsibilities include research on market conditions to identify “trends, pain points and opportunities for growth.” According to O\*NET<sup>10</sup>, market research is a duty not consistent with the advertising and promotion manager occupation but would likely fall within the parameters of another O\*NET occupation. Other job postings are not sufficiently detailed, and include duties, such as “[m]anage, research and onboard external vendors” or “[t]ake a lead in multiple concurrent projects.” The lack of detail of these job postings does not allow an accurate comparison of the level of responsibility and scope of duties to the proposed position.

Nor do the advertised positions included in the record contain documentary evidence sufficient to establish that these job vacancy announcements were placed by companies that (1) conduct business in the Petitioner’s industry and (2) are also “similar” to the Petitioner. When determining whether the employer posting a job listing and the Petitioner share the same general characteristics, factors to be considered may include information regarding the nature or type of organization and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing.

In the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation, the Petitioner stated that it is a mortgage and investment wealth management company established in 2014. The petitioner further stated that it has fifteen employees and a gross annual income of \$1,248,000. The Petitioner did not indicate its net annual income. The Petitioner designated its business operations under the North American Industry Classification System (NAICS) code 52292. This NAICS code is designated for “Real Estate Credit.” The U.S. Department of Commerce, Census Bureau website describes this NAICS code by stating, “[t]his U.S. industry comprises establishments primarily engaged in lending funds with real estate as collateral.”<sup>11</sup>

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<sup>10</sup> O\*NET OnLine Summary Report for “11-2011.00 – Advertising and Promotions Managers,” <http://www.onetonline.org/link/summary/15-1121.00> (last visited Aug. 26, 2020).

<sup>11</sup> U.S. Dep’t of Commerce, U.S Census Bureau, 2017 NAICS Definition, 52292 – Real Estate Credit, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited Aug. 26, 2020).

In this instance, the job vacancy announcements contained in the record do not advertise positions that are in the same industry and otherwise similar to the Petitioner. The Petitioner is a mortgage and investment wealth management company yet the employers whose advertisements we examined include, for instance, an auto dealership, insurance agencies, a health system, a cruise line, a pharmaceutical company, a university, an ad agency, a media company, a retail company, staffing companies, and hotel chains. None of these employers conduct business in the same industry as the Petitioner. With their appeal brief, the Petitioner also provides advertised positions from several financial and banking institutions. The Petitioner asserts these institutions are “similar” to the Petitioner and require at least a bachelor’s degree for marketing and advertising positions. However, the Petitioner, an operation with fifteen individuals, does not share a similar scope of operations or staffing as those employers in the advertisements. For example, the advertisements are from companies, such as, JPMorgan Chase, CIT, Better.com, LendingTree, and Citi, that employs hundreds to thousands of employees and provide services nationwide. In sum, the levels of independent judgement, complexity, supervisory duties, or amount of supervision of the positions listed on the submitted job advertisements cannot be adequately determined and cannot be compared to those of the proffered position.

For all of these reasons, the Petitioner has not established that these job vacancy announcements are relevant. Even if the threshold had been met, we would still conclude that the job postings do not satisfy this prong of the second criterion, as they do not indicate that a bachelor’s degree in a specific specialty, or the equivalent, is common to the industry in parallel positions among similar organizations. The announcements reflect that the employers accept a variety of degrees including any bachelor’s degree, a general-purpose degree in business or business administration,<sup>12</sup> as well as degrees in finance, journalism, public relations, or English. The various degrees which employers accept for entry into the proffered position undermine the Petitioner’s assertion that a bachelor’s degree in a specific specialty is a common requirement within the industry.

As the complete review of the record does not establish that the Petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary.<sup>13</sup> That is, not every deficit of every advertisement has been addressed.<sup>14</sup> The Petitioner has not provided sufficient probative evidence to establish that a bachelor’s degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations. Thus, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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<sup>12</sup> The degree requirement set by the statutory and regulatory framework of the H 1B program is not just a bachelor’s or higher degree, but a bachelor’s degree in a specific specialty that is directly related to the duties of the position. See section 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). Although a general-purpose bachelor’s degree, such as business or business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a conclusion that a particular position qualifies for classification as a specialty occupation. *Royal Siam*, 484 F.3d at 147.

<sup>13</sup> The Petitioner did not provide any independent evidence of how representative the job postings are of the particular advertising employers’ recruiting history for the type of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the actual hiring practices of these employers.

<sup>14</sup> Even if all of the job postings indicated that a requirement of a bachelor’s degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the Petitioner does not demonstrate what statistically valid inferences, if any, can be drawn from the job postings with regard to the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (7th ed. 1995).

## 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.

Upon review, the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. The job duties provided are generic and routine, including duties, such as “[p]lan and prepare advertising and promotional materials to increase leads” and “[p]roduce engaging content which generates new leads and clients.” These tasks do not convey sufficient substantive information to establish how these duties are complex or unique. The Petitioner’s job tasks of “[f]ind interesting stories within the industry and out in the market that can be used on website, social media, and emails” and “[e]dit all copy for clarity, grammar and spelling, consistency and accuracy” without additional information do not appear to be duties that would require a bachelor’s degree. The record does not establish which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment.

We also observe that many of the duties of the proffered position, as described by the Petitioner, paraphrase tasks from O\*NET OnLine Summary Report for this occupation.<sup>15</sup> For example, the Petitioner’s job duties include “[i]nspect layouts and advertising copy and edit scripts, photographs and videos, and other marketing material,” and “[g]ather and organize information on mortgage rates, financing options, housing market, and other industry news, in order to plan and execute advertising strategies and social media campaigns,” which are paraphrased from the advertising and promotion manager O\*NET tasks of “[i]nspect layouts and advertising copy and edit scripts, audio and video tapes, and other promotional material for adherence to specifications” and “[g]ather and organize information to plan advertising campaigns.”<sup>16</sup> This type of description may be appropriate when defining the range of duties that may be performed within an occupational category, but it fails to adequately convey the substantive work that the Beneficiary will perform within the Petitioner’s business operations and, thus, generally cannot be relied upon by the Petitioner when demonstrating duties attached to its specific employment.

When establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in the context of its business operations, as well as demonstrate a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition. In the instant case, the Petitioner has not detailed the actual work to be performed for this position rather than describing the occupation. The overview of an occupation, coupled with basic and routine tasks, is insufficient to establish that the proposed position is particularly complex or unique.

The Petitioner’s LCA indicates a wage level II was assessed for the proffered position. A Level II designation when read in combination with the evidence presented and the Handbook’s account of the

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<sup>15</sup> O\*NET OnLine Summary Report for “11-2011.00 – Advertising and Promotions Managers,” <http://www.onetonline.org/link/summary/15-1121.00> (last visited Aug 27, 2020).

<sup>16</sup> *Id.*



requirements for this occupation, indicates that this particular position is not so complex or unique that the duties could only be performed by an individual with a bachelor's degree or higher in a specific specialty, or its equivalent. If typical positions located within the occupational category do not require a bachelor's degree in a specific specialty, or the equivalent, as in this matter, then it is unclear how a position with wage level II characteristics would, regardless of the Petitioner's assertions. The record lacks sufficiently detailed and informative evidence to distinguish the proffered position as unique from or more complex than other closely related positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

The Petitioner also provides a list of courses the Beneficiary completed and asserts these courses prepared her to perform the duties of the proffered position. However, whether or not the Beneficiary in this case has completed a specialized course of study directly related to the proffered position is irrelevant to the issue of whether the proffered position qualifies as a specialty occupation, i.e., whether the duties of the proffered position require the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent.<sup>17</sup> Although the Petitioner claims that the Beneficiary is well-qualified and her coursework will assist her in carrying out the duties of the proffered position, the test to establish a position as a specialty occupation is not the education or experience of a particular beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent.<sup>18</sup>

The Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the duties of the position and has not identified 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 at 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. Evidence provided in this criterion may include, but is not limited to, an organizational chart showing the Petitioner's hierarchy and staffing levels with corresponding and experience requirements for this position, as well as documentary evidence of past employment practices for the position. The Petitioner does not challenge the Director's decision on this criterion. The record does not establish that the Petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Therefore, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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<sup>17</sup> Section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii)

<sup>18</sup>We are required to follow long-standing legal standards and determine first, whether the proffered position qualifies for classification as a specialty occupation, and second, whether the Beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. Cf. *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].").

#### D. Fourth Criterion

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. The Petitioner also does not challenge the Director's decision on this criterion and the record does not demonstrate that the 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

As set forth above, we conclude that the evidence of record does not establish, more likely than not, that the proffered position qualifies for classification as a specialty occupation. Accordingly, the appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.