



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

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

In Re: 8989295

Date: JULY 8, 2020

Appeal of California Service Center Decision

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

The Petitioner, an engineering consulting services company, seeks to temporarily employ the Beneficiary 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 California Service Center Director denied the petition, concluding that the Petitioner had not established that the proffered position is a specialty occupation. On appeal, the Petitioner asserts that the Director erred and that the proffered position is a specialty occupation.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

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). 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) (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. ANALYSIS

The Petitioner stated that the Beneficiary will be employed through its contractual arrangement with an end-client as a “software quality assurance/integration engineer” and that a minimum of a bachelor’s degree in electronics and telecommunication engineering, or other engineering field, or a related field of study is required for entry into the position.¹ The Petitioner provided a list of duties, which were quoted by the end-client in its letter submitted in response to the Director’s request for evidence (RFE), as follows (verbatim):

- Perform work in the capacity of an entry-level Software Quality Assurance/Integration Engineer, working only under the direct supervision and guidance of a senior experienced supervising engineer.
- Assist the supervising engineer in building Locomotive Test Set up for integration testing of Locomotive model, EM2000 and FIRE (Functional Integrated Railroad Electronics) And different kind of air brakes like Fast Integrated, CCBII, CCBIIP.
- Help identify the functioning of different kind of freight and passenger locomotives like Union Pacific, BNSF, [REDACTED] Railways, [REDACTED] Regional Road Authority.
- Support testing communication in locomotives using Intellitrain Software and Can Analyzer.

¹ The Petitioner most recently employed the Beneficiary through employment authorized pursuant to 8 C.F.R. § 274a.12(c)(26), and provides copies of wage statements for her employment with the Petitioner. It indicates that it has placed the Beneficiary at the end-client site since September 2017.

- Assist with validation of signals of FIRE Windows XP and Unix operating system.
- Help develop test case in Rational Quality Management tool using Specifications and performed analysis of test script development in LabView software and define the scope of each test script.
- Assist with the maintenance of records of defects in defect tracking system JIRA.
- Preparing tollgate reports for all orders for review by senior engineers.

Upon review of the record in its totality and for the reasons set out below, we conclude that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. Specifically, the record does not include sufficient consistent, probative evidence establishing that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.²

A. First Criterion

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), 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. The Petitioner designated the proffered position on the labor condition application (LCA) as a Standard Occupation Classification (SOC) code 15-1199 "Computer Occupations, All Other" occupation. In response to the Director's RFE the Petitioner asserted that the duties of the proffered position are consistent with the duties of the "Software Quality Assurance Engineers and Testers" corresponding to SOC code 15-1199.01.³

The *Handbook* is a career resource offering information on hundreds of occupations. However, there are occupational categories which the *Handbook* does not cover in detail, and instead provides only summary data.⁴ The subchapter of the *Handbook* titled "Data for Occupations Not Covered in Detail" states, in relevant part, that the "[t]ypical entry-level education" for a variety of occupations within the category of "[c]omputer and mathematical occupations" is a "Bachelor's degree," without indicating that the bachelor's degree must be in a specific specialty.⁵ Thus, the *Handbook* is not probative in establishing

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 The Petitioner classified the proffered position at a Level I wage. A wage determination starts with an entry-level wage (Level I) and progresses to a higher wage level (up to Level IV) after considering the experience, education, and skill requirements of the Petitioner's job opportunity. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://fledatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

⁴ Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Data for Occupations Not Covered in Detail, <https://www.bls.gov/ooh/about/data-for-occupations-not-covered-in-detail.htm> (last visited July 7, 2020). Here, the *Handbook* does not provide specific information for various occupations which might be classified within the occupational category.

⁵ The *Handbook* also indicates that this occupation does not require work experience in a related occupation or typical on-the-job training. *Id.*

that these positions comprise an occupational group for which the normal minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent.

The Petitioner submitted an opinion letter from [REDACTED] in response to the Director's RFE, who similarly concludes that the duties of the proffered position require at least "a bachelor's degree in electronics and telecommunication engineering, or other engineering field, or a related field of study." We carefully evaluated [REDACTED]'s assertions in support of the instant petition but, for the following reasons, determined the letter does not have significant weight in this matter.

[REDACTED] references the DOL's Occupational Information Network (O*NET) summary report for "Software Quality Assurance Engineers and Testers," for the proposition that "most enterprise-level Software and IT companies require at least a bachelor's degree or its equivalent for hire." However, [REDACTED] reliance on the O*NET summary report to establish the proffered position is a specialty occupation is misplaced. The O*NET summary report does not establish that a bachelor's degree *in a specific specialty*, or the equivalent, is normally required. It provides general information regarding the occupation, but it does not support a conclusion that the proffered position requires a bachelor's degree in a specific specialty, or the equivalent.

Instead, O*NET assigns these positions a "Job Zone Four" rating, which states "most of these occupations require a four-year bachelor's degree, but some do not." Moreover, the Job Zone Four designation does not indicate that any academic credentials for Job Zone Four occupations must be directly related to the duties performed. In addition, the specialized vocational preparation (SVP) rating 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. 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, experience, and formal education. The SVP rating also does not specify the particular type of degree, if any, that a position would require.⁶ Further, although the summary reports provide the educational requirements of "respondents," it does not account for 100% of the "respondents." Moreover, the respondents' positions within the occupation are not distinguished by career level (e.g., entry-level, mid-level, senior-level). Furthermore, the graph in the summary report does not indicate that the "education level" for the respondents must be in a specific specialty. For all of these reasons, O*NET does not establish the proffered position as a specialty occupation.

Further, [REDACTED] does not discuss the duties of the proffered position in any substantive manner beyond what was detailed in the Petitioner's letter. Rather, he quotes, then paraphrases the duties and description of tasks provided by the Petitioner.⁷ [REDACTED] indicates:

This expert opinion is based on but not limited to interviews, correspondence, research and documents provided by the petitioner/employer, the employee, the attorney, and my collected references. In the process of rendering this opinion for this proffered

⁶ For additional information, see the O*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

⁷ It appears as though [REDACTED] used a template with conclusory findings and generic analysis to support the Petitioner's particular position as a specialty occupation. The lack of cogent analysis specific to nature of the Petitioner's position strongly suggests that [REDACTED] was asked to confirm a preconceived notion as to the required degrees, not objectively assess the proffered position and opine on the minimum bachelor's degree required, if any.

position, independent research has been conducted into the beneficiary's qualifications by evaluating copies of their educational transcripts, their Labor Condition Application, their resume and work experience letters. Independent research of [the Petitioner's] business and products has been done by evaluating the individual pages on their official website.

There is no indication that [] conducted any research or studies pertinent to the educational requirements normally required for the proffered position (or parallel positions) in the Petitioner's industry. He does not reference, cite, or discuss studies, surveys, industry publications, authoritative publications, or other sources of empirical information which he may have consulted to complete his evaluation, beyond his brief analysis of the O*NET summary report for the occupational sub-category "Software Quality Assurance Engineers and Testers."

[] further opines "[w]ithin the organization there are various levels of management along with multiple departments that oversee, direct and detail the operations and employees. . . . This proffered position works directly with other departments closely to complete the organization's mission and functional operations." Notably, he does not discuss the Petitioner's specific staffing infrastructure and organizational hierarchy within his analysis of the proffered position, nor does he discuss the nature of the staffing structure for the end-client project for which the Beneficiary will perform services. It is not apparent that he conducted any research regarding the proffered position within the construct of the Petitioner's (or the end-client's) business operations in order to render an objective conclusion regarding the associated education requirements for the position, if any, beyond studying documents submitted in support of the petition, and the Petitioner's website.

For the reasons discussed, we find that the opinion letter provided lends little probative value to the matter here. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence or to determine a fact in issue.'"). For the sake of brevity, we will not address other deficiencies within [] analyses of the proffered position.⁸

As the foregoing demonstrates, 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)(I).

⁸ We hereby incorporate our observations of []' letter into our discussion of the other criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 concentrates upon the common industry practice, while the alternative prong narrows its focus to the Petitioner’s specific position.

1. First Prong

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.”⁹

Here and as already discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, probative sources) reports an industry-wide requirement for at least a bachelor’s degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry’s professional association indicating that it has made a degree a minimum entry requirement.

The Petitioner submitted job vacancy announcements for our consideration under this prong. To be relevant for consideration, 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. These job vacancy announcements do not satisfy that threshold. Upon review of the documents, we conclude that the Petitioner’s reliance on the job announcements is misplaced.

We will first consider whether the advertised job opportunities could be considered “parallel positions.” The job advertisements do not describe the duties with sufficient detail so that we might make a meaningful comparison of them to the duties of the proffered position. A few general bullet points, such as those found in the C- and M-C- positions, do not sufficiently establish that the primary duties and responsibilities of the advertised positions are the same or similar to the proffered position.

Furthermore, we note that in addition to a degree, most of the employers require significant additional experience, including over two years (or over four years) of experience. The Petitioner has identified its particular position as a wage Level I position on the certified LCA. A Level I wage for a Job Zone Four occupation with an SVP 7 < 8 rating is for a position that may require up to and including two years of experience, in addition to a bachelor’s degree. Any required additional experience would require a corresponding increase in the wage level.¹⁰ As such, most of the advertised positions are for more senior-

⁹ 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)).

¹⁰ A requirement of more than four years of experience requires a corresponding three-level increase in wage level, whereas a requirement of more than two years of experience requires a corresponding one-level increase in wage level.

level positions than the position proffered here, and thus are not parallel to the proffered position, or if they are parallel as the Petitioner contends, then the Petitioner has not submitted an LCA that corresponds to and supports the petition as required. In either case, the Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions parallel those of the proffered position.

Nor does 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. Though the Petitioner contends that these employers are similar to it, the brief overviews in the announcements themselves do not sufficiently establish that they operate in the same industry and are similar to the Petitioner.

For all of these reasons, the Petitioner has not established that these job vacancy announcements are relevant.¹¹ As the documentation 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.¹² That is, not every deficit of every piece of evidence has been addressed.

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).

2. Second Prong

The second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) is satisfied if the Petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

The Beneficiary is to be employed at an end-client location in order to work on an end-client project. Though requested by the Director in her RFE, the Petitioner has not provided sufficient evidence to substantiate the nature of the end-client project work to which the Beneficiary will be assigned. The Petitioner initially stated that it provided "a copy of the contractual agreement and current [p]urchase [o]rder (P.O) specific to the [B]eneficiary, which is valid until the project completion date." The Petitioner submitted a copy of its 2010 master service agreement [MSA] with the end-client which indicates that the Petitioner will "perform [s]ervices for and tender [d]eliverables to [the end-client] which will be described in writing and agreed to in writing by the parties on schedules. However, the

¹¹ 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.

¹² 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).

Petitioner did not provide a PO or other similar document specific to the Beneficiary's off-site employment with the end-client.

The Petitioner provided the duties of the proffered position which may comport with the typical tasks performed by individuals employed in the "Software Quality Assurance Engineers and Testers" occupational subcategory; and, submitted an August 2019 letter from the end-client which quotes its previously stated job duties. The end-client letter indicates that the end-client "entered into an agreement with [the Petitioner] to provide certain professionals to assist us with particular needs. We confirm that this contract is still valid and in effect as of [August 2019], and will remain valid until the project completion date." However, the end-client does not otherwise identify or describe the scope, complexity, and nature of the project work to which the Beneficiary will be assigned.

We further note identical language and typographical errors in correspondence from the Petitioner and the end-client. For example, the statement that the Beneficiary will "Help develop test case in Rational Quality Management tool using Specifications and performed analysis of test script development in LabView software and define the scope of each test script," and "Assist the supervising engineer in building Locomotive Test Set up for integration testing of Locomotive model, EM2000 and FIRE (Functional Integrated Railroad Electronics) And different kind of air brakes like Fast Integrated, CCBII, CCBIIP," appears in documentation from both entities, to include the capitalization within the quote. Moreover, we observe that some of these oddly worded duties also appear verbatim in copies of the Petitioner's presentation slides about the Beneficiary's work, as well as in the Beneficiary's resume.

When we consider the unique similarities in the documentation from the Petitioner, the Beneficiary, and the end-client, we conclude that the Petitioner has not established by a preponderance of the evidence that the duties originated from the end-client. The Petitioner must resolve this ambiguity in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). While we are unable to determine the original source of the proposed duties, it remains the Petitioner's burden to demonstrate the duties relate to the actual work the Beneficiary will perform at the end-client worksite. The Petitioner must also establish the duties are the requirements actually imposed by the entity using the Beneficiary's services, which in this case is the end-client. *Defensor*, 201 F.3d at 387-88.

Upon review of the totality of the record, we conclude that the Petitioner has not sufficiently explained or documented why the proffered position is so complex or unique that a bachelor's degree in a specific specialty is required. When determining whether a position is a specialty occupation, we look at whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge attained through at least a baccalaureate degree in a specific discipline.

It is the Petitioner's burden to prove by a preponderance of evidence that it is qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* Here, the documentation provided is not probative towards establishing the terms and conditions of the Beneficiary's assignment *as imposed by the end-client*. See *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 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. Thus, it cannot be concluded that the Petitioner has 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 record must establish that a petitioner's stated degree requirement is not a matter of preference for high-caliber candidates but is necessitated instead by performance requirements of the position. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). Were we limited solely to reviewing a petitioner's claimed self-imposed requirements, an organization could bring any individual with a bachelor's degree to the United States to perform any occupation as long as the petitioning entity created a token degree requirement. *Id.* Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner's past recruitment and hiring practices, as well as information regarding employees who previously held the position.

The Director requested documentary evidence regarding the Petitioner's historical recruiting practices, and the minimum requirements for the proffered position in her RFE. In response to the RFE, the Petitioner reiterates its initial education requirements for the position, but did not submit documentary evidence of its historical recruiting practices for the position, or other evidence regarding previous or current employees who have served in the proffered position.¹³ The Petitioner, therefore, has not satisfied the third criterion of 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.

As discussed, we find that the Petitioner has not adequately established the scope and nature of the proffered position. We also observe that the Petitioner stated "[t]his is the Beneficiary's first employment while undergoing training as a junior engineer working with employment authorization []. Hence, the wage offered to the Beneficiary meets and exceeds the Level 1 wage guidelines for this job classification, in the area of employment/work location, as this is an [e]ntry-[l]evel [p]osition." We renew our concerns regard the lack of material that would set forth the relative specialization and complexity of the Beneficiary's entry-level role within the Petitioner's organization. Though the Petitioner has provided narrative about the job duties of the position, the Petitioner has not sufficiently

¹³ "Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the [petition]." 8 C.F.R. § 103.2(b)(14).

established the Beneficiary's claimed specialized, complex, entry-level role within her organizational function.¹⁴ We incorporate our discussion and analysis under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), and conclude that the Petitioner has not established 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).

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.

III. CONCLUSION

In visa petition proceedings, it is a 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.

¹⁴ We note that in certain occupations (e.g., doctors or lawyers), a Level I, entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty, or its equivalent. That is, a position's wage level designation may be a relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.