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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B2

[redacted]

DATE: NOV 23 2011 OFFICE: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner claimed on the Form I-129 that it manages eighteen residential care homes and that it has 77 employees, gross annual income of $4.2 million, and net annual income of over $100,000. It seeks to employ the beneficiary as a database administrator pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition on the basis of her determination that the petitioner failed to demonstrate that its offer of employment was "reasonable and credible."

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's responses to the director's request for additional evidence; (4) the director's letter denying the petition; and (5) the Form I-290B and supporting documentation. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's ground for denying this petition. Beyond the decision of the director, we find additionally that the petitioner has failed to demonstrate: (1) that the proposed position qualifies for classification as a specialty occupation; and (2) that the petition is supported by a certified labor condition application (LCA) which corresponds to it.

The Petitioner Has Not Demonstrated That Its Offer of Employment is Reasonable, Credible, and Authentic

The director found the petitioner's offer of employment lacking reasonability, credibility, and authenticity on the basis of her determination that the petitioner had failed to demonstrate that its business operations, processes, and services are of a scope or complexity to require the services of a database administrator to modify its existing database and database management systems to make changes. In arriving at her conclusion, the director stated that the information submitted by the petitioner did not indicate that the petitioner employs any computer programmers or systems analysts for the beneficiary to direct; that it had ever employed a database administrator in the past; or that the petitioner has the size or scope for which employment of a database administrator would be necessary. The director concluded her discussion by stating that the record lacked "a reliable evidentiary basis to determine that the petitioner's proffer is authentic."

On appeal counsel notes, correctly, that the director did not raise her ultimate ground for the petition's denial in her May 1, 2008 request for additional evidence. However, the petitioner has now been afforded the opportunity to supplement the record with additional evidence via the appellate process and it is unclear what further remedy would be appropriate. As such, we deem the record complete and ready for adjudication.

Upon review, we find that the petitioner has failed to demonstrate that its offer of employment to the beneficiary is reasonable, credible, and authentic because the evidence it submitted in support of the petition calls the petitioner's veracity into question.

For example, in the document entitled "Corporate Organizational Chart" that the petitioner filed on July 24, 2008, it stated that its corporate office is located at [redacted] in [redacted] However, the website of the California Secretary of State[1] indicates that this location has been occupied by an Asian restaurant since at least March 21, 2008.

Moreover, the petitioner appears to have purposefully altered a photograph that was allegedly taken on its business premises. Ostensibly, this picture features a sign located on the petitioner's business premises (again, upon which, according to the website of the California Secretary of State, a different entity was in fact conducting business at the time the petitioner submitted this picture). The sign is topped by a banner stating "Cypress Commercial Center," and the names of eight business entities are listed in two columns beneath the banner. The petitioner's name appears on the left column, in the third row. However, the petitioner's name does not appear to have actually been on this sign but rather placed into the picture after it was taken, as the petitioner's business name appears unnatural and "pixelated." Furthermore, our suspicion that the petitioner's name was placed into the picture after it was taken is supported by two additional factors. First, the white background behind the petitioner's name extends into the left side of the sign's blue border in an unnatural way, and unlike any of the other seven entities appearing on the sign. Second, we note that a thin shadow runs down the left side of the entire sign, slightly to the right of the blue border. However, that shadow is briefly interrupted, again in an unnatural way, by the white background that surrounds the petitioner's name. Again, this photograph appears to have been altered by the petitioner after it was taken.

This evidence is not credible, and it will not be given any weight in this proceeding. If U.S. Citizenship and Immigration Services (USCIS) fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001); *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988). Moreover, the petitioner's submission of false statements brings into question the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The petitioner's submission of evidence that is not credible fails to overcome the concerns of the director regarding the credibility and authenticity of its offer of employment to the beneficiary. The petitioner has failed to overcome the director's finding that its offer of employment to the beneficiary is not reasonable, credible, or authentic.

The Proposed Position Does Not Qualify For Classification as a Specialty Occupation

Beyond the decision of the director, the petitioner may not be approved for another reason, as the petitioner has failed to demonstrate that its proposed position qualifies for classification as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that

[1] *Available at* http://kepler.sos.ca.gov/cbs.aspx (accessed November 4, 2011).

the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

> An occupation which requires [1] theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires [2] the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also meet one of the following criteria:

> *(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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of*

W-F-, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), USCIS consistently interprets 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. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

In its June 19, 2008 letter, the petitioner stated that the duties of the proposed position would include the following:

- Developing standards and guidelines for the selection and acquisition of software;
- Modifying existing databases and database management systems;
- Directing programs and analysts to make necessary changes to the existing database system;
- Testing programs or databases, and correcting errors and implanting necessary modifications;
- Planning, coordinating, and implementing security measures to safeguard information in computer files against accidental or unauthorized damage, modification, or disclosure;
- Approving, scheduling, planning, testing, and supervising the installation of new databases;
- Training users and answering their questions;
- Establishing and calculating optimal values for database parameters, using manuals and calculators;
- Specifying users and user access levels for each procedure, using pen, template, or computer software;
- Developing methods for integrating different products so that they work together properly, such as customizing commercial databases in order to fit specific needs;
- Analyzing the petitioner's current database system in order to ensure its optimal performance;
- Reviewing and modifying existing backup systems;
- Developing new backup systems;
- Establishing policies and procedures for staff use of the database system;
- Maintaining up-to-date knowledge of new database systems and design; and
- Identifying user requirements and adding new users as needed.

In making our determination as to whether the proposed position qualifies for classification as a specialty occupation, we turn first to the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(*1*) and (*2*): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, a resource upon which we routinely rely for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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)).

The *Handbook* describes the duties of a database administrator as follows:

> Information Technology (IT) has become an integral part of modern life. Among its most important functions are the efficient transmission of information and the storage and analysis of information. The workers described below all help individuals and organizations share and store information through computer networks and systems, the Internet, and computer databases.
>
> * * *
>
> *Database administrators* work with database management software and determine ways to store, organize, analyze, use, and present data. They identify user needs and set up new computer databases. In many cases, database administrators must integrate data from old systems into a new system. They also test and coordinate modifications to the system when needed, and troubleshoot problems when they occur. An organization's database administrator ensures the performance of the system, understands the platform on which the database runs, and adds new users to the system. Because many databases are connected to the Internet, database administrators also must plan and coordinate security measures with network administrators. Some database administrators may also be responsible for database design, but this task is usually performed by *database designers* or *database analysts*. . . .

Handbook, 2010-11 ed., available at http://www.bls.gov/oco/ocos305.htm (accessed November 4, 2011). The duties of the proposed position are similar to those of database administrators as such positions are described in the *Handbook*. Having made that determination, we turn next to the *Handbook's* findings regarding the training requirements for database administrators:

> For network architect and database administrator positions, a bachelor's degree in a computer-related field generally is required, although some employers prefer applicants with a master's degree in business administration (MBA) with a concentration in information systems. . . .

(Emphasis added.) *Id.* This passage makes it clear that employers of database administrators do not normally require at least a bachelor's degree, or its equivalent, in a specific specialty.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not rely simply upon a proposed position's title. The specific duties of the position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the beneficiary, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

As discussed, we have determined that the duties of the proposed largely mirror those listed in the *Handbook* among those normally performed by database administrators. However, our review has found that this occupation does not normally impose a normal minimum entry requirement of a bachelor's degree in a specific field of study as required by section 214(i)(1)(B) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

For all of these reasons, we find that the petitioner has failed to demonstrate that its proposed position qualifies for classification as a specialty occupation under the requirements of the first criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We turn next to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The petitioner has not satisfied the first of the two alternative prongs at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proposed position; and (2) located in organizations that are similar to the petitioner.

Again, 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As already discussed, the petitioner has not established that its proposed position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. Nor has the petitioner submitted evidence that the industry's professional associations have made a degree in a specific specialty a minimum requirement for entry.

Nor do the letters from [redacted] President of [redacted] and [redacted] President of [redacted] establish the petitioner's proposed position as a specialty occupation under the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*). First, the petitioner has not submitted any evidence to demonstrate that either [redacted] is "similar" to the petitioner. For example, there is no evidence that either company is similar to the petitioner in size, scope, and scale of operations, business efforts, and expenditures. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, although [redacted] stated that she employs a database administrator, she did not indicate whether that individual possesses a bachelor's degree; and although [redacted] stated that she employs a database administrator who is a university graduate, she did not indicate that she required that individual to possess a degree in any particular field of study. These letters, therefore, do not demonstrate that a bachelor's degree, or its equivalent, *in a specific specialty*, is required.

For all of these reasons, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The petitioner has also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*), which provides that "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." The duties of the proposed position are similar to those of database administrators as outlined in the *Handbook*, and the *Handbook* does not indicate that a baccalaureate degree *in a specific specialty*, or its equivalent, is a normal minimum entry requirement for such positions. The duties proposed by the petitioner are no more complex or unique than those outlined by the *Handbook;* to the contrary, the duties proposed by the petitioner largely mirror those outlined in the *Handbook*. The duties discussed by the petitioner appear no more unique, complex, or specialized than those discussed in the *Handbook*. Accordingly, the evidence of record does not refute the *Handbook's* information indicating that a bachelor's degree from a specific field of study is not the normal minimum entry requirement for positions such as the one proposed here.

We turn next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*), which requires that the petitioner demonstrate it normally requires a degree or its equivalent for the position. To determine a petitioner's ability to satisfy the third criterion, we normally review its past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.[2] However, the record contains no such evidence.

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[2] Even if a petitioner believes or otherwise assert that a proposed position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*), requires the petitioner to establish that the nature of its proposed position's 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 the specialty. As previously discussed, the *Handbook* indicates that a baccalaureate degree in a specific specialty is not a normal minimum entry requirement. The petitioner has failed to differentiate the duties of the proposed position from those described in the *Handbook* and, as such, has failed to indicate the specialization and complexity required by this criterion. The evidence of record, including the factors argued by the petitioner on appeal as rendering the position so specialized and unique that it qualifies for classification as a specialty occupation, does not distinguish the duties of the proposed position as more specialized and complex than those normally performed by database administrators, which do not normally require, nor are they usually associated with, the attainment of at least a bachelor's degree in a specific specialty. As a result, the record fails to establish that the proposed position meets the specialized and complex threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)*(4)*.

Finally, the unpublished AAO decision submitted by counsel on appeal does not establish the proposed position as a specialty occupation under any of the statutory and regulatory criteria set forth above. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

For all of these reasons, we agree with the director's determination that the petitioner failed to demonstrate that the proposed position qualifies for classification as a specialty occupation.

The Petitioner Has Failed To Establish that the Petition is Supported by an LCA Which Corresponds to the Petition

Beyond the decision of the director, we note that the certified LCA provided in support of the instant petition lists a Level I prevailing wage level for database administrators in the Santa Ana-Anaheim-Irvine, California metropolitan division.[3] This indicates that the LCA, which is certified

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limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any job so long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proposed position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). Here, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)*(3)* based on its normal hiring practices.

[3] The Level I prevailing wage for a training and development specialist in Santa Ana-Anaheim-Irvine, California was $44,928 at the time the LCA was certified. The Level II prevailing wage was $57,450; the Level III prevailing wage was $69,992; and the Level IV prevailing wage was $82,514. *See* Foreign Labor Certification Data Center, Online Wage Library, *available at* http:///www.flcdatacenter.com (accessed November 4, 2011).

for an entry-level position, is at odds with the statements by the petitioner regarding the complexity of the duties to be performed by the beneficiary.

Given that the LCA submitted in support of the petition is for a Level I wage,[4] it must therefore be concluded that either (1) the position is a low-level, entry position relative to other database administrators; or that (2) the LCA does not correspond to the proposed petition.

While the DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part, the following:

> For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

(Italics added). The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has not demonstrated that the petition is supported by an LCA which corresponds to the petition, and the petition must be denied for this additional reason.

Conclusion

The petitioner has failed to demonstrate that its offer of employment is reasonable, credible, and authentic. Beyond the decision of the director, the petitioner has also failed to demonstrate: (1) that the proposed position qualifies for classification as a specialty occupation; and (2) that the petition is supported by a certified labor condition application (LCA) which corresponds to it.[5] Accordingly, the

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[4] According to guidance regarding wage level determination issued by the DOL in 2009 entitled *Prevailing Wage Determination Policy Guidance*, at page 7, Level I wage rates, which are labeled as "entry" rates, "are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered."

[5] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

beneficiary is ineligible for nonimmigrant classification under section 101(a)(15)(H)(i)(b) of the Act and this petition must remain denied.

The petition will remain denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed.