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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

D2

[redacted]

DATE: JUL 05 2012 OFFICE: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner:
Beneficiary: [redacted]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the California Service Center on April 16, 2010. In the Form I-129 visa petition, the petitioner describes itself as a dental laboratory established in 1985. In order to employ the beneficiary in what it designates as a denture technician position, the petitioner seeks to classify her as a nonimmigrant worker *in* a specialty occupation 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).[1]

The director denied the petition on October 1, 2010, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, the petitioner and counsel assert that the director's basis for denial was erroneous and contend that the petitioner satisfied all evidentiary requirements. In support of this assertion, the petitioner and counsel submit a brief and additional evidence.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

For the reasons that will be discussed below, the AAO agrees with the director that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed. The petition will be denied.

As a preliminary matter, the AAO notes that even if the petitioner were to overcome the director's ground for denial of the petition (which it has not), the petition could not be approved. That is, upon review of the record of proceeding, the AAO notes that in the instant case, another issue, not addressed by the director, precludes the approval of the H-1B petition.[2] As will be explained below, the Form I-129 petition was not properly signed by the petitioner. More specifically, the petitioner failed to certify that it would be liable for the reasonable costs of return transportation if the beneficiary is dismissed from its employment prior to the period of authorized stay.

The regulation at 8 C.F.R. § 103.2(a)(1) states, in pertinent part, the following:

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[1] In the Form I-129 petition (page 3), the petitioner stated that the job title for the position is "Denture Technician." With the initial petition, the petitioner continued to refer to the job title for the proffered position as a denture technician – specifically, in the Labor Condition Application (LCA) and in its letter of support. In response to the RFE and in the appeal, the petitioner referred to the position as a dental technician. The AAO refers to a proffered position by the job title listed by the petitioner on the Form I-129 petition.

[2] The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

> *Every benefit request or other document submitted to DHS* [Department of Homeland Security] must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary, and such instructions are incorporated into the regulations requiring its submission.

The instructions for Form I-129 state that the petition must be properly signed. The instructions further indicate that a petition that is not properly signed will be rejected. Moreover, according to the instructions, a petitioner that fails to completely fill out the form will not establish eligibility for the benefit sought and the petition may be denied.

The regulation at 8 C.F.R. § 103.2(a)(2), which concerns the requirement of a signature on applications and petitions, states the following:

> An applicant or petitioner must sign his or her benefit request. . . . By signing the benefit request, the applicant or petitioner . . . certifies under penalty of perjury that the benefit request, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on a benefit request that is being filed with the USCIS [United States Citizenship and Immigration Services] is one that is either handwritten or, for benefit requests filed electronically as permitted by the instructions to the form, in electronic format.

Pursuant to 8 C.F.R. § 103.2(a)(7)(i) and (iii), an application or petition which is not properly signed shall be rejected as improperly filed, and will not retain a filing date.

The regulation at 8 C.F.R. § 103.2(b)(1) provides, in pertinent part, the following:

> An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. Each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions.

A petitioner must establish that it is eligible for the requested benefit at the time of filing the petition. All required petition forms must be properly completed and filed with any initial evidence required by applicable regulations and the form instructions. *See* 8 C.F.R. § 103.2(b)(1).

In the instant case, the petitioner failed to comply with the signature requirement. More specifically, the Form I-129 (page 9) contains a signature block that is devoid of any signature from the petitioning employer. This section of the form reads as follows:

> As an authorized official of the employer, I certify that the employer will be liable for the reasonable costs of return transportation of the alien abroad if the alien is dismissed from employment by the employer before the end of the period of authorized stay.

By failing to sign this signature block of the Form I-129, the petitioner has failed to attest that it will comply with § 214(c)(5) of the Act, which states the following:

> In the case of an alien who is provided nonimmigrant status under section 101(a)(15)(H)(i)(b) or 101(a)(15)(H)(ii)(b) and who is dismissed from employment by the employer before the end of the period of authorized admission, the employer shall be liable for the reasonable costs of return transportation of the alien abroad.

The regulation at 8 CFR § 214.2(h)(4)(iii)(E) further states, in pertinent part, the following:

> The employer will be liable for the reasonable costs of return transportation of the alien abroad if the alien is dismissed from employment by the employer before the end of the period of authorized admission pursuant to section 214(c)(5) of the Act . . . . Within the context of this paragraph, the term "abroad" refers to the alien's last place of foreign residence. This provision applies to any employer whose offer of employment became the basis for an alien obtaining or continuing H–1B status.

Thus, the petition has not been properly filed because the petitioning employer did not sign the signature block certifying that it would be liable for the reasonable costs of return transportation if the beneficiary is dismissed from its employment prior to the period of authorized stay. Pursuant to 8 C.F.R. § 103.2(a)(7)(i), an application or petition which is not properly signed shall be rejected as improperly filed, and no receipt date can be assigned to an improperly filed petition. While the director did not reject the petition, the AAO is not controlled by service center decisions. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 at 3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001). The AAO notes that the integrity of the immigration process depends on the employer signing the official immigration forms. As previously mentioned, the AAO conducts appellate review on a *de novo* basis, and it was in the exercise of this function that the AAO identified this additional ground for dismissing the petition. *See Soltane v. DOJ*, 381 F.3d 143. Thus, the petitioner has failed to establish eligibility for the benefit sought and the petition may not be approved.

The appeal must be dismissed, thus rendering the remaining issues in this proceeding moot. Accordingly, the AAO does not need to examine the director's basis for denial of the petition. However, the AAO will note that, in any event it reviewed the record of proceeding and, based upon that review, hereby endorses the director's decision. That is, the AAO agrees with director's finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

Later in this decision, the AAO will also address an additional, independent ground, not identified by the director's decision, that the AAO finds also precludes approval of this petition. Specifically, beyond the decision of the director, the AAO finds that the petitioner failed to submit a Labor Condition Application (LCA) that complies with the applicable statutory and regulatory provisions. For this additional reason, the petition may not be approved. It is considered an independent and alternative ground for denial.

The petitioner stated that it seeks the beneficiary's services as a denture technician. In a letter of support dated April 8, 2010, the petitioner provided the following job description for the proffered position:

- [O]paquing using the spray or cream techniques;
- [B]uilding up porcelain fused to metal restorations;
- [C]ontouring, staining, and glazing while producing interior and posterior fixtures with proper contacts, occlusions, and shades;
- [F]ull knowledge of zirconia material;
- [B]uilding and finishing porcelain fused to metal crowns and bridges over implants;
- [F]abricating veneers;
- [U]sing Labnet;
- [C]ommunicating with dentists regarding design and treatment plans.

Upon review of the record of proceeding, the AAO notes that while the petitioner has identified its proffered position as that of a denture technician, its description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's contention that the position is a specialty occupation. While a generalized description is necessary when defining the range of duties that may be performed within an occupation, a generic description cannot be relied upon by a petitioner when discussing the duties attached to specific employment for H-1B approval. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests and substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition. Here, the job description fails to communicate any level of complexity, uniqueness and/or specialization in performing the tasks and/or the correlation between the duties and a need for a particular level education of highly specialized knowledge in a specific specialty.

The director found the evidence insufficient to establish eligibility for the benefit sought and issued an RFE on August 16, 2010. The petitioner was asked to submit additional evidence, including probative evidence that establishes the proffered position qualifies as a specialty occupation. The petitioner responded to the director's RFE by submitting a letter and additional evidence.

In response to the RFE, the petitioner stated that it "hope[d] that, in addition to her duties constructing [its] dental laboratory materials, she will be able to fill a training and supervisory role, overseeing the work and training of [the] dental lab assistants." Counsel claimed that "the proffered position includes the supervision of two dental technology assistants." The petitioner's response

included an organizational chart. In the organizational chart, the beneficiary is listed as "Dental Technician/Supervisor and Trainer" in the ceramic department, which is a separate department from the denture department. A document entitled "[The Petitioner's] Corporate Structure" states that Bodgan Czubik serves as the petitioner's "Dental Technician/Supervisor, Denture Department." The petitioner also provided additional evidence in response to the RFE, including two opinion letters, job postings and documentation that counsel claimed demonstrated the petitioner's hiring practices.

The director reviewed the record of proceeding and determined that the petitioner had not established eligibility for the benefit sought. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The director denied the petition on October 1, 2010. Thereafter, counsel submitted an appeal of the denial of the H-1B petition. The matter is now before the AAO.

Based upon a complete review of the record of proceeding, the AAO will make some preliminary findings that are material to the determination of the merits of this appeal.

The AAO notes that there are numerous inconsistencies and discrepancies in the record of proceeding, which undermines the petitioner's credibility with regard to the services the beneficiary will perform, as well as the nature and requirements of the proffered position.

The petitioner and counsel claim that the proffered position involves complex, unique and/or specialized duties. In the appeal, *for the first time*, the petitioner and counsel state that the petitioner is "a specialized dental laboratory." They claim that the petitioner "manufacturers both standard dental technology products and advanced, specialized products beyond the offerings of most laboratories." The petitioner repeatedly states that its uses "advanced technology." It further claims that it uses the "most progressive fabrication methods and innovative materials" and asserts that these methods and materials "place [it] beyond the offerings of most dental laboratories." The petitioner states that it uses complex and unique processes and techniques that can "only be performed by individuals with specialized education and training." Moreover, in the appeal, counsel claims that the beneficiary will serve in "a senior dental technician" position. According to the petitioner, the beneficiary will "independently manage and supervise a second laboratory, which we plan to open." Counsel further states that the beneficiary will serve in an "advanced, specialized position" that requires "advanced knowledge of implants and zirconia." The petitioner and counsel claim that the position requires "specialized abilities" and "specialized knowledge to work in [the petitioner's] unique, advanced setting." Counsel repeatedly states that these duties require education and training beyond what is required for entry into the average dental technician position. Moreover, according to counsel, the supervisory and training duties of the proffered position require "experience . . . beyond what an entry level employee possesses." The petitioner also claims that the required specialized training necessary for the position "is rare to find" and is a "critical need" for its business. Counsel claims that the beneficiary's will be responsible for "the management of a laboratory." In the appeal, the petitioner and counsel repeatedly assert that the proffered position involves advanced, complex, unique and/or specialized duties.

In this regard, these assertions are questionable when reviewed in connection with the LCA submitted with the Form I-129 petition. The AAO notes that the petitioner provided an LCA in support of the instant petition that designated the occupational classification for the position under "Dental Laboratory Technician" at a Level 1 (entry level) wage.

Wage levels should be determined only after selecting the most relevant *O*NET* occupational code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.[3] Prevailing wage determinations start with an entry level wage and progress to a wage that is commensurate with that of a Level 2 (qualified), Level 3 (experienced), or Level 4 (fully competent worker) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties.[4] DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels.[5] A Level 1 wage rate is described by DOL as follows:

> **Level 1** (entry) wage 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.

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[3] *See* DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf.

[4] A point system is used to assess the complexity of the job and assign the wage level. Step 1 requires a "1" to represent the job's requirements. Step 2 addresses experience and must contain a "0" (for at or below the level of experience and SVP range), a "1" (low end of experience and SVP), a "2" (high end), or "3" (greater than range). Step 3 considers education required to perform the job duties, a "1" (more than the usual education by one category) or "2" (more than the usual education by more than one category). Step 4 accounts for Special Skills requirements that indicate a higher level of complexity or decision-making with a "1"or a "2" entered as appropriate. Finally, Step 5 addresses Supervisory Duties, with a "1" entered unless supervision is generally required by the occupation.

[5] *See* DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf.

> 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.

See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf.

As discussed above, the petitioner and counsel repeatedly claim that the duties of the proffered position are advanced, complex, unique and/or specialized. However, the AAO must question the level of complexity, independent judgment and understanding required for the position, as the LCA is certified for a Level 1 entry-level position. The LCA's wage level indicates the position is actually a low-level, entry position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

This aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the petitioner's assertions regarding the demands and level of responsibilities of the proffered position. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As noted below, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(2) specifies that certification of an LCA does not constitute a determination that an occupation is a specialty occupation:

> Certification by the Department of Labor of a labor condition application in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation. The director shall determine if the application involves a specialty occupation as defined in section 214(i)(1) of the Act. The director shall also determine whether the particular alien for whom H–1B classification is sought qualifies to perform services in the specialty occupation as prescribed in section 214(i)(2) of the Act.

While 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 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 (emphasis added):

> 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.

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a valid LCA that corresponds to the claimed duties of the proffered position, that is, specifically, that corresponds to the level of work and responsibilities that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work and responsibilities in accordance with the requirements of the pertinent LCA regulations.

The petitioner's statements regarding the claimed level of complexity, independent judgment and understanding required for the proffered position are *materially inconsistent with the certification of* the LCA for a Level 1 entry-level position. This conflict undermines the overall credibility of the petition. The petitioner and counsel failed to provide any explanation for the inconsistencies in the record with regard to the wage level for the proffered position.

The AAO finds that, fully considered in the context of the entire record of proceedings, the petitioner failed to establish the nature of the proffered position and in what capacity the petitioner actually would employ the beneficiary. Thus, even if it were determined that the petitioner overcame the director's grounds for denying the petition (which it has not), the petition could still not be approved due to the petitioner's failure to submit an LCA that corresponds to the claimed duties of the proffered position and that is certified for the proper wage-level classification.

Moreover, upon review of the record of proceeding, the AAO notes that there is an additional issue that precludes the approval of the petition with regard to the petitioner's failure to submit an LCA that properly corresponds to the petition. More specifically, the LCA referenced on the Form I-129 petition was not certified by DOL.

On page 3 of the Form I-129, the petitioner reported that the corresponding LCA for the petition was LCA Case Number I-200-10085-353169. The AAO notes that each LCA has a unique identification number. A review of the Foreign Labor Certification (FLC) Data Center website indicates that the LCA referenced on the Form I-129 was submitted to DOL on March 26, 2010, but thereafter was denied on March 31, 2010.[6]

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[6] The Occupational Employment Statistics (OES) program produces employment and wage estimates for over 800 occupations. *See* Bureau of Labor Statistics, U.S. Department of Labor, on the Internet at *http://www.bls.gov/oes/* (visited June 26, 2012). The OES All Industries Database is available at the Foreign Labor Certification Data Center, which includes the Online Wage Library for prevailing wage determinations and the disclosure databases for the temporary and permanent programs. The Online Wage Library is accessible at *http://www.flcdatacenter.com/*.

The petitioner did not provide the LCA referenced on the Form I-129 petition to USCIS. Instead, the petitioner submitted an LCA with the Case Number [redacted] to USCIS. Thus, the LCA submitted to support the petition contains a different identification number than the LCA referenced on the Form I-129 (page 3).

As previously discussed, DHS (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b). Here, the LCA referenced on the Form I-129 petition was not certified by DOL, and the LCA submitted to USCIS by the petitioner does not correspond to the Form I-129 petition. For this reason as well, the petitioner has failed to establish eligibility for the benefit sought and the petition cannot be approved.

For efficiency's sake, the AAO hereby incorporates the above discussion and analysis regarding the inconsistencies and discrepancies in the record of proceeding as well as the material evidentiary deficiencies regarding the beneficiary's proposed employment into its analysis of each basis discussed below for dismissing the appeal.

The AAO will now address the director's determination that the proffered position is not a specialty occupation. Based upon a complete review of the record of proceeding, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes a specialty occupation.

To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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) states, in pertinent part, the following:

> *Specialty occupation* means an occupation which [(1)] requires 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 [(2)] requires 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, a proposed 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), U.S. Citizenship and Immigration Services (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 proffered 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.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO will first review the record of proceeding in relation 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 the normal minimum requirement for entry into the particular position.[7]

The petitioner stated that the beneficiary would be employed in a denture technician position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, the specific duties of the proffered 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 alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 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.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.[8] The petitioner asserts that the proffered position falls under the occupational category "Dental Laboratory Technicians." The AAO reviewed the chapter of the *Handbook* entitled "Dental Laboratory Technicians," including the sections regarding the typical duties and requirements for this occupational category.[9] However, the *Handbook* does not indicate that "Dental Laboratory Technicians" comprise an occupational group that categorically requires at least a bachelor's degree, or the equivalent, in a specific specialty.

The subchapter of the *Handbook* entitled "How to Become a Dental Laboratory Technician" states the following about this occupation:

> There are no formal education or training requirements to be a dental laboratory technician, but most have at least a high school diploma. Technicians usually learn their skills on the job.
>
> Training
> Most dental laboratory technicians learn through on-the-job training. They usually begin as helpers in a laboratory and learn more advanced skills as they gain

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[7] The AAO acknowledges that the petitioner and counsel do not claim that the proffered position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). Nevertheless, the AAO reviewed the record of proceeding and analyzed the evidence under this criterion.

[8] All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site http://www.bls.gov/OCO/.

[9] U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Dental Laboratory Technicians, on the Internet at http://www.bls.gov/ooh/production/dental-laboratory-technicians.htm#tab-1 (last visited June 26, 2012).

experience. For example, technicians may begin by pouring plaster into an impression to make a model. As they become more experienced, they may progress to more complex tasks, such as making porcelain crowns and bridges. Because all laboratories are different, the length of training varies.

Education
A high school diploma is the standard requirement for getting a job as a dental laboratory technician. High school students interested in becoming dental laboratory technicians should take courses in science, mathematics, computer programming, and art.

Formal education programs are available for dental laboratory technicians through vocational schools, community colleges, and universities. Most programs take 2 years to complete, though there are a few 4-year programs available. All programs have courses in dental anatomy, dental ceramics, dentures, and partial dentures. As laboratories continue to manufacture parts for dental appliances using advanced computer programs, it may be helpful for technicians to take courses in computer skills and programming.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Dental Laboratory Technicians, on the Internet at http://www.bls.gov/ooh/production/dental-laboratory-technicians.htm#tab-4 (last visited June 26, 2012).

As previously discussed, the petitioner indicated in the LCA that its proffered position is a comparatively low, entry-level position relative to others within the occupation. Upon review of chapter on dental laboratory technicians, the AAO finds that the *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty is normally required for this occupational category. Rather, the *Handbook* begins by stating that there are no formal education or training requirements to be a dental laboratory technician. The *Handbook* states that most dental laboratory technicians possess at least a high school diploma and that employees usually learn their skills on the job. The *Handbook* reports that formal education programs are available through vocational schools, community colleges, and universities. While the *Handbook*'s narrative indicates that there are a few four-year programs available, the *Handbook* also specifically states that most programs for dental laboratory technicians take two years to complete. The *Handbook* does not support a claim that the proffered position falls under an occupational group that categorically qualifies as a specialty occupation.

It is incumbent upon the petitioner to provide persuasive evidence that the proffered position qualifies as a specialty occupation under this criterion, notwithstanding the absence of *Handbook* support on the issue. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." 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)).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that there is a categorical requirement for at least a bachelor's degree in a specific specialty. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that position is one for which a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

Next, the AAO reviews the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*). This prong requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

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

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. The record of proceeding does not contain any evidence from the industry's professional association to indicate that a degree is a minimum entry requirement.

The record of proceeding contains two job announcements by a company called Prodents. Additionally, the petitioner submitted two opinion letters from individuals whom counsel claims are experts in the field of dental technology. However, upon review of the evidence, the AAO finds that the petitioner's reliance on the job announcements and opinion letters is misplaced.

In the Form I-129, the petitioner stated that it is a dental laboratory with 12 employees. The petitioner claims that its gross annual income is approximately $1 million and that its net annual income is approximately $500,000. The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 339116.[10] The AAO notes that the NAICS code 339116 is designated for "Dental Laboratories."[11] The U.S. Department of Commerce, Census Bureau website states that this industry "comprises establishments primarily

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[10] According to the U.S. Census Bureau, the North American Industry Classification System (NAICS) is used to classify business establishments according to type of economic activity, and each establishment is classified to an industry according to the primary business activity taking place there. *See* http://www.census.gov/eos/www/naics/ (last viewed June 26, 2012).

[11] U.S. Dep't of Commerce, U.S Census Bureau, 2007 NAICS Definition, 339116 – Dental Laboratories, on the Internet at http://www.census.gov/cgi-bin/sssd/naics/naicsrch (last viewed June 26, 2012).

engaged in manufacturing dentures, crowns, bridges, and orthodontic appliances customized for individual application."[12] For the petitioner to establish that an advertising organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Such factors 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 (to list just a few elements that may be considered).

The AAO notes that the petitioner did not provide any independent evidence of how representative the job advertisements are of the particular advertising employer's recruiting history for the type of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the employer's actual hiring practices. Upon review of the documents, the AAO finds that they do not establish that a requirement for a bachelor's degree, in a specific specialty, is common to the petitioner's industry in similar organizations for parallel positions to the proffered position.

The petitioner submitted two job postings from the company Prodents. The advertisements are for an "Experienced Dental Ceramist." The advertisements do not contain sufficient information regarding the nature or type of organization and/or information regarding its business operations. Consequently, the record is devoid of sufficient information regarding the advertising organization to conduct a legitimate comparison of the organization to the petitioner. The petitioner failed to supplement the record of proceeding to establish that the advertising organization is similar to it. Therefore, the advertisements are outside the scope of consideration for this criterion, which encompasses only organizations similar to the petitioner. Thus, further review of the postings is not necessary. Moreover, the AAO notes that the advertisements state "Required experience: CDT or Bachelor's Degree in Dental Technician." Thus, the advertising employer requires candidates to be qualified as a CDT [Certified Dental Technician] or possesses a bachelor's degree in dental technician.

The AAO notes that the *Handbook* states that the National Board for Certification in Dental Laboratory Technology (NBCCERT) offers certification as a CDT. According to the NBCCERT website, the qualifications for individuals applying to take the CDT exam include that (1) the candidate must be a high-school graduate (or the documented equivalent) and possess at least five years of on-the-job training or experience in dental technology; or (2) the candidate must have graduated from a two-year accredited dental laboratory technician program and possess two years of practical experience in addition to (and not concurrent with) the course of study.[13]

Thus, the advertising employer's requirements for its position include less than a bachelor's degree. The documentation submitted by the petitioner does not indicate that at least a bachelor's degree, or the equivalent, in a specific specialty is required for the advertised position.

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[12] *Id.*

[13] *See* National Board for Certification in Dental Laboratory Technology, "Become a CDT or RG", on the Internet at http://www.nbccert.org/ (last visited June 26, 2012).

As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in the job postings is not necessary. That is, not every deficit has been addressed.

It must be noted that even if all of the job postings indicated that 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 fails to demonstrate what statistically valid inferences, if any, can be drawn from two advertisements (by the same employer, apparently for one position) with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position required a bachelor's or higher degree in a specific specialty or its equivalent for an organization that is similar to the petitioner, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not normally require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

The petitioner and counsel claim that a degree requirement is common to the industry in parallel positions among similar organizations. In support of this conclusion, the petitioner provided two opinion letters. Both letters are from owners of dental labs. The AAO notes that some of the phrases in the letters match each other virtually verbatim.

It must first be noted that the letters are devoid of sufficient information regarding the organizations to conduct a meaningfully substantive comparison of the business operations to the petitioner. Furthermore, the petitioner failed to provide any supplemental information to establish that the organizations are similar to the petitioner. Moreover, the writers did not provide any evidence to establish that they currently or in the past employed individuals in parallel positions to the proffered position. Thus, from the onset, this prong of the regulations has not been established by the writers.

The writers of the letters claim that "a bachelor's degree in dental technology is highly sought after and considered the minimum requirement for a position in the dental industry." However, upon review of the letters, the AAO observes that there is an inadequate factual foundation to support the writers' opinions, and the opinions are not in accord with other information in the record of proceeding.

Both writers claim to be qualified to give opinions on the dental technology industry based upon their individual work as "an employee, a manager, and an owner" in the dental technology industry for many years. However, it is not clear that the writers are authorities in the area in which they pronounce their opinions, namely, the industry hiring requirements for dental technicians in organizations similar to the petitioner. A review of the opinion letters indicates that the writers did

not identify the specific elements of their knowledge and experience that they may have utilized to reach their conclusions. The writers do not provide any evidence in support of their opinions regarding the educational requirements for the occupation (e.g. cite studies, surveys, empirical evidence). They have not provided a sufficient factual basis by which one may reasonably conclude that their opinions are well founded and reliable as they are not supported by independent, objective evidence demonstrating the manner in which they reached such conclusions.

Additionally, the conclusions reached by the writers lack the requisite specificity and detail. For example, there is no evidence that they have visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. It is unclear whether or not they have published any work pertinent to the industry's *educational requirements* for dental technicians (or parallel positions) to work in organizations similar to the petitioner, or been recognized by professional organizations as an authority on those requirements. As the writers have not established their credentials as recognized authorities on the hiring standards for this occupation, their opinions in this area merit no special weight. Upon review, the opinion letters are not probative evidence to establish that the proffered position is a specialty occupation.

Furthermore, the writers fail to give sufficient details about the complexity of the duties of the occupation to substantiate their conclusions. The very fact that the writers attribute a degree requirement to such a generalized treatment of the occupation undermines the credibility of their opinions. They have not provided sufficient facts that would support the contention that the proffered position requires at least a bachelor's degree in a specific specialty. They do not provide a substantive, analytical basis for their opinions.

The AAO may, in its discretion, use as advisory opinions or statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International,* 19 I&N Dec. 791 (Comm. 1988). As a reasonable exercise of its discretion the AAO discounts the opinion letters as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Thus, based upon a complete review of the record, the petitioner has not established that at least a bachelor's degree in a specific specialty is the norm for entry into positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The AAO 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 the particular position proffered in this petition is "so complex or unique" that it can be performed only by an individual with at least a bachelor's degree in a specialty occupation.

The petitioner and counsel claim that the duties of the proffered position are complex and/or unique and they assert that the petitioner has provided sufficient documentation to satisfy this prong through the evidence submitted. However, a review of the record of proceeding indicates that the

petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail any particular level of complexity or uniqueness such that they can only be performed by an individual with at least a bachelor's degree in a specific specialty. The petitioner provided a generic description of the tasks of the proffered position with the Form I-129 petition that fails to adequately establish the complexity or uniqueness of any specific duties of the actual work that the beneficiary would perform. Moreover, the AAO here incorporates by reference and reiterates it earlier discussion that the LCA indicates the proffered position is a low-level, entry position relative to others within the occupation. Based upon the wage-level, the beneficiary is only required to have a basic understanding of the occupation. Furthermore, based upon the petitioner's chosen wage-level, the beneficiary is expected to perform routine tasks that require limited, if any, exercise of independent judgment. Additionally, the beneficiary's work will be closely supervised and monitored and she will receive specific instructions on required tasks and expected results. Her work will be closely monitored and reviewed for accuracy.

Even though the petitioner and counsel claim that the duties of the proffered position are so complex or unique that a bachelor's degree is required, the record does not sufficiently demonstrate how the duties of the proffered position require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it claims are so complex or unique. While a few related courses may be beneficial in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position.

The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

Consequently, as the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, 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).

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, or the equivalent, in a specific specialty for the position. The AAO usually reviews the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

To merit approval of the petition under this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. Further, it should be noted that the

record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. In the instant case, the record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty.

While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS 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 occupation as 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 384. In other words, if a petitioner's degree requirement is only symbolic and the proffered 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* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

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

In the instant case, the director sent an RFE on August 16, 2010. In response to the RFE, the petitioner submitted three advertisements that it placed for the position of dental laboratory technician that were published in September 2010. Thus, the advertisements were published after the director's RFE and do not pre-date the filing of the petition. The AAO notes that the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). Evidence that the petitioner creates after the director issues an RFE is not considered independent and objective evidence. Necessarily, independent and objective evidence would be evidence that is contemporaneous with the event to be proven and existent at the time of the

director's notice. Therefore, the advertisements are not probative evidence establishing that the petitioner has satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Moreover, the petitioner's advertisements state that a "Bachelor's Degree in Dental Tech, Medical Tech, or related field strongly preferred, but will consider candidates with Associate's Degree and significant experience." The petitioner states a preference (not a requirement) for a bachelor's degree in various fields. Further, the petitioner does not quantify its acceptance of an associate's degree and significant experience. That is, the petitioner does not state that a candidate must possess *the equivalent* of at least a bachelor's degree in a specific specialty. Accordingly, the advertisements do not establish that candidates must possess at least a baccalaureate degree, or its equivalent, in a specific specialty. Thus, for this reason as well, the advertisements do not establish that the petitioner normally requires at least a bachelor's degree, or its equivalent, in a specific specialty for the proffered position.

The petitioner also submitted documentation regarding the credentials of two individuals. The petitioner claims that these individuals work in the petitioner's laboratory in similar positions to the proffered position.

The petitioner stated in the Form I-129 petition that it has 12 employees and that it was established in 1985 (approximately 25 years prior to the H-1B submission). The petitioner did not provide the number of people it currently employs or previously employed to serve in the position of denture technician. Consequently, it cannot be determined how representative the educational and work credentials of two individuals are of the petitioner's normal hiring practices. Further, the petitioner failed to provide employment records or other evidence to establish that the individuals whose credentials it submitted are employed by the petitioner.

Moreover, the petitioner failed to provide the job duties and day-to-day responsibilities of any of the positions that it claims are similar to the proffered position. The petitioner did not indicate the knowledge and skills required for the positions, or provide any information regarding the complexity of the job duties, independent judgment required or the amount of supervision received. As a result, it is impossible to determine if the positions are similar or related to the proffered position.[14]

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[14] For the reasons discussed above, the credentials of the two individuals are not persuasive in establishing that the petitioner normally requires at least a bachelor's degree, or the equivalent, in a specific specialty for the proffered position. Accordingly, the AAO will only briefly discuss the credentials submitted (and will further note that not every deficit has been discussed.) The petitioner submitted evidence to establish that Mr. [redacted] was granted an associate's degree in 1990 and then served as a senior dental technician from 1990 to 1999 with another employer. This suggests that at least a bachelor's degree in a specific specialty or the equivalent is not normally required for entry to the occupation. Moreover, the documentation provided is insufficient to establish that Mr. [redacted] possesses the equivalent of a bachelor's degree. For example, the work certificate is not sufficiently detailed to determine his primary and essential responsibilities or to establish the level of progressively responsible experience (if any), knowledge and skills required for the position, the complexity of the job duties, independent judgment required, the amount of supervision received, etc.

As previously noted, simply going on record without providing adequate supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

Although the petitioner claims that the individuals serve in similar positions to the proffered position, the petitioner failed to submit probative evidence to establish that the individuals are employed in the same or similar position as the proffered position. Thus, the documentation is not persuasive in establishing the petitioner's normal recruiting and hiring practices for denture technician positions.

Upon review of the record, the petitioner has not provided sufficient evidence to establish that it *normally* requires at least a bachelor's degree, or the equivalent, in a specific specialty for the proffered position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

The petitioner and counsel claim that the nature of the specific duties of the proffered position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. However, the discrepancies and inconsistencies in the record of proceeding, with regard to the services the beneficiary will perform and the nature of the position, lead the AAO to conclude that the assertions of the petitioner and counsel are not credible. The AAO incorporates its earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a low, entry-level position relative to others within the occupation. The petitioner designated the position as a Level 1 position (out of four possible wage-levels), which DOL indicates is appropriate for "beginning level employees who have only a basic understanding of the occupation."[15] Without further probative evidence, it is simply not credible that the petitioner's proffered position is one with specialized and complex duties as such a position would likely be classified at a higher wage-level. The petitioner has not provided sufficient probative evidence 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.

Upon review of the record, the petitioner has not met its burden of proof to establish that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The AAO, therefore, concludes that the proffered position failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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[15] *See* DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf.

For the reasons related in the preceding discussion, the petitioner has failed to establish that it has satisfied any of the additional, supplement requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision.[16]

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 143, (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd.* 345 F.3d 683.

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.

ORDER: The appeal will be dismissed. The petition will be denied.

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[16] As previously mentioned, the AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143. However, as the petition cannot be approved for the reasons discussed in the decision, the AAO will not discuss the additional issues or deficiencies in the record of proceeding that it observes.