



U.S. Citizenship
and Immigration
Services

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Date: **JUN 12 2012** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
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:



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 with the field office or service center that originally decided your case by filing a 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 Director, California Service Center, 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 be denied.

The petitioner describes itself as a children's learning center for preschool-aged children that seeks to employ the beneficiary as an education administrator. The petitioner therefore endeavors to classify the beneficiary 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).

The director denied the petition, finding that the proffered position is not a specialty occupation. On appeal, counsel for the petitioner contends that the director's findings were erroneous, and submits a brief and additional evidence in support of this contention.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

Specialty occupation means 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), 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.

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

The petitioner, a children’s learning center, was founded in 2009 and claims to employ five persons. In a letter of support dated July 6, 2009, it claimed to require the services of the beneficiary as its education administrator, claiming that it was “a start-up organization that provides Japanese child care services to surround[ing] areas,” and would provide care for children ranging in age from 18 months to 5 years. The petitioner further stated:

In the field of education administration, especially positions involving heavy administrative duties, Education Administrator must have a good academic training and communication skills. At this time, we are in need of an Education Administrator who will be assisting the principal in managing various administrative works including policies enforcement; parents program implementation, handle relations with parents, capital budgeting, and most importantly, the career development of our staff. Our Education Administrator will design and implement specialized training programs for our staff members.

In addition, the petitioner described the proffered position as follows:

Applies knowledge of education and personal communication skills to assist the executive director and vice president to set educational standards and goals, and establish policies and procedures in order to carry them out. Manages various administrative works, including work on personnel policies, budgeting policies, curriculum development, fund raising events, and parenting issues. Other responsibilities include administering record keeping; monitoring students' educational progress; training and motivating teachers and staff; managing guidance and other student services; handling relations with parents, prospective and current students, employers, and the community.

More specifically, Education Administer may authorize the purchases of instructional materials and teaching aids, such as books, toys, and games designed to simulate learning in the child care center; perform interviews and recommend hiring of teaching and service staff; confer with parents regarding facility activities, policies, and enrollment procedures; and confer with teaching staff regarding child's behavioral or learning problems, and recommend methods of modifying inappropriate behavior and encouraging learning experiences; review and evaluate facility activities to ensure conformance with state and local regulation; and may arrange medical attention for ill or injured child in accordance with parental instructions.

The petitioner concluded by stating that the proffered position required an individual who possessed at least a master's degree in education, education administration, or a related field.

On October 15, 2009, the director issued an RFE, which requested a more detailed description of the work to be performed by the beneficiary as well as information pertaining to the beneficiary's qualifications. The director specifically requested information pertaining to the beneficiary's specific job duties and the percentage of time devoted to such duties, as well as an organizational chart demonstrating the composition of the petitioner's company. The director also requested evidence such as documentation showing that similar businesses in the petitioner's industry imposed the same requirements for educational administrators.

In response, the petitioner submitted a letter dated November 25, 2009 that addressed the director's queries. The petitioner categorized the beneficiary's proposed duties into five areas, and indicated the percentages of time the beneficiary would devote to each area as follows:

- Educational program issues – 10 hours per week
- Student issues – 10 hours per week
- Facility area – 5 hours per week
- Communication with parents – 5 hours per week
- Public relations – 10 hours per week

The petitioner also provided additional evidence in the form of job postings, and further indicated that the proffered position was complex and specialized because the petitioner provided Japanese education programs.

On February 16, 2010, the director denied the petition. Specifically, the director concluded that the record did not establish that the proffered position met any of the four alternative criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel contends that the director's findings were erroneous, and asserts that the director ignored evidence submitted in response to the RFE. Counsel also asserts that the director penalized the petitioner for being a new entity and thus being unable to establish a hiring history for the proffered position. Counsel concludes that the petition should be approved.

USCIS routinely relies on the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook* when determining if a position qualifies as a specialty occupation. As a preliminary matter, the AAO notes that subsequent to the director's denial, a revised edition of the *Handbook* was released. Upon review, it appears that the category of "Education Administrator," to which the director cited in her February 16, 2010, no longer exists. Therefore, the AAO will review the *Handbook* in order to make an independent determination of the proffered position's classification.

The petitioner indicates that the proffered position is that of an education administrator in a child care/preschool setting. A review of the occupational category entitled "Preschool and Childcare Center Directors" reveals a number of similarities to the proffered position, and the AAO therefore finds this category to be most akin to that of the petitioner's description of the proffered position. Specifically, the *Handbook* describes this occupational category as follows:

Preschool and childcare center directors typically do the following:

- Supervise preschool teachers and childcare workers
- Establish policies and communicate them to staff and parents
- Provide training and professional development opportunities for staff
- Assist staff in resolving conflicts between children and communicating with parents
- Meet with parents and staff to discuss students' progress
- Establish budgets and set fees for programs

- Ensure facilities are maintained and cleaned according to state regulations
- Hire and train new staff members
- Develop educational programs and set educational standards

Some preschools and childcare centers are independently owned and operated. In these facilities, directors must follow the instructions and guidelines of the owner. Sometimes, directors own the facilities, so they decide how to operate the facilities.

Other preschools and childcare centers are part of a national chain or franchise. The director of a chain or franchise must also ensure that the facility meets its parent organization's standards and regulations.

In addition, some preschools and childcare centers, such as Head Start programs, receive state and federal funding. Directors of these schools and centers must ensure that their programs, staff, and facilities meet state and federal guidelines. For example, they must ensure that the staff meets the educational requirements set by the Department of Health and Human Services.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Preschool and Childcare Center Directors, <http://www.bls.gov/ooh/management/preschool-and-childcare-center-directors.htm#tab-2> (last visited May 22, 2012). According to the *Handbook*, preschool and childcare center directors supervise preschool teachers and childcare workers, establish policies and communicate them to staff and parents, meet with parents and staff to discuss students' progress, establish budgets and set fees for programs, and develop educational programs. All of these duties are akin to those of the beneficiary as described by the petitioner.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), it must be established that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position. A review of the *Handbook's* education and training requirements for this occupation, however, indicates that it does not require a bachelor's degree in a specific specialty or its equivalent for entry into the position in the United States. Specifically, according to the *Handbook*, the educational requirements of a preschool and childcare center director are as follows:

Most states require preschool and childcare center directors to have at least a high school diploma, but some require an associate's or bachelor's degree in early childhood education. These degree programs teach students about child development, strategies to teach young children, and how to observe and document children's progress. Employers may prefer candidates who have a degree in early childhood education or at least some postsecondary education in early childhood education.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Preschool and Childcare Center Directors, <http://www.bls.gov/ooh/management/preschool-and-childcare-center-directors.htm#tab-4> (last visited May 22, 2012). The *Handbook* does not report that a preschool or childcare center director requires at least a bachelor's degree in a specific specialty for

entry into the occupation in the United States. While it indicates that some employers may prefer candidates who possess a bachelor's degree in early childhood education, most states require only a high school diploma.¹

With regard to the state of employment in this matter, i.e., California, it only requires the child care center director to have completed one of the following prior to employment:

- (1) High school graduation or GED; completion, with passing grades, of 15 semester or equivalent quarter units as specified in (h)(1)(A) and (h)(1)(B) below at an accredited or approved college or university; and at least four years of teaching experience in a licensed child care center or comparable group child care program.
 - (A) Three of the 15 units required in (h)(1) above shall be in administration or staff relations.
 - (B) Twelve of the 15 units required in (h)(1) above shall include courses that cover the general areas of child growth and development, or human growth and development; child, family and community, or child and family; and program/curriculum.
- (2) An associate of arts degree from an accredited or approved college or university with a major or emphasis in early childhood education or child development; and at least two years of teaching experience in a licensed child care center or comparable group child care program.
 - (A) Three semester or equivalent quarter units shall be in administration or staff relations.
- (3) A bachelor's degree from an accredited or approved college or university with a major or emphasis in early childhood education or child development and at least one year of teaching experience in a licensed child care center or comparable group child care program.

¹ It is noted that this conclusion is consistent with the *Handbook's* prior "Education Administrators" chapter, which stated the following:

Child care directors who supervise private programs are usually not required to have a degree; however, most States require a preschool education credential, which often includes some postsecondary work.

- (A) Three semester or equivalent quarter units shall be in administration or staff relations.
- (4) A Child Development Site Supervisor Permit or a Child Development Program Director Permit issued by the California Commission on Teacher Credentialing.

Title 22, Div. 12, Chpt. 1, Art. 6, § 101215.1 of the California Child Care Center General Licensing Requirements. Thus, the California state minimum requirements of a high school diploma and 15 postsecondary units or credits are consistent with and generally support the *Handbook's* conclusion that a bachelor's degree in a specific specialty is not required for entry into this occupation.

On appeal, counsel submits articles from the National Resource Center for Health and Safety in Child Care (NACCRRRA). Specifically, these articles indicate that quality child care is associated with degreed child care professionals. While a degree in education or another closely related field may be preferred by employers and/or parents, a degree in a specific specialty is not required for entry into the position. Therefore, while these articles express an opinion with regard to the varying levels of childcare children may receive based on the educational backgrounds of staff and the child-to-staff ratio, they do not establish that a degree in a specific specialty is required to perform the duties of an education administrator in a preschool or childcare center.

Moreover, counsel acknowledges this fact on page 6 of her brief, when she states that “a bachelor’s degree is becoming the norm for this position,” recognizing that it is not yet the norm. As discussed above in the review of the *Handbook's* section on educational requirements for preschool and childcare center directors, a bachelor’s degree or higher in a specific specialty is not required for entry into this occupational category. Therefore, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position under the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 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, 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 response to the RFE, the petitioner submitted several postings from www.careerbuilder.com. Three postings were initiated by “Teachers-Teachers,” which advertised openings for teachers, administrators, and other educational personnel in school districts throughout Virginia, Washington D.C., Maryland, Oklahoma, and Nevada. These postings, however, are insufficient to establish an industry-wide standard in this matter. These postings are for educational personnel in the public school systems of the states identified above, and not for private preschool or childcare centers such as that of the petitioner. As a result, these postings cannot be considered postings from organizations

similar to the petitioner. Moreover, these postings simply require a four year degree, and do not state that a degree in a specific specialty is required.

The job postings for the [REDACTED] regional director are also inapposite for two reasons. First, the advertised positions are for regional directors and not for the director of a single preschool. Second, it appears the duties include management of state preschools. Thus, it cannot be found that these postings are for parallel positions in similar organizations.

The petitioner also submitted a posting by [REDACTED] for the position of Course and Program Administrator. Based on the description of duties, which includes generating reports for sales and operations, it does not appear to be parallel to the proffered position. Moreover, it appears that the employer is a privately held company engaged in educational resources for the business world, and not a preschool or childcare center. Consequently, this posting has little probative value.

In addition, the petitioner submitted a posting for an Elementary Administrator in a nonpublic school, posted by The Help Group. This posting is also insufficient to establish an industry-wide standard, since it applies to an elementary school position and not one in a preschool or childcare center. Moreover, even if it was determined to be in an organization similar to that of the petitioner, the posting simply requires a four year degree, and not a degree in a specific specialty. Similarly, the posting for the director of [REDACTED] appears to require at most an associate degree and two-years of relevant experience, which is not equivalent to a bachelor's degree in a specific specialty.

Finally, the petitioner submitted a document from [REDACTED], an alleged competitor which it claims is reflective of a standard degree requirement for the position of education administrator. This document includes a job description for the position of Education Administrator which is identical to the position description included in the petitioner's July 6, 2009 letter of support. Since the information contained in this document appears to be taken directly from the petitioner's letter of support, the AAO cannot afford any evidentiary weight to this evidence. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).²

² Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from this one job description from Suika Education, Inc. with regard to determining the common educational requirements for entry into parallel positions in similar private, preschool 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").

For the reasons set forth above, the petitioner has failed to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may submit evidence to establish that the duties of the position are so complex or unique that only an individual with a degree in a specific specialty can perform the duties associated with the position. The AAO observes that the petitioner has indicated that the beneficiary's educational background, Japanese language skills, and experience in the industry will assist him in carrying out the duties of the proffered position; however, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. The petitioner does not explain or clarify which of the duties, if any, of the proffered position are so complex or unique as to be distinguishable from those of similar but non-degreed employment. Simply claiming that the center will focus on Japanese enrichment is insufficient to qualify this position as a specialty occupation. The petitioner has thus failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The petitioner indicated that this is a newly-formed school that did not previously employ an education administrator. Therefore, since the petitioner has not previously hired degreed individuals to fill the proffered position in the past, the petitioner cannot satisfy this criterion.

Although the petitioner claims that the proffered position requires the incumbent to possess at least a master's degree in education, education administration, or a closely related field, this claim is not persuasive, since the record does not document that the duties of the proffered position require a baccalaureate or higher level of education to perform them. In addition, the AAO acknowledges counsels assertion on appeal that it only employs degreed individuals to teach and manage its program. However, 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 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 required the individual to have a baccalaureate or higher degree. *See Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, 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.

As such, even if the [REDACTED] document were reliable, it cannot be found that this one job description which has been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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.

The petitioner and counsel simply provide their own unsupported opinions with regard to the qualifications necessary for an education administrator to successfully function in the proffered position. Moreover, the description of the duties of the proffered position does not specifically identify any tasks that are so specialized or complex that only a specialty-degreed individual could perform them. The fact that knowledge of Japanese language and culture is important does not establish that the position is more specialized or complex than other similar but non-specialty-degreed employment.

On appeal, counsel asserts that the nature of the petitioner's operations and the job duties of the proffered position must be considered when determining whether the position is a specialty occupation. However, as discussed above, both the director and the AAO have reviewed the nature of the petitioner's business. As evidenced by the organizational chart submitted in response to the RFE, the petitioner is a start-up daycare facility with a president and four instructors. As discussed previously, the description of duties provided equates to the *Handbook's* description of duties for a preschool/childcare center director, an occupation that does not require a bachelor's degree in a specific specialty. The petitioner provides no other evidence to demonstrate that the petitioner's business and the beneficiary's position therein is more specialized or complex than other administrator positions in similar organizations.

Relative specialization and complexity have not been sufficiently developed for the proffered position and, as such, the evidence of record does not establish that this position is significantly different from other preschool education administrator positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. Consequently, to the extent that they are depicted in the record, the duties have not been demonstrated as being so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).³

³ Counsel argues on appeal that the proffered position qualifies as a specialty occupation on the basis that its duties are so specialized and complex. However, the duties as described lack sufficient specificity to distinguish the proffered position from other preschool administrator / director positions for which a bachelor's or higher degree in a specific specialty, or its equivalent, is not required to perform their duties.

Moreover, the petitioner has designated the proffered position as a Level I position on the submitted Labor Condition Application (LCA), indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See Employment and Training Administration (ETA), Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs (Rev. Nov. 2009). Therefore, despite the errors in the LCA discussed in greater detail *infra*, it is

The petitioner has failed to establish that it has satisfied any of the criteria 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.

Beyond the decision of the director, the petition must also be denied due to the petitioner's failure to provide a certified LCA that corresponds to the petition. Specifically, the LCA submitted in this matter was certified for SOC code 11-9039.00, "Education Administrators, All Other." The job as described by the petitioner, however, is classified under SOC code 11-9031.00, "Education Administrators, Preschool and Childcare Center/Program." As such, the petitioner was required to provide at the time of filing an LCA certified for occupation code 11-9031.00, not 11-9039.00, in order for it to be found to correspond to the petition.

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 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 (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 has been certified for the proper occupational classification, and the petition must be denied for this additional reason.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.

simply not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Again, 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. at 591-92.