

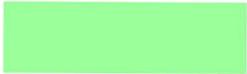


U.S. Citizenship
and Immigration
Services

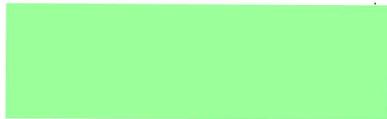
(b)(6)



DATE: **FEB 04 2013**

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:

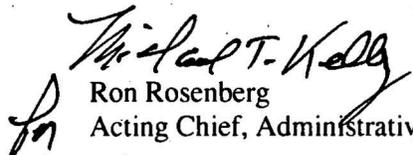


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) 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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). 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 July 5, 2011. On the Form I-129 visa petition, the petitioner describes itself as an electricity and gas consulting business established in 1991, with five employees. In order to employ the beneficiary in what it designates as a business manager 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).

The director denied the petition on October 17, 2011, 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. Counsel for the petitioner filed a motion to reopen and reconsider. The director granted the motion to reopen and reopened the petition. However, the director ultimately denied the petition on February 9, 2012, 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. The petitioner filed an appeal of the decision on March 13, 2012.

On appeal, counsel for the petitioner asserts that the director's basis for denial of the petition on the specialty occupation issue was erroneous. In support of these assertions, the petitioner submitted a brief.

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 petitioner's response to the RFE; (4) the director's notice of decision denying the petition; (5) the petitioner's Form I-290B (Notice of Motion) and supporting materials; (6) the director's decision on the motion; and (7) the petitioner's Form I-290B (Notice of Appeal) and supporting materials. 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's decision 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, and the petition will be denied.

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 corresponds to the petition. For this additional reason, the petition may not be approved. This is considered an independent and alternative basis for denial.¹

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this

¹ The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

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

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

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) 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. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). 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 directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

In this matter, the petitioner indicated in the Form I-129 and supporting documentation that it seeks the beneficiary's services in a position that it designates as a business manager to work on a full-time basis at a salary of \$42,000 per year. The petitioner submitted the following information regarding the proposed duties of the proffered position at Section 1 of page 11 of the Form I-129 Supplement H:

Shall perform the duties of a business manager for an electrical and gas utility consulting firm. Shall gather and organize information on problems or procedures implementing procedural and policy changes to improve operational efficiency. Shall evaluate and manage staff performance. Shall establish procedures for record keeping. Shall recruit and select office staff. Shall organize orientation and training of new staff members. Shall designe [sic] and implement office policies and procedures and ensure that they are being adhered to. Shall manage internal staff relations. Shall take in and analyze customer complaints and inquiries handling them as necessary. Shall ensure security and confidentiality of data.

In its support letter, dated June 29, 2011, the petitioner provided the following description of the proffered position:

[The beneficiary] shall gather and organize information on problems or procedures implementing procedural and policy changes to improve operational efficiency. She shall evaluate and manage staff performance. She shall establish procedures for record keeping. She shall recruit and select office staff. She shall organize orientation and training of new staff members. She will design and implement office policies and procedures and ensure that they are being adhered to. She shall manage internal staff relations. She shall take in and analyze customer complaints and inquiries handling them as necessary. She shall ensure security and confidentiality of data.

In addition, the petitioner claims that “[the beneficiary] qualifies for the position in that she has extensive education and experience in the fields of business management.” The petitioner submitted a copy of an educational credentials evaluation from International Education Evaluators demonstrating that the beneficiary possessed the U.S. equivalent to a Bachelor of Business Administration in Management degree.

The petitioner also submitted an LCA in support of the instant H-1B petition. The AAO notes that the LCA designation for the proffered position corresponds to the occupational classification of "Management Analysts" – SOC (ONET/OES Code) 13-1111.00, at a Level I wage.

Upon review of the documentation, the director found the evidence insufficient to establish eligibility for the benefit sought and issued a RFE on July 15, 2011. The petitioner was asked to submit probative evidence to establish that a specialty occupation position exists for the beneficiary. The director outlined the specific evidence to be submitted.

On October 7, 2011, counsel for the petitioner responded to the RFE and submitted, *inter alia*, (1) a revised list of the proffered position's job duties; (2) the petitioner's letter in response to the RFE; and (3) additional evidence.

In the letter submitted in response to the RFE, dated October 4, 2011, counsel for the petitioner stated the following:

We have included a more detailed job duties list. It is difficult to include the percentage of time which each job duty will take because that will vary depending on the needs of the company. The beneficiary is not directly supervising anyone but will be evaluating most positions in the company per the job duties described. The only person who will be directly supervising [the beneficiary] will be the President of the company. . . .

Along with the RFE response letter, counsel for the petitioner provided the following revised list of the duties of the proffered position:

- allocation [sic] of [sic] resources to enable task performance
- coordinate office staff activities to ensure maximum efficiency

- evaluate and manage staff performance
- recruit and select office staff
- organize orientation and training of new staff members
- design and implement filing systems
- ensure filing systems are maintained and current
- establish procedures for record keeping
- monitor record keeping
- ensure security and confidentiality of data
- design and implement office policies and procedures
- ensure office policies and procedures are being adhered to
- analyze and monitor internal processes
- implement procedural and policy changes to improve operational efficiency
- prepare operational reports and schedules to ensure efficiency
- monitor and maintain office supplies inventory
- maintain a safe and secure working environment
- handle customer inquiries and complaints
- manage internal staff relations
- invoice clients and manage accounts payable [and]
- ensuring [sic] that there is adequate supply of stationary and equipment.

In the petitioner's letter in response to the RFE, dated September 23, 2011, the petitioner states that it is writing "this letter in support of our contention that [the beneficiary,] while performing the duties of a [b]usiness [m]anager[,] is performing a [s]pecialty [o]ccupation which requires the skills which one obtains while completing the requirements for a bachelor[']s degree." The petitioner also states that "[t]he position which [the beneficiary] will be filling will help our company compete in the marketplace by making us more efficient at what we do." Finally, the petitioner states the following:

The proffered job is different than that of a normal office manager because our whole company premise is built on achieving maximum cost efficiency for our clients. We need [the beneficiary] in the position of business development specialist to ensure that our company operates efficiently in order to ensure maximum profitability.

On October 17, 2011, the director denied the petition. 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.

Counsel for the petitioner submitted a joint motion to reopen and motion to reconsider. The AAO notes that the regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." Based on the plain meaning of "new," a new fact is found to be evidence that

was not available and could not have been discovered or presented in the previous proceeding. The new facts submitted on motion must be material and previously unavailable, and could not have been discovered earlier in the proceeding. *Cf.* 8 C.F.R. § 1003.23(b)(3).

The documents submitted on motion include, *inter alia*, (1) an opinion letter regarding the position of "Business Development Specialist," dated November 11, 2011, by [REDACTED] Ph.D., Professor of Management, Entrepreneurship, and General Business at [REDACTED] (2) [REDACTED] resume; and (3) a letter, dated September 14, 2010, from [REDACTED] Ph.D., Professor and Chair, Department of Management, Entrepreneurship, and General Business, [REDACTED] confirming that (a) [REDACTED] is a Professor of Management, Entrepreneurship, and General Business at [REDACTED] (b) "there is a procedure at [REDACTED] to grant academic credit for prior life and work experience"; and (c) [REDACTED] is highly qualified to evaluate individuals' international educational and work backgrounds."

The director granted the motion and reopened the petition. The director reconsidered its decision but found that all of the grounds for the denial had not been overcome, and affirmed the denial of the petition on February 9, 2012.

On appeal, counsel for the petitioner asserts that the director's basis for denial of the petition on the specialty occupation issue was erroneous and contends that (1) the petitioner established by a preponderance of the evidence that the proffered position is a specialty occupation; (2) the director incorrectly equated the proffered position to a "consultant" and did not consider the evidence in the record; (3) the director dismissed an "expert opinion letter," and the director's statement with respect to the letter "does not express the state of the law, and moreover, does not refute the expert opinion of the affiant[;]" and (4) "the rest of the decision again only speculates as to the position's level of duties."

The issue before the AAO is whether the petitioner has provided sufficient evidence to establish that it would employ the beneficiary in a specialty occupation position. Applying the preponderance of the evidence standard, the AAO agrees with the director and finds that the evidence of record fails to establish that the position as described is more likely than not a specialty occupation.

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)(I), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position that is the subject of the petition.

On the Form I-129, the petitioner stated that the beneficiary would be employed in a business manager position. Notably, in its response to the RFE, the petitioner appears to have modified the title of the proffered position from "business manager" to "business development specialist." The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request

for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's RFE appears to indicate that the petitioner has materially changed the job title for the proffered position. Therefore, the AAO will only recognize the job title of "business manager" that was submitted with the initial petition.

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 a 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.² As previously discussed, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Management Analysts."

The AAO reviewed the chapter of the *Handbook* entitled "Management Analysts," including the sections regarding the typical duties and requirements for this occupational category³, but is not persuaded by the petitioner's claim that the proffered position of business manager falls under the occupational category for "Management Analysts." The duties of the proffered position, to the extent that they are depicted in the record of proceeding, indicate that the beneficiary may perform a few general tasks in common with this occupational group, but not that the beneficiary's duties would constitute a management analyst position, and not that they would require the range of specialized knowledge that characterizes this occupational category. It must be noted that the petitioner failed to provide probative documentary evidence to substantiate its claim that the beneficiary will primarily, or substantially, perform the same or similar duties, tasks and/or work

² The *Handbook*, which is available in printed form, may also be accessed on the Internet at <http://www.bls.gov/ooh/>. The AAO's references to the *Handbook* are to the 2012-2013 edition available online.

³ For additional information regarding the occupational category "Management Analysts," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Management Analysts, available on the Internet at <http://www.bls.gov/ooh/business-and-financial/management-analysts.htm#tab-1> (last visited January 2, 2013).

activities that characterize the occupation of management analysts. The totality of the evidence in this proceeding, including information and documentation regarding the proposed duties, the petitioner's business operations, and the petitioner's organizational structure, does not establish that the duties of the proposed position are substantially comparable to those of management analysts.

Nevertheless, even if the evidence of record had established the proffered position as falling within the "Management Analysts" occupational category – which is not the case – the AAO finds that the *Handbook* does not indicate that normally the minimum requirement for entry into management analyst positions is at least a bachelor's degree in a specific specialty, or its equivalent.

The "Management Analysts" chapter of the 2012-2013 edition of the *Handbook* describes the duties of such positions as follows:

Management analysts, often called management consultants, propose ways to improve an organization's efficiency. They advise managers on how to make organizations more profitable through reduced costs and increased revenues.

Duties

Management analysts typically do the following:

- Gather and organize information about the problem to be solved or the procedure to be improved
- Interview personnel and conduct on-site observations to determine the methods, equipment, and personnel that will be needed
- Analyze financial and other data, including revenue, expenditure, and employment reports, including, sometimes, building and using sophisticated mathematical models
- Develop solutions or alternative practices
- Recommend new systems, procedures, or organizational changes
- Make recommendations to management through presentations or written reports
- Confer with managers to ensure that the changes are working

Although some management analysts work for the organization that they are analyzing, most work as consultants on a contractual basis.

Whether they are self-employed or part of a large consulting company, the work of a management analyst may vary from project to project. Some projects require a team of consultants, each specializing in one area. In other projects, consultants work independently with the client organization's managers.

Management analysts often specialize in certain areas, such as inventory management or reorganizing corporate structures to eliminate duplicate and nonessential jobs. Some consultants specialize in a specific industry, such as healthcare or telecommunications. In government, management analysts usually specialize by type of agency.

Organizations hire consultants to develop strategies for entering and remaining competitive in the electronic marketplace.

Management analysts who work on contract may write proposals and bid for jobs. Typically, an organization that needs the help of a management analyst solicits proposals from a number of consultants and consulting companies that specialize in the needed work. Those who want the work must then submit a proposal by the deadline that explains how they will do the work, who will do the work, why they are the best consultants to do the work, what the schedule will be, and how much it will cost. The organization that needs the consultants then selects the proposal that best meets its needs and budget.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Management Analysts, available on the Internet at <http://www.bls.gov/ooh/business-and-financial/management-analysts.htm#tab-2> (last visited January 2, 2013).

The subchapter of the *Handbook* entitled "How to Become a Management Analyst" states the following about this occupational category:

Most management analysts have at least a bachelor's degree. The Certified Management Consultant (CMC) designation may improve job prospects.

Education

A bachelor's degree is the typical entry-level requirement for management analysts. However, some employers prefer to hire candidates who have a master's degree in business administration (MBA). In 2010, 28 percent of management analysts had a master's degree.

Few colleges and universities offer formal programs in management consulting. However, many fields of study provide a suitable education because of the range of areas that management analysts address. Common fields of study include business, management, accounting, marketing, economics, statistics, computer and information science, and engineering.

Analysts also routinely attend conferences to stay up to date on current developments in their field.

Certification

The Institute of Management Consultants USA, Inc. (IMC USA) offers the Certified Management Consultant (CMC) designation to those who meet minimum levels of education and experience, submit client reviews, and pass an interview and exam covering the IMC USA's Code of Ethics. Management consultants with a CMC designation must be recertified every 3 years. Management analysts are not required to get certification, but it may give jobseekers a competitive advantage.

Work Experience

Many analysts enter the occupation with years of work experience. Organizations that specialize in certain fields try to hire candidates who have experience in those areas. Typical work backgrounds include management, human resources, and information technology.

Advancement

As consultants gain experience, they often take on more responsibility. At the senior level, consultants may supervise teams working on more complex projects and become more involved in seeking out new business. Those with exceptional skills may eventually become partners in their consulting organization and focus on attracting new clients and bringing in revenue. Senior consultants who leave their consulting company often move to senior management positions at non-consulting organizations.

Id., Management Analysts, available on the Internet at <http://www.bls.gov/oooh/business-and-financial/management-analysts.htm#tab-4> (last visited January 2, 2013).

When reviewing the *Handbook*, the AAO must note again that the petitioner designated the prevailing wage for the proffered position as wage for a Level I (entry level) position on the LCA.⁴ This designation is indicative of a comparatively low, entry-level position relative to others within the occupation.⁵ That is, in accordance with the relevant DOL explanatory information on wage

⁴ Wage levels should be determined only after selecting the most relevant Occupational Information Network (O*NET) 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.

Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) 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. 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.

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.

⁵ The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is describes as follows:

levels, this Level I wage rate is only appropriate for a position in which the beneficiary is only required to have a basic understanding of the occupation and would be expected to perform routine tasks that require limited, if any, exercise of judgment. This wage rate also indicates that the beneficiary would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she would receive specific instructions on required tasks and expected results. In the instant case, this is further signified by the fact that the offered salary of \$42,000 per year to the beneficiary is approximately \$36,000 less per year than the 2010 median yearly wage of \$78,160 for management analyst positions (as listed in the *Handbook*).

The *Handbook* does not support the assertion that at least a bachelor's degree in a *specific specialty* is normally the minimum requirement for entry into this occupation. While the *Handbook* indicates that a bachelor's degree is the typical entry-level requirement, the *Handbook* does not indicate that a degree in a *specific specialty* is normally the minimum requirement for entry into these positions. The *Handbook* reports that many fields of study provide a suitable educational path for these positions. The *Handbook* identifies common areas of study to include business, management, accounting, marketing, economics, statistics, computer and information science, and engineering. The petitioner has not submitted any evidence to establish that the fields business, management, accounting, marketing, economics, statistics, computer and information science, and engineering encompass a specific specialty.

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as marketing and computer information science, would not meet the statutory requirement that the degree be "in the specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties.⁶ Section 214(i)(1)(B) of the Act (emphasis added).

Level I (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. 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.

Id.

⁶ Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, the AAO does not so narrowly interpret

Furthermore, the *Handbook* indicates that a common field of study for this occupation is business and that some employers prefer to hire candidates who have an advanced degree in business administration. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Therefore, the *Handbook's* recognition that a general, non-specialty "background" in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree in a specific specialty is not a normal, minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that working as a management analyst does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation, it does not support the proffered position as being a specialty occupation.

When, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies the criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. 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)).

As previously discussed, along with the joint motion to reopen and reconsider, counsel for the petitioner submitted a letter from [REDACTED] Ph.D., Professor of Management, Entrepreneurship, and General Business at [REDACTED] dated November 11, 2011, regarding the position of "Business Development Specialist." The letter is on [REDACTED] letterhead.

The AAO reviewed the opinion letter in its entirety. However, as discussed below, the letter from [REDACTED] is not persuasive in establishing the proffered position as a specialty occupation position.

In the letter, [REDACTED] states her opinion on the educational requirements for the position of "business development specialist." For example, on page 2 of the letter, [REDACTED] states:

[T]he position of Business Development Specialist requires the theoretical and practical application of a highly specialized body of knowledge in the field of

these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. As just stated, this also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Management or a related field, which requires the attainment of at least a Bachelor's degree in Management or its equivalent as the minimum requirement for entry into this occupation.

provided a summary of her education and experience and attached a copy of her curriculum vitae. She described her qualifications, including her educational credentials, professional experience, awards and honors, and provided a list of the publications she has written, as well as a list of unpublished conference presentations. Based upon a complete review of letter and curriculum vitae, the AAO notes that may, in fact, be a recognized authority on various topics; however, she has failed to provide sufficient information regarding the basis of her claimed expertise in the particular area in which she here opines. While she attached her curriculum vitae, she has not established her expertise in relation to the hiring practices of organizations seeking to fill positions similar to the proffered position in the instant case. Without further clarification, it is unclear how her education, training, skills or experience would translate to expertise or specialized knowledge regarding the current recruiting and hiring practices of the petitioner or similar organizations for business manager positions (or parallel positions). Also, opinion letter does not cite specific instances in which her past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that she has published any work or conducted any research or studies regarding the educational requirements for such positions (or parallel positions) in the petitioner's industry for similar organizations, and there is no indication of recognition by any professional organizations that she is an authority on those specific requirements.

states that her "evaluation relies upon the copies of documents provided by [the beneficiary] and represented by her to be authentic and true copies of those documents." also references the job duties for the proffered position. Upon review of the opinion letter, there is no indication that possesses any knowledge of the petitioner's proffered position beyond this information. It must be noted that there is no indication that the petitioner and counsel advised that the petitioner characterized the proffered position as a low, entry-level business manager position (under the occupational classification of "Management Analysts"), for a beginning-level employee who has only a basic understanding of the occupation (as indicated by the wage-level on the LCA). The wage-rate indicates that the beneficiary 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. Also, throughout the opinion letter, refers to the position as "business development specialist." There is no indication that the petitioner and counsel advised that the job title for the proffered position that was specified on the Form I-129 and certified LCA was "business manager" and not "business development specialist." It appears that would have found this information relevant for her opinion letter. Also, does not demonstrate or assert an in-depth knowledge of the petitioner's specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise. Moreover, without this basic information, the petitioner has not demonstrated that possessed the requisite information necessary to adequately assess the nature of the petitioner's position, and the job duties and responsibilities.

also did not provide any documentation to establish her credentials as a recognized authority on the relevant industry-hiring standards. She claims to possess expertise in the field of business management and related fields, but she did not identify the specific elements of her knowledge and experience that she may have applied in reaching her conclusions here. For example, the opinion letter contains no evidence that her opinion was based on scholarly research that she conducted in the specific area upon which she is opining.

asserts a general educational standard for organizations similar to the petitioner, without referencing any supporting authority or any empirical basis for the pronouncement. Likewise, she does not provide a substantive, analytical basis for her opinion and ultimate conclusion. Her opinion does not relate her conclusion to specific, concrete aspects of this petitioner's business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue. Accordingly, the very fact that she attributes a degree requirement to such a generalized treatment of the proffered position undermines the credibility of her opinion. There is no evidence that has 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. She has not provided sufficient facts that would support the contention that the proffered position requires at least a bachelor's degree in a specific specialty. does not provide sufficiently substantive and analytical bases for her opinion.

In summary, and for each and all of the reasons discussed above, the AAO concludes that the opinion letter rendered by is not probative evidence to establish the proffered position as a specialty occupation. The conclusions reached by lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which she reached such conclusions. There is an inadequate factual foundation established to support the opinion and the AAO finds that the opinion is not in accord with other information in the record. Therefore, the AAO finds that the letter from does not establish that the proffered position is a specialty occupation. As such, neither findings, nor her ultimate conclusion, is worthy of any deference, and her opinion letter is not probative evidence towards satisfying any criterion of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). As a reasonable exercise of its discretion the AAO discounts the advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, the AAO hereby incorporates the above discussion and analysis regarding the opinion letter into each of the bases in this decision for dismissing the appeal.

Upon review of the totality of the evidence in the entire record of proceeding, the AAO concludes that the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is normally required for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in

(b)(6)

the record of proceeding do not indicate that the particular position that is the subject of this petition is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, 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).

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 first alternative prong calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, 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. 1095, 1102 (S.D.N.Y. 1989)).

As previously 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 of at least a bachelor's degree in a specific specialty, or its equivalent. Thus, the AAO incorporates by reference its previous discussion on the matter. The AAO notes that the record of proceeding does not contain any submissions from professional associations, individuals or similar firms in the petitioner's industry attesting that a degree requirement is common to the industry for individuals employed in positions parallel to the proffered position.

Thus, based upon a complete review of the record, the AAO finds that the petitioner has not established that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is common in the petitioner's industry for positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. Thus, 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 its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

In the instant case, the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of business manager. Specifically, the petitioner failed to demonstrate how the business manager duties described 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.

While some of the courses listed on the copy of the beneficiary's transcript for the foreign degree from the [REDACTED] may be beneficial in performing

certain duties of a business manager 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 are required to perform the duties of the particular position here proffered. The AAO hereby incorporates and reiterates its previous discussion and analysis regarding [REDACTED] opinion letter and the reasons the AAO does not give it much weight.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, the AAO incorporates by reference and reiterates its earlier discussion that the LCA indicates a wage level based upon the occupational classification "Management Analysts" at a Level I (entry level) wage. This designation is appropriate for positions for which the petitioner expects the beneficiary to have a basic understanding of the occupation. That is, 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.

By way of comparison, the AAO notes that a position classified at a Level IV (fully competent) position is designated by the DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems." Thus, the wage level designated by the petitioner in the LCA for the proffered position is not consistent with claims that the position would entail any particularly complex or unique duties or that the position itself would be so complex or unique as to require the services of a person with at least a bachelor's degree in a specific specialty.

The evidence of record does not establish that this position is significantly different from other business manager positions such that it refutes the *Handbook's* information that there are various acceptable degrees for these positions, including a general-purpose degree such as business administration, for entry into the occupation. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique than 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 of business manager is more complex or unique than other business manager positions that can be performed by a person without at least a baccalaureate degree in a specific specialty or its equivalent, the petitioner has not 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 in a specific specialty, or the equivalent, for the position. Of course, the AAO will necessarily review and consider whatever evidence the petitioner may have submitted with regard to its history of recruiting and hiring for the proffered position and with regard to the educational credentials of the persons who have held the proffered position in the past.

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 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 the performance requirements of the position.

While a petitioner may believe or otherwise assert that a proffered position requires a specific 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 petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree-requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if 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 a 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. *See id.* at 388.

The record of proceeding is devoid of any documentation that establishes a prior history, by the petitioner, of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty.

Upon review of the record, the petitioner has not provided evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Therefore, the petitioner has not satisfied the 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 knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

Upon review of the record of the proceeding, the AAO notes that the petitioner has not provided sufficient evidence to satisfy this criterion of the regulations. The AAO acknowledges that the petitioner believes its proffered position involves specialized and complex duties. However, upon review of the record, there is insufficient evidence to establish that the duties of the business manager position require 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 AAO notes that the petitioner has not provided probative evidence to satisfy this criterion of the regulations. In the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish their nature as more specialized and complex than the nature of the duties of other positions in the pertinent occupational category whose performance does not require the application of knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or its equivalent.

In this regard, the AAO here incorporates into this analysis its earlier comments and findings with regard to the implication of the Level I wage-rate designation (the lowest of four possible wage-levels) in the LCA. That is, that the proffered position's Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category of "Management Analysts" and hence one not likely distinguishable by relatively specialized and complex duties. As noted earlier, the DOL indicates that a Level I designation is appropriate for "beginning level employees who have only a basic understanding of the occupation."

The petitioner has submitted insufficient evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the duties of the position are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. The AAO, therefore, concludes that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, 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.

The general requirements for filing immigration applications and petitions are set forth at 8 C.F.R. §103.2(a)(1), in pertinent part, as follows:

Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions . . . and such instructions are incorporated into the regulations requiring its submission.

The regulations require that before filing a Form I-129 petition on behalf of an H-1B worker, a petitioner obtain a certified LCA from the DOL in the occupational specialty in which the H-1B worker will be employed. *See* 8 C.F.R. §§ 214.2(h)(4)(i)(B) and 214.2(h)(4)(iii)(B)(1). The instructions that accompany the Form I-129 also specify that an H-1B petition must be filed with evidence that an LCA has been certified by DOL.

Moreover, 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) therefore requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary.

In the instant matter, the petitioner filed the Form I-129 with USCIS on July 5, 2011. The LCA provided at the time of filing was certified on June 10, 2011⁷, (1) for the job title of business manager; (2) pursuant to occupational code, 13-1111.00 – Management Analysts; (3) for a position in the city [REDACTED] in the state of Illinois (within the [REDACTED], IL-WI Metropolitan Division); and (4) at a Level I prevailing wage of \$40,123 per year.

According to the Foreign Labor Certification Data Center's Online Wage Library, under the "All Industries database for 7/2010 – 6/2011," for the [REDACTED] IL-WI Metropolitan Division, the prevailing wage for the occupation "Management Analysts" at a Level I wage is \$47,362 per year for full-time employment. This reflects a difference of over \$7,000 from the prevailing wage of \$40,123 per year that was listed on the certified LCA.

Section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A), states, in pertinent part, that the petitioner must offer wages that are at least the actual wage paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or

⁷ The AAO notes that, pursuant to the DOL's iCERT Case Status Check (accessed on the Internet at <http://icert.doleta.gov/index.cfm?event=ehRegister.caseStatusSearch>), the petitioner submitted the LCA for certification on June 6, 2011.

the prevailing wage for the position in the area of employment, whichever is greater. Here, as mentioned above, the prevailing wage for the proffered position is \$47,362 per year for full-time employment. The petitioner attested on the Form I-129 petition, however, that it would only pay the beneficiary \$42,000 per year to work full-time for the petitioner. Therefore, as the petitioner has failed to offer a wage that is equal to or greater than the prevailing wage, the petition must be denied for this additional reason.

Thus, the record establishes that, at the time of filing, the petitioner had not obtained a certified LCA at the prevailing wage level for the requested employment for the beneficiary. Therefore, the petitioner has failed to comply with the filing requirements at 8 C.F.R. §§ 214.2(h)(4)(i)(B) and 214.2(h)(4)(iii)(B)(I) by providing a certified LCA that corresponds to the instant petition. For this additional reason, the petition may not be approved.

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 145 (noting, as mentioned earlier, 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.

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. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. § 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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