



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **AUG 08 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
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.

On the Form I-129 visa petition, the petitioner describes itself as a health care and pharmaceutical consulting services business established in 2006. In order to employ the beneficiary in what it designates as a clinical research coordinator position, the petitioner seeks to classify him 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 petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, counsel for the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements.

The record of proceeding contains: (1) the Form I-129 and supporting documentation; (2) the director's RFE; (3) counsel's responses to the RFE; (4) the notice of decision; (5) the Form I-290B and supporting materials; (6) the AAO's RFE; and (7) the petitioner's response to the AAO's RFE. We reviewed the record in its entirety before issuing its decision.

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

I. PROCEDURAL AND FACTUAL BACKGROUND

In the petition signed on March 14, 2013, the petitioner indicates that it wishes to employ the beneficiary as a clinical research coordinator on a full-time basis at the rate of pay of \$50,000 per year. In addition, the petitioner indicates that the beneficiary will work at [REDACTED]. The petitioner did not request any other work sites.

¹ On appeal, we found that the petitioner's address is zoned as a residential single-family home. Subsequently, we issued an RFE on April 16, 2014 requesting additional evidence. In its response, the petitioner claims that its residence is permitted for "accessory uses as regulated in section 731-220 Home occupations" and is "allowed to use the home to carry out professional services," and submitted documents in support.

We reviewed the documents submitted and find that the petitioner did not establish it is legally permitted to occupy and use its residence as a business premise. For example, Sec. 731-220(a) states that certain professions and domestic occupations, crafts and services defined as "permitted home occupations" shall be permitted in all dwelling districts. The regulations list the examples of professional services which constitute permitted home occupations; notably, health care and pharmaceutical consulting is not listed. Further, the petitioner highlighted "engineering" from the list; however, the petitioner does not explain how "engineering" relates to its business or the proffered position as a clinical research coordinator.

In the support letter dated March 20, 2013, the petitioner states the following regarding the proffered position:

- Audit and monitor investigational sites, laboratories, and other entities for research studies to ensure compliance to the study protocol, Standard Operating Procedures (SOPs), applicable FDA regulations, the guidelines of ICH-GXP and/or ISO standards. The candidate will also be charged with ensuring the quality and integrity of data, and assessing the overall risk of the entities[;]
- Audit and Monitor clinical trials to ensure absolute adherence to Good Clinical Practice in accordance with ICH-GCP standards, Declaration of Helsinki, Federal Regulatory Requirements and study procedures;
- Site review to ensure proper adherence to protocol, source data verification and assess CRF entries;
- Assess and/or Perform pre-study initiation, interim monitoring and close out visits as required;
- Ensure adequacy of drug shipment and drug accountability;
- Liaise with the Medical Monitor, Principal Investigator, clinical operations staff and sponsor representatives as required;
- Provide support to the Project Manager / Managing Partner with ad-hoc tasks as required;
- Record adverse event and side effect data and confer with investigators regarding the reporting of events to oversight agencies[;]
- Prepare for or participate in quality assurance audits conducted by study sponsors, federal agencies, or specifically designated review groups[;]
- Identify protocol problems, inform investigators of problems, or assist in problem resolution efforts such as protocol revisions[; and]

Moreover, the petitioner did not establish that it meets all of the home occupation requirements under Section 731-220(b). For example, Section 731-220(b)(2) states "[n]o more than six hundred (600) square feet or thirty (30) percent of the total square footage of the dwelling unit, whichever is lesser, shall be used in connection with the home occupations." The petitioner submitted photographs of the working areas in the home. However, the petitioner did not supplement evidence that less than 600 square feet or 30% of the total square footage of the dwelling unit, is being used. The documentation is insufficient to establish that the petitioner is authorized to conduct business and employ individuals at this site per local zoning laws and regulations.

- Review proposed study protocols to evaluate factors such as sample collection processes, data management plans, and potential subject risks[.]

In addition, the petitioner states that "[w]e require a minimum of a Bachelor['s] degree in Medicine, Biological Science, Pharmacology, Nursing, and/or related field." With the initial petition, the petitioner submitted a copy of the beneficiary's degree and academic transcript for Master of Science in Regulatory Affairs for Drugs, Biologics, and Medical Devices, from [REDACTED] in Massachusetts. In addition, the petitioner submitted a copy of the beneficiary's foreign diploma and transcript.

The petitioner also submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The occupational category is designated as "Natural Sciences Managers" at a Level I (entry level) wage. In addition, the petitioner submitted printouts from its website.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on May 23, 2013. The director outlined the specific evidence to be submitted.

On July 26, 2013, counsel responded with a brief and additional evidence. In the brief, counsel provided a revised description of the duties of the proffered position, along with the approximate percentage of time that the beneficiary will spend performing each duty.² Further, counsel submitted, in part:

- An offer of employment letter from the petitioner to the beneficiary. The letter is dated May 28, 2012.
- A copy of the beneficiary's Form W-2, Wage and Tax Statement, for 2012.
- A Master Services Agreement between the petitioner and [REDACTED] and its affiliates), effective September 26, 2011.
- A work order entitled "WORK ORDER NO. 33" between the petitioner and Aptalis, along with Exhibits A and B. The work order is effective June 24, 2013. The work order indicates that "[t]he term of this Work Order shall commence as of the Effective Date and shall terminate upon August 30th, 2013, unless earlier terminated in accordance with the terms of the Agreement (the 'Work Order Term')."

² It is noted that the revised job description and the percentages of time allocated to each duty provided by counsel is not probative evidence. The description was submitted by counsel, not the petitioner, and counsel's brief was not signed by or endorsed by the petitioner. The record of proceeding does not indicate the source of the expanded duties and responsibilities (and the percentages of time allocated to each duty) that counsel attributes to the proffered position. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

- A work order entitled "WORK ORDER NO. 34" between the petitioner and [REDACTED] along with Exhibits A and B. The work order is effective June 27, 2013. The work order indicates "[t]he term of this Work Order shall commence as of the Effective Date and shall terminate upon Dec 31, 2013, unless earlier terminated in accordance with the terms of the Agreement (the 'Work Order Term')." In addition, Exhibit A indicates, "The [Petitioner] will provide Services on time and material basis estimated at 40 hours per month until December 31, 2013."
- A Consulting Agreement between the petitioner and [REDACTED] along with an Amendment 1. The agreement indicates, "[t]his Agreement shall commence on the date of its execution by both parties and shall terminate 6 months thereafter unless extended or renewed by written agreement of the parties." Notably, Amendment 1 is entitled "Amendment 1 to Consulting Agreement N°BU1 Signed on September 10, 2012." Further, the document states "[t]his Amendment 1 shall enter into force retroactively on October 1, 2012, and will terminate on December 31st, 2013, unless extended or renewed by written agreement of the Parties." The petitioner did not provide any probative evidence to demonstrate that the agreement or the amendment was extended.
- A Consulting Services Agreement between the petitioner and [REDACTED] effective February 15, 2013. The agreement indicates that "[t]he term of this agreement shall be one (1) year from the Effective Date."

A work order entitled "WORK ORDER 01" between the petitioner and [REDACTED], effective March 11, 2013. The work order indicates that "[t]he Services will be completed in a fast track manner with a goal of the final report to be drafted in the next week of this site audit."

- An excerpt entitled "Summary Report for: 11-9121.01 – Clinical Research Coordinators" from the Occupational Information Network (O*NET) OnLine.
- A letter from [REDACTED]
- Job vacancy announcements.
- The petitioner's posting for the proffered position in its website.

The director reviewed the response, and found the evidence insufficient to establish eligibility for the benefit sought. The director denied the petition on August 29, 2013. Counsel submitted an appeal of the denial of the H-1B petition. With the brief, counsel submitted copies of documents previously submitted in response to the director's RFE, along with new evidence.⁴

⁴ With regard to the new documentation submitted on appeal that was encompassed by the director's RFE, we note that this evidence is outside the scope of the appeal. The regulations indicate that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary in the adjudication of

II. PREPONDERANCE OF THE EVIDENCE STANDARD

On appeal, counsel references the preponderance of the evidence standard. We note that with respect to the preponderance of the evidence standard, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010), states in pertinent part the following:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

* * *

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case.

* * *

Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. See *INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the

the petition. See 8 C.F.R. §§ 103.2(b)(8); 214.2(h)(9)(i). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. § 103.2(b)(1), (8), and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, we will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533. If the petitioner had wanted the submitted evidence to be considered, it should have submitted it with the initial petition or in response to the director's request for evidence. *Id.* The petitioner has not provided a valid reason for not previously submitting the evidence. Under the circumstances, we need not consider the sufficiency of such evidence requested by the director in the RFE but submitted for the first time on appeal. Nevertheless, we reviewed the documentation. However, as will be discussed in this decision, the petitioner has not established eligibility for the benefit sought.

director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Thus, in adjudicating the petition pursuant to the preponderance of the evidence standard, U.S. Citizenship and Immigration Services (USCIS) examines each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. The "preponderance of the evidence" standard does not relieve the petitioner from satisfying the basic evidentiary requirements set by regulation. The standard of proof should not be confused with the burden of proof. Specifically, the petitioner bears the burden of establishing eligibility for the benefit sought. A petitioner must establish that it is eligible for the requested benefit at the time of filing the petition. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *see e.g., Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). As will be discussed, in the instant case, that burden has not been met.

III. SPECIALTY OCCUPATION

The primary issue for consideration is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the 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 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 387. To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), USCIS consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the 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.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the

ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

Moreover, when determining whether a position is a specialty occupation, USCIS must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, USCIS looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, 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."

When determining whether a proffered position qualifies as a specialty occupation, USCIS must determine, *inter alia*, whether the petitioner (1) has provided sufficient evidence to establish that the beneficiary will perform the duties of the proffered position as stated in the petition; and (2) has established that, at the time of filing, it had secured non-speculative work for the beneficiary that is in accordance with the petitioner's claims about the nature of the work that the beneficiary would perform in the proffered position.

The petitioner in this matter provided a list of the beneficiary's proposed duties. As observed above, USCIS in this matter must review the actual duties the beneficiary will be expected to perform to ascertain whether those duties require at least a baccalaureate degree in a specific specialty, or its equivalent, as required for classification as a specialty occupation. To accomplish that task in this matter, USCIS must analyze the actual duties in conjunction with the specific project(s) to which the beneficiary will be assigned. To allow otherwise, results in generic descriptions of duties that, while they may appear to comprise the duties of a specialty occupation, are not related to any actual services the beneficiary is expected to provide.

In that regard, we have reviewed the information in the record regarding the petitioner's health care and pharmaceutical consulting services business. Upon review of this information, we find that the record of proceeding lacks documentation regarding the actual work that the beneficiary will perform to sufficiently substantiate the claim that the petitioner has H-1B caliber work for the beneficiary for the period of employment requested in the petition.

Notably, on the Form I-129, the petitioner requested that the beneficiary be granted H-1B classification from October 1, 2013, to September 10, 2016. In response to the director's RFE, the petitioner submitted agreements and work orders for consulting services; however, the documents expire prior to or soon after the beneficiary's start date. For example, "WORK ORDER NO. 33"

terminated on August 30th, 2013, prior to the beneficiary's start date of October 1, 2013. Similarly, "WORK ORDER No. 34" expired on December 31, 2013. Further, the Consulting Services Agreement with Vivier Pharma, Inc. became effective on February 15, 2013, but the term is stated to be one year from the effective date, which means it expired on or around March 15, 2014.

Moreover, there are no contracts or other evidence in the record demonstrating that the beneficiary is assigned to any particular project for the requested employment period. That is, the record does not include any work product or other documentary evidence to confirm that the petitioner has ongoing projects to which the beneficiary will be assigned. While the petitioner may be able to eventually locate some work for the beneficiary, it has failed to establish that the petition was filed for non-speculative work for the beneficiary that existed *as of the time of the petition's filing*.⁵ There is insufficient documentary evidence in the record corroborating the availability of work for the beneficiary for the requested period of employment and, consequently, what the beneficiary would do and where the beneficiary would work, as well as how this would impact the circumstances of his relationship with the petitioner. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). Moreover, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act.

The petitioner has not established that, at the time the petition was submitted, it had located H-1B caliber work for the beneficiary that would entail performing the duties as described in the petition, and that was reserved for the beneficiary for the duration of the period requested. Without statements of work describing the specific duties the petitioner requires the beneficiary to perform, as those duties relate to specific projects, USCIS is unable to discern the nature of the position and whether the

⁵ The agency made clear long ago that speculative employment is not permitted in the H-1B program. For example, a 1998 proposed rule documented this position as follows:

Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. *See* section 214(i) of the Immigration and Nationality Act (the "Act"). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

position indeed requires the theoretical and practical application of a body of highly specialized knowledge attained through a baccalaureate program. Without a meaningful job description within the context of non-speculative employment, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The petitioner did not communicate (1) the actual work that the beneficiary would perform, (2) the complexity, uniqueness and/or specialization of the tasks, and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4. Thus, the petitioner has failed to satisfy any of the criteria under the applicable provisions at 8 C.F.R. § 214.2(h)(4)(iii)(A).

However, assuming *arguendo* that the petitioner had sufficiently described and documented the duties of the proffered position, we will discuss them and the evidence of record with regard to whether the proffered position as described would qualify as a specialty occupation. To that end, we turn to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We 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.

As a preliminary matter, the petitioner has provided inconsistent information regarding the minimum requirements for the proffered position. In the support letter, the petitioner indicated that "a minimum of a Bachelor[s] degree in Medicine, Biological Science, Pharmacology, Nursing, and/or related field" is required for the clinical research coordinator position. However, in response to the RFE, counsel asserted that the candidate for the position "must have at least a Bachelor's or Higher degree in Medicine, pharma, **regulatory affairs**, and nursing" (emphasis added). No explanation was provided for the variance.

Further, we find that the petitioner's claimed requirement of at least a bachelor's degree in Medicine, Biological Science, Pharmacology, Nursing, and regulatory affairs for the proffered position, without more, is inadequate to establish that the proposed position qualifies as a specialty occupation. In general, provided that 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 disparate fields, such as philosophy and engineering, 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. Section 214(i)(1)(B) of the Act (emphasis added).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," we do not so narrowly interpret 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. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Again, the petitioner claims that the duties of the proffered position can be performed by an individual with a bachelor's degree in Medicine, Biological Science, Pharmacology, Nursing, Regulatory Affairs, and/or related field. The issue here is that it is not readily apparent that these fields of study are closely related or that all of the fields are directly related to the duties and responsibilities of the particular position proffered in this matter.

Here and as indicated above, the petitioner, who bears the burden of proof in this proceeding, simply fails to establish either (1) that all of these disciplines are closely related fields, or (2) that all of the fields are directly related to the duties and responsibilities of the proffered position. As the evidence of record fails to establish how these dissimilar fields of study form either a body of highly specialized knowledge in a specific specialty, or its equivalent, the petitioner's assertion that the job duties of this particular position can be performed by an individual with a degree in any of these fields suggests that the proffered position is not in fact a specialty occupation. Therefore, absent probative evidence of a direct relationship between the claimed degrees required and the duties and responsibilities of the position, it cannot be found that the proffered position requires at least a bachelor's degree in a specific specialty, or its equivalent.

Moreover, the petitioner did not provide persuasive evidence that the proffered position qualifies as a specialty occupation. Specifically, the petitioner did not provide probative evidence to establish that a bachelor's degree or its equivalent is normally the minimum requirement for entry into the proffered position.

We recognize the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (hereinafter the *Handbook*) as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁶ We reviewed the *Handbook* regarding the

⁶ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/ooh/>.

occupational category "Clinical Research Coordinators."⁷ However, the *Handbook* does not provide a detailed narrative account nor does it provide summary data for the occupational category "Clinical Research Coordinators." More specifically, the *Handbook* does not state the typical duties and responsibilities for this category. Further, the *Handbook* does not include any information regarding the academic and/or professional requirements for this occupation.

Accordingly, in certain instances, the *Handbook* is not probative. When the *Handbook* does not provide sufficient information, it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise qualifies as a specialty occupation under this 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 indicates whether the position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider all of the evidence presented to determine whether the petitioner has established eligibility for the benefit sought. Upon review of the record, the petitioner has failed to meet its burden in this regard.

In response to the RFE, counsel referenced the O*NET Online Summary Report for the occupational category "Clinical Research Coordinators." Counsel asserts that "[a]ccording to the [O*NET] website, the [t]ypical level of education that most workers need to enter this occupation of [c]linical research coordinator is Bachelor's Degree." Upon review, we find that contrary to counsel's assertion, O*NET does not establish that the proffered position satisfies the requirements for a specialty occupation position. Under the subsection entitled "Education," O*NET states that "[m]ost of these occupations require a four-year bachelor's degree, but some do not." However, "most" is not indicative that a particular position normally requires at least a bachelor's degree in a specific specialty, or its equivalent.⁹ Furthermore, O*NET does not state that a degree must be in a specific specialty, or its equivalent. Therefore, O*NET is not probative evidence to establish that the proffered position qualifies as a specialty occupation.

⁷ As previously discussed, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Natural Sciences Managers"-SOC (ONET/OES) code 11-9121. We note that prevailing wage for the occupational category the "Natural Sciences Managers"-SOC (ONET/OES) code 11-9121 also applies to "Clinical Research Coordinators"-SOC (ONET/OES) code 11-9121.01.

⁹ For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of the positions require at least a bachelor's degree, it could be said that "most" of the positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner (which is designated as a Level I position in the LCA). Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "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." Section 214(i)(1) of the Act.

In addition, the petitioner submitted two letters from [REDACTED] to establish that a bachelor or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position. Upon review, we find that the letters are not persuasive in establishing that the proffered position is a specialty occupation. Specifically, we find that the letters state different minimum requirements for entry into the proffered position. For example, the letter dated July 23, 2013 from [REDACTED], Student Success Specialist, and [REDACTED], Program Manager at Regulatory Affairs, state that the "regulatory profession is a knowledge-based field...nearly all regulatory professionals have a higher education degree and the majority has some post baccalaureate education and/or graduate degrees." The letters also indicate that the "majority have degrees in science, particularly in the life sciences or clinical sciences and/or engineering." However, the letter dated September 24, 2013, from [REDACTED], Senior Faculty of Regulatory Affairs Program, states that a "Bachelor Degree is the minimum requirement for an entry into the position as Clinical Research Coordinator (Regulatory Compliance Analyst)" and that "majority have degrees in science, particularly in the life sciences or clinical sciences or pharmacy and/or engineering." No explanation was provided for the variance.

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

Next, we find 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 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)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* (or other objective, authoritative source), reports a standard, industry-wide requirement of at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. The record does not contain any letters from the industry's professional association, indicating that it has made a degree a minimum entry requirement.

In the Form I-129 petition, the petitioner stated that it is a health care and pharmaceutical consulting services business established in 2006. The petitioner further stated that it has three employees in the United States. In addition, the petitioner stated that its gross annual income is \$238,219, but did not provide its net annual income. The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 541690.¹⁰ This NAICS code is designated for "Other Scientific and Technical Consulting Services." The U.S. Department of Commerce, Census Bureau website describes this NAICS code as follows:

This U.S. industry comprises establishments primarily engaged in providing advice and assistance to businesses and other organizations on scientific and technical issues (except environmental).

See U.S. Dep't of Commerce, U.S Census Bureau, 2012 NAICS Definition, 541690 – Other Scientific and Technical Consulting Services, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited August 6, 2014).

For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). Notably, it is not sufficient for the petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

The petitioner and counsel submitted copies of job advertisements in support of the assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. However, upon review of the documents, we find that such reliance on the job announcements is misplaced.

Upon review of the documentation, the petitioner fails 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.

The petitioner submitted advertisements from employers that do not appear to be similar to the petitioner. The record of proceeding contains job postings as follows:

- [REDACTED] (an academic

¹⁰ According to the U.S. Census Bureau, the North American Industry Classification System (NAICS) is used to classify business establishments according to type of economic activity and each establishment is classified to an industry according to the primary business activity taking place there. See <http://www.census.gov/eos/www/naics/> (last visited August 6, 2014).

- medical center);
- [REDACTED] (a staffing agency whose client is a biotechnology lab);
- [REDACTED] (supporting the DoD Center for Deployment Health Research conducting epidemiological studies on the health of service members and their families); and
- [REDACTED] (providing information technology, systems engineering, professional services and simulation and training to customers).

The petitioner also provided a job posting from [REDACTED], but the posting did not contain information regarding the employer, and the petitioner did not supplement the record with further information. Upon review, we find that none appear to be for organizations similar to the petitioner. When determining whether the petitioner and an organization share the same general characteristics, such factors may include information regarding the nature or type of organization, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such information, evidence submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. It is not sufficient for the petitioner and counsel to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion. Neither counsel nor the petitioner have specified what characteristics they believe the petitioner shares with these organizations. As previously noted, without further information, the petitioner has not established that the advertisements are for similar organizations.

Further, some postings appear to be for dissimilar positions and/or for more senior positions. For example, [REDACTED] requires "at least three years of work-related experience," and Battelle requires "5-8 years related experience in research setting." As previously mentioned, the petitioner designated the proffered position on the LCA through the wage level as a Level I low, entry-level position. Furthermore, some of the positions do not appear to have similar duties to the proffered position. For these postings, the petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

In addition, contrary to the purpose for which the advertisements were submitted, the postings do not establish that at least a bachelor's degree in a specific specialty, or its equivalent, is required for the positions. For example, the job postings from [REDACTED] indicate that a bachelor's degree is required, but they do not indicate that a bachelor's degree in a *specific specialty* is required. We reiterate that the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a *specific specialty* that is directly related to the specialty occupation claimed in the petition.

Furthermore, the petitioner fails to establish the relevancy of the provided examples to the issue here.¹¹ That is, the petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from these advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations.¹²

The petitioner also submitted letters from [REDACTED]

[REDACTED] Ms. [REDACTED] indicates that they "routinely recruit & employ or hire individuals with Bachelor['s] or Higher degree or equivalent in Medicine, Pharmacy, Regulatory Affairs, or Nursing, among others for doing the job duties of Clinical Research Associate (Regulatory & Compliance)." Ms. [REDACTED] also states that they "routinely recruit and employ or hire individuals with Bachelor['s] or Higher degree or equivalent in Medicine, Pharmacy, Regulatory Affairs, Nursing to perform the job duties of a Clinical Research Coordinator or a Clinical Research Associate (Regulatory & Compliance)." We find that while the employers provide general statements that they have employed individuals in similar positions, they fail to provide the actual job duties and day-to-day responsibilities of the positions to establish that they are the same or parallel to the proffered position. Further, they did they provide any documentation to substantiate their claimed academic requirements (e.g., copies of diplomas/transcripts, employment records, job vacancy announcements). In addition, the petitioner has not supplemented the record with information regarding [REDACTED] and Aptalis, to establish that they are similar to the petitioner.

We may, in our discretion, use advisory opinions or statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). As a reasonable exercise of our discretion, we decline to regard the advisory opinion letters as probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, we hereby incorporate the above discussion and

¹¹ As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed.

¹² The petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these few job postings with regard to the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position (for organizations similar to the petitioner) required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have 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.

analysis regarding the opinion letters into our analyses of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

We 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.

Upon review of the record of proceeding, we find that the petitioner has failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position. That is, we reviewed the record in its entirety and finds that the petitioner has not provided sufficient documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent.

Notably, the petitioner is a business with three employees, including the signatory for the petitioner or the owner, the signatory's spouse, and the beneficiary. It is reasonable to assume that the size of an employer's business has or could have an impact on the duties of a particular position. *See EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). Thus, the size of a petitioner may be considered as a component of the nature of the petitioner's business, as the size impacts upon the duties of a particular position. In matters where a petitioner's business is relatively small, we review the record for evidence that its operations, are, nevertheless, of sufficient complexity to indicate that it would employ the beneficiary in position requiring the theoretical and practical application of a body of highly specialized knowledge that may be obtained only through a baccalaureate degree or higher in a specific specialty, or its equivalent. Additionally, when a petitioner employs relatively few people, it may be necessary for the petitioner to establish how the beneficiary will be relieved from performing non-qualifying duties.

We reviewed the record in its entirety and find that the petitioner has not provided sufficient documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent. This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. The LCA indicates a wage level at a Level I (entry level) wage. The wage-level of the proffered position indicates that the beneficiary is only required to have a basic understanding of the occupation; that he will be expected to perform routine tasks that require limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results. Without further evidence, it is simply not credible that the petitioner's proffered position is

complex or unique as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage. For example, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."¹³ The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

It is further noted the record of proceeding does not establish that the petitioner's requisite knowledge for the proffered position can only be obtained through a baccalaureate or higher degree program in a specific specialty, or its equivalent. We note that the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be beneficial in performing certain duties of the position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here proffered.

The petitioner claims that the beneficiary's professional experience will assist him in carrying out the duties of the proffered position. However, as previously mentioned, 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 sufficiently explain or clarify which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-

¹³ The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is described as follows:

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.

See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

degreed or non-specialty degreed employment. The petitioner has thus failed to establish the proffered position as satisfying the second prong of the criterion at 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 its equivalent, for the position. We usually review the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

To merit approval of the petition under this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency in its prior recruiting and hiring for the position. Further, it should be noted that the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. In the instant case, the record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

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 the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as

the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

As mentioned, the petitioner stated in the Form I-129 petition that it has three employees and that it was established in 2006. The record of proceeding contains copies of internal job postings for Clinical Research Coordinator positions which appear to have been posted on its website. However, the petitioner did not indicate the total number of people it has employed to serve in the proffered position. Upon review of the record, the petitioner has not provided any evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

We incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a low, entry-level position relative to others within the occupation. The petitioner designated the position as a Level I position (the lowest of four assignable wage levels), which DOL indicates is appropriate for "beginning level employees who have only a basic understanding of the occupation." Without further evidence, it is not credible that the petitioner's proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level III (experienced) or IV (fully competent) position, requiring a significantly higher prevailing wage. As previously discussed, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the nature of the specific duties of the proffered position is so specialized and complex that the 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. We, therefore, conclude 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.

IV. CONCLUSION AND ORDER

An application or petition that fails to comply with the technical requirements of the law may be denied by US even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143 (noting that the

AAO conducts appellate review on a *de novo* basis).

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

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *see e.g., Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.