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



U.S. Citizenship
and Immigration
Services

DATE: SEP 19 2014

OFFICE: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, Petition for a Nonimmigrant Worker, the petitioner describes itself as a home health care service provider established in 2003. In order to employ the beneficiary in what it designates as a network and computer systems administrator 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, concluding that the petitioner failed to establish that the proffered position is a specialty occupation in accordance with the applicable statutory and regulatory provisions. The petitioner subsequently filed an appeal. On appeal, the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that it satisfied all evidentiary requirements.

The record of proceeding before us contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B, Notice of Appeal or Motion, and supporting materials. We reviewed the record in its entirety before issuing our decision.¹

For the reasons that will be discussed below, we agree with the director's decision that the petitioner has failed to establish eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed.² The appeal will be dismissed, and the petition will be denied.

I. FACTURAL AND PROCEDURAL HISTORY

In the petition, the petitioner indicates that it is seeking the beneficiary's services as a network and computer systems administrator on a full-time basis. In the letter of support, the petitioner states that the proffered position "is [a] management level position managing and overseeing the Computer/IT department of [the petitioner]." The petitioner further states that "[t]he administrator and its department is responsible for the day to day management, maintenance and security of the company's computer networks." In addition, the petitioner asserts that the beneficiary will be responsible for the following duties:

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

² The director appears to imply that "a bona fide position of Network and Computer Systems Administrator requires a beneficiary to have a baccalaureate degree." To the extent this implication suggests that all network and computer systems administrator positions by virtue of their occupational classification qualify as specialty occupations, such implication is withdrawn.

The administrator will organize, installs [sic], and support company's computer systems, including local area networks (LANs), website, intranets, and other data communication systems; must ensure that company databases are complete, accurate, and accessible only to authorized personnel; must stay up to date with evolving information technology; keep current with proposed laws about health care and health information systems; and also responsible to develop the knowledge and skills of all staff with the computer systems of the company, especially its clinical application. In addition Network and Computer Systems Administrator has to provide technical assistance, support and advised [sic] to individual staff and the company regarding information technology. He will work in the organization in its use of computer systems, and also work with computer hardware or software vendors or with third-party vendor that provide computer support services on contractual basis.

Below are breakdown of specific job duties and responsibilities of the Network and Computer Systems Administrator:

- Management and Administrative Duties
 - Determine the continuing and future needs of our company in network and computer system.
 - Install and maintain network and computer hardware, software, security systems and ensure that all systems are operating properly.
 - Oversee, monitor and direct overall management of the company's computer systems and its information management systems.
 - Maintain and administer computer networks, such as the Local Area Network (LAN), Virtual Private Network (VPN) and related computing environment including computer hardware, systems software, applications software and all configurations.
 - Monitor the daily performance of the company's computer systems, its clinical and billing software, and the database of its patients with their medical information, for Medicare and HIPAA compliance.
 - Manage information resource such as computer files and databases, including data security and disaster recovery planning.
 - Plan, review and evaluate the existing computer systems of the company and other available systems in the industry to ensure that its computer systems are up to date and in compliance with industry and Medicare requirements.
 - To compile data, write reports and recommendation to the President and/or Administrator regarding computer systems of the company, its effectiveness and efficiency.
 - To explore and evaluate the benefits, advantages and cost of ECloud computing and digital technology for patients clinical records.

- Confer with company management to plan strategic development and information service methodologies to achieve corporate goals.
 - Prepare budgets of the technology department taking into account company financial objectives and capital requirements.
 - Develop and establish operational policies, procedures and work standards related to use of computer systems and its security.
- Technical Support
 - Confer with users and respond to inquiries from office and field staff regarding computer use, technical problems and may run diagnostics programs to resolve problems.
 - To respond to telephone calls and email messages from field staff regarding computer issues or problems, and in the use of point of care systems.
 - Troubleshoot and resolve technical problems and/or malfunctions with the company's (LAN) Local Area Network and its Virtual Private Network (VPN).
 - Perform system backups, recovery and documentation.
 - Negotiate purchases of computers and peripheral equipment such as those related to hardware, software, networks, equipment maintenance services, communication services, and other related technology purchases.
 - Oversee the installation, repairs and operation of computer systems, workstations, and software, and to serve as resource to respond to computer problems.
 - Assign computer passwords and ID to employees, and monitor violations of computer security procedures.
 - Ensure security of the data by making it inaccessible to those who are not authorized to use it.
 - Monitor and test the network performance including virus protection systems, e-mail applications and software usage.
- Personnel Training:
 - Provide training and write training manual and/or guidelines for office and field staff in the use of computer, hardware, software, point of care technology and Ecloud technology.
 - Coordinate the training of the company computer systems with the office and field staff and outside vendors, when needed.
 - Plan and coordinate scheduling of industry educational teleconference and Webinar sessions for company staff.
 - Train/instruct users through formal and informal training regarding computer security awareness to ensure system security.

The petitioner indicates that the basic requirements, in pertinent part, for the proffered position include:

- A Bachelor of Science in Computer Science or Electrical Engineering degree.
- Adequate work experience in computer system and/or information technology.

With the initial petition, the petitioner submitted copies of the beneficiary's foreign diploma and transcript, as well as a credential evaluation from [REDACTED]. The evaluation states that the beneficiary's foreign education is "equivalent to a bachelor's degree Computer Science offered by an accredited university in the United States."

The petitioner also submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. We note that the LCA designation for the proffered position corresponds to the occupational classification of "Network and Computer Systems Administrators" - SOC (ONET/OES Code) 15-1142, at a Level I (entry) wage, the lowest of the four assignable wage classifications.

Upon review of the initial documentation submitted, the director found the evidence insufficient to establish eligibility for the benefit sought, and issued an RFE. The director outlined the specific evidence to be submitted.

In response, the petitioner provided the following: (1) job vacancy announcements; (2) foreign diplomas and licenses of its employees; (3) its Employer's Quarterly Wage/Tax Report for 2013 (quarter 3); (4) a copy of its brochure; (5) an organizational chart;³ (6) printouts from the [REDACTED] website regarding membership information; and (7) a letter from [REDACTED] Director of Clinical Operation at [REDACTED].

The director reviewed the documentation and found it insufficient to establish eligibility for the benefit sought. The director denied the petition on February 3, 2014. The petitioner submits an appeal of the denial of the H-1B petition.

II. BEYOND THE DIRECTOR'S DECISION

The LCA Wage Level Does Not Correspond to the Petition

³ It must be noted for the record that the petitioner has provided inconsistent information regarding its number of employees. On the Form I-129, the petitioner indicates that it has 21 employees. The Employer's Quarterly Wage/Tax Report for 2013 (quarter 3) indicates that the petitioner had 15 employees in July 2013, 16 employees in August 2013, and 7 employees in September 2013. In addition, the organization chart shows that the petitioner has 13 employees. No explanation for the inconsistent information provided by the petitioner was given.

Preliminarily, we find beyond the decision of the director, that the petitioner has not submitted an LCA that supports its claims in the petition. That is, we observe that the record of proceeding contains discrepancies between what the petitioner claims about the level of responsibility inherent in the proffered position set against the contrary level of responsibility conveyed by the wage level indicated by the LCA submitted in support of petition. As previously discussed, the petitioner submitted an LCA in support of the petition that designated the proffered position to the corresponding occupational category of "Network and Computer Systems Administrators" - SOC (ONET/OES) code 15-1142. The wage level for the proffered position in the LCA corresponds to a Level I (entry) position. The prevailing wage source is listed in the LCA as OFLC (Office of Foreign Labor Certification) Online Data Center.⁴ The LCA was certified on March [REDACTED]. We note that by completing and submitting the LCA, and by signing the LCA, the petitioner attested that the information contained in the LCA was true and accurate.

Wage levels should be determined only after selecting the most relevant Occupational Information Network (O*NET) occupational code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.⁵

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) position 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.⁶ The U.S. Department of Labor (DOL) emphasizes that these guidelines should not be

⁴ The Occupational Employment Statistics (OES) program produces employment and wage estimates for over 800 occupations. See Bureau of Labor Statistics, U.S. Department of Labor, on the Internet at <http://www.bls.gov/oes/>. The OES All Industries Database is available at the Office of Foreign Labor Certification (OFLC) Data Center, which includes the Online Wage Library for prevailing wage determinations and the disclosure databases for the temporary and permanent programs. The Online Wage Library is accessible at <http://www.flcdatcenter.com/>.

⁵ For additional information regarding prevailing wage determinations, 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.

⁶ A point system is used to assess the complexity of the job and assign the wage level. Step 1 requires a "1" to represent the job's requirements. Step 2 addresses experience and must contain a "0" (for at or below the level of experience and SVP range), a "1" (low end of experience and SVP), a "2" (high end), or "3" (greater than range). Step 3 considers education required to perform the job duties, a "1" (more than the usual education by one category) or "2" (more than the usual education by more than one category). Step 4

implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

The 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.

The petitioner claims that the proffered position involves complex, unique and/or specialized duties. Further, in the letter of support, the petitioner claims that the proffered position "is [a] management level position managing and overseeing the Computer/IT department of [the petitioner]." The petitioner further states that "[t]he administrator and its department is responsible for the day to day management, maintenance and security of the company's computer networks."

In response to the director's RFE, the petitioner claims that the position requires a "highly educated" individual with "specialized knowledge and skills in computer and information technology." In addition, the petitioner asserts that "[t]he duties and responsibilities of the proffered position are so specialized and complex that [the] knowledge associated with having a bachelors [sic] degree or higher in Computer Science or Electrical Engineering is required to perform the duties in the proffered position." The petitioner also claims that the proffered position is a "management and supervisory position."

Upon review of the assertions regarding the proffered position, we must question the stated requirements for the proffered position, as well as the level of complexity, independent judgment and understanding that are actually needed for the proffered position as the LCA is certified for a Level I entry-level position. This characterization of the position and the claimed duties, responsibilities and requirements as described in the record of proceeding conflict with the

accounts for Special Skills requirements that indicate a higher level of complexity or decision-making with a "1" or a "2" entered as appropriate. Finally, Step 5 addresses Supervisory Duties, with a "1" entered unless supervision is generally required by the occupation.

wage-rate element of the LCA selected by the petitioner, which, as reflected in the discussion above, is indicative of a comparatively low, entry-level position relative to others within the occupation. Furthermore, a Level I designation is appropriate for a position such as a research fellow, a worker in training, or an internship.

Under the H-1B program, a petitioner must offer a beneficiary wages that are at least the actual wage level paid by the petitioner to all other individuals with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application. See section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A); *Patel v. Boghra*, 369 Fed.Appx. 722, 723 (7th Cir. 2010). The LCA serves as the critical mechanism for enforcing section 212(n)(1) of the Act, 8 U.S.C. § 1182(n)(1). See 65 Fed. Reg. 80110, 80110-80111 (indicating that the wage protections in the Act seek "to protect U.S. workers' wages and eliminate any economic incentive or advantage in hiring temporary foreign workers" and that this "process of protecting U.S. workers begins with [the filing of an LCA] with [DOL]").

The prevailing wage of \$47,798 per year on the LCA corresponds to a Level I wage level for the occupational category of "Network and Computer Systems Administrators" for [REDACTED] Michigan.⁷ Notably, if the proffered position were designated as a higher level position, the prevailing wage at that time would have been \$58,843 per year for a Level II position, \$69,888 per year for a Level III position, and \$80,933 per year for a Level IV position.

The petitioner was required to provide, at the time of filing the H-1B petition, an LCA certified for the correct wage level in order for it to be found to correspond to the petition.⁸ To permit otherwise would result in a petitioner paying a wage lower than that required by section 212(n)(1)(A) of the Act, by allowing that petitioner to simply submit an LCA for a different wage level at a lower prevailing wage than the one that it claims it is offering to the beneficiary. Upon review of the certified LCA and the duties the petitioner attaches to the proffered position, the petitioner has

⁷ For additional information regarding the prevailing wage for network and computer systems administrators in Oakland County, see the All Industries Database for 7/2012 - 6/2013 for this occupation at the Foreign Labor Certification Data Center, Online Wage Library on the Internet at [http://www.flcdatabase.com/OesQuickResults.aspx?code=15-1142&area=\[REDACTED\]&year=13&source=1](http://www.flcdatabase.com/OesQuickResults.aspx?code=15-1142&area=[REDACTED]&year=13&source=1).

⁸ To promote the U.S. worker protection goals of a statutory and regulatory scheme that allocates responsibilities sequentially between DOL and the U.S. Department of Homeland Security (DHS), a prospective employer must file an LCA and receive certification from DOL before an H-1B petition may be submitted to USCIS. See 8 C.F.R. § 214.2(h)(4)(i)(B)(1); 20 C.F.R. § 655.700(b)(2). Upon receiving DOL's certification, the prospective employer then submits the certified LCA to USCIS with an H-1B petition on behalf of a specific worker. See 8 C.F.R. § 214.2(h)(2)(i)(A), (2)(i)(E), (4)(iii)(B)(1). DOL reviews LCAs "for completeness and obvious inaccuracies," and will certify the LCA absent a determination that the application is incomplete or obviously inaccurate. Section 212(n)(1)(G)(ii) of the Act. In contrast, USCIS must determine whether the attestations and content of an LCA correspond to and support the H-1B visa petition. 20 C.F.R. § 655.705(b); see generally 8 C.F.R. § 214.2(h)(4)(i)(B).

failed to establish that it would pay an adequate salary for the beneficiary's work, as required under the Act, if the petition were granted for a higher-level and more complex position as claimed elsewhere in the petition.

Moreover, this aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the petitioner's assertions regarding the demands, level of responsibilities and requirements of the proffered position. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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

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

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

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

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, provided the proffered position was in fact found to be a higher-level and more complex position as asserted by the petitioner elsewhere in the petition, the petitioner would have failed to submit a valid LCA that corresponds to the claimed duties and requirements of the proffered position. That is, the LCA submitted in support of the petition would then fail to correspond to the level of work, responsibilities and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work, responsibilities and requirements in accordance with section 212(n)(1)(A) of the Act and the pertinent LCA regulations.

The petitioner's statements regarding the requirements and claimed level of complexity, independent judgment and understanding required for the proffered position are materially inconsistent with the certification of the LCA for a Level I entry-level position. Accordingly, this conflict undermines the overall credibility of the petition. We find that, fully considered in the context of the entire record of proceeding, the petitioner failed to establish the nature of the proffered position and in what capacity the beneficiary will actually be employed.

For the foregoing reasons, a review of the enclosed LCA indicates that the information provided does not correspond to the level of work and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work and requirements in accordance with the pertinent LCA regulations. As found above, as a result, even if it were determined that the petitioner overcame the basis for the director's for denial of the petition, the petition could still not be approved.⁹

III. REVIEW OF THE DIRECTOR'S DECISION

Specialty Occupation

We will now address the director's basis for denial of the petition, namely that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position.¹⁰ Based upon a complete review of the record of proceeding, we agree with the director and find that the evidence fails to establish that the position as described constitutes a specialty occupation. For efficiency's sake, we hereby incorporate the above discussion and analysis into the record of proceeding regarding the beneficiary's proposed employment.

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.

⁹ Fundamentally, it appears that (1) the petitioner previously claimed to DOL that the proffered position is a Level I, entry-level position to obtain a lower prevailing wage; and (2) the petitioner is now claiming to USCIS that the position is a higher-level and more complex position in order to support its claim that the position qualifies as a specialty occupation. The petitioner cannot have it both ways. Either the position is a more senior and complex position (based on a comparison of the petitioner's job requirements to the standard occupational requirements) and thereby necessitates a higher required wage, or it is an entry-level position for which the lower wage offered to the beneficiary in this petition is acceptable. To permit otherwise would be directly contrary to the U.S. worker protection provisions contained in section 212(n)(1)(A) of the Act and its implementing regulations.

¹⁰ It must be noted that for purposes of the H-1B adjudication, the issue of a credible or bona fide offer of employment is viewed within the context of whether the petitioner has offered the beneficiary a position that is determined to be a specialty occupation. Accordingly, we must determine whether the petitioner has provided sufficient evidence to establish that the services to be performed by the beneficiary, as described by the petitioner, are those of a specialty occupation.

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 387. To avoid this 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.

The petitioner asserted that the beneficiary would be employed as a network and computer systems administrator. However, 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.

Upon review of the above job duties, we note that the petitioner did not provide any information with regard to the order of importance and/or frequency of occurrence with which the beneficiary will perform the described functions and tasks. Thus, the petitioner failed to specify which tasks were major functions of the proffered position and it did not establish the frequency with which each of the duties would be performed (e.g., regularly, periodically or at irregular intervals). As a result, the petitioner did not establish the primary and essential functions of the proffered position.

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 make its determination as to whether the proffered position qualifies as a specialty occupation, we first turn to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty, or

its equivalent, is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by us when determining these criteria include: whether DOL's *Occupational Outlook Handbook* (hereinafter the *Handbook*), on which we routinely rely for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹¹ As previously mentioned, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Network and Computer Systems Administrators."

We reviewed the chapter of the *Handbook* entitled "Network and Computer Systems Administrators," including the sections regarding the typical duties and requirements for this occupational category. However, the *Handbook* does not indicate that "Network and Computer Systems Administrators" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry.

The subchapter of the *Handbook* entitled "How to Become a Network and Computer Systems Administrator" states the following about this occupation:

Although some employers require just a postsecondary certificate, most require a bachelor's degree in a field related to computer or information science.

Education

Although some employers require just a postsecondary certificate, most require a bachelor's degree in a field related to computer or information science. However, because administrators work with computer hardware and equipment, a degree in computer engineering or electrical engineering usually is acceptable as well. Such a degree usually entails classes in computer programming, networking, or systems design.

¹¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online. We hereby incorporate the chapter of the *Handbook* regarding the occupational category "Network and Computer Systems Administrators" into the record of proceeding.

Because network technology is continually changing, administrators need to keep up with the latest developments. Many continue to take courses throughout their careers. Some businesses require that an administrator get a master's degree.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Network and Computer Systems Administrators, on the Internet at <http://www.bls.gov/ooh/computer-and-information-technology/network-and-computer-systems-administrators.htm#tab-4> (last visited September 2, 2014).

When reviewing the *Handbook*, we must note again that the petitioner designated the wage level of the proffered position as a Level I position on the LCA. As previously discussed, this designation is indicative of a comparatively low, entry-level position relative to others within the occupation and signifies that the beneficiary is only expected to possess a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that he would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results. Furthermore, DOL guidance indicates that a Level I designation is appropriate for a position as a research fellow, a worker in training, or an internship.

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. Rather, the *Handbook* states that although some employers require just a postsecondary certificate, most require a bachelor's degree in a field related to computer or information science. However, this statement does not support the view that any network and computer systems administrator job qualifies as a specialty occupation as "most" is not indicative that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.¹² More specifically, "most" is not indicative that a position normally requires at least a bachelor's degree in a specific specialty, or its equivalent (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)), or that a position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)).

¹² For instance, the first definition of "most" in *Webster's New 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 need at least a bachelor's degree in accounting, it could be said that "most" of the positions need 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. (We note that the proffered position has been designated by the petitioner in the LCA as a low, entry-level position relative to others within the occupation.) 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." § 214(i)(1) of the Act.

In addition, the *Handbook* states that a degree in computer engineering or electrical engineering usually is acceptable. Furthermore, the *Handbook* reports that some businesses require that an administrator get a master's degree. Accordingly, the *Handbook* does not report that at least a bachelor's degree in a specific specialty, or its equivalent, categorically is normally the minimum requirement for entry into the occupation. Thus, it does not support the proffered position as qualifying as a specialty occupation.

It is incumbent upon the petitioner to provide persuasive evidence that the proffered position qualifies as a specialty occupation under this criterion, notwithstanding the absence of the *Handbook's* support on the issue. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook* (or other objective, authoritative source) indicates 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 criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we will review the record of proceeding regarding the first of the two alternative prongs found at 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 (1) to the petitioner's industry; and (2) for positions within that industry that are both: (a) parallel to the proffered position, and (b) 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 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1102).

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 our previous discussion on the matter.

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). 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.

In the Form I-129 petition, the petitioner describes itself as a home health care services provider established in 2003, with 21 employees. The petitioner claims that it has a gross annual income of \$820,392 and a net annual income of \$10,558. The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 6216.¹³ This NAICS code is designated for "Home Health Care Services." The U.S. Department of Commerce, Census Bureau website describes this NAICS code by stating the following:

This industry comprises establishments primarily engaged in providing skilled nursing services in the home, along with a range of the following: personal care services; homemaker and companion services; physical therapy; medical social services; medications; medical equipment and supplies; counseling; 24-hour home care; occupation and vocational therapy; dietary and nutritional services; speech therapy; audiology; and high-tech care, such as intravenous therapy.

U.S. Dep't of Commerce, U.S Census Bureau, 2012 NAICS Definition, 6216 – Home Health Care Services, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited September 2, 2014).

In support of the assertion that the proffered position is a specialty occupation under this criterion of the regulations, the petitioner submitted copies of job advertisements in response to the RFE. The petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers' recruiting history for the type of jobs advertised. Moreover, as the advertisements are only solicitations for hire, they are not evidence of the actual hiring practices of these employers.

Upon review of the documents, we find that they do not establish that a requirement for a bachelor's degree in a specific specialty, or its equivalent, is common to the petitioner's industry in similar organizations for parallel positions to the proffered position.

¹³ 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 September 2, 2014).

For example, the petitioner submitted advertisements for organizations that do not appear to be similar to the petitioner. More specifically, the advertisements include positions with [REDACTED] (a company in the computer/IT services industry), and [REDACTED] (a company in the aerospace and defense industry). Without further information, these advertisements appear to be for organizations that are not similar to the petitioner. On appeal the petitioner references the advertisements submitted in response to the director's RFE and notes that the advertisers "are all in [the] health care industry either as provider or supplier of services or vendors of the providers." The petitioner also acknowledges, however, that these advertisers "are dissimilar because they are big business in terms of volume of business and revenues, and their business products/services are different from home healthcare industry." Upon review, without probative evidence establishing that the petitioner shares specific aspects or traits with the advertisers other than that they all belong to the general health care industry, the petitioner has not demonstrated how the advertising organizations are similar to it.

Furthermore, the petitioner has not established that the advertisements are for parallel positions. For instance, the petitioner provided a posting for a manager of end user support position, which requires a candidate to possess a degree and "seven or more years [of] related experience and/or training." Another submission is for a junior network/IT engineer with [REDACTED], which requires a candidate to possess a degree and "3 years of related experience." As previously discussed, the petitioner designated a wage level I (entry level) for the proffered position on the LCA. The advertised positions appear to be for more senior positions than the proffered position. More importantly, the petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

Additionally, 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 petitioner submitted a posting for [REDACTED] which does not indicate any academic requirement for the position. In addition, the posting for a manager of end user support by [REDACTED] states that a bachelor's degree is required, but it does not indicate that a bachelor's degree in a *specific specialty* that is directly related to the occupation 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 in any field, but such a degree in a *specific specialty* that is directly related to the specialty occupation claimed in the petition. The petitioner also submitted a posting for a systems administrator position, which states that a "Bachelor's degree in computer science, engineering or a science related field is strongly preferred." Obviously, a *preference* for a degree in these fields is not an indication of a minimum *requirement*.

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. The evidence does

not establish that the proffered position qualifies as a specialty occupation under this criterion of the regulations.¹⁴

In response to the RFE, the petitioner also submitted a printout from the [REDACTED] website. The printout provides general information about the organization, including membership information. Notably, the printout does not address the educational requirements for network and computer systems administrator positions (or parallel positions).

In addition, the petitioner provided a letter from [REDACTED] Director of [REDACTED] dated October 21, 2013. In the letter, the clinical director states that [REDACTED] is a consultant and management company that assisted the petitioner in recruiting, hiring and training management staff. In addition, the clinical director states that "the changes in the home care industry, such as Electronic Medical Records requirement...prompted us to recommend and convince our home health care client to establish and start an IT department managed by IT and computer professionals with [a] bachelor's degree in computer science or related field, such as Information Technology, Electrical engineering or Computer Engineering." We observe that the author of this letter does not state that at least a bachelor's degree in a specific specialty, or its equivalent, is required for the position.

Thus, based upon a complete review of the record, the petitioner has not established 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. 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

¹⁴ Although the size of the relevant study population is unknown, the petitioner also fails to demonstrate 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 companies. *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 of network and computer systems administrator for companies that are similar to the petitioner and in the same industry requires a bachelor's or higher degree in a specific specialty, or its equivalent, (which they do not) 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, or its equivalent, for entry into the occupation in the United States.

performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

We acknowledge that the petitioner may believe that the proffered position is so complex and/or unique that it can be performed only by an individual with at least a bachelor's degree. In support of this assertion, the petitioner provided documents regarding its business operations, including a copy of its brochure, its Employer's Quarterly Wage/Tax Report for 2013 (quarter 3), and an organizational chart. However, 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 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.

Specifically, the petitioner failed to demonstrate how the network and computer systems administrator 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. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While related courses may be beneficial, or even essential, in performing certain duties of a network and computer systems administrator 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 petitioner's proffered position.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, we incorporate by reference and reiterate our earlier discussion that the LCA indicates that the position is a low-level, entry position relative to others within the occupation. Based upon the wage rate, the beneficiary is only required to have a basic understanding of the occupation. Moreover, the wage rate indicates that the beneficiary will perform routine tasks that require limited, if any, exercise of independent judgment; his work will be closely supervised and monitored; he will receive specific instructions on required tasks and expected results; and his work will be reviewed for accuracy.

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 instance, 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."¹⁵

¹⁵ For additional information regarding wage levels as defined by DOL, 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.

Therefore, the evidence of record does not establish that this position is significantly different from other network and computer systems administrator positions such that it refutes the *Handbook's* information to the effect that a bachelor's degree in a specific specialty, or its equivalent, is not required 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.

The petitioner claims that the beneficiary's academic background and 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 (or its equivalent). 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-degreed or non-specialty degreed employment. Upon review of the record of proceeding, we find that the petitioner has 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. 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* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

Moreover, 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.

In this matter, in response to the director's RFE, the petitioner stated that "[t]his is the first time that our company is hiring [a] network and computer systems administrator." Accordingly, the petitioner does not have any documentation regarding employees who have previously held the position and the record is devoid of information to satisfy this criterion of the regulations.

Upon review of the record, the petitioner has not provided probative 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.

In the instant case, the petitioner provided documents regarding its business operations, including the documentation previously outlined. We acknowledge that the petitioner may believe 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. Upon review of the record of the proceeding, however, we find 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 that they are more specialized and complex than positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent.

Moreover, 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 occupational category. Again, 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 simply not credible that the petitioner's proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level III (experienced) or IV (fully competent) position, requiring a substantially 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."

Upon review of the record, we find that the petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. The petitioner has not established that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree 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

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, 145 (3d Cir. 2004) (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 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, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.