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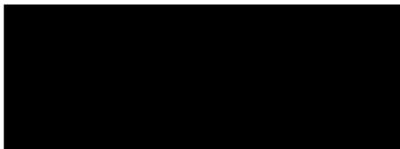
Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*Michael T. Kelly*

for  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition the petitioner stated that it is a private, for-profit tutoring and learning center. To employ the beneficiary in what it designates as a teacher position, the petitioner endeavors 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 it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements. In support of these contentions, counsel submitted a brief and additional evidence.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief and attached exhibits in support of the appeal.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would be employing the beneficiary in a specialty occupation position.

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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a 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, the position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), 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 a particular position meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5<sup>th</sup> Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its

equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

With the visa petition, counsel submitted a letter, dated March 31, 2009, from the petitioner's president. As to the proffered position, that letter states:

[The beneficiary] is being offered temporary employment in the position of a Teacher. In this capacity, [the beneficiary] will be responsible for teaching academic subject [sic] to students in grade K-12 basic math skills, geometry, algebra, trigonometry, calculus, college prep math, preparation for standardized exams, . . . SAT prep according to each students' [sic] educational level.

Counsel also submitted evidence purporting to show that the beneficiary has a bachelor's degree in mathematics from the University [REDACTED]<sup>1</sup>

Because the evidence did not demonstrate that the petitioner would employ the beneficiary in a specialty occupation position, the service center, on May 6, 2009, issued a RFE in this matter. The service center requested, *inter alia*, a more detailed description of the duties of the proffered position, the minimum education, required for the job, and why the work to be performed requires a person with a minimum of a bachelor's degree or the equivalent in a specific specialty.

Counsel responded in a letter dated June 3, 2009. Counsel stated that the petitioner has five teachers and that each has a bachelor's degree. Counsel provided a list of those teachers and the subjects they teach, as well as some evidence pertinent to the academic credentials of each teacher. Counsel also cited the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* for the proposition that teaching positions require bachelor's degrees.

The list of teachers includes the name of a person that the petitioner employs as a math teacher with regard to whom counsel submitted documents in [REDACTED] which appear to be related to this person's educational credentials. However, no English translation is provided. Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3). Because the documents submitted were not accompanied by a translation and certification, their contents shall not be considered.

Counsel also provided an educational evaluation, dated February 20, 2001, which states that this math teacher's study at two different foreign institutions is equivalent to 150 semester hours of undergraduate study. As was noted above, the record does not contain English translations of this person's educational credentials. Without such translations, the AAO is unable to ascertain the reliability of the evaluation. Further, the evaluation does not state that this person's education is equivalent to a minimum of a bachelor's degree or the equivalent, or that it is equivalent to a U.S.

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<sup>1</sup> Deficiencies in the submitted documentation will be addressed later in this decision, after the discussion of the specialty occupation issue.

bachelor's degree or the equivalent *in any specific specialty*. USCIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

The list shows that the petitioner also employs another person as a math teacher. The record contains a diploma showing that this person received a bachelor's degree and a master's degree, both in mathematics, and both from ██████████ University.

The list also names a person that the petitioner employs as a physics teacher. The record contains a diploma showing that this person received a Master of Science degree from the ██████████ University of ██████████ but not that the degree was in any more specific concentration than science.

The list also names two persons that the petitioner employs as English teachers. A diploma in the record shows that one person received a bachelor's degree in "English (Literature)" from ██████████ University. With regard to the other person, the petitioner submitted a copy of a teaching credential issued by the State of ██████████. Counsel stated that this demonstrates that she has a bachelor's degree. Counsel did not even allege, however, that this demonstrates the possession of a bachelor's degree in any specific specialty relevant to teaching.

With regard to the named current teachers and the related supporting documents, the AAO finds that, as reflected in the discussion above, the evidence in the record of proceeding does not establish that the petitioner's current teaching staff is composed only of persons with at least a bachelor's degree, or the equivalent, in a specific specialty. Further, noting that the petitioner has presented no evidence of its actual recruiting history and that the petitioner addresses only its current staff, although the Form I-129 states that the petitioner was established in 1996, the AAO also finds that the petitioner has not presented recruiting and hiring evidence sufficient to establish its history in this area. For all of these reasons, the AAO concludes that the petitioner's submissions about its current staff are not probative on the specialty occupation issue.

Counsel also provided a letter, dated June 2, 2009, from the petitioner's president. The petitioner's president listed the following duties of the proffered position:

- Teach academic subject to students in grade K-12 basic math skills, geometry, algebra, trigonometry, calculus, college prep math, preparation for standardized exams, college prep math, SAT prep according to each students' [sic] educational level.
- Teach in a classroom setting and Create classroom lesson plans for classes of 10-30 mixed-age students
- Create study plans for individual students based on skill level and strengths/weaknesses

- Complete student evaluations on a quarterly basis
- Develop new homework assignments and worksheets based on student's problem areas.
- Grade assignments and tests.

The petitioner's president also stated:

The minimum requirement for this job is a bachelor's degree or its equivalent in mathematics or related field of study. Employing a teacher with at least a bachelor's degree will ensure competency in the area of teaching academic education.

The director denied the visa petition on July 13, 2009 finding, as was noted above, that the petitioner had not demonstrated that it would employ the beneficiary in a specialty occupation. In that decision, the director analyzed the proffered position as comparable to self-enrichment teacher positions as described in the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*.

In his appeal brief, counsel noted that the subjects taught at the petitioner's school are all academic subjects, and asserted that the proffered position is more akin to mathematics teacher position than a self-enrichment teacher position. Counsel stated, without supporting evidence, that, although teaching other subjects may not require a college degree, "the nature of mathematics is so complex that a person without a degree would not be able to perform." The AAO notes that the duties of the proffered position contemplate teaching mathematics at levels varying from kindergarten through secondary school levels.

The record does not contain a schedule of the petitioner's classes. It may only offer classes after regular school hours and on weekends, rather than being the school its students attend during the ordinary school day. However, the classes taught are academic classes and preparation for standardized tests such as the Scholastic Aptitude Test.

The AAO recognizes the *Handbook*, which counsel previously cited, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>2</sup> As to the duties of teachers, the *Handbook* states the following in the section entitled *Teachers – Kindergarten, Elementary, Middle, and Secondary*.

*Kindergarten teachers* use play and hands-on teaching, but academics begin to take priority in kindergarten classrooms. Letter recognition, phonics, numbers, and

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<sup>2</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2010 – 2011 edition available online.

awareness of nature and science, introduced at the preschool level, are taught primarily in kindergarten.

Most *elementary school teachers* instruct one class of children in several subjects. In some schools, two or more teachers work as a team and are jointly responsible for a group of students in at least one subject. In other schools, a teacher may teach one special subject—usually music, art, reading, science, arithmetic, or physical education—to a number of classes. A small but growing number of teachers instruct multilevel classrooms, with students at several different learning levels.

*Middle school teachers* and *secondary school teachers* help students delve more deeply into subjects introduced in elementary school and expose them to more information about the world. Middle and secondary school teachers specialize in a specific subject, such as English, Spanish, mathematics, history, or biology. They also may teach subjects that are career oriented.

The duties of the proffered position contain elements of teaching at each of those levels. Notwithstanding that the petitioner may not be an ordinary school in the sense of offering a full-time curriculum to its students, the AAO finds that the proffered position is similar to that of a teacher at the kindergarten, elementary, middle, and secondary school levels than it is to a self-enrichment education teacher position. The position will be analyzed as such, and the AAO hereby withdraws the director's specific finding to the contrary.

The *Handbook* describes the educational requirements of teaching positions at kindergarten, elementary, middle, and secondary school as follows:

Traditional education programs for kindergarten and elementary school teachers include courses designed specifically for those preparing to teach. Among these courses are mathematics, physical science, social science, music, art, and literature, as well as prescribed professional education courses, such as philosophy of education, psychology of learning, and teaching methods. Aspiring secondary school teachers most often major in the subject they plan to teach, while also taking a program of study in teacher preparation. Many 4-year colleges require students to wait until their sophomore year before applying for admission to teacher education programs. To maintain their accreditation, teacher education programs are now required to include classes in the use of computers and other technologies. Most programs require students to perform a student-teaching internship. Teacher education programs are accredited by the National Council for Accreditation of Teacher Education and the Teacher Education Accreditation Council. Graduation from an accredited program is not necessary to become a teacher, but it may make fulfilling licensure requirements easier.

That passage does not indicate that teaching, or teaching mathematics, requires a minimum of a bachelor's degree or the equivalent in a specific specialty. The *Handbook* further indicates that all

states require public school teachers to be certified and licensed, and that certification and licensure requires a minimum of a bachelor's degree. It does not indicate, however, that public school teaching positions require a minimum of a bachelor's degree or the equivalent *in a specific specialty*. Further still, the petitioner is not a public school, and the *Handbook* states that licensure is not required for teachers in most private schools, and no evidence in the record suggests that the proffered position is an exception to that general rule.

The record contains no other evidence related to teaching positions in general. As the record of proceeding has not demonstrated that a minimum of a bachelor's degree, or the equivalent, in a specific specialty is normally the minimum requirement for entry into the type of teaching position that is the subject of this petition, the petitioner has not demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As was noted above, the *Handbook* does not indicate that private-school teachers must have a bachelor's degree, let alone one in a specific specialty directly related to the subjects that they would teach. Also, the record contains no evidence that such a degree is required by any professional association of private school teachers. Further, the petitioner has not provided any evidence pertinent to the recruitment and hiring practices of organizations similar to the petitioner in the petitioner's industry when hiring for a position parallel to the proffered position.

Therefore, the petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of the first alternate prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, the AAO finds that the petitioner has not satisfied the second alternate prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), in that it has not demonstrated that the particular position proffered is so complex or unique that it can be performed only by an individual with at least a bachelor's degree, or the equivalent, in a specific specialty.

Counsel's conclusion that mathematics teachers require a bachelor's degree notwithstanding that other teachers may not is unsupported by the evidence in the record of proceeding. The duties of the proffered position, as described in the petitioner's president's June 2, 2009 letter and elsewhere in the record, are generic duties of a school teacher. The record contains no indication that the proffered position is sufficiently complex or unique that it requires at least a bachelor's degree, although other teaching positions may not. 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)). 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).

Next, as will now be discussed, the petitioner has not demonstrated that it normally requires at least a bachelor's degree, or the equivalent, in a specific specialty for the proffered position and that the position therefore qualifies as a position in a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

First and foremost, the AAO here incorporates and adopts for the purposes of this discussion its previous conclusion, and supporting discussion, that the petitioner's submissions about its current staff are not probative on the specialty occupation issue.

Counsel demonstrated that four of the petitioner's five teachers have bachelor's or higher degrees. Whether one of the petitioner's math teachers has a college degree or the equivalent, or in what course of study, is unclear. The petitioner has not demonstrated that all of its teachers have bachelor's degrees.

More specifically, as to its mathematics teachers, the petitioner demonstrated that one has a master's degree in mathematics. Whether its other mathematics teacher has a college degree has not been demonstrated. If that person does have a degree, what subject it is in is unknown to the AAO. Thus, the petitioner has not demonstrated even that its two mathematics teachers have a minimum of a bachelor's degree or the equivalent in a specific specialty.

The subject in which one of the petitioner's other teachers has a degree is unclear. The degrees in evidence include a Master of Science degree in mathematics, an otherwise undifferentiated master's of science degree, and a bachelor's degree in English literature. Those degrees are in various subjects. They are not any indication that the petitioner requires its teachers to have a minimum of a bachelor's degree or the equivalent in a specific specialty.

In any event, as also previously indicated in its discussion of the evidence with regard to the petitioner's current staff, the AAO finds that, as the petitioner was established in 1996 and has only presented evidence as to its current staff – and not even as to the standards under which those

persons were recruited - the petitioner has not presented recruiting and hiring evidence sufficient to establish its history of recruiting and hiring for the position that is the subject of this petition.

For all of the reasons above, the AAO concludes that the petitioner's submissions about its current staff are not probative on the specialty occupation issue.

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

As described in the record of proceeding, the duties of the proffered position are the generic duties of kindergarten, elementary, middle, and secondary school teachers. Nothing sets them apart from the duties of other teaching positions, some of which do not require a minimum of a bachelor's degree or the equivalent in a specific specialty. Nothing in the record indicates that any of the duties of the proffered position require a minimum of a bachelor's degree or the equivalent in a specific specialty, notwithstanding that the duties of other such teaching positions do not.

As noted earlier in this decision, the *Handbook* indicates that there is no categorical requirement for a bachelor's or higher degree, or the equivalent, for private-school teachers in the kindergarten through secondary-school levels. Further, as also reflected in this decision's statements about the lack of an evidentiary or factual foundation for the petitioner's assertion that the proffered position requires at least a bachelor's degree, or the equivalent, in mathematics, the record of proceeding lacks substantive evidence of the specialization and complexity of the proposed duties relative to math teaching positions whose performance does not require, and is not usually associated with, at least a bachelor's degree in mathematics or any other specific specialty closely related to teaching math.

The AAO also finds that, to the extent to which they are described in the record of proceeding - which is exclusively in terms of generalized and generic functions that could apply to a wide variety of teaching or tutoring positions not requiring at least a bachelor's degree in a specific specialty - it is not self-evident the proposed duties are both more complex and more specialized than math teaching positions not requiring the application of knowledge usually associated with the attainment of at least a bachelor's degree, or the equivalent, in mathematics. Further, the petitioner has not supplemented its descriptions of the proposed duties with evidence establishing the requisite association between those duties and knowledge usually associated with at least a bachelor's degree, or the equivalent, in a specific specialty.

For the reasons discussed above, the AAO finds that the director was correct in her determination that the record before her failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds that the evidence and argument submitted on appeal have not remedied that failure. Accordingly, the appeal will be dismissed and the petition denied on this basis.

Beyond the decision of the director, the AAO also finds that the petition must also be denied because the petitioner has not established that the beneficiary is qualified to serve in the proffered position if that position had been established as a specialty occupation. This is because, the AAO finds, the evidence in the record of proceeding does not establish that the beneficiary holds at least a bachelor's degree, or the equivalent, let alone one in mathematics (which the petitioner asserts as the degree necessary for performance of the proffered position). The AAO conducts appellate review on a *de novo* basis (*See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004), and it was in the exercise of this function that the AAO identified this additional ground for denying the petition.

To establish the petitioner's educational credentials, the petitioner's educational evaluator, and ultimately the petitioner itself, relies upon foreign diplomas and related academic transcripts that relate to a name other than that specified as the beneficiary's in the Form I-129. In this regard, the AAO notes the affidavit of the person attesting to the name on the diplomas and transcripts as the beneficiary's alias. However, the AAO finds this insufficient to establish that those documents indeed relate to the alien on whose behalf this petition was filed. In this regard, the AAO notes that there is no reliable official document in the record of proceeding that attests that the person who is named in the Form I-129 and the person named in the aforementioned affidavit are one and the same.<sup>3</sup> The AAO also finds that the affidavit attesting to the beneficiary's alias avers that the affiant is acquainted with the beneficiary but fails to specify and corroborate the nature and length of that acquaintance and the bases of the affiant's knowledge regarding the beneficiary's dual identity. The AAO also finds it curious that a person would attend post-secondary schools under an alias, have his or her academic records posted to the alias, and have degrees recorded and diplomas issued under an assumed name. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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

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

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<sup>3</sup> The AAO accords little weight to the handwritten statements on the beneficiary's passport pages. It is not clear who wrote the statements and when; and there is no indication in the passport that these statements were official entries and that their accuracy had been verified.