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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

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[REDACTED]

Date: DEC 01 2011 Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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

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

ON BEHALF OF PETITIONER:

[REDACTED]

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the California Service Center denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a research institute and medical group. It seeks to employ the beneficiary as a clinical research assistant 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.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE) and counsel's letter to the director requesting additional time to respond to the RFE; (3) the director's denial letter; and (4) Form I-290B. The AAO reviewed the record in its entirety before reaching its decision.

Prior to addressing the substantive basis for the director's decision, the AAO will first discuss the primary issue counsel raises on appeal, which is whether the director properly issued the RFE.

The petitioner submitted the petition on July 11, 2009. The petitioner also submitted a Labor Condition Application (LCA) indicating that the prevailing wage is \$33,405 per year, with a proffered salary of \$42,000. Additionally, the petitioner submitted a copy of the prevailing wage survey on which the LCA was based. The occupational title used in this survey is "Health Diagnosing and Treating Practitioners, All Other."

The petitioner stated it is a research institute and medical group with 13 employees. The support letter submitted by the petitioner stated that the beneficiary would:

- Study coordination, coordinate data collection, entry, and organization;
- Set up a study filing system and execute study startup;
- Assist with all aspects of submission and follow up processes to the Study Sponsors;
- Coordinate subject recruitment for studies and develop outreach;
- Coordinate and maintain up to four studies with asthmatic patients;
- Maintain study documents/case report forms;
- Participate in regular conference calls with collaborative study sites;
- Attend investigator meetings;
- Act as independent evaluator;
- Obtain subject consent for research studies;
- Oversee responsibilities of research assistant and work-study students;
- Conduct procedures for protecting human subjects from research risks;
- Provide training, supervision, and management to research assistants;
- Conduct and interpret pulmonary function tests;
- Conduct bronchial provocation tests;
- Conduct airway evaluation;
- Conduct allergy tests;
- Assist in drafting and submitting investigator initiated research protocols;

- Conduct patient interviews;
- Conduct literature review; and
- Follow and observe physician while examining research patients.

The petitioner stated that the position requires at least a bachelor's degree generally, but did not indicate that the degree must be in a specific specialty. The petitioner submitted evidence that the beneficiary's foreign education is equivalent to a U.S. Doctor of Medicine degree.

Additionally, the petitioner submitted copies of advertisements placed by other employers for clinical research associates.

On July 3, 2009, the director issued an RFE requesting additional evidence that the proffered position is a specialty occupation, including a more detailed job description and an organizational chart if the beneficiary will supervise or direct others. The RFE also requested additional information regarding the petitioner's business.

Counsel for the petitioner responded to the RFE with a request for a 30-day extension to respond to the RFE. No documentation was submitted in response to the RFE other than the request for a 30-day extension.

The director denied the petition on August 12, 2009, finding that the proffered position is not a specialty occupation based on the evidence of record. The director noted that, under 8 C.F.R. § 103.2(b)(8), additional time to respond to an RFE may not be granted.

On appeal, counsel states as follows in the Form I-290B:

USCIS erred in denying the H-1B Petition for the following reasons:

- 1) The Request for Evidence was improvidently issued because Petitioner met all the requirements for eligibility for the H-1B petition and had submitted all necessary eligibility documents. In addition, the RFE did not raise any underlying questions regarding eligibility and there were no missing eligibility documents. In fact, the Petitioner submitted all evidence of eligibility in the original petition. Petitioner addressed the eligibility by providing a detailed job description, that the position meets the definition of a "specialty occupation" under the Occupational Outlook Handbook, and job postings in the profession and comparable fields requiring a minimum of a Bachelor's degree.
- 2) 8 C.F.R. 103.2(a)(8) specifically states "...the applicant or Petitioner SHALL be given 12 weeks to respond to a Request for Evidence." In the instant case, Petitioner was given only 30 days. This is contrary to the regulations.
- 3) Petitioner was unable to meet the deficient 30 days given to respond to the RFE and made a timely request for just an additional 30 days to submit the requested documents which was denied arbitrarily and capriciously. Although it is proper not to grant additional time based on 8 C.F.R. 103.2(a)(8), however, this

statement "additional time may not be granted" is after the requirement that 12 weeks be given to respond to the RFE. In this case, again, Petitioner was only given a mere 30 days and not the required 12 weeks.

Although counsel for the petitioner checked Box B in Part 2, indicating that a brief and/or additional evidence would be submitted within 30 days, as of the date of this decision, the petitioner has submitted neither.

The regulation at 8 C.F.R. § 103.2(b)(8) does not permit the director to extend the time within which the petitioner may submit evidence in response to the RFE. The petitioner had not submitted any additional documentation by the time the director's decision was issued on August 12, 2009. Consequently, the director did not err in denying the petition due to the petitioner's failure to timely submit requested documentation required for a material line of inquiry. Moreover, the AAO finds that the 30 day timeframe provided for the petitioner to submit a response to the RFE was reasonable and, as discussed in greater detail below, in accordance with current regulations. The petitioner and counsel did not provide any reason why the 30 day time period provided in the RFE for the petitioner's response was unreasonable, but simply stated that the RFE was lengthy. 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).

On appeal, counsel for the petitioner submits none of the relevant documentation requested in the RFE. As will be noted below in the discussion of the U.S. Department of Homeland Security regulations governing RFEs, all documents in response to an RFE must be submitted at the same time and within the response period specified in the RFE. In this matter, the petitioner's response to the RFE and on appeal neither addressed the issues raised in the director's RFE nor provided any of the requested documentation.

A service center director may issue an RFE for evidence that he or she may independently require to assist in adjudicating an H-1B petition, and his or her decision to approve a petition must be based upon consideration of all of the evidence as submitted by the petitioner, both initially and in response to any RFE that the director may issue. *See* 8 C.F.R. § 214.2(h)(9)(i). The purpose of an RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1), (8), and (12).

The regulation at 8 C.F.R. § 103.2(b)(11) provides the following rules on responding to an RFE. The petitioner has three options during the response period specified in the RFE: submission of a complete response containing all of the requested information; submission of a partial response with a request for a decision based on the record; or withdrawal of the petition. Submission of only some of the requested evidence will be considered a request for a decision on the record. Materials in response to the RFE must be submitted together at one time, along with the original RFE, and they must be filed within the period afforded in the RFE. Further, the regulation at 8 C.F.R. § 103.2(b)(8)(iv) states that in no case shall the maximum response period provided in an RFE exceed 12 weeks, and that additional time to respond may not be granted. Thus, the

petitioner is afforded only one opportunity to file materials in response to the RFE.

Counsel is incorrect as a matter of law that 8 C.F.R. § 103.2(a)(8) mandates a twelve week response time for RFEs. Counsel is most likely relying on a prior version of 8 C.F.R. § 103.2(a)(8) (2007), which was revised in a final rule effective June 18, 2007. The final rule removes the fixed time of 12 weeks to respond to an RFE and permits U.S. Citizenship and Immigration Services (USCIS) to assign flexible times (though no more than 12 weeks) for applicants and petitioners to respond to the RFE. 72 Fed. Reg. 19100 (Apr. 17, 2007).

Because the petitioner submitted a response (albeit just a request for extension of time) before the deadline stated in the RFE, the regulation at 8 C.F.R. § 103.2(b)(13) does not come into play, which states that, if the petitioner fails to respond to an RFE within the specified time, a petition may be summarily denied, denied based on the record, or denied for both reasons. However, pursuant to provisions at 8 C.F.R. § 103.2(b)(11) and (14), if, as here, the petitioner submits a response to the RFE, however inadequate, the petitioner's RFE response will be deemed a request for a decision on the record, and a decision will be issued on the basis of the record as it existed upon receipt of the timely filed RFE response. Therefore, the director acted appropriately when she made a decision based on the record after the petitioner submitted a request for an extension of time to respond to the RFE. The AAO further notes that, according to 8 C.F.R. § 103.2(b)(14), failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition.

Having addressed the procedural issues relevant to the RFE and denial issued by the director in this matter, the AAO will now consider the principal basis for the director's decision - namely, whether the 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 following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires [(1)] theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires [(2)] the attainment of a bachelor's

degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also meet one of the following criteria:

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), 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.

To make its determination whether the employment described qualifies as a specialty occupation, the AAO turns 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 the normal 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 the AAO when determining these criteria include: whether the Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies 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)).

Although counsel argues that the documentation submitted with the petition is sufficient to establish that the proffered position is a specialty occupation, the AAO disagrees with this assessment. In the petitioner's support letter, the petitioner references the job classification of scientific technician/technologist in describing the proffered position. According to the *Handbook* (2010-11 online edition), Science Technicians:

use the principles and theories of science and mathematics to assist in research and development and to help invent and improve products and processes. However, their jobs are more practically oriented than those of scientists. Technicians set up, operate, and maintain laboratory instruments, monitor experiments, make observations, calculate and record results, and often develop conclusions. They must keep detailed logs of all of their work. Those who perform production work monitor manufacturing processes and may ensure quality by testing products for proper proportions of ingredients, for purity, or for strength and durability.

As laboratory instrumentation and procedures have become more complex, the role of science technicians in research and development has expanded. In addition to performing routine tasks, many technicians, under the direction of scientists, now develop and adapt laboratory procedures to achieve the best results, interpret data, and devise solutions to problems. Technicians must develop expert knowledge of laboratory equipment so that they can adjust settings when necessary and recognize when equipment is malfunctioning.

Most science technicians specialize, learning their skills and working in the same disciplines in which scientists work. Occupational titles, therefore, tend to follow the same structure as those for scientists.

Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook*, 2010-11 Edition, "Science Technicians," <<http://www.bls.gov/oco/ocos115.htm>> (accessed November 7, 2011). The training and qualifications required for Science Technicians are described as follows in the *Handbook*:

There are many ways to qualify for a job as a science technician. Most employers prefer applicants who have at least 2 years of specialized postsecondary training or an associate degree in applied science or science-related technology. Some science technicians have a bachelor's degree in the natural sciences, while others have no formal postsecondary education and learn their skills on the job.

Some science technician specialties have higher education requirements. For example, biological technicians often need a bachelor's degree in biology or a closely related field. Forensic science positions also typically require a bachelor's degree, either in forensic science or another natural science. Knowledge and understanding of legal procedures also can be helpful. . . .

Id. (emphasis added). According to the *Handbook*, most employers prefer Science Technicians to hold a two-year degree and some Science Technicians have no formal postsecondary education. Therefore, the *Handbook* does not indicate that at least a bachelor's degree in a specific specialty is usually required for Science Technicians. Although some science technician specialties have higher education requirements, the petitioner has not provided evidence that the proffered position entails duties the performance of which require that the person performing them hold a baccalaureate or higher degree in a specific specialty. The petitioner was afforded the opportunity to provide such evidence in response to the RFE but, as discussed previously, the petitioner neglected to submit any additional documentation relating to the proffered position either in response to the RFE or on appeal.

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.

As the *Handbook* indicates no specific degree requirement for employment as a Science Technician, and as it is not self-evident that, as described in the record of proceeding, the proposed duties comprise a position for which the normal entry requirement would be at least a bachelor's degree, or its equivalent, in a specific specialty, the AAO concludes that the performance of the proffered position's duties does not require the beneficiary to hold a baccalaureate or higher degree in a specific specialty.

Accordingly, the AAO finds that the petitioner has not satisfied the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

As earlier noted, 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement of at least a bachelor's degree in a specific specialty. Further, the record of proceeding does not establish the common-degree-requirement via submissions from an industry professional association or by letters or affidavits from firms or individuals attesting as to routine recruiting and employment practices in the industry with regard to the type of position that is the subject of this petition. The advertisements submitted by the petitioner were placed by pharmaceutical companies and hospitals, rather than a smaller practice group that is similar to the petitioner. Further, although most of the advertisements required at least a bachelor's degree, none of the advertisements required at least a bachelor's degree in a specific specialty. In short, the petitioner has not established 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.

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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."

The evidence of record does not refute the *Handbook's* information to the effect that there is a wide spectrum of credentials that are found acceptable for Science Technician positions, including 2-year degrees in process technology or other academic concentrations, and degrees not in a specific specialty closely related to the occupation. Likewise, the *Handbook* also indicates that some science technician positions are held by persons with no postsecondary education who learn their skills on the job.

The AAO further notes that, on their face, the duties, as described in the record of proceeding before the director, do not appear highly technical in nature, nor has the petitioner established that they comprise a position technically or otherwise so complex, or, for that matter, so unique, as to require the services of a person equipped with at least a bachelor's degree, or the equivalent, in a specific specialty. In this regard, the AAO notes that whatever body of specialized knowledge would have to be applied, and at what level of educational attainment, is not evident in the technical functions used to describe the proffered position or in the technical documentation that the petitioner has submitted into the record. The AAO finds that neither the

functions as described nor the supportive documentation are inherently identifiable with the theoretical and practical application of any particular minimum educational level of a particular body of highly specialized knowledge in a specific specialty or its equivalent.

Next, as the record has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).¹

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's 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. The AAO here incorporates and adopts its comments, in the discussion of the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), with regard to the functions used to describe the duties of the proffered position. Based upon its review of the record of proceeding, the AAO finds that the petitioner has not demonstrated that the proposed duties are so specialized and complex as to require knowledge usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The AAO, therefore, concludes that the proffered position has not satisfied the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Beyond the decision of the director, the AAO finds that the petitioner failed to submit requested evidence, thereby precluding a material line of inquiry. As discussed earlier, the petitioner did not provide additional documentation that was specifically requested by the director to provide further information that clarifies whether the proffered position is a specialty occupation. As stated earlier, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Therefore, the petition will be denied for this additional reason.

Finally, beyond the decision of the director, the petition must also be denied due to the petitioner's failure to provide a certified LCA that corresponds to the petition. Specifically,

¹ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's 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 employer 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 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

although the job title on the LCA submitted with the petition reads "Clinical Research Assistant," it was certified for occupation code 079 or "Occupations in Medicine and Health." The job as titled and as described by the petitioner, however, is classified under occupation code 078 or "Occupations in Medical and Dental Technology." As such, the petitioner was required to provide at the time of filing an LCA certified for occupation code 078, not 079, in order for it to be found to correspond to the petition.

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

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

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a valid LCA that has been certified for the proper occupational classification, and the petition must be denied for this additional reason.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The appeal will be dismissed and the petition denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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