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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

PUBLIC COPY

[redacted]

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DATE: DEC 05 2011 OFFICE: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[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 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 remain denied.

The petitioner represented itself on the Form I-129 as a freight forwarding business with seven employees. It seeks to employ the beneficiary as a financial analyst pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition on the basis of her determination that the petitioner failed to demonstrate that its proposed position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request for additional evidence; (4) the director's letter denying the petition; and (5) the Form I-290B and supporting documentation. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's ground for denying this petition. Beyond the decision of the director, we find additionally that the petitioner has failed to demonstrate that the petition is supported by a certified labor condition application (LCA) which corresponds to it.

The first issue before us on appeal is whether the proposed position qualifies for classification 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), 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 proposed 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.

In its September 10, 2009 letter of support, the petitioner stated that the beneficiary would spend thirty percent of her time performing the following duties:

- Analyzing and forecasting each segment of the petitioner's freight forwarding business and recommending areas on which to concentrate;
- Analyzing and forecasting business, industry, and economic conditions and trends for making investment decisions, and making proper recommendations to the company's top management regarding the condition of the company's current and future financial situation;
- Researching, analyzing, developing, and evaluating investment and expansion opportunities to make recommendations regarding the timing of investments and business expansion; and
- Developing, creating, modifying, and analyzing financial simulation models with many variables, such as interest rates, the need for cash, revenue projection, economic trends, inflation, profit margins, fixed and variable operating costs, in order to evaluate and compare various financial alternatives and objectives.

The petitioner then stated that the beneficiary would spend twenty percent of her time performing the following duties:

- Developing, analyzing, and devising the petitioner's plans for expansion;
- Developing long- and short-term financial models and strategies for the company; and
- Managing banking relationships.

Next, the petitioner stated that the beneficiary would spend twenty-five percent of her time performing the following duties:

- Providing analytical support for proposed changes in cost and profit standards;
- Providing financial analysis, financial reports, and making proper recommendations for adjustments; and
- Reviewing financial transactions and monitoring budgeting to ensure efficient and profitable operations and to ensure that expenditures remain within budget limitations.

Finally, the petitioner stated that the beneficiary would spend twenty-five percent of her time performing the following duties:

- Evaluating and analyzing the pricing structure of the petitioner's freight forwarding services;
- Determining, evaluating, and analyzing cost structures of the petitioner's products and services and its competitors' costs and prices, and identifying ways in which to reduce the costs of products and services; and
- Analyzing profit margins and marginal revenue in order to determine and decide upon optimal profit margins and target revenues.

In making our determination as to whether the proposed position qualifies for classification as a specialty occupation, we turn first 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 *Occupational Outlook Handbook (Handbook)*, a resource upon 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)).

The *Handbook* describes the duties of a financial analyst as follows:

> *Financial analysts* provide guidance to businesses and individuals making investment decisions. Financial analysts assess the performance of stocks, bonds, commodities, and other types of investments. Also called *securities analysts* and *investment analysts*, they work for banks, insurance companies, mutual and pension funds, securities firms, the business media, and other businesses, making investment decisions or recommendations. Financial analysts study company financial statements and analyze commodity prices, sales, costs, expenses, and tax rates to determine a company's value by projecting its future earnings. They often meet with company officials to gain a better insight into the firms' prospects and management.

Handbook, 2010-11 ed., available at http://www.bls.gov/oco/ocos301.htm (accessed November 17, 2011). We find these duties generally reflective of those proposed for the beneficiary. Having made that determination, we turn next to the *Handbook's* findings regarding the training requirements for financial analysts:

> A bachelor's or graduate degree is required for financial analysts. Most companies require a bachelor's degree in a related field, such as finance, business, accounting, statistics, or economics.

Id. We note that finance, business, accounting, statistics, and economics are not a single, specific specialty. Thus, although the *Handbook* indicates that a bachelor's degree is routinely required of financial analysts, it does not indicate that such positions require a degree *in any specific specialty*. Rather, it indicates that a degree in any of a wide variety of subjects would suffice.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not rely simply upon a proposed position's title. The specific duties of the 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 beneficiary, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 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 discussed, we have determined that the duties of the proposed largely mirror those listed in the *Handbook* among those normally performed by financial analysts. However, neither the *Handbook* nor any other evidence in the record indicates that financial analyst positions typically require a minimum of a bachelor's degree or the equivalent in a specific specialty. The petitioner has not, therefore, demonstrated that a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry as required by section 214(i)(1)(B) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

Nor do we find convincing counsel's citation to the Department of Labor's *Occupational Information Network (O*NET™ Online)*. *O*NET™ Online* is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a requirement for a given position, as *O*NET™ Online's* JobZone assignments make no mention of the specific field of study from which a degree must come. As was noted previously, USCIS 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 proposed position. With regard to the Specialized Vocational Preparation (SVP) rating, we note that an SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Again, USCIS 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 proposed position. For all of these reasons, the *O*NET™ Online* excerpt is of little evidentiary value to the issue presented on appeal.

For all of these reasons, we find that the petitioner has failed to demonstrate that its proposed position qualifies for classification as a specialty occupation under the requirements of the first criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We turn next to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The petitioner has not satisfied the first of the two alternative prongs at 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, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proposed position; and (2) located in organizations that are similar to the petitioner.

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

As already discussed, the petitioner has not established that its proposed position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree *in a specific specialty*. Nor has the petitioner submitted evidence that the industry's professional associations have made a degree in a specific specialty a minimum requirement for entry. Finally, the petitioner's reliance upon the job vacancy advertisements is misplaced. First, it has not submitted any evidence to demonstrate that these seven[1] advertisements are from companies "similar" to the petitioner. There is no evidence that the advertisers are similar to the petitioner in size, scope, and scale of operations, business efforts, and expenditures. Nor is there any evidence in the record as to how representative these advertisements are of the advertisers' usual recruiting and hiring practices. Simply 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)).

For all of these reasons, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The petitioner has 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 duties of the proposed position are similar to those of financial analysts as outlined in the *Handbook*, and the *Handbook* does not indicate that a baccalaureate degree *in a specific specialty*, or its

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[1] According to the *Handbook*'s detailed statistics on financial analysts, there were approximately 250,600 persons employed as financial analysts in 2008. *Handbook* at http://www.bls.gov/oco/ocos301.htm. Based on the size of this relevant study population, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from just seven job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the job of a financial analyst for a seven-employee freight forwarding business required a bachelor's or higher degree *in a specific specialty* or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree *in a specific specialty* for entry into the occupation in the United States.

equivalent, is a normal minimum entry requirement for such positions. The duties proposed by the petitioner are no more complex or unique than those outlined by the *Handbook;* to the contrary, the duties proposed by the petitioner largely mirror those outlined in the *Handbook.* Accordingly, the evidence of record does not refute the *Handbook's* information indicating that a bachelor's degree from a specific field of study is not the normal minimum entry requirement for positions such as the one proposed here.

We turn next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*), which requires that the petitioner demonstrate it normally requires a degree or its equivalent for the position. To determine a petitioner's ability to satisfy the third criterion, we normally review its past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.[2] Although the petitioner submits evidence that it previously employed a degreed individual to perform the duties of the proposed position, prior employment of one individual with a degree does not establish the hiring history necessary for approval under the third criterion. Nor does the hiring of one individual with a bachelor's degree establish that the petitioner normally requires that the degree come from a specific specialty.

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*), requires the petitioner to establish that the nature of its proposed 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 in the specialty. As previously discussed, the *Handbook* indicates that a baccalaureate degree *in a specific specialty* is not a normal minimum entry requirement. The petitioner has failed to differentiate the duties of the proposed position from those described in the *Handbook* and, as such, has failed to indicate the specialization and complexity required by this criterion. The evidence of record, including the factors argued by the petitioner on appeal as rendering the position so specialized and unique that it qualifies for classification as a specialty occupation, does not distinguish the duties of the proposed position as more specialized and complex than those normally performed by financial analysts, which do not normally require, nor are they usually associated with, the attainment of at least a bachelor's degree *in a specific specialty.* As a result, the record fails to establish that the proposed position meets the specialized and complex threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)*(4)*.

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[2] Even if a petitioner believes or otherwise assert that a proposed 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 job so 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 proposed 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"). Here, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) based on its normal hiring practices.

Nor do the letters from [redacted], President of [redacted] Inc. and [redacted], President of [redacted] Inc. establish the proposed position as a specialty occupation under any of the criteria discussed above. First, as was the case with the job advertisements submitted by the petitioner, it did not submit any evidence to demonstrate that these letters were from companies "similar" to it in size, scope, and scale of operations, business efforts, and expenditures. Nor was any evidence submitted to document the authors' assertions that they have employed financial analysts with degrees in the past. Again, simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. at 165. Furthermore, although the author of each letter asserted that its organization requires a bachelor's degree, neither indicated that a bachelor's degree or its equivalent, *in a specific specialty*, is required. We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

For all of these reasons, we agree with the director's determination that the petitioner failed to demonstrate that the proposed position qualifies for classification as a specialty occupation.

Finally, it is noted that the certified LCA provided in support of the instant petition lists a Level I prevailing wage level for financial analysts in the Los Angeles-Long Beach-Glendale, California Metropolitan Division.[3] This indicates that the LCA, which is certified for an entry-level position, is at odds with the statements by counsel and the petitioner regarding the complexity of the duties to be performed by the beneficiary. Given that the LCA submitted in support of the petition is for a Level I wage,[4] it must therefore be concluded that either (1) the position is a low-level, entry position relative to other financial analysts; or that (2) the LCA does not correspond to the proposed petition.

While the 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

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[3] The Level I prevailing wage for a financial analyst in the Los Angeles-Long Beach-Glendale, California metropolitan statistical area was $52,811 at the time the LCA was certified. The Level II prevailing wage was $72,613; the Level III prevailing wage was $92,414; and the Level IV prevailing wage was $112,216. *See* Foreign Labor Certification Data Center, Online Wage Library, *available at* http:///www.flcdatacenter.com (accessed November 17, 2011).

[4] According to guidance regarding wage level determination issued by the DOL in 2009 entitled *Prevailing Wage Determination Policy Guidance*, at page 7, Level I wage rates, which are labeled as "entry" 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."

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, the following:

> 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.

(Italics added). The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has not demonstrated that the petition is supported by an LCA which corresponds to the petition, and the petition must be denied for this additional reason.

The petitioner has failed to demonstrate that the proposed position qualifies for classification as a specialty occupation. Beyond the decision of the director, the petitioner has also failed to demonstrate that the petition is supported by an LCA which corresponds to the petition.[5] Accordingly, the beneficiary is ineligible for nonimmigrant classification under section 101(a)(15)(H)(i)(b) of the Act and this petition must remain denied.

The petition will remain denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed.

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[5] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).