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



U.S. Citizenship  
and Immigration  
Services



DATE: **DEC 16 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 service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be affirmed in part and withdrawn in part. The appeal will be dismissed. The petition will remain denied.

The petitioner represented itself on the Form I-129 as a medical research foundation with seven employees. It seeks to employ the beneficiary as a medical management developmental specialist 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 his determination that the petitioner failed to demonstrate: (1) that its proposed position qualifies for classification as a specialty occupation; (2) that its offer of employment is reasonable and credible; and (3) that the evidence it submitted is credible and sufficient to establish that it has complied with the terms and conditions of employment.

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 responses 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 overcome the director's determination that the evidence it submitted is not credible and sufficient to establish that it complied with the terms and conditions of employment. However, the petitioner has failed to overcome the director's findings that the proposed position qualifies for classification as a specialty occupation or that its offer of employment is reasonable and credible. 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.

In our adjudication of this matter we turn first to the director's second ground for denial of the petition: her determination that the petitioner failed to demonstrate that its offer of employment is reasonable and credible. However, for purposes of H-1B adjudication, the issue of bona fide employment is viewed primarily within the context of whether the petitioner has offered the beneficiary a position that qualifies for classification as a specialty occupation. Accordingly, of greater importance in this matter is whether the proposed position in fact meets that standard. 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 (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 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 April 13, 2009 letter of support, the petitioner stated that the beneficiary would be providing services to its client, Rehab Network PLLC (Rehab Network). Specifically, the petitioner stated that the beneficiary would provide Rehab Network with the following services:

- Ensuring that new employees of Rehab Network complete their orientation and training;
- Providing employees of Rehab Network with customized training programs to ensure they understand and apply company policies and procedures;
- Conducting new hiring orientation for new employees of Rehab Network;
- Conducting compliance training for employees of Rehab Network on a monthly basis;
- Conferring with Rehab Network's managers in order to determine training needs and objectives, and coordinate the placement of participant skills training through monthly assessments and quizzes;
- Organizing, developing, and enhancing training procedure manuals and guides for Rehab Network;
- Writing Rehab Network's training programs and administering written and practical exams in order to assess the company's training needs;
- Maintaining performance records and evaluations; and
- Making suggestions for methods to improve Rehab Network's operations, processes, and procedures to internal staff and management.

The record contains a copy of an agreement executed between the petitioner and Rehab Network on [REDACTED] which the two parties agreed that the beneficiary would provide services to Rehab Network for a period of one year, and the petitioner made clear on the Form I-129 that the beneficiary would be providing her services at Rehab Network's location of business located on Marcy Avenue in Brooklyn, New York. However, that agreement did not discuss the duties to be performed by the beneficiary for Rehab Network, and the record lacks any other documentary evidence from Rehab Network regarding the duties that the beneficiary would perform for it. Absent such evidence, the petitioner fails to establish that the duties that the beneficiary would perform are those of a specialty occupation.

In support of this analysis, USCIS routinely cites *Defensor v. Meissner*, 201 F.3d 384 (5th Cir. 2000), in which an examination of the ultimate employment of the beneficiary was deemed necessary to determine whether the position constitutes a specialty occupation. The petitioner in *Defensor*, Vintage Health Resources (Vintage), was a medical contract service agency that brought foreign nurses into the United States and located jobs for them at hospitals as registered nurses. The

court in *Defensor* found that Vintage had “token degree requirements,” to “mask the fact that nursing in general is not a specialty occupation.” *Id.* at 387.

The court in *Defensor* held that for the purpose of determining whether a proffered position is a specialty occupation, the petitioner acting as an employment contractor is merely a “token employer,” while the entity for which the services are to be performed is the “more relevant employer.” *Id.* at 388. The *Defensor* court recognized that evidence of the client companies’ job requirements is critical where the work is to be performed for entities other than the petitioner. The *Defensor* court held that the legacy Immigration and Naturalization Service (INS) had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary’s services. *Id.* In *Defensor*, the court found that that evidence of the client companies’ job requirements is critical if the work is to be performed for entities other than the petitioner. *Id.*

In this particular case, the record lacks such substantive evidence from Rehab Network or any other end-user entity that could generate work for the beneficiary and whose business needs would ultimately determine what the beneficiary would actually do on a day-to-day basis. In short, the petitioner fails to demonstrate the existence of H-1B caliber work for the beneficiary. The petitioner’s failure to establish the substantive nature of the work to be performed by the beneficiary precludes finding a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) because it is the substantive nature of that work that determines: (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proposed position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner’s normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Moreover, even if the petitioner had demonstrated that it had work for the beneficiary to perform, which it did not do, the petitioner would still fail to demonstrate that its proposed position is a specialty occupation.

We recognize the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. Although the petitioner refers to its proposed position as a medical management developmental specialist, it referenced the *Handbook’s* discussion of training and development specialists.

In pertinent part, the *Handbook* states the following regarding training and development managers and specialists, which is contained within its entry for human resources, training, and labor relations managers and specialists:

Training and development. *Training and development managers and specialists* create, procure, and conduct training and development programs for employees.

Managers typically supervise specialists and make budget-impacting decisions in exchange for a reduced training portfolio. Increasingly, executives recognize that training offers a way of developing skills, enhancing productivity and quality of work, and building worker loyalty. Enhancing employee skills can increase individual and organizational performance and help to achieve business results. Increasingly, executives realize that developing the skills and knowledge of its workforce is a business imperative that can give them a competitive edge in recruiting and retaining high quality employees and can lead to business growth.

Other factors involved in determining whether training is needed include the complexity of the work environment, the rapid pace of organizational and technological change, and the growing number of jobs in fields that constantly generate new knowledge and, thus, require new skills. In addition, advances in learning theory have provided insights into how people learn and how training can be organized most effectively.

*Training managers* oversee development of training programs, contracts, and budgets. They may perform needs assessments of the types of training needed, determine the best means of delivering training, and create the content. They may provide employee training in a classroom, computer laboratory, or onsite production facility, or through a training film, Web video-on-demand, or self-paced or self-guided instructional guides. For live or in-person training, training managers ensure that teaching materials are prepared and the space appropriately set, training and instruction stimulate the class, and completion certificates are issued at the end of training. For computer-assisted or recorded training, trainers ensure that cameras, microphones, and other necessary technology platforms are functioning properly and that individual computers or other learning devices are configured for training purposes. They also have the responsibility for the entire learning process, and its environment, to ensure that the course meets its objectives and is measured and evaluated to understand how learning impacts performance.

*Training specialists* plan, organize, and direct a wide range of training activities. Trainers consult with training managers and employee supervisors to develop performance improvement measures, conduct orientation sessions, and arrange on-the-job training for new employees. They help employees maintain and improve their job skills and prepare for jobs requiring greater skill. They work with supervisors to improve their interpersonal skills and to deal effectively with employees. They may set up individualized training plans to strengthen employees' existing skills or teach new ones. Training specialists also may set up leadership or executive development programs for employees who aspire to move up in the organization. These programs are designed to develop or "groom" leaders to replace those leaving the organization and as part of a corporate succession plan. Trainers also lead programs to assist employees with job transitions as a result of mergers or consolidation, as well as retraining programs to develop new skills that may result from technological changes in the work place. In government-supported job-training

programs, training specialists serve as case managers and provide basic job skills to prepare participants to function in the labor force. They assess the training needs of clients and guide them through the most appropriate training. After training, clients may either be referred to employer relations representatives or receive job placement assistance.

Planning and program development is an essential part of the training specialist's job. In order to identify and assess training needs, trainers may confer with managers and supervisors or conduct surveys. They also evaluate training effectiveness to ensure that employees actually learn and that the training they receive helps the organization meet its strategic goals and achieve results.

Depending on the size, goals, and nature of the organization, trainers may differ considerably in their responsibilities and in the methods they use. Training methods also vary by whether the training predominantly is knowledge-based or skill-based or sometimes a combination of the two. For example, much knowledge-based training is conducted in a classroom setting. Most skill training provides some combination of hands-on instruction, demonstration, and practice at doing something and usually is conducted on a shop floor, studio, or laboratory where trainees gain experience and confidence. Some on-the-job training methods could apply equally to knowledge or skill training and formal apprenticeship training programs combine classroom training and work experience. Increasingly, training programs involve interactive Internet-based training modules that can be downloaded for either individual or group instruction, for dissemination to a geographically dispersed class, or to be coordinated with other multimedia programs. These technologies allow participants to take advantage of distance learning alternatives and to attend conferences and seminars through satellite or Internet communications hookups, or use other computer-aided instructional technologies, such as those for the hearing-impaired or sight-impaired.

*Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos021.htm> (last accessed December 2, 2011). We find these duties generally reflective of those proposed by the petitioner. In pertinent part, the *Handbook* states the following with regard to the credentials necessary for entry into this field:

The educational backgrounds of human resources, training, and labor relations managers and specialists vary considerably, reflecting the diversity of duties and levels of responsibility. In filling entry-level jobs, many employers seek college graduates who have majored in human resources, human resources administration, or industrial and labor relations. Other employers look for college graduates with a technical or business background or a well-rounded liberal arts education.

*Id.* We note that human resources, human resources administration, industrial and labor relations, various technical fields, business, and liberal arts do not constitute a single, specific specialty. Thus, although the *Handbook* indicates that many employers require a college degree, it does not

indicate that such employers require a degree *in any specific specialty*. Rather, it indicates that a degree in any of a wide variety of subjects would suffice. Furthermore, the fact that “many employers” require a degree is not synonymous with the “normally required” standard imposed by the regulation.

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 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 position largely mirror those listed in the *Handbook* among those normally performed by training and development managers and specialists. However, our review has found that this occupation does not normally impose a normal minimum entry requirement of a bachelor’s degree in a specific field of study 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 citations 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; 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 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 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. Few of the advertisements state the size of the employer, and there is no 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)).

Furthermore, although the companies that placed these particular advertisements do require a bachelor's degree, their advertisements establish, at best, that although a bachelor's degree is generally required, a bachelor's degree, or its equivalent, *in a specific specialty*, is not required. 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).<sup>1</sup>

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<sup>1</sup> According to the *Handbook's* detailed statistics on human resources, training, and labor relations managers and specialists, there were approximately 216,600 persons employed as training and development specialists in 2008. *Handbook* at <http://www.bls.gov/oco/ocos021.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 thirteen 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

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 training and development specialists as outlined in the *Handbook*, and the *Handbook* does not indicate that a baccalaureate degree *in a specific specialty*, or its 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*. The duties discussed by the petitioner appear no more unique, complex, or specialized than those discussed in the *Handbook*. 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.<sup>2</sup> However, the record contains no such evidence.

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

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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 proposed position 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.

<sup>2</sup> 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.

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 does not distinguish the duties of the proposed position as more specialized and complex than those normally performed by training and development specialists, which do not normally require, nor are they usually associated with, the attainment of at least a bachelor's degree in a specific field. 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).

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.

The director also found that the petitioner had failed to demonstrate that the evidence it submitted is credible and sufficient to establish that it has complied with the terms and conditions of employment. On appeal, the petitioner submits additional evidence and information regarding the petitioner's business name and operations, which we find reasonable. As such, this portion of the director's decision is hereby withdrawn.

Beyond the decision of the director, it is noted that the certified LCA provided in support of the instant petition lists a Level I prevailing wage level for training and development specialists in the New York-White Plains-Warren, New York-New Jersey metropolitan division.<sup>3</sup> 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,<sup>4</sup> it must therefore be concluded that either (1) the position is a low-level, entry position relative to other food service managers; 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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<sup>3</sup> The Level I prevailing wage for a training and development specialist in the New York-White Plains-Warren, New York-New Jersey metropolitan division was \$39,811 at the time the LCA was certified. The Level II prevailing wage was \$51,438; the Level III prevailing wage was \$63,086; and the Level IV prevailing wage was \$74,714. See Foreign Labor Certification Data Center, Online Wage Library, available at <http://www.flcdcenter.com> (accessed December 2, 2011).

<sup>4</sup> 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 it.<sup>5</sup> 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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<sup>5</sup> 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 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).