

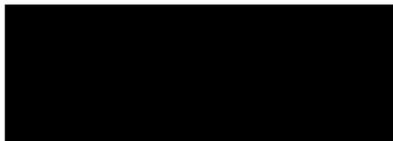
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



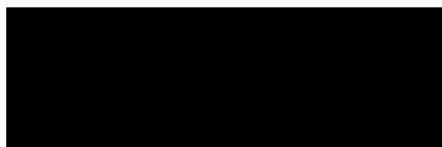
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DATE: DEC 27 2011 Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner describes itself as a music center and seeks to employ the beneficiary as its artistic director. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition, finding that the position was not a specialty occupation.

On appeal, counsel for the petitioner submits a brief and additional evidence and contends that, contrary to the director's findings, the proffered position is a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 with supporting documentation; (2) the director's request for further evidence (RFE); (3) the petitioner's response to the director's RFE; (4) the director's denial decision; and (5) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The 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 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 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.

In an undated letter of support included with the petition, the petitioner explains that it operates two music schools/centers in California, and currently has over 250 students enrolled in its programs. The petitioner claims that its focus is "on teaching basic musical concepts and skills at the early stages, progressively moving on to more intensive training." Regarding the duties of the proffered position of artistic director, the petitioner states that the duties of the position would include the following:

Assist the School Director in developing and/or enhancing the music programs of [the petitioner]. Review and evaluate these programs and recommend appropriate changes in content, instructional methods and materials. Recommend individual and ensemble instructional and enrichment programs, materials and equipment to meet the training needs and promote musical development of students. Provide students with opportunities for further development of their skills through individual lessons and/or group keyboard program of the school. Plan master classes and conduct advance courses for students and faculty. Plan and direct school recitals and special performances, including musical repertoire to be performed. Perform as a featured soloist, or collaborate with other faculty staff in recitals, special performances, and outreach concerts to promote the school and encourage artistic excellence. Critique individual and ensemble performances to correct errors in techniques.

The petitioner further contended that performance of the duties of the position required the attainment of at least a master's degree in music plus at least two years of experience in performing and teaching.

In a May 28, 2009 RFE, the director requested additional information. Specifically, the director requested more detailed evidence demonstrating that the proffered position is a specialty occupation, including but not limited to a more detailed description of the proffered position and information pertaining to the petitioner's business, its hiring practices, and its organizational chart.

In response, the petitioner addressed the director's queries in a response dated August 14, 2009. The petitioner provided an updated description of duties for the proffered position which identified the percentage of time she would devote to each such duty. In relevant part, these duties include:

1. *Assist the School Director in developing and enhancing the music programs of [the petitioner] – 10%.*
2. *Review and evaluate [the petitioner's] programs and recommend appropriate changes in content, instructional methods and materials – 10%.*
3. *Recommend individual and ensemble instructional and enrichment programs, materials and equipment to meet the training needs and promote musical development of students – 15%.*
4. *Provide students with opportunities for further development of their skills through individual lessons and/or group keyboard program of the school – 20%.*
5. *Plan master classes and conduct advanced courses for students and faculty – 10%.*
6. *Plan and direct school recitals and special performances, including musical repertoire to be performed - 20%.*
7. *Perform as a featured soloist, or collaborate with other faculty staff in recitals, special performances, and outreach concerts to promote the school and encourage artistic excellence – 10%.*
8. *Critique individual and ensemble performances to correct errors in technique – 5%.*

The petitioner also submitted letters and job postings in support of the contention that the degree requirement is common in the petitioner's industry.

On August 31, 2009, the director denied the petition, determining that the petitioner had failed to establish that the proffered position is a specialty occupation. The director found that, contrary to the assertions of the petitioner and counsel, the proffered position does not require a degree in a specific specialty.

On appeal, counsel contends that the director's findings were erroneous, and argues that a bachelor's degree is the normal prerequisite for entry into the occupation. Counsel further contends that the petitioner submitted sufficient evidence to establish eligibility for the benefit sought.

In reviewing the record, the AAO observes that the critical element is not the title of the position or 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.

To make its determination as to whether the employment described above qualifies as a specialty occupation, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Factors considered by the AAO when determining this criterion include whether the U.S. Department of Labor's (DOL) *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.

To determine whether the duties of the proffered position support the petitioner's characterization of its proposed employment, the AAO first turns to the 2010-2011 online edition of the *Handbook*. Since the occupational title of Artistic Director is not included in the *Handbook*, the AAO will examine the section pertaining to Music Directors which is most closely related to the description of the proffered position. As stated by the *Handbook* in its section entitled Musicians, Singers, and Related Workers, this occupational category is described as follows:

Musicians, singers, and related workers play musical instruments, sing, compose or arrange music, or conduct groups in instrumental or vocal performances. They perform solo or as part of a group, mostly in front of live audiences in nightclubs, concert halls, and theaters. They also perform in recording or production studios for radio, TV, film, or video games. Regardless of the setting, they spend considerable time practicing alone and with their bands, orchestras, or other musical ensembles.

Musicians play one or more musical instruments. Many musicians learn to play several related instruments and can perform equally well in several musical styles. Instrumental musicians, for example, may play in a symphony orchestra, rock group, or jazz combo one night, appear in another ensemble the next, and work in a studio band the following day. Some play a variety of string, brass, woodwind, or percussion instruments or electronic synthesizers.

* * *

Music directors and *conductors* conduct, direct, plan, and lead instrumental or vocal performances by musical groups such as orchestras, choirs, and glee clubs. These leaders audition and select musicians, choose the music most appropriate for their talents and abilities, and direct rehearsals and performances. *Choral directors* lead choirs and glee clubs, sometimes working with a band or an orchestra conductor. Directors audition and select singers and lead them at rehearsals and performances to achieve harmony, rhythm, tempo, shading, and other desired musical effects.

Bureau of Labor Statistics, U.S. Dept. of Labor, *Occupational Outlook Handbook*, 2010-11 ed., "Musicians, Singers, and Related Workers," <http://www.bls.gov/oco/ocos095.htm> (accessed December 7, 2011). The director concluded that this occupational category was most akin to that of the proffered position, and the AAO concurs.

The *Handbook's* section pertaining to the educational requirements for music directors states:

Long-term on-the-job training is the most common way people learn to become musicians or singers. Aspiring musicians begin studying an instrument at an early age. They may gain valuable experience playing in a school or community band or orchestra or with a group of friends. Singers usually start training when their voices mature. Participation in school musicals or choirs often provides good early training and experience. Composers and music directors usually require a bachelor's degree in a related field.

Education and training. Musicians need extensive and prolonged training and practice to acquire the skills and knowledge necessary to interpret music at a professional level. Like other artists, musicians and singers continually strive to improve their abilities. Formal training may be obtained through private study with an accomplished musician, in a college or university music program, or in a music conservatory. An audition generally is necessary to qualify for university or conservatory study. The National Association of Schools of Music is made up of 615 accredited college-level programs in music. Courses typically include music theory, music interpretation, composition, conducting, and performance, either with a particular instrument or a voice performance. Music directors, composers, conductors, and arrangers need considerable related work experience or advanced training in these subjects.

A master's or doctoral degree usually is required to teach advanced music courses in colleges and universities; a bachelor's degree may be sufficient to teach basic courses. A degree in music education qualifies graduates for a State certificate to teach music in public elementary or secondary schools. (Information related to teachers—postsecondary and teachers—kindergarten, elementary, middle, and secondary can be found elsewhere in the *Handbook*.) Musicians who do not meet public school music education requirements may teach in private schools and recreation associations or instruct individual students in private sessions.

Id. The *Handbook* does not indicate that a bachelor's degree or higher in a specific specialty or its equivalent is the normal minimum requirement for entry into the position. While formal education is available through degree programs, it may also be obtained through private study with an accomplished musician. While the *Handbook* does state that a degree in music education qualifies individuals to teach music education at a public elementary or secondary school, this is not such a position. The *Handbook* indicates instead that positions related to music education that are not at a college, university, or public secondary school, such as the one proffered here, do not need at least a bachelor's degree in music education. Furthermore, the *Handbook* explains that private instrumental lessons, taken especially when an individual is young, help develop technique and enhance one's performance. The *Handbook* also notes that young persons considering careers in music should have musical talent, versatility, creativity, poise, and a good stage presence. The AAO finds no support in the *Handbook* to support the assertion that a baccalaureate degree in a specific specialty or its

equivalent is normally the minimum entry requirement for a career as an artistic director teaching and/or directing music education for a private music center.

The petitioner has therefore failed to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the position of artistic director/music director as described in the record of proceeding. Accordingly, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner. Factors often considered by USCIS when determining the industry standard include: whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The petitioner submitted several documents in support of its eligibility under this criterion. First, the petitioner submitted a letter from [REDACTED] a private secondary school in Baltimore, Maryland. [REDACTED] a professional concert pianist, states as follows: "I strongly attest that the entry requirement for this occupation is a bachelor's degree or higher qualification." However, [REDACTED] does not state that a bachelor's degree or higher degree *in a specific specialty* is required. Moreover, since the [REDACTED] is a private secondary school, not a music center like the petitioner, this letter cannot be deemed evidence that a similar organization in the petitioner's industry "routinely employ[s] and recruit[s] only degreed individuals" for the position of artistic director.

The petitioner also submits a letter from [REDACTED], International Student Advisor and PDSO at the [REDACTED]. [REDACTED] likewise contends that the position of artistic director would "require the possession of the knowledge, skills and experience that can most efficiently be gained in a music degree program." Also, [REDACTED] writes on behalf of the beneficiary and attests to her qualifications, since she earned two of her degrees from the [REDACTED]. Again, however, the author does not state that a bachelor's or higher degree *in a specific specialty* is required. Instead, she only indicates that such a degree is the most efficient way to become qualified. Furthermore, this letter also cannot be deemed evidence that a similar organization in the petitioner's industry routinely employ and recruit only degreed individuals for the position of artistic director, since there is no evidence that the [REDACTED] and the petitioner are similar organizations.

The petitioner also submits several job postings for the position of artistic director, and some of these postings are accompanied by letters from the hiring organizations which claim that they routinely require degrees for the incumbents. However, none of the advertised positions are

considered akin to that of an artistic director for a music center. Specifically, the petitioner submits postings for an artistic director in a Saturday School, a teacher in a music school, a band director in a school, a music teacher in a premier music academy, a music teacher in a musical arts school, and a piano instructor for a music school. The petitioner is not a school, nor is it seeking to employ the beneficiary as a teacher. Consequently, these postings cannot be deemed representative evidence that music centers similar to that of the petitioner routinely require a bachelor's degree or higher for artistic directors. Therefore, the petitioner has failed to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).¹

In the alternative, the petitioner may submit evidence to establish that the duties of the position are so complex or unique that only an individual with a degree in a specific specialty can perform the duties associated with the position. The AAO observes that the petitioner has indicated that the beneficiary's educational background and experience in the industry will assist her in carrying out the duties of the proffered position; however, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. The petitioner does not explain or clarify which of the duties, if any, of the proffered position are so complex or unique as to be distinguishable from those of similar but non-degreed employment. The petitioner has thus failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that it normally requires a degree or its equivalent for the position. However, the petitioner has provided no evidence to demonstrate that it has previously hired only degreed individuals for the proffered

¹ Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from less than a dozen job postings with regard to determining the common educational requirements for entry into parallel positions in similar religious 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 position of artistic director for a music center 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.

position. Despite claiming that it requires at least a master's degree in music, the petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. 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 or 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. To interpret the regulations any other way would lead to absurd results: if USCIS were limited to reviewing a petitioner's self-imposed requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. As already discussed, the duties of the proffered position are performed by music directors and musicians, which the *Handbook* reveals are occupations that do not require a baccalaureate degree in a specific specialty or its equivalent to work at a music center. Moreover, the AAO notes that no evidence supports the petitioner's claim that it normally requires a bachelor's degree in a specific specialty or its equivalent for the proposed position. 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)).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The duties of the position described encompass routine duties associated with musical direction and instruction. While the petitioner claims that the duties of the proffered position are sufficiently complex, the record does not contain explanations or clarifying data sufficient to elevate the position to one that is so specialized and complex that the knowledge to perform these additional tasks is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The AAO notes that the duties as described in the record of proceeding are broad and numerous and appear to span a variety of functions, including planning lessons, recitals, and critiquing performances. The AAO finds that, to the extent that they are described, the duties do not convey either the need for the beneficiary to apply a particular body of highly specialized knowledge in a specific specialty, or a usual association between such knowledge and the attainment of a particular educational level in a specific specialty. As the petitioner has not established that the proffered position's specific duties require the application of specialized and complex knowledge usually associated with the attainment of a baccalaureate degree or higher degree in a specific discipline, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Based on the record of proceeding, the AAO determines that the petitioner has not established that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the petition must also be denied due to the petitioner's failure to provide a certified Labor Condition Application (LCA) that corresponds to the petition. Specifically, although the job title on the LCA submitted with the petition reads "Artistic Director," it was certified for occupation code 102 or "Museum Curators and Related Occupations." The job as titled and as described by the petitioner, however, is best classified under occupation code 152 or "Occupations in Music." As such, the petitioner was required to provide at the time of filing an LCA certified for occupation code 152, not 102, 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.

Finally and beyond the decision of the director, even if the LCA were found to correspond to the petition, the petitioner indicates that it will not comply with the LCA and pay the beneficiary the required wage. More specifically, the petitioner indicates on the Form I-129 and the Form I-129 H-1B Data Collection Supplement that it will pay the beneficiary \$17,136.00 for 20 hours per week of work. According to the LCA provided, the petitioner would be required to pay the beneficiary at least \$18,564.00 per year for 20 hours per week of work. Therefore, as the record indicates that the petitioner would not comply with wage requirements as attested to in the LCA, the petition must be denied for this additional reason.

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 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's

enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*. 345 F.3d 683.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, 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.