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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

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U.S. Citizenship
and Immigration
Services

D2

DATE: NOV 23 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)

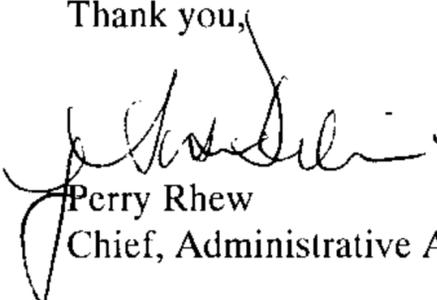
ON BEHALF OF PETITIONER:

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 an athletic club with 189 employees and gross annual income of \$5 million. It seeks to employ the beneficiary as a facilities director 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 responses to the director's request for additional evidence; (4) the director's letter denying the petition; and (5) the Form I-290B.¹ 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: (1) that the beneficiary qualifies to perform the duties of a specialty occupation; and (2) that the petition is supported by a certified labor condition application (LCA) which corresponds to it.

The Proposed Position Does Not Qualify For Classification as a Specialty Occupation

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:

¹ Counsel marked the box at section two of the Form I-290B, Notice of Appeal, to indicate that a brief and/or additional evidence would be sent within 30 days. However, to date, 23 months later, the AAO has not received an additional brief or evidence. Accordingly, we deem the record complete and ready for adjudication.

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 his October 23, 2009 letter, counsel stated that the duties of the proposed position would include the following:

- Providing leadership in the development and execution of a Facilities Master Plan for the petitioner. According to counsel, the beneficiary would spend twenty-five percent of his time on this duty.
- Establishing and carrying out a preventive maintenance program for building systems, including HVAC, plumbing, and grounds maintenance. According to counsel, the beneficiary would spend fifteen percent of his time performing these duties.
- Overseeing maintenance personnel and ensuring that all projects are completed in a timely and accurate manner. According to counsel, the beneficiary would spend ten percent of his time performing these duties.
- Creating and managing the budget for the petitioner's facilities, including the maintenance of cost and estimate records and managing the petitioner's maintenance personnel and ensuring that all projects are completed in a timely and accurate manner. According to counsel, the beneficiary would spend ten percent of his time performing these duties.
- Preparing and reviewing specifications and bills of material and equipment selection, and overseeing the purchasing and bidding process of supplies and replacement parts and equipment and services to maintain a smooth and effective operation. According to counsel, the beneficiary would spend ten percent of his time performing these duties.
- Consulting with management on a regular basis regarding the overall condition of the building's structure, systems, and equipment, and proposing cost effective processes for maintaining these systems. According to counsel, the beneficiary would spend five percent of his time performing these duties.
- Receiving training in fire training, environmental health and safety, and engineering systems, and studying state and local building codes and ensuring compliance with such codes. According to counsel, the beneficiary would spend five percent of his time performing these duties.

- Working with architects, contractors, and engineers on capital projects. According to counsel, the beneficiary would spend five percent of his time performing these duties.

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 facilities manager within its discussion of those described for administrative services managers:

Administrative services managers plan, coordinate, and direct a broad range of services that allow organizations to operate efficiently. They might, for example, coordinate space allocation, facilities maintenance and operations, and major property and equipment procurement. They also may oversee centralized operations that meet the needs of multiple departments, such as information and data processing, mail, materials scheduling and distribution, printing and reproduction, records management, telecommunications management, security, recycling, wellness, and transportation services. Administrative services managers also ensure that contracts, insurance requirements, and government regulations and safety standards are followed and up to date. They may examine energy consumption patterns, technology usage, and personal property needs to plan for their long-term maintenance, modernization, and replacement.

* * *

Administrative services managers who work as *facility managers* plan, design, and manage buildings, grounds, equipment, and supplies. Increasingly, they develop and implement plans that incorporate energy efficiency into a facility's operations and structures. These tasks require integrating the principles of business administration, information technology, architecture, and engineering. Although the specific tasks assigned to facility managers vary substantially depending on the organization, the duties fall into several categories, relating to operations and maintenance, real estate, project planning and management, communication, finance, facility function, technology integration, and environmental factors. Tasks within these broad categories may include space and workplace planning, budgeting, purchase and sale

of real estate, lease management, renovations, or architectural planning and design. Facility managers may oversee renovation projects to improve efficiency or ensure that facilities meet government regulations and environmental, health, and security standards. For example, they may influence building renovation projects by recommending energy-saving alternatives or production efficiencies that reduce waste. Additionally, facility managers continually monitor the facility to ensure that it remains safe, secure, and well-maintained. Often, facility managers are responsible for directing staff, including maintenance, grounds, and custodial workers.

Handbook, 2010-11 ed., available at <http://www.bls.gov/oco/ocos002.htm> (accessed November 10, 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 facility managers:

Most facility managers have an undergraduate or graduate degree in engineering, architecture, construction management, business administration, or facility management. Many also have backgrounds in real estate, construction, or interior design, in addition to managerial experience. Whatever the educational background, it must be accompanied by related work experience reflecting managerial and leadership abilities. Many administrative services managers obtained their experience by specializing in one area at first, then augmenting their qualifications by acquiring work experience in other specialties before assuming managerial duties.

Id. Engineering, architecture, construction management, business administration, and facility management do not constitute a single, specific specialty. Thus, although the *Handbook* indicates that a bachelor's degree is routinely required of facility managers, it does not indicate that such positions require a degree *in any specific specialty*. To the contrary, 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 facility managers. However, neither the *Handbook* nor any other evidence in the record indicates that facility manager 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).

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 or that a bachelor's degree in a specific specialty is a minimum entry requirement in parallel positions in similar organizations.

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 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 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 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 facility managers, 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).

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 Beneficiary Is Not Qualified To Perform the Duties of a Specialty Occupation

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.

Beyond the decision of the director, we find that the petition may not be approved for an additional reason, as the petitioner has failed to demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation. The statutory and regulatory framework that the AAO must apply in its consideration of the evidence of the beneficiary's qualification to serve in a specialty occupation follows below.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C)
 - (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

As the beneficiary did not earn a baccalaureate or higher degree from an accredited college or university in the United States, he does not qualify to perform the duties of a specialty occupation

under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1). As he does not possess a foreign degree that has been determined to be equivalent to a baccalaureate or higher degree from an accredited college or university in the United States, he does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). As the petitioner has not demonstrated that the beneficiary holds an unrestricted state license, registration or certification to perform the duties of a specialty occupation, he does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3).

The petitioner, therefore, must establish that the beneficiary qualifies to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), which requires a demonstration that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary also has recognition of that expertise in the specialty through progressively responsible positions directly related to the specialty. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) is determined by at least one of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;³
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

³ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.

Regarding the beneficiary's work experience, the record contains a July 17, 2009 evaluation from [REDACTED] who found the beneficiary's work experience equivalent to a bachelor's degree in industrial management awarded by an accredited university in the United States. However, this evaluation does not qualify the beneficiary under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), as the petitioner has not demonstrated that [REDACTED] possesses the authority to grant college-level credit for training and/or experience in the field at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience in the field. Although [REDACTED] states that he possesses such authority, the petitioner submits no evidence to support this claim. 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)).

No evidence has been submitted to establish, nor does the petitioner assert, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), which requires submission of the results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI).

Nor does the beneficiary qualify under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). As was the case under 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1) and (2), the beneficiary is unqualified under this criterion because he did not earn a baccalaureate or higher degree from an accredited college or university in the United States and does not possess a foreign degree that has been determined to be equivalent to a baccalaureate or higher degree from an accredited college or university in the United States.

No evidence has been submitted to establish, nor does the petitioner assert, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), which requires that the beneficiary submit evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) states the following with regard to analyzing an alien's qualifications:

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two

recognized authorities in the same specialty occupation;⁴

- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

Although the record contains evidence regarding the beneficiary's work history, it does not establish that this work experience included the theoretical and practical application of specialized knowledge required by the occupation; that it was gained while working with peers, supervisors, or subordinates who held a bachelor's degree or its equivalent in the field; and that the beneficiary achieved recognition of expertise in the field as evidenced by at least one of the five types of documentation delineated in 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(5)(i)-(v).

Accordingly, the beneficiary does not qualify under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(5)(i)-(v) and therefore does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). As such, the petitioner has failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation. For this additional reason, the petition may not be approved.

The Petitioner Has Failed To Demonstrate that the Petition is Supported by an LCA Which Corresponds to the Petition

Beyond the decision of the director, we note that the certified LCA provided in support of the instant petition lists a Level I prevailing wage level for engineering managers in the [REDACTED].⁵ This indicates that the LCA, which is certified

⁴ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. See 8 C.F.R. § 214.2(h)(4)(ii).

⁵ The Level I prevailing wage for an engineering manager in the [REDACTED] was \$86,965 at the time the LCA was certified. The Level II prevailing wage was \$101,795; the Level III prevailing wage was \$116,626; and the Level IV prevailing wage was \$131,456. See Foreign Labor Certification Data Center, Online Wage Library, available at <http://www.flcdatacenter.com> (accessed November 10, 2011).

for an entry-level position, is at odds with the statements by 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,⁶ it must therefore be concluded that either (1) the position is a low-level, entry position relative to other facility directors; 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 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.

Conclusion

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: (1) that the beneficiary qualifies to perform the duties of a specialty occupation; and (2) that the petition is supported by an LCA which corresponds to the petition.⁷ Accordingly, the beneficiary is

⁶ 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."

⁷ 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

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.