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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

[redacted]

D2

DATE: JAN 2 0 2012 OFFICE: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

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

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: Although the service center director initially approved the nonimmigrant visa petition he subsequently issued a notice of intent to revoke (NOIR), and ultimately revoked, approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. Approval of the petition will remain revoked.

The petitioner represented itself on the Form I-129 as a provider of "Oriental Medicine" with eleven employees. It seeks to employ the beneficiary as a media and communications 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 approved the petition on July 6, 2007, with validity dates of July 15, 2007 through July 25, 2010. However, the United States Consulate in Shanghai, China found the beneficiary unqualified to perform the duties of the proposed position, refused to grant the visa, and returned the file to U.S. Citizenship and Immigration Services (USCIS). The director issued a NOIR on April 6, 2009 and revoked approval of the petition on September 28, 2009.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's NOIR; (3) the petitioner's response to the director's NOIR; (4) the director's decision revoking approval of 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).

Authority to Revoke Approval of a Petition

The process for revoking approval of an approved petition on notice is set forth at 8 C.F.R. § 214.2(h)(11) which states, in pertinent part, the following:

> *Revocation of approval of petition.*
>
> (i) *General.*
>
> (A) The petitioner shall immediately notify the Service of any changes in the terms and conditions of employment of a beneficiary which may affect eligibility under section 101(a)(15)(H) of the Act and paragraph (h) of this section. . . .
>
> (B) The director may revoke a petition at any time, even after expiration of the petition.
>
> * * *
>
> (iii) *Revocation on notice—*
>
> (A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

(*1*) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as specified in the petition; or

(*2*) The statement of facts contained in the petition was not true and correct; or

(*3*) The petitioner violated terms and conditions of the approved petition; or

(*4*) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or

(*5*) The approval of the petition violated paragraph (h) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. . . .

In this particular case, we find that the director's April 6, 2009 NOIR properly placed the petitioner on notice that he was contemplating revoking approval of the petition within the scope of the revocation-on-notice provisions discussed above. As will be discussed below, we find further that revocation of this petition's approval was proper under 8 C.F.R. § 214.2(h)(11)(iii)(A)(5), because the director's approval of the petition (1) violated paragraph (h) of the cited regulation and (2) involved gross error, because the beneficiary does not qualify to perform the duties of the proposed position or, for the matter, the duties of any specialty occupation. Beyond the decision of the director, we find additionally that director could also have revoked approval of the petition under 8 C.F.R. § 214.2(h)(11)(iii)(A)(5), had he provided the requisite notice pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(B), on the grounds that the record does not demonstrate that: (1) the beneficiary qualifies to perform the duties of *any* specialty occupation; (2) that the proposed position qualifies for classification as a specialty occupation; and (3) that the petition is supported by a certified labor condition application (LCA) which corresponds to it.

The Record Does Not Demonstrate That The Beneficiary Qualifies To Perform the Duties of a Specialty Occupation

The petitioner proposes to employ the beneficiary in a position entitled "media and communications specialist." In its June 6, 2007 letter of support, the petitioner stated that it provides its patients with

"advanced health care through a unique model designed to achieve superior quality in healing and wellness," and that its treatment model combines traditional Chinese medicine with modern integrative medicine. The petitioner stated further that it provides weekly educational seminars and periodic medical training for medical students from the University of New Mexico, and that it also publishes articles and papers for both the lay and medical communities. According to the petitioner, many of its publications, lectures, and seminars are conducted wholly or partly in the Chinese language, and that it desires to expand its outreach to Chinese-speakers in the United States and in other countries as well. The petitioner stated that the duties of its proposed position would include the following:

- Conducting market research on topics of interest in the field of Chinese medicine;
- Recruiting guest speakers from, and for, the University of New Mexico School of Medicine's Office of Integrative Medical Education;
- Organizing seminars;
- Writing Chinese-language press releases, brochures, and other public relations materials;
- Writing, recording, and otherwise preparing broadcast public relations materials for the Chinese-language media in the United States and abroad;
- Arranging for the reproduction of materials for distribution;
- Examining reproductions for conformity to standards;
- Translating and editing materials according to specific market or customer requirements;
- Coordinating and arranging book signings and other publicity for books and other materials written by the petitioner's director; and
- Writing book reviews for books and other materials written by the petitioner's director.

On the Form I-129, the petitioner added the following additional duties:

- Establishing relationships with medical schools and physicians in order to "bridge the occupational relationship of traditional modern medicine with Chinese Medicine applications";
- Developing relationships with, and recruiting for short- and long-term employment, higher-level scholars such as guest speakers, teachers, and other experts in the field of traditional Chinese medicine;
- Developing human resource allocation models that would allow for greater numbers of medical students to participate in the petitioner's programs;
- Developing the petitioner's written employment and independent contractor policy and procedure guidelines; and
- Developing public relations with the community.

As noted, the director initially found the beneficiary qualified to perform these duties, and approved the petition. However, in his April 6, 2009 NOIR the director relayed the concerns of the consular officer who interviewed the petitioner as follows:

> [A]fter an interview with the beneficiary at the consulate in Shanghai, it has been determined that [the beneficiary] may not be eligible for the H-1B visa being sought.

> The beneficiary speaks no English and indicated he is a calligrapher. Your petition states that his duties include the translation of materials and working with the University of New Mexico Medical School. The beneficiary has no medical degree or formal training in Chinese medicine. [Nor could he] provide information on how he would be conducting marketing research in the United States. . . .

The director found the petitioner's response insufficient, and revoked approval of the petition on September 28, 2009 stating, in pertinent part, the following:

> You indicated that part of his duties would include conducting marketing research in topics of interest in Chinese Medicine. However, the beneficiary has no formal education in Chinese Medicine. Further, the beneficiary was not able to provide the consular officer with any information regarding how he would conduct marketing research in the United States.
>
> You also indicated other duties such as recruiting guest speakers, translating and editing materials, and arrang[ing] and coordinat[ing] book signings. It has been noted that the beneficiary speaks no English. Further, the beneficiary could not provide information as to how large the Chinese community in Albuquerque, NM.

On appeal, counsel contends that the director erred in revoking approval of the petition. Counsel asserts that the beneficiary's lack of training in Chinese medicine is not relevant, as "[t]his is a public relations position only." He argues that the beneficiary's lack of English language skills is not relevant because English language skills are not necessary to perform the duties of the proposed position. He states that the beneficiary's lack of knowledge regarding how he would be conducting market research upon his arrival to the United States is not relevant because he will receive training after he arrives. Finally, he contends that the beneficiary's unfamiliarity with the Mandarin-speaking community of Albuquerque is not relevant.

Upon review, we find that the director's revocation of the petition's approval was proper. We will first address the beneficiary's inability to speak the English language. We note that in the petitioner's June 6, 2007 letter of support, certain job duties were specifically labeled as pertaining only to the Chinese language speaking community. Specifically, we note the following duties:

- Writing Chinese-language press releases, brochures, and other public relations materials; and
- Writing, recording, and otherwise preparing broadcast public relations materials for the Chinese-language media in the United States and abroad;

The fact that the petitioner elected to specify that certain job functions related only to Chinese language media but did not do so for others leads to the logical conclusion that the other job functions do not. For example, the petitioner did not indicate that the petitioner's duties to recruit guest speakers from, and for, the University of New Mexico School of Medicine's Office of Integrative Medical Education; to organize seminars; to arrange for the reproduction of materials for distribution; to examine reproductions for conformity to standards; to translate and edit materials according to specific market or customer requirements; to coordinate and arrange book signings and

other publicity for books and other materials written by the petitioner's director; to write book reviews for books and other materials written by the petitioner's director; to establish relationships with medical schools and physicians in order to "bridge the occupational relationship of traditional modern medicine with Chinese Medicine applications"; to develop relationships with, and recruit for short- and long-term employment, higher-level scholars such as guest speakers, teachers, and other experts in the field of traditional Chinese medicine; to develop human resource allocation models to allow for greater numbers of medical students to participate in the petitioner's programs; to develop the petitioner's written employment and independent contractor policy and procedure guidelines; and to develop public relations with the community would all be conducted in the Chinese language.

In its May 7, 2009 letter submitted in response to the director's NOIR, the petitioner revised the duties of the proposed position to add statements indicating that such duties would in fact be conducted in the Mandarin language, when it had not done so originally. As noted, the petitioner did not qualify the job duties in this manner when it filed the petition, and USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Nor was this the only material change attempted by the petitioner. As noted above, when it filed the petition the petitioner stated that the beneficiary would translate and edit materials according to specific market or customer requirements. However, counsel argued in his May 8, 2009 letter that the proposed position is not that of a translator, and the petitioner stated in its May 7, 2009 letter that "[t]his is not a translation position." Again, this material change will not be permitted. If the petitioner had not wanted us to assume that the proposed position would include translation responsibilities, it should not have made such statements when it filed the petition. *See* 8 C.F.R. 103.2(b)(1); *Matter of Michelin Tire Corp.*, 17 I&N Dec. at 248; *Matter of Izummi*, 22 I&N Dec. at 176. Nor are we persuaded by counsel's attempt on appeal to reintroduce the petitioner's translation duties by stating that the petitioner would translate Chinese medical books from ancient Chinese into modern Chinese, which constitutes a further attempt to materially alter the duties of the proposed position.[1]

For all of these reasons, we are not persuaded by the assertions of counsel and the petitioner that performance of the duties of the proposed position, as they existed at the time the petition was filed, did not require command of the English language.

Nor are we persuaded by counsel's assertion that the beneficiary's lack of training in Chinese medicine is not relevant, because "[t]his is a public relations position only." First, a cursory review of the job duties set forth by the petitioner in its original filing shows that they are not limited solely

[1] Counsel stated that this was "indicated in the initial petition." It was not.

to ones involving public relations. Counsel's statement regarding the nature of the proposed duties, therefore, is not supported by the record. With regard to the director's concern regarding the beneficiary's lack of training in Chinese medicine, we find the record unclear as to how the beneficiary will conduct market research on topics of interest in the field of Chinese medicine if he lacks any training on the matter. Nor is it clear how the beneficiary would establish relationships with medical schools and physicians in order to "bridge the occupational relationship of traditional modern medicine with Chinese Medicine applications." While we do not claim that the beneficiary's lack of training in the field of Chinese medicine precludes his performance of these duties, the petitioner in this case has not met its burden in demonstrating otherwise.

With regard to counsel's generalized assertions that the beneficiary would receive training on market research upon his arrival into the United States, we note again that a visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. at 248.

Finally, we turn to counsel's assertion regarding the beneficiary's unfamiliarity with the Chinese language-speaking community in Albuquerque, New Mexico. Counsel noted that the community to be reached via the beneficiary's efforts was found throughout the United States and China, and that "[t]he assumption that the beneficiary's public relations work would only address the local Mandarin speaking community in Albuquerque, New Mexico is an assumption invented by Amcon Shanghai and totally unsupported by the evidence." While we agree that the scope of many of the proposed work duties would reach far beyond the confines of Albuquerque, we also note that one of his specific job duties stated on the Form I-129 was to "[d]evelop public relations with the community." The plain language of this proposed duty would lead a reasonable reader to conclude that the petitioner was to develop public relations *with the community*, i.e., Albuquerque.

For all of these reasons, we find the director's revocation of this petition proper – the record as currently constituted does not demonstrate that the beneficiary is qualified to perform the duties of the petitioner's proposed position.

However, we note further that the director could have, had he placed the petitioner on notice of his intent to do so, made the additional finding that the record does not establish that the beneficiary is qualified to perform the duties of *any* 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*).[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

[2] Although the beneficiary's resume indicates he earned a bachelor's degree from Nanjing University in 1976, the record contains no evaluation equating that degree to one awarded by an American college or university.

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.

Regarding the beneficiary's work experience, the record contains an evaluation dated April 2, 2007 prepared by [redacted], which found the beneficiary's combination of education and work experience equivalent to a bachelor's degree in broadcasting and communication awarded by an accredited college or university in the United States. However, [redacted] 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] evaluator possesses the authority to grant college-level credit for training and/or experience in this 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. *See Matter of Soffici*, 22 I&N Dec. at 165.

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

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[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.

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

[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).

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; 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 *any* specialty occupation, and the director could also have revoked the approval of the petition on this basis.

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

Beyond the decision of the director, we find additionally that the director could also have revoked the petition, had he placed the petitioner on notice of his intent to do so, on the ground that the proposed position does not qualify for classification as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

> An occupation which requires [1] theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires [2] the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

(1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

(3) The employer normally requires a degree or its equivalent for the position; or

(4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

The duties of the proposed position were set forth previously. In his June 22, 2007 letter of support, counsel stated that the duties of the proposed position are similar to those of a media director, a public relations representative, and a director of media marketing. On appeal, counsel asserts that "this is a public relations position only."

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)).

In reaching our conclusion regarding the degree requirements of the proposed position, we have relied upon the 2010-2011[5] edition of the *Handbook*. In pertinent part, the *Handbook* states the following regarding the duties of advertising, marketing, and public relations managers:

> Advertising, marketing, promotions, public relations, and sales managers coordinate their companies' market research, marketing strategy, sales, advertising, promotion, pricing, product development, and public relations activities. In small firms the owner or chief executive officer might assume all advertising, promotions, marketing, sales, and public relations responsibilities. . . .
>
> *Advertising managers.* Advertising managers direct a firm's or group's advertising and promotional campaign. . . .
>
> *Marketing managers.* Marketing managers work with advertising and promotion managers to promote the firm's or organization's products and services. With the help of lower level managers, including *product development managers* and *market research managers*, marketing managers estimate the demand for products and services offered by the firm and its competitors and identify potential markets for the firm's products. Marketing managers also develop pricing strategies to help firms maximize profits and market share while ensuring that the firms' customers are satisfied. In collaboration with sales, product development, and other managers, they

[5] The 2012-13 edition of the *Handbook* will not be available until March 2012. *See* U.S. Department of Labor, Bureau of Labor Statistics, http://www.bls.gov/oco (last accessed January 5, 2012).

monitor trends that indicate the need for new products and services and they oversee product development.

* * *

Public relations managers. Public relations managers plan and direct public relations programs designed to create and maintain a favorable public image for the employer or client. For example, they might write press releases or sponsor corporate events to help maintain and improve the image and identity of the company or client. They also help to clarify the organization's point of view to their main constituency. They observe social, economic, and political trends that might ultimately affect the firm, and they make recommendations to enhance the firm's image on the basis of those trends. Public relations managers often specialize in a specific area, such as crisis management, or in a specific industry, such as healthcare.

In large organizations, public relations managers may supervise a staff of public relations specialists. (See the *Handbook* statement on public relations specialists.) They also work with advertising and marketing staffs to make sure that the advertising campaigns are compatible with the image the company or client is trying to portray. In addition, public relations managers may handle internal company communications, such as company newsletters, and may help financial managers produce company reports. They may assist company executives in drafting speeches, arranging interviews, and maintaining other forms of public contact; oversee company archives; and respond to requests for information. Some of these managers handle special events as well, such as the sponsorship of races, parties introducing new products, or other activities that the firm supports in order to gain public attention through the press without advertising directly.

Handbook, 2010-11 ed., available at http://www.bls.gov/oco/ocos020.htm (last accessed January 6, 2012). In pertinent part, the *Handbook* states the following with regard to public relations specialists:

An organization's reputation, profitability, and its continued existence can depend on the degree to which its targeted public supports its goals and policies. Public relations specialists—also referred to as *communications specialists* and *media specialists*, among other titles—serve as advocates for clients seeking to build and maintain positive relationships with the public. Their clients include businesses, nonprofit associations, universities, hospitals, and other organizations, and build and maintain positive relationships with the public. As managers recognize the link between good public relations and the success of their organizations, they increasingly rely on public relations specialists for advice on the strategy and policy of their communications.

Public relations specialists handle organizational functions, such as media, community, consumer, industry, and governmental relations; political campaigns; interest-group representation; conflict mediation; and employee and investor relations. Public relations specialists must understand the attitudes and concerns of

> community, consumer, employee, and public interest groups to establish and maintain cooperative relationships between them and representatives from print and broadcast journalism.
>
> Public relations specialists draft press releases and contact people in the media who might print or broadcast their material. Many radio or television special reports, newspaper stories, and magazine articles start at the desks of public relations specialists. Sometimes, the subject of a press release is an organization and its policies toward employees or its role in the community. For example, a press release might describe a public issue, such as health, energy, or the environment, and what an organization does to advance that issue.
>
> Public relations specialists also arrange and conduct programs to maintain contact between organization representatives and the public. For example, public relations specialists set up speaking engagements and prepare speeches for officials. These media specialists represent employers at community projects; make film, slide, and other visual presentations for meetings and school assemblies; and plan conventions.

Id. at http://www.bls.gov/oco/ocos086.htm.[6] Based upon our reading of the *Handbook*, we conclude that the duties of the proposed position as described by the petitioner combine the duties of several occupations, as those occupations are described in the *Handbook*. As indicated, the duties of the proposed position combine those of advertising, marketing, and public relations managers, as well as public relations specialists, as such positions are described in the *Handbook*. Having made that determination, we turn next to the *Handbook's* discussion of the educational credentials necessary for entry into these occupations. With regard to the education and training requirements for advertising, marketing, and public relations managers, the *Handbook* states the following:

> A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales manager jobs, but many employers prefer college graduates with experience in related occupations.
>
> ***Education and training.*** For marketing, sales, and promotions management positions, employers often prefer a bachelor's or master's degree in business administration with an emphasis on marketing. Courses in business law, management, economics, accounting, finance, mathematics, and statistics are advantageous. In addition, the completion of an internship while the candidate is in school is highly recommended. In highly technical industries, such as computer and electronics manufacturing, a bachelor's degree in engineering or science, combined with a master's degree in business administration, is preferred.
>
> For advertising management positions, some employers prefer a bachelor's degree in advertising or journalism. A relevant course of study might include classes in

[6] We note that counsel submitted this same excerpt.

> marketing, consumer behavior, market research, sales, communication methods and technology, visual arts, art history, and photography.
>
> For public relations management positions, some employers prefer a bachelor's or master's degree in public relations or journalism. The applicant's curriculum should include courses in advertising, business administration, public affairs, public speaking, political science, and creative and technical writing.
>
> Most advertising, marketing, promotions, public relations, and sales management positions are filled through promotions of experienced staff or related professional personnel. For example, many managers are former sales representatives; purchasing agents; buyers; or product, advertising, promotions, or public relations specialists. In small firms, in which the number of positions is limited, advancement to a management position usually comes slowly. In large firms, promotion may occur more quickly.

Id. at http://www.bls.gov/oco/ocos020.htm. Although a bachelor's degree may be preferred, the *Handbook* does not indicate that a minimum of a bachelor's degree in a specific specialty is normally required for advertising, marketing, and public relations managers. Employer preferences are not synonymous with normal minimum hiring requirements. Furthermore, the *Handbook* indicates that even for those positions that do require a degree, there is no requirement that it come *from a specific specialty.*

The *Handbook* states the following with regard to the education and training requirements for public relations specialists:

> A bachelor's degree in a communications-related field combined with public relations experience is excellent preparation for a person interested in public relations work.
>
> ***Education and training.*** Many entry-level public relations specialists have a college degree in public relations, journalism, marketing, or communications. Some firms seek college graduates who have worked in electronic or print journalism. Other employers seek applicants with demonstrated communication skills and training or experience in a field related to the firm's business—information technology, healthcare, science, engineering, sales, or finance, for example.

Id. at http://www.bls.gov/oco/ocos086.htm. The *Handbook's* discussion does not establish that a bachelor's degree *in a specific specialty*, or its equivalent, is the normal minimum entry requirement for public relations specialists. The *Handbook's* statement that a college degree in a communications-related field combined with work experience is excellent preparation for work in the field does not equate to a finding that a baccalaureate degree in a specific specialty, or its equivalent, is a normal minimum entry requirement. That a certain career preparation provides "excellent preparation" is not synonymous with a "minimum requirement for entry" criterion. Nor does the *Handbook's* statement that "many entry-level public relations specialists have a college

degree" equate to a finding that a baccalaureate degree in a specific specialty, or its equivalent, is the normal minimum entry requirement, as that statement does not meet the "normal minimum requirement for entry" criterion.

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 a 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 advertising, marketing, and public relations managers, and public relations specialists. However, neither the *Handbook* nor any other evidence in the record indicates that such positions typically require a minimum of a bachelor's degree or the equivalent in a specific specialty. The petitioner has not, therefore, demonstrated that a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry as required by section 214(i)(1)(B) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

Nor do we find convincing counsel's citation to the Department of Labor's *Dictionary of Occupational Titles (DOT)*. 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, and the *DOT* is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a requirement for a given position. The *DOT's* Specialized Vocational Preparation (SVP) rating system, which counsel referenced in his June 22, 2007 letter, is meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP rating system 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.[7] For all of these reasons, the *DOT* and its SVP rating system are of little evidentiary value to the issue presented on appeal.

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[7] Moreover, we note the following information from Section II of the *Dictionary of Occupational Titles* (*DOT*) Appendix C, Components of the Definition Trailer, *available at* http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM (last accessed January 6, 2012), which further addresses the SVP ratings system:

II. SPECIFIC VOCATIONAL PREPARATION (SVP)

> Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

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

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This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

Specific vocational training includes training given in any of the following circumstances:

a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);

b. Apprenticeship training (for apprenticeable jobs only);

c. In-plant training (organized classroom study provided by an employer);

d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);

e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

Level	Time
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month
3	Over 1 month up to and including 3 months
4	Over 3 months up to and including 6 months
5	Over 6 months up to and including 1 year
6	Over 1 year up to and including 2 years
7	Over 2 years up to and including 4 years
8	Over 4 years up to and including 10 years
9	Over 10 years

Note: The levels of this scale are mutually exclusive and do not overlap.

Thus, even if the *DOT* were to assign the proposed position an SVP rating of 8, that rating would not necessarily indicate that at least a four-year bachelor's degree is required, or more importantly, that such a degree must be in a specific specialty closely related to the requirements of that occupation. Therefore, the SVP rating is not probative of the proposed position being a specialty occupation.

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, counsel's reliance upon the job vacancy advertisements he submits on appeal is misplaced. First, he 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 most[8] of 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).

We also conclude that the record does not establish that the proposed position is a specialty occupation under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2),which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." The evidence of record does not refute the

[8] Best Doctors does not require a candidate for its advertised position to hold bachelor's degree; its advertisement states only that a bachelor's degree in marketing is "preferred." Employer preferences are not synonymous with minimum hiring requirements.

Handbook's information to the effect that there is a spectrum of degrees acceptable for advertising, marketing, and public relations manager and public relations specialist positions. The record lacks sufficiently detailed information to distinguish the proposed position as unique from or more complex than similar positions that can be performed by persons without a specialty degree or its equivalent.

We turn next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*), which requires that the petitioner demonstrate that it normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet the third criterion, we normally review the petitioner's 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.[9] However, the record contains no such evidence. The petitioner has not established that the proposed position qualifies for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).

The fourth criterion, located at 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 a 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 performed by advertising, marketing, and public relations managers, and public relations specialists who do not possess a degree from a specific specialty and, as such, has failed to indicate the specialization and complexity required by this criterion. 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*).

Accordingly, the proposed position does not qualify for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(*1*)-(*4*). Had he placed the petitioner on notice of his intent to do so, the director could also have revoked approval of the petition on this basis.

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

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[9] Even if a petitioner believes or otherwise asserts 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 additionally that the director could also have revoked the petition, had he placed the petitioner on notice of his intent to do so, on the ground that the petitioner has failed to demonstrate that the petition is supported by an LCA that corresponds to it.

We note that the certified LCA provided in support of the instant petition lists a Level I prevailing wage level for writers and authors in Albuquerque, New Mexico.[10] 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,[11] it must therefore be concluded that either (1) the position is a low-level, entry position relative to other market research analysts; or that (2) the LCA does not correspond to the proposed petition.

While the DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an 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. Had he placed the petitioner on notice of his intent to do so, the director could also have revoked approval of the petition on this basis.

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[10] The Level I prevailing wage for writers and authors in Albuquerque, New Mexico was $25,251 at the time the LCA was certified. The Level II prevailing wage was $32,594; the Level III prevailing wage was $39,915; and the Level IV prevailing wage was $47,258. *See* Foreign Labor Certification Data Center, Online Wage Library, *available at* http:///www.flcdatacenter.com (accessed January 9, 2012).

[11] 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."

Conclusion

The petitioner has failed to demonstrate that the beneficiary is qualified to perform the duties of the particular position proposed here, and the director properly revoked approval of the petition on that basis. Beyond the decision of the director, we find additionally that the director could also have revoked approval of the petition, had he properly placed the petition on notice of his intent to do so because the record does not establish that: (1) the beneficiary is qualified to perform the duties of any specialty occupation; (2) the proposed position qualifies for classification as a specialty occupation; and (3) the petition is supported by an LCA which corresponds to it.[12]

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed. Approval of the petition remains revoked.

[12] *See Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).