

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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



82

DATE: **JUL 02 2012** OFFICE: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the Vermont Service Center on August 5, 2010. In the Form I-129 visa petition, the petitioner describes itself as an enterprise engaged in software consulting established in 2003. In order to employ the beneficiary in what it designates as a programmer analyst position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on September 10, 2010, finding that the petitioner (1) failed to comply with the itinerary requirement at 8 C.F.R. § 214.2(h)(2)(i)(B) (further stating "it is not clear as to when, where, or for whom the job duties would be performed"); and (2) failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, the petitioner asserts that the director's bases for denial were erroneous and contends that it satisfied all evidentiary requirements.

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

For the reasons that will be discussed below, the AAO agrees with the director that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed. The petition will be denied.

Later in this decision, the AAO will also address two additional, independent grounds, not identified by the director's decision, that the AAO finds also precludes approval of this petition. Specifically, beyond the decision of the director, the AAO finds that the petitioner (1) failed to submit a Labor Condition Application (LCA) that complies with the applicable statutory and regulatory provisions; and (2) failed to establish that the beneficiary is qualified to serve in a specialty occupation position. For these additional reasons, the petition may not be approved, with each basis considered as an independent and alternative ground for denial.¹

The petitioner stated that it seeks the beneficiary's services as a programmer analyst, to serve on a full-time basis at a salary of \$60,000 per year. In a letter of support dated August 3, 2010, the petitioner provided the following job description for the proffered position:

- Confer with clients regarding the nature of the information processing or computation needs a computer program is to address.

¹ The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

- Coordinate and link the computer systems within an organization to increase [c]ompatibility and so information can be shared.
- Consult with management to ensure agreement on system principles.
- Expand or modify system to serve new purposes or improve work flow.
- Interview or survey workers, observe job performance and/or perform the job in order to determine what information is processed and how it is processed.
- Determine computer software or hardware needed to set up or alter system.

The petitioner provided the following information regarding the percentage of time that the beneficiary would spend performing "Daily Task Activit[ies]":

System analysis	25%
System design	20%
Writing the source code and develop programs	30%
Unit and system testing	15%

The AAO notes that the percentage of time spent performing the above tasks equals 90%. No explanation was provided for how the beneficiary would spend the remaining 10% of his time.

Upon review of record of proceeding, the AAO notes that the job description of the duties and daily tasks of the proffered position are generalized and generic as the petitioner fails to convey either the substantive nature of the work that the beneficiary would actually perform, any particular body of highly specialized knowledge that would have to be theoretically and practically applied to perform it, or the educational level of any such knowledge that may be necessary. The responsibilities for the proffered position contain generalized functions without providing sufficient information regarding the particular work, and associated educational requirements, into which the duties would manifest themselves in their day-to-day performance within the petitioner's business operations.

While the petitioner has identified its position as that of a programmer analyst, its description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's contention. While a generalized description is necessary when defining the range of duties that may be performed within an occupation, a generic description cannot be relied upon by a petitioner when discussing the duties attached to specific employment for H-1B approval. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. Here, the job descriptions fail to communicate (1) the actual work that the beneficiary would perform, (2) the complexity, uniqueness and/or specialization of the tasks, and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty.

The director found the evidence insufficient to establish eligibility for the benefit sought and issued an RFE on August 19, 2010. The petitioner was asked to submit additional evidence, including a position description or other probative evidence that establishes the skills required to perform the duties of the proffered position. Additionally, the director requested the petitioner provide documentation to establish that the beneficiary would be serving on an in-house project as claimed by the petitioner, including evidence regarding the petitioner's business operations and products/services. The petitioner responded to the director's RFE by submitting a letter, with the same duties listed above, and additional evidence.

The director reviewed the response to the RFE and determined that the petitioner had not established eligibility for the benefit sought. The director determined that the petitioner failed to establish the actual location of where the beneficiary would be employed. Furthermore, although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The director denied the petition on September 10, 2010. Thereafter, the petitioner submitted an appeal of the denial of the H-1B petition. The matter is now before the AAO.

Based upon a complete review of the record of proceeding, the AAO will make some preliminary findings that are material to the determination of the merits of this appeal.

The AAO notes that there are numerous inconsistencies and discrepancies in the record of proceeding, which undermines the petitioner's credibility with regard to the location of the beneficiary's employment, the services the beneficiary will perform, as well as the nature and requirements of the proffered position. When a petition includes numerous errors and discrepancies, those inconsistencies may raise serious concerns about the veracity of the petitioner's assertions.² This is exemplified by the fact that the petitioner mistakenly and repeatedly referenced the beneficiary in its letter of support and in response to the RFE in the feminine pronoun case. The record provides no explanation for this inconsistency. Additionally, this is illustrated by the fact that the petitioner provided conflicting information regarding the basis for H-1B classification, stating that the petition was filed as a continuation of previously approved employment without change with the same employer on the Form I-129 but claiming

² Additionally, the AAO notes that the petitioner failed to provide requested information in the Form I-129. For example, in the Form I-129, the petitioner claimed to have only filed one prior H-1B petition on behalf of the beneficiary. Additionally, the petitioner submitted a photocopy of a Form I-797B notice, indicating that the petitioner's prior H-1B petition for the beneficiary had been approved, valid from October 1, 2006 to September 30, 2009. USCIS records indicate that the petitioner submitted another H-1B petition on behalf of the beneficiary on April 23, 2009. The petitioner failed to provide this information to USCIS. In the H Classification Supplement to Form I-129, the petitioner was asked to provide the beneficiary's "prior periods of stay in H or L classification in the United States for the last six years." The petitioner left this entry blank. No reason for the omissions was provided.

that the petition was based upon a change in employer on the LCA.³ Moreover, there are numerous discrepancies in the record of proceeding with regard to the worksite location of the beneficiary's employment. Thus, the AAO must question the accuracy of the petitioner's assertions and whether the information provided is correctly attributed to this particular position and beneficiary.

When determining whether a position is a specialty occupation, the AAO must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, USCIS looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

The regulation at 8 C.F.R. § 214.2(h)(2)(i)(B) states, in pertinent part:

Service or training in more than one location. A petition which requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with the Service office which has jurisdiction over I-129H petitions in the area where the petitioner is located. The address which the petitioner specifies as its location on the I-129H petition shall be where the petitioner is located for purposes of this paragraph.

The itinerary language at 8 C.F.R. § 214.2(h)(2)(i)(B), with its use of the mandatory "must" and its inclusion in the subsection "Filing of petitions," establishes that the itinerary as there defined is a material and necessary document for an H-1B petition involving employment at multiple locations, and that such a petition may not be approved for any employment period for which there is not submitted at least the employment dates and locations. A complete itinerary is material in that it is necessary to substantiate a petitioner's claim that has H-1B caliber work for a beneficiary for the period of employment requested in the petition.

The Department of Labor (DOL) regulations governing Labor Condition Applications (LCAs) states that "[e]ach LCA shall state . . . [t]he places of intended employment." 20 C.F.R.

³ Upon review of the Form I-129 petition and LCA the AAO notes that the petitioner has provided conflicting information regarding the basis for H-1B classification. More specifically, in the Form I-129 (page 1, Part 2), the petitioner marked the basis for classification as "Continuation of previously approved employment without change with the same employer."³ In the LCA (page 1, Section 7), the petitioner marked claimed that the "[b]asis for visa classification supported by this application" was a "Change in employer." The petitioner did not provide an explanation for this discrepancy. The AAO notes that the Form I-129 does not correspond to the LCA in this regard.

§ 655.730(c)(4) (emphasis added). "Place of intended employment" is defined as "the worksite or physical location where the work actually is performed by the H-1B . . . nonimmigrant." 20 C.F.R. § 655.715. Moreover, the instructions for Section G of Form ETA 9035 require that the employer list the place of intended employment "with as much geographic specificity as possible" and notes that the employer may identify up to three physical locations, including street address, city, county, state, and zip code, where work will be performed. Petitioners who know that an employee will be working at additional worksites at the time of filing must include all worksites on Form ETA 9035. Failure to do this will result in a finding that the employer did not file an LCA that supports the H-1B petition.

In the instant case, the record reveals that prior to the adjudication of the H-1B petition, the petitioner provided conflicting, inconsistent information as to where the beneficiary would be employed. In Part 1 of the Form I-129, the petitioner listed an address on [REDACTED] in Miami, Florida. In Part 5 of the Form I-129, the petitioner was specifically requested to provide the "[a]ddress where the person(s) will work if different from address in **Part 1**. (Street number and name, city/town, state, zip code)." The petitioner did not assert that the beneficiary would be employed at a different worksite than the address in Miami, Florida or that the beneficiary would work at multiple locations. On August 3, 2010, the petitioner's president signed the Form I-129 confirming that all of the information was true and correct.

In the LCA, the petitioner listed the address on [REDACTED] as the "Place of Employment 1." The petitioner listed [REDACTED] as an additional worksite. No other worksite locations were provided. The petitioner's president signed the LCA on August 3, 2010 confirming that all of the information and statements provided were true and correct.⁴

In a letter dated August 3, 2010, the petitioner stated that it was providing documents "for [REDACTED] or where the beneficiary will work."⁵ The petitioner continued by stating that the "office in Miami, FL is a sales office and not a work location for the beneficiary." The petitioner claimed that the "beneficiary will be working at [its] Fremont location." In response to the RFE, the petitioner submitted a letter stating that the "beneficiary will be working at our offices at [REDACTED]"⁶

The petitioner did not provide a valid explanation for the inconsistencies in the record of proceeding with regard to the worksite location(s). In its letters of support, the petitioner claims that the beneficiary will only be employed in Fremont, California. The petitioner did not provide

⁴ The AAO notes that the petitioner stated in the Form I-129 that the beneficiary's "[c]urrent U.S. address" (page 2, Part 3) and "[c]urrent residential address" (page 13, Part A) were [REDACTED] the petitioner's address. The petitioner did not provide an explanation as to the reason that it stated that the beneficiary is residing at the petitioner's place of business.

⁵ The AAO notes that the Form I-129 petition, LCA and letter of support are all dated the same day, August 3, 2010.

⁶ The record of proceeding contains numerous inconsistencies as to the beneficiary's place of employment. The AAO will not attempt to "guess" whether the petitioner's statement that the beneficiary will be working at [REDACTED] is a typographical error.

any explanation for indicating on the Form I-129 that the beneficiary would only be employed at its office in Miami, Florida. The Form I-129 specifically requests the petitioner provide the "[a]ddress where the person(s) will work if different from address in Part I." The petitioner failed to list any other address(es). The petitioner also failed to explain the reason it claimed that the beneficiary would work in Miami, Florida in the LCA. Moreover, the petitioner failed to provide any reason for the variance in the suite numbers with regard to the worksite in Fremont, California. As previously mentioned, a petition which requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services. *See* 8 C.F.R. § 214.2(h)(2)(i)(B). In the instant case, the petitioner has not sufficiently established where the beneficiary will be employed during the duration of the H-1B period. The record reflects multiple possible worksites for the beneficiary and the petitioner did not submit an itinerary, nor did it establish that it is exempt from the itinerary requirement. Accordingly, the petitioner has not established eligibility for the benefit sought and the petition cannot be approved.

Moreover, while DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.*

[Italics added]. The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit an LCA that corresponds to the petition. More specifically, there are discrepancies with regard to the beneficiary worksite location as claimed by the petitioner in the H-1B petition and the LCA, and there are discrepancies between the basis for the visa classification on the Form I-129 and LCA. Accordingly, the petitioner has not submitted an LCA that corresponds to the petition, and for this reason also the petition cannot be approved.

The AAO will now address the director's determination that the proffered position is not a specialty occupation. Based upon a complete review of the record of proceeding, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes 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 Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] requires 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 [(2)] requires 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, a proposed 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.⁷

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

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position.

The petitioner stated that the beneficiary would be employed in a programmer analyst position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, the specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical

⁷ In the appeal, the petitioner claims that it submitted documentation evidencing "that the petitioner requires a bachelors degree" and, thus, the position qualifies as a specialty occupation. The AAO is not persuaded by the petitioner's claim that the proffered position is a specialty occupation. As discussed above, 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). To interpret one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in the illogical and absurd result of particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory definition at Section 214(i)(1) of the Act or regulatory definition at 8 C.F.R. § 214.2(h)(4)(ii). *See Defensor v. Meissner*, 201 F.3d 384.

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.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁸ The petitioner asserts that the proffered position falls under the occupational category "Computer Systems Analysts." The AAO reviewed the chapter of the *Handbook* entitled "Computer Systems Analysts," including the sections regarding the typical duties and requirements for this occupational category.⁹ However, contrary to the petitioner's assertion, the *Handbook* does not indicate that "Computer Systems Analysts" comprise an occupational group that categorically requires at least a bachelor's degree, or the equivalent, in a specific specialty.

The subchapter of the *Handbook* entitled "How to Become a Computer Systems Analyst" states the following about this occupation:

A bachelor's degree in a computer or information science field is common, although not always a requirement. Some firms hire analysts with business or liberal arts degrees who know how to write computer programs.

Education

Most computer systems analysts have a bachelor's degree in a computer-related field. Because computer systems analysts are also heavily involved in the business side of a company, it may be helpful to take business courses or major in management information systems (MIS).

Some employers prefer applicants who have a Master of Business Administration (MBA) with a concentration in information systems. For more technically complex jobs, a master's degree in computer science may be more appropriate.

Although many analysts have technical degrees, such a degree is not always a requirement. Many systems analysts have liberal arts degrees and have gained programming or technical expertise elsewhere.

Some analysts have an associate's degree and experience in a related occupation.

⁸ All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

⁹ U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Public Relations Managers and Specialists, on the Internet at <http://www.bls.gov/ooh/Management/Public-relations-managers-and-specialists.htm#tab-1> (last visited June 29, 2012).

Many systems analysts continue to take classes throughout their careers so that they can learn about new and innovative technologies and keep their skills competitive. Technological advances come so rapidly in the computer field that continual study is necessary to remain competitive.

Systems analysts must also understand the business field they are working in. For example, a hospital may want an analyst with a background or coursework in health management. An analyst working for a bank may need to understand finance.

Advancement

With experience, systems analysts can advance to project manager and lead a team of analysts. Some can eventually become information technology (IT) directors or chief technology officers. For more information, see the profile on computer and information systems managers.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Computer Systems Analysts, on the Internet at <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-4> (last visited June 29, 2012).

The *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty is normally required for this occupational category. Rather, the occupation accommodates a wide spectrum of educational credentials, including less than a bachelor's degree in a specific specialty. The *Handbook* reports that "[m]any systems analysts have liberal arts degrees."¹⁰ Furthermore, according to the *Handbook*, "[s]ome analysts have an associate's degree." While the *Handbook's* narrative indicates that a bachelor's degree in a computer or information science field is common, the *Handbook* specifically states that it is not always a requirement. The text suggests that a degree may be a preference among employers of computer systems analysts in some environments, but not that it is an occupational, entry requirement.¹¹

¹⁰ The AAO here reiterates that the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a *specific specialty* that is directly related to the position. See 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). Although a general-purpose bachelor's degree, such as a degree in liberal arts or business, may be a legitimate prerequisite for a particular position, the acceptance of such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007); cf. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

¹¹ The statement that "most computer systems analysts have a bachelor's degree" does not support the view that any computer systems analyst job qualifies as a specialty occupation, as "most" is not indicative that a particular position within the wide spectrum of computer systems analysts jobs normally requires at least a bachelor's degree, or its equivalent, in a specific specialty. For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "Greatest in number, quantity, size, or degree." As such, if merely 51% of the positions require at least a bachelor's degree in specific specialty, it could be said that "most" of the positions require such a

The *Handbook* does not support the petitioner's claim that the proffered position falls under an occupational group that categorically qualifies as a specialty occupation.

It is incumbent upon the petitioner to provide persuasive evidence that the proffered position qualifies as a specialty occupation under this criterion, notwithstanding the absence of *Handbook* support on the issue. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." 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)).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that there is a categorical requirement for at least a bachelor's degree in a specific specialty. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that position is one for which a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO reviews the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

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 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. The record of proceeding does not contain any evidence from the industry's professional association to indicate that a degree is a minimum entry requirement. The petitioner also did not submit any letters or affidavits from firms or individuals in the industry. The record of proceeding does contain several job announcements.

degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. (The AAO notes that the proffered position has been designated by the petitioner in the LCA as a low, entry-level position relative to others within the occupation). Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist.

However, upon review of the evidence, the AAO finds that the petitioner's reliance on the job announcements is misplaced.

The petitioner stated that it is an enterprise engaged in software consulting. In the Form I-129, the petitioner also stated that it has 225 employees and a gross annual income of approximately \$29 million and a net annual income of \$55,150. The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 541511.¹² The AAO notes that the NAICS code 541511 is designated for "Custom Computer Programming Services."¹³ The U.S. Department of Commerce, Census Bureau website states that this industry "comprises establishments primarily engaged in writing, modifying, testing, and supporting software to meet the needs of a particular customer."¹⁴ For the petitioner to establish that an advertising organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered).

The AAO notes that the petitioner did not provide any independent evidence of how representative the job advertisements are of the particular advertising employer's recruiting history for the type of jobs advertised. As they are only solicitations for hire, they are not evidence of the employer's actual hiring practices. Inexplicably, the petitioner submitted job announcement from August 2008. Thus, the postings were two years old at the time of submission to USCIS. The petitioner did not provide an explanation as to the reason it was relying on job advertisements that were posted two years prior to the submission of the H-1B petition in order to establish current industry standards. Upon review of the documents, the AAO finds that they do not establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in similar organizations for parallel positions to the proffered position.

The petitioner submitted the following job postings:

- Advertisements for the following companies: [REDACTED] for an unnamed client; [REDACTED] an unnamed employer in Naples, Florida; and [REDACTED]. The advertisements do not contain sufficient information regarding the nature or type of organizations and/or information regarding their business operations. Consequently, the record is devoid of sufficient information regarding the advertising organizations to provide a legitimate comparison of the organizations to the petitioner. The petitioner failed to supplement the record of proceeding to establish that the

¹² According to the U.S. Census Bureau, the North American Industry Classification System (NAICS) is used to classify business establishments according to type of economic activity, and each establishment is classified to an industry according to the primary business activity taking place there. See <http://www.census.gov/eos/www/naics/> (last viewed June 29, 2012).

¹³ U.S. Dept of Commerce, U.S Census Bureau, 2007 NAICS Definition, 541511 – Custom Computer Programming Services, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsreh> (last viewed June 29, 2012).

¹⁴ *Id.*

advertising organizations are similar to it. Therefore, the advertisements are outside the scope of consideration for this criterion, which encompasses only organizations similar to the petitioner. Thus, further review of the postings is not necessary.

- Advertisements for the following companies: [REDACTED] for an unnamed employer and [REDACTED]. The advertisements contain insufficient information regarding the employers to provide a legitimate comparison of the organizations to the petitioner, and the petitioner failed to supplement the record of proceeding to establish that the employers are similar to it. Therefore, the advertisements are outside the scope of consideration for this criterion, which encompasses only organizations similar to the petitioner. Furthermore, contrary to the purpose for which the advertisements were submitted, the postings state that a bachelor's degree is required, but do not indicate that a bachelor's degree in a *specific specialty* is required.
- Advertisements for the California State University and Health Market Science (provider of solutions for the healthcare industry). The advertisements appear to be for organizations that are not similar to the petitioner and the petitioner has not provided any evidence to suggest otherwise. Therefore, the postings are outside the scope of consideration for this criterion, which encompasses only organizations similar to the petitioner. Thus, further review of the advertisements is not necessary.
- An advertisement for [REDACTED]. The record is devoid of sufficient information regarding the advertising organization to conduct a legitimate comparison of the business operations, and the petitioner failed to establish that the employer is similar to it. Moreover, the advertisement does not provide sufficient information about the duties and responsibilities of the position to support a meaningful comparison between it and the proffered position, or a conclusion that the positions are parallel in their actual performance and knowledge requirements.

As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed.

It must be noted that even if all of the job postings indicated that a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be

accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

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

Thus, based upon a complete review of the record, the petitioner has not established that at least a bachelor's degree in a specific specialty is the norm for entry into positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that the particular position proffered in this petition is "so complex or unique" that it can be performed only by an individual with at least a bachelor's degree in a specialty occupation.

The petitioner does not assert or provide any documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty. This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. The LCA indicates a wage level based upon the occupational classification "Computer Systems Analysts" at a Level 1 (entry level) wage.

Wage levels should be determined only after selecting the most relevant *O*NET* occupational code classification. Then, a prevailing-wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.¹⁵ Prevailing wage determinations start with an entry level wage (i.e. Level 1) and progress to a wage that is commensurate with that of a Level 2 (qualified), Level 3 (experienced), or Level 4 (fully competent worker) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of

¹⁵ *See* DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf.

the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties.¹⁶ DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received as indicated by the job description.¹⁷

The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels.¹⁸ A Level 1 wage rate is described by DOL as follows:

Level 1 (entry) wage 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.

See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf.

The AAO observes that the wage-rate element of the LCA is indicative of a comparatively low, entry-level position relative to others within the occupation. Based upon the wage rate, the beneficiary is a beginning level employee who has only a basic understanding of the occupation. He will be expected to perform routine tasks that require limited, if any, exercise of judgment. The beneficiary will work under close supervision, and he will receive specific instructions on required tasks and expected results. His work will be closely monitored and reviewed for accuracy. Thus, based upon the record of proceeding, including the LCA, it does not appear that the proffered position is so complex or unique that it can only be performed by an individual who has completed a baccalaureate program in a specific discipline that directly relates to the

¹⁶ A point system is used to assess the complexity of the job and assign the wage level. Step 1 requires a "1" to represent the job's requirements. Step 2 addresses experience and must contain a "0" (for at or below the level of experience and SVP range), a "1" (low end of experience and SVP), a "2" (high end), or "3" (greater than range). Step 3 considers education required to perform the job duties, a "1" (more than the usual education by one category) or "2" (more than the usual education by more than one category). Step 4 accounts for Special Skills requirements that indicate a higher level of complexity or decision-making with a "1" or a "2" entered as appropriate. Finally, Step 5 addresses Supervisory Duties, with a "1" entered unless supervision is generally required by the occupation.

¹⁷ See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf.

¹⁸ *Id.*

proffered position. Furthermore, the petitioner has not established that 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 in a specific specialty.

It is further noted that although the petitioner asserts that a bachelor's degree is required to perform the duties of the proffered position, the petitioner failed to sufficiently demonstrate how the duties of the proffered position require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. That is, the record of proceeding does not establish that the petitioner's requisite knowledge for the proffered position can only be obtained through a baccalaureate or higher degree program in a specific specialty, or the equivalent.

The petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform any of the position. While a few related courses may be beneficial in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position.

The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

Consequently, as the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position. The AAO usually reviews the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

To merit approval of the petition under this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. Further, it should be noted that the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. In the instant case, the record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty.

While a petitioner may believe or otherwise assert that a proffered 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 occupation as 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 384. In other words, if a petitioner's degree requirement is only symbolic and the proffered 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* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees in a specific specialty or its equivalent. *See id.* at 388.

The petitioner submitted an advertisement for the position of programmer analyst that it placed a few months prior to the submission of the H-1B petition. There are several differences between the advertised position and the proffered position, including the number of hours to be worked and the description of the duties to be performed. The petitioner states in the advertisement that a "Bachelors degree, combination of education/experience [is] acceptable" for the position. Additionally, the petitioner submitted "degree certificates from 10 of [its] current employees (sample) which shows that [it] hire[s] individuals with Bachelors Degree[s]."

Upon review of the documentation, the AAO finds that it is not sufficient to establish that the petitioner normally requires at least a bachelor's degree, or the equivalent, in a specific specialty for its programmer analyst positions. The AAO notes that such an assertion, i.e., that the duties of the programmer analyst position can be performed by a person with a bachelor's degree, without any further specification, is tantamount to an admission that the position is not, in fact, a specialty occupation. As previously discussed, the degree requirement set by the statutory and

regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a *specific specialty* that is directly related to the position. See 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

Moreover, the petitioner stated in the Form I-129 petition that it has 225 employees. The petitioner did not state the number of people it currently employs or previously employed to serve in the position of programmer analyst. Consequently, it cannot be determined how representative the diplomas of ten individuals are of the petitioner's normal hiring practices. Further, the petitioner failed to provide employment records or other evidence to establish that the individuals are employed by the petitioner, nor did the petitioner submit probative evidence to establish that the individuals are employed in the same or similar position as the proffered position. Thus, the documentation is not persuasive in establishing the petitioner's normal recruiting and hiring practices for programmer analyst positions.

Upon review of the record, the petitioner has not provided sufficient evidence to establish that it normally requires at least a bachelor's degree, or the equivalent, in a specific specialty for the proffered position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific 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.

Upon review of the record, the petitioner does not assert that the nature of the specific duties of the proffered position is specialized and complex. Furthermore, the petitioner did not submit any evidence to indicate that the nature of the specific 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 specific specialty.

Moreover, the AAO incorporates its earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position on the LCA as a low, entry-level position relative to others within the occupation. The petitioner designated the position as a Level 1 position (out of four possible wage-levels), which DOL indicates is appropriate for "beginning level employees who have only a basic understanding of the occupation."¹⁹ Without further evidence, it is simply not credible that the petitioner's proffered position is one with specialized and/or complex duties, as such a position would likely be classified at a higher-level, requiring a significantly higher prevailing wage. The petitioner has not provided sufficient probative evidence to establish that the nature of the specific 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 specific specialty.

¹⁹ See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf.

Upon review of the record, the petitioner has not met its burden of proof to establish that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The AAO, therefore, concludes that the proffered position failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that it has satisfied any of the additional, supplement requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

Beyond the decision of the director, the AAO finds that even if the petitioner had overcome the grounds for denial of the petition discussed above, the petition could not be approved because the petitioner failed to establish that the beneficiary is qualified to serve in a specialty occupation position. The AAO does not need to examine the issue of the beneficiary's qualifications in detail, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. That is, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications further, except to note that, in any event, the petitioner did not submit an evaluation of his foreign degree or sufficient evidence to establish that his degree is the equivalent of a U.S. bachelor's degree in a specific specialty. As such, the petitioner failed to establish that the beneficiary is qualified to serve in a specialty occupation position. Thus the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

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

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*. 345 F.3d 683.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal will be dismissed. The petition will be denied.