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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: **JUL 03 2012** Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

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

If you believe the 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.

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner describes itself as a doctor's office engaged in the practice of internal medicine and the treatment of pulmonary diseases and sleep disorders. In order to employ the beneficiary in what it designates as a clinical coordinator 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, finding that the proffered position was not a specialty occupation. On appeal, counsel for the petitioner contends that the director's findings were erroneous and submits a brief and additional evidence in support of this contention.

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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

Specialty occupation means 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, 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.

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.

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

In a letter of support dated December 3, 2009, the petitioner claims that it wishes to employ the beneficiary as its clinical coordinator to implement and administer the clinical sleep studies for its medical practices. On December 17, 2009, the director issued an RFE, which requested a more detailed description of the work to be performed by the beneficiary as well as information pertaining to the petitioner's organization. The director specifically requested information pertaining to the beneficiary's actual job duties and the percentage of time devoted to such duties, as well as an organizational chart demonstrating the composition of the petitioner's company. The director also requested evidence such as documentation showing that the petitioner's unique business model was more complex or unique than similar businesses in the field.

In response, both counsel and the petitioner addressed the director's queries. In a letter dated January 14, 2010, counsel addressed the four prongs of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A), and asserted that the proffered position of clinical coordinator satisfied all four criteria. Additionally, the petitioner addressed the issues raised by the director in a letter dated January 13, 2010, and provided a more specific overview of the beneficiary's proposed duties. The petitioner claimed that it wished to increase its participation in clinical trials for new pulmonary drugs and in sleep studies, and claims that its two physicians are unable to conduct such trials while simultaneously managing their patient practices. It further claimed that, in the past, it hired a contract worker from the respective drug company to manage its clinical trials, but since it now has elected to expand its participation in clinical trials, it requires the services of a full time clinical coordinator.

Regarding the beneficiary's duties, the petitioner provided more details regarding the nature of the position. The petitioner claimed that the beneficiary, as clinical coordinator, would evaluate patients against a number of inclusion and exclusion criteria to determine good candidates for the trials. The petitioner further indicated that 30% of the beneficiary's time would be spent taking detailed medical histories of patients, with the remaining 70% of his time devoted to analysis and reporting of data for the study authors. Specifically, the petitioner claimed that he will gather information from patient histories, charts, and test results, and organize this information into case report forms. Finally, the petitioner indicated that, while the beneficiary would ultimately devote all of his time to the coordination of clinical trials, he would devote 50% of his time assisting doctors with regular patients for the initial six to twelve months of his employment. In assisting doctors with regular patients, the petitioner stated that the beneficiary would "assist doctors in the clinic by reviewing patient charts, summarizing patient information for the doctors, and taking medical histories."

On May 28, 2010, the director denied the petition, finding that the record did not establish that the proffered position met any of the four alternative criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A). Specifically, the director concluded that the proffered position was akin to that of a medical records and health information technician, an occupational category that did not require a baccalaureate or higher degree in a specific specialty.

On appeal, counsel contends that the director's findings were erroneous, and asserts that the proffered position of clinical coordinator is entirely distinct from that of a medical records and health

information technician. Counsel also asserts that "the proffered position reflects the duties of a Clinical Research Coordinator, which the U.S. Department of Labor classifies under the title, Natural Sciences Managers."

In order to determine whether the employment described above qualifies as a specialty occupation, the AAO first turns to the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)*, on which USCIS routinely relies for the educational requirements of particular occupations. The *Handbook* does not contain an occupation with the specific title of clinical coordinator. The director found that the proffered position is most accurately categorized as a medical records and health information technician, which is described as follows:

All technicians **document patients' health information, including the medical history**, symptoms, examination and test results, treatments, and other information about healthcare provider services. Medical records and health information technicians' duties vary with the size of the facility in which they work.

Medical records and health information technicians typically do the following:

- **Review patient records** for timeliness, completeness, accuracy, and appropriateness of health data
- Organize and maintain data for clinical databases and registries
- Track patient outcomes for quality assessment
- Use classification software to assign clinical codes for reimbursement and data analysis
- Electronically record data for collection, storage, analysis, retrieval, and reporting
- Protect patients' health information for confidentiality, authorized access for treatment, and data security

Although medical records and health information technicians do not provide direct patient care, they work regularly with physicians and other healthcare professionals. They meet with these workers to clarify diagnoses or to get additional information to make sure that records are complete and accurate.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Medical Records and Health Information Technicians, <http://www.bls.gov/ooh/Healthcare/Medical-records-and-health-information-technicians.htm#tab-2> (last visited June 26, 2012) (emphasis added).

Further review of the *Handbook* also reveals the related occupation of medical assistant, which is described as follows:

Medical assistants complete administrative and clinical tasks in the offices of physicians, podiatrists, chiropractors, and other health practitioners. Their duties vary with the location, specialty, and size of the practice.

Medical assistants typically do the following:

- **Take patient history** and measure vital signs
- Help the physician with patient examinations
- Give patient injections as directed by the physician
- Schedule patient appointments
- Prepare blood for laboratory tests

Electronic health records (EHRs) are changing medical assistants' jobs. More and more physicians are adopting EHRs, moving all their patient information online. Assistants need to learn the EHR software that their office uses.

Medical assistants take and record patients' personal information. They must be able to keep that information confidential and discuss it only with other medical personnel who are involved in treating the patient.

Medical assistants should not be confused with physician assistants, who examine, diagnose, and treat patients under a physician's supervision. For more information, see the profile on physician assistants.

In larger practices or hospitals, medical assistants may specialize in either administrative or clinical work. . . .

Handbook, 2012-13 ed., Medical Assistants, <http://www.bls.gov/ooh/Healthcare/medical-assistants.htm#tab-2> (last visited June 26, 2012) (emphasis added).

Upon review, while the AAO agrees with counsel that 50% of the proffered position's duties reflect those of a Clinical Research Coordinator (11-9121.01) covered by the *Handbook* under its chapter on natural sciences managers, the remaining 50% of the beneficiary's duties will entail a combination of the duties of both a medical assistant as well as a medical records and health information technician. In other words, the proffered position requires the beneficiary to perform the duties of three separate occupations. Thus, even if 50% of the beneficiary's proffered duties will entail those of a clinical research coordinator, 50% of his assignments will not. As such, a significant, and not simply an incidental portion of the beneficiary's time will be spent performing the duties of a medical assistant and medical records and health information technician. By choosing to combine the duties of multiple occupations into one petition, the petitioner has in effect requested

that USCIS assess whether all of the non-incident duties, and not simply of portion of them, qualify the combined position as a specialty occupation.¹

¹ It is noted that, where a petitioner seeks to employ a beneficiary in two or more distinct occupations, the petitioner should file two or more separate petitions, requesting concurrent, part-time employment for each occupation. If a petitioner does not file two or more separate petitions and if only one aspect of a combined position qualifies as a specialty occupation, USCIS would be required to deny the entire petition as the pertinent regulations do not permit the partial approval of only a portion of a proffered position and/or the limiting of the approval of a petition to perform only certain duties. *See generally* 8 C.F.R. § 214.2(h). Furthermore and as is the case here, the petitioner would need to ensure that it separately meets all requirements relevant to each occupation and the payment of wages commensurate with the higher paying occupation. *See generally* 8 C.F.R. § 214.2(h); DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance* (Revised Nov. 2009). Thus, filing separate petitions would help ensure that the petitioner submits the requisite evidence pertinent to each occupation and would help eliminate confusion with regard to the proper classification of the position being offered.

It is also noted that, while the petitioner asserts that the beneficiary's clinical research coordinator duties will eventually entail 100% of his time, the proper procedure to document such a change is to file an amended petition at the moment that full-time employment is no longer speculative and the change is ready to occur. In general, to ascertain the intent of a petitioner, USCIS must look 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. If a petitioner's intent changes with regard to a material term and condition of employment or the beneficiary's eligibility, an amended or new petition must be filed. To allow a petition to be amended in any other way would be contrary to the regulations. Taken to the extreme, a petitioner could then simply claim to offer what is essentially speculative employment when filing the petition only to "change its intent" after the fact, either before or after the H-1B petition has been adjudicated. The agency made clear long ago that speculative employment is not permitted in the H-1B program. A 1998 proposed rule documented this position as follows:

Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. See section 214(i) of the Immigration and Nationality Act (the "Act"). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

To that end, the AAO will look next to what the *Handbook* states with regard to the entry educational requirements for medical records and health information technicians and medical assistants. With regard to medical records and health information technicians, the *Handbook* states the following:

Medical records and health information technicians typically need a postsecondary certificate to enter the occupation, although they may have an associate's degree. Many employers also require professional certification.

Education

Postsecondary certificate and associate's degree programs in health information technology typically include courses in medical terminology, anatomy and physiology, health data requirements and standards, classification and coding systems, healthcare reimbursement methods, healthcare statistics, and computer systems. Applicants to health information technology programs increase their chances of admission by taking high school courses in health, computer science, math, and biology.

Handbook, 2012-13 ed., Medical Records and Health Information Technicians, <http://www.bls.gov/ooh/Healthcare/medical-assistants.htm#tab-4> (last visited June 26, 2012). Regarding Medical Assistants, the *Handbook* states:

In most states, there are no formal educational requirements for becoming a medical assistant. Most have at least a high school diploma. Many assistants learn through on-the-job training.

Education

High school students interested in a career as a medical assistant should take courses in biology, chemistry, and anatomy. Medical assistants typically have a high school diploma or equivalent. There are no formal educational requirements for becoming a medical assistant in most states. However, some medical assistants graduate from formal education programs, and employers may prefer such training. Programs are available from community colleges, vocational schools, technical schools, or universities and take about 1 year to complete. These programs usually lead to a certificate or diploma. Some community and junior colleges offer 2-year programs

63 Fed. Reg. 30419, 30419 - 30420 (June 4, 1998). While a petitioner is certainly permitted to change its intent with regard to non-speculative employment, e.g., a change in duties or job location, it must nonetheless document such a material change in intent through an amended or new petition in accordance with 8 C.F.R. § 214.2(h)(2)(i)(E).

that lead to an associate's degree. All programs have classroom and laboratory portions that include lessons in anatomy and medical terminology.

Handbook, 2012-13 ed., Medical Assistants, <http://www.bls.gov/ooh/Healthcare/medical-assistants.htm#tab-4> (last visited June 26, 2012). As such, medical assistants require no formal training and, although the *Handbook* indicates that medical records and health information technicians typically need a postsecondary certificate to enter the occupation, there is no requirement for a postsecondary degree in a specific specialty. Moreover, the *Handbook* indicates that an associate's degree is also sufficient for a medical records and health information technician. Therefore, neither occupational category requires a bachelor's or higher degree in a specific specialty or its equivalent for entry.

For the reasons set forth above, the petitioner has failed to establish that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position. Therefore, the petitioner has failed to establish that it has satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In response to the RFE, the petitioner submitted five individual job postings as well as a large listing of vacancy announcements for various positions from the Society of Clinical Research Associates. Three of the individual postings are for the position of clinical research coordinator. It is noted that, while all three of these vacancy announcements require a bachelor's degree, they do not specify that a bachelor's degree in a specific specialty is required. Additionally, the posting for the position of clinical trials coordinator with Providence Healthcare Network also requires a general bachelor's degree or nursing degree, but again does not denote a specific specialty. Finally, while the posting for clinical trial site study coordinator at GlaxoSmithKline Biologicals does in fact require a more specific degree (i.e., a master's degree or other post-graduate degree in a relevant field such as public health or nursing), this company is one of the world's leading vaccine producers and therefore cannot be deemed a similar organization to that of the petitioner.²

The petitioner also submits a printout of multiple classified ads from various companies posted online at the Society of Clinical Research Associates (SOCRA), found at www.socra.org. There are a wide variety of positions listed on this site, none of which the petitioner claims specifically to be akin to that of the proffered position. Moreover, a review of these postings demonstrates that only

² See <http://us.gsk.com/html/career/career-biologicals.html>. The company also claims on its website to employ approximately 6,200 people.

minimal information about each company is provided, thereby rendering it impossible to determine whether any potentially parallel positions are in organizations similar to that of the petitioner.

Moreover, as discussed above, the AAO is reviewing the portion of the duties comparable to that of a medical records and health information technician and/or medical assistant, and not the portion of duties akin to that of a clinical coordinator. For this additional reason, these postings cannot be considered postings for parallel positions in similar organizations within the petitioner's industry.

The petitioner also submitted screenshots of the web pages of SOCRA as well as the Association of Clinical Research Professionals (ACRP). However, these pages do not provide evidence that a bachelor's degree in a specific specialty is required for entry into the occupational category. While they provide information regarding clinical research education and certification programs, they again do not provide evidence that a degree in a specific specialty is a prerequisite for entry into this occupational category.

For the reasons set forth above, the petitioner has failed to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may submit evidence to establish that the duties of the position are so complex or unique that only an individual with a degree in a specific specialty can perform the duties associated with the position. The AAO observes that the petitioner has indicated that the beneficiary's educational background, particularly his doctorate in medicine, and experience in the industry will assist him in carrying out the duties of the proffered position; however, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. On appeal, counsel for the petitioner contends that the position is so complex or unique that only an individual with a degree can perform the associated duties, yet counsel merely restates the tasks of the beneficiary and contends, erroneously, that they are akin to a more complex occupational category of natural science managers as discussed in *O*Net*. Counsel does not explain or clarify which of the duties, if any, of the proffered position are so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner has thus failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a bachelor's or higher degree in a specific specialty or its equivalent for the position. Although the RFE requested evidence pertaining to the petitioner's past hiring practices for the proffered position, the petition did not adequately address this issue. The petitioner claimed that it

previously hired employees of the drug companies that sponsored the clinical trials on a contractual basis to coordinate these trials for the petitioner. Therefore, since the petitioner acknowledges that it did not previously hire specialty degreed individuals to fill the proffered position in the past, the petitioner has not satisfied this criterion.

Although the petitioner claims that the proffered position requires the incumbent to possess at least a bachelor's degree in health administration, health science, or a closely related field, this claim is not persuasive, since the record does not document that the portion of the duties being examined here require a baccalaureate or higher level of education in a specific specialty to perform them. 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 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 required the individual to have a baccalaureate or higher degree. *See Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, 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.

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position when examining the non-clinical portion of the beneficiary's duties. In other words, this portion of proposed duties has not been described with sufficient specificity to show that they are more specialized and complex than medical records and health information technician and/or medical assistant positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.³

³ Counsel argues on appeal that the proffered position qualifies as a specialty occupation on the basis that its duties are so specialized and complex. However, the duties as described lack sufficient specificity to distinguish the proffered position from other similar positions for which a bachelor's or higher degree in a specific specialty, or its equivalent, is not required to perform their duties.

Moreover, as discussed in greater detail *infra*, the petitioner has designated the proffered position as a Level I position on the submitted Labor Condition Application (LCA), indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. *See* Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009). Therefore, it is simply not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, 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.

Finally, beyond the decision of the director, the petition must also be denied due to the petitioner's failure to provide a certified LCA that corresponds to the petition. As previously discussed, counsel for the petitioner asserts on appeal that the duties of the proffered position reflect the duties of a clinical research coordinator, which falls under the occupational classification of "Natural Science Manager," SOC (O*NET/OES) Code 11-9121.00. The assertion of counsel that the occupational category for the proffered position is "Natural Science Managers" is contradicted by the occupational classification selected by the petitioner on the LCA, which is that of a "Medical and Health Services Manager" and which falls under SOC (O*NET/OES) Code 11-9111.00.

With respect to the LCA, DOL provides clear guidance for selecting the most relevant O*NET occupational code classification. The "Prevailing Wage Determination Policy Guidance" states the following:

In determining the *nature of the job offer*, the first order is to review the requirements of the employer's job offer and determine the appropriate occupational classification. The O*NET description that corresponds to the employer's job offer shall be used to identify the appropriate occupational classification. . . . If the employer's job opportunity has worker requirements described in a combination of O*NET occupations, the SWA should default directly to the relevant O*NET-SOC occupational code for the highest paying occupation. For example, if the employer's job offer is for an engineer-pilot, the SWA shall use the education, skill and experience levels for the higher paying occupation when making the wage level determination.⁴

As indicated above, the petitioner indicated on the LCA that the wage level for the proffered position is Level 1 (entry). The petitioner provided the prevailing wage that corresponds to the occupation "Medical and Health Services Manager," which is \$23.91 per hour (\$49,733 per year).

The AAO observes, however, that the prevailing wage for the position "Natural Science Managers" at a Level 1 wage is significantly higher at \$29.14 per hour (\$60,611 per year) than the prevailing wage for "Medical and Health Services Managers." Thus, according to DOL guidance, if the petitioner believed the position was appropriately described in "Natural Science Managers" or was a combination of "Natural Science Managers" and "Medical and Health Services Manager," it should have chosen the relevant occupational code for the highest paying occupation, in this case "Natural

⁴ DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance* (Revised Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf

Science Managers.” However, the petitioner chose the occupational category for the lower paying occupation “Medical and Health Services Managers” for the proffered position on the LCA.

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

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

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a valid LCA that has been certified for the proper occupational classification, and the petition must be denied for this additional reason.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition is denied.