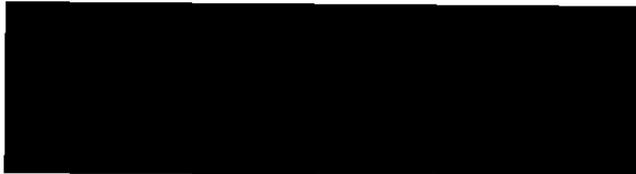




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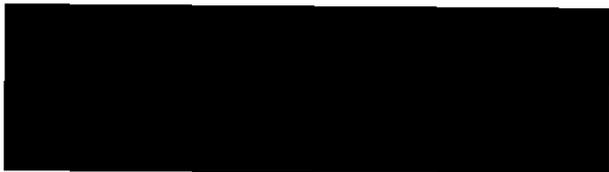
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Date: **JUN 01 2012** Office: CALIFORNIA SERVICE CENTER FILE 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the 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 with the field office or service center that originally decided your case by filing a 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 service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner states that it is a dental practice with 28 employees and a gross annual income of \$4,121,832.00. It seeks to employ the beneficiary as a "dental laboratory technologist" and 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 the grounds that the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation.

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

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

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

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

The 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.

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 petitioner states that it is seeking the beneficiary's services as a "dental laboratory technologist" on a full-time basis earning a rate of \$75,000 per year. In the April 12, 2011, letter of support, the petitioner states that the beneficiary will be responsible for the following proffered duties:

- Performing intricate scientific procedures for treatment of abnormal dental conditions and diseases such as cleft palates, irregular teeth, and gum disease (10%).
- Working with advanced jaw-recording replication devices to rehabilitate patients with complex occlusal/bite conditions (10%).
- Performing biomimetic recontouring and fabrication of precise dental acrylic provisional prostheses with customized teeth set-up and individualized staining techniques (10%).
- Employing master level experience and knowledge to design and construct all dental porcelains: complex shading techniques, opalescence, reflection, anatomical surfacing, textures, and translucencies (10%).
- Using technical and anatomical specifications to design metal and porcelain materials that promote healthy tissue adaptation (10%).
- Performing microscopic refining of all restorations, including fabrication, fitting, and finishing, by use of the surgical microscope (10%).
- Using mastery of digital and analog photography skills and digital imaging computer software to manage digital records of patient cases (10%).
- Designing and constructing sleep apnea and snoring prostheses to advance the tongue and lower jaw (5%).
- Designing and fabricating surgical guides to facilitate surgical placement in procedures for implant placement (5%).
- Managing the use of various laboratory materials and techniques, including ceramics, plaster casting, electroplating, wax modeling, metal casting, and other metal processes (5%).
- Designing and constructing dental metals using knowledge of custom-milled abutments, pontics, and super-structures for restoring dentition of implants and surrounding teeth (5%).
- Designing dentures, crowns, inlays, onlays, clasps and bands, and implants using CAS/CAM and other techniques (5%).
- Using advanced dental laboratory computer software to manage data entry, track cases, and perform quality control (5%).

The support letter also states that the person filling the proffered position must possess at least a bachelor's degree in dental laboratory technology or its equivalent. The petitioner submitted a copy of the beneficiary's foreign certificate and foreign dental technologist license, as well as a credential evaluation from [REDACTED] finding that the beneficiary's work experience is equivalent to a U.S. bachelor's degree in dental laboratory technology.

On June 9, 2011, the director issued an RFE requesting the petitioner submit, *inter alia*, (1) evidence that the proffered position is a common position required by similarly sized organizations with similar annual incomes; (2) evidence to establish a degree requirement is common to the industry in parallel positions among similar organizations such as job listings or advertisements; (3) evidence to show that an industry-related professional association has made a bachelor's degree in a specific specialty a requirement for entry into the field; (4) letters or affidavits from firms or individuals in the industry that attest that such firms routinely employ

and recruit only specialty degreed individuals; (5) copies of the petitioner's present and past job vacancy announcements; (6) evidence to establish that the petitioner has a past practice of hiring persons with a baccalaureate or higher degree in a specific specialty to perform the duties of the proffered position; and (7) evidence pertaining to the beneficiary's equivalence to completion of a college degree.

On July 21, 2010, in response to the director's RFE, counsel for the petitioner submitted, in part, (1) a credential evaluation for [REDACTED] (2) copies of [REDACTED] certificates and transcripts; (3) a credential evaluation for [REDACTED] (4) copies of [REDACTED] bachelor's degree, certificates, and transcripts; (5) a letter from [REDACTED] Maryland Dental School; (6) a letter from [REDACTED] (7) four letters from other dental laboratory companies; and (8) a credential evaluation from [REDACTED] from UCLA School of Dentistry.

The director denied the petition on January 5, 2012.

On appeal, counsel claims that the director erroneously classified the proffered position as a dental technician position. Further, counsel claims that the director ignored the evidence in the record such as the letter from [REDACTED] and the five additional letters from a professor and dental laboratory owners. Counsel also states that the director ignored the evidence that establishes that the proffered position's duties are more complex and specialized than those found in the average dental practice. Counsel contends that the petitioner has meet all four of the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A).

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO turn first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (hereinafter the *Handbook*), on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹ As the petitioner has

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available

identified its proffered position as that of a medical and clinical laboratory technologist, the AAO turns first to the 2012-2013 edition of the *Handbook* and its discussion of this occupation. As stated in the *Handbook*:

Medical laboratory technologists (also known as medical laboratory scientists) and medical laboratory technicians **collect samples and perform the tests to analyze body fluids, tissue, and other substances.**

Duties

Medical laboratory technologists and medical laboratory technicians have different job responsibilities: technologists perform more complex tests and procedures than do technicians, and they typically supervise technicians. Medical laboratory technologists typically do the following:

- **Analyze body fluids such as blood, urine, and tissue samples** to determine normal or abnormal findings
- **Collect and study blood samples** for use in transfusions by identifying the number of cells, the cell morphology or the blood group, blood type, and compatibility with other blood types
- Operate sophisticated laboratory equipment such as microscopes and cell counters
- Use automated equipment and computerized instruments capable of performing a number of tests at the same time
- Log data from medical tests and enter results into a patient's medical record
- Discuss results and findings of laboratory tests and procedures with physicians
- Supervise or train medical laboratory technicians

Medical laboratory technicians usually work under the supervision of medical laboratory technologists or laboratory managers. Both technicians and technologists perform tests and procedures that physicians or other healthcare personnel order. However, technologists perform more complex tests and laboratory procedures than technicians do. For example, technologists may prepare specimens and operate automated analyzers or perform manual tests that are based on detailed instructions.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., Medical and Clinical Laboratory Technologists and Technicians, <http://www.bls.gov/ooh/healthcare/medical-and-clinical-laboratory-technologists-and-technicians.htm#tab-2> (accessed May 29, 2012) (emphasis added).

The petitioner has failed to submit any corroborating evidence demonstrating that the beneficiary

online.

will be analyzing body fluids such as blood, urine, and tissue samples, and collecting and studying blood samples. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Instead, the AAO agrees with the director and finds that the duties described by the petitioner, which are largely focused on the design and construction of prosthetic appliances such as dental porcelains, reflect the duties of a dental laboratory technician. The "Dental Laboratory Technician" chapter of the 2012-2013 edition of the *Handbook* describes the duties of a dental laboratory technician as follows:

Dental laboratory technicians use impressions, or molds, of a patient's teeth to create crowns, bridges, dentures and other dental appliances. They work closely with dentists but have limited contact with patients.

Duties

Dental laboratory technicians typically do the following:

- Follow detailed work orders and prescriptions from a dentist, to create a dental appliance
- Mix plaster and other pastes to fill molds from impressions taken by a dentist
- Cover molds and frameworks with mixtures and allow them to set
- Place the dental appliance on an apparatus that mimics the patient's bite and jaw movement
- Examine the appliance, noting the size and shape of adjacent teeth and gaps in the gumline
- Sculpt or carve parts of an appliance, such as individual teeth
- Adjust prosthetics to allow for a more natural look or to improve function
- Repair dental appliances that may be cracked or damaged, such as dentures and crowns

Dental laboratory technicians work with small handtools, such as files and polishers. They work with many different materials to make prosthetic appliances, including wax, plastic, and porcelain. In some cases, technicians work with computer programs to create appliances or to get impressions sent from a dentist's office.

In small laboratories, technicians do all stages of the work. In large laboratories, technicians may work on only one step of the process, such as waxing or polishing appliances.

Dental laboratory technicians can specialize in one of six areas: orthodontic appliances, crowns and bridges, complete dentures, partial dentures, implants, and ceramics. Technicians may have different job titles, depending on their

specialty. For example, technicians who make porcelain and acrylic restorations, such as veneers and bridges, are called *dental ceramists*.

Dental laboratory technicians are part of a larger dental team. They work closely with dentists and other technicians. For more information, see the profile on dentists.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., Dental Laboratory Technicians, <http://www.bls.gov/ooh/Production/Dental-laboratory-technicians.htm#tab-2> (accessed May 29, 2012).

The petitioner's description of its position indicates that 10% of the time the beneficiary will be performing biomimetic recontouring and fabrication of precise dental acrylic provisional prostheses. In addition, 10% of the time the beneficiary will be designing and constructing all dental porcelains and another 10% of the time the beneficiary will be designing metal and porcelain materials. The beneficiary will also be designing and constructing sleep apnea and snoring prostheses for 10% of the time. Further, 5% of the time the beneficiary will be managing the use of various laboratory materials and techniques, including ceramics, plaster casting, electroplating, wax modeling, metal casting, and other metal processes, and a total of 10% of the time the beneficiary will be designing dental metals, dentures, crowns, inlays, onlays, clasps and bands, and implants. Therefore, over 50% of the time the beneficiary will be working with various materials to make prosthetic appliances, which is the type of work just described in the *Handbook's* section on dental laboratory technicians.

Under the section on "How to Become a Dental Laboratory Technician," the *Handbook* states that:

A high school diploma is the standard requirement for getting a job as a dental laboratory technician. High school students interested in becoming dental laboratory technicians should take courses in science, mathematics, computer programming, and art.

Formal education programs are available for dental laboratory technicians through vocational schools, community colleges, and universities. Most programs take 2 years to complete, though there are a few 4-year programs available. All programs have courses in dental anatomy, dental ceramics, dentures, and partial dentures. As laboratories continue to manufacture parts for dental appliances using advanced computer programs, it may be helpful for technicians to take courses in computer skills and programming.

Handbook, 2012-13 ed., Dental Laboratory Technicians, <http://www.bls.gov/ooh/Production/Dental-laboratory-technicians.htm#tab-4> (accessed May 29, 2012).

Because the *Handbook* indicates that entry into the dental laboratory technician occupation does not normally require a bachelor's degree in a specific specialty, the *Handbook* does not support

the proffered position as being a specialty occupation. Further, there is nothing in the evidence of record that otherwise establishes that the duties described for the proffered position would require the application of at least a bachelor's degree level of highly specialized knowledge in any specialty.

The AAO will now discuss the expert opinion letter from [REDACTED] submitted by counsel in response to the RFE. [REDACTED] states that he is a [REDACTED]

According to [REDACTED] offers bachelor's and master's degree programs in dental hygiene as well as post-graduate programs in Dental Surgery, General Dentistry, Orthodontics, Periodontics, Prosthodontics, and other areas. There is no indication that the university offers a program in or that [REDACTED] teaches any courses in dental laboratory technology, the subject area upon which the letter opines.

Nevertheless, [REDACTED] states in this letter that, in his opinion, the proffered position's duties are of a professional nature and therefore require preparation of at least a bachelor's degree in dental laboratory technology or a related field, or its equivalent. [REDACTED] does not list the reference materials on which he relies as a basis for his conclusion. It appears that [REDACTED] did not base his opinion on any objective evidence, but instead restates the proffered position description as provided by the petitioner. [REDACTED] also states that it is the industry standard for a company, such as the petitioner, to require at a minimum a bachelor's degree in dental laboratory technology or a related area, or its equivalent. Again, however, [REDACTED] did not provide any basis for his opinion such as a labor market survey or study. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Although [REDACTED] does list a number of courses "required by a Dental Laboratory major," he does not specifically identify and explain why these courses would be required to perform the duties of the proffered position. The opinion further fails to demonstrate that these courses constitute a "body of highly specialized knowledge" to be applied "theoretically and practically" in the proffered position and that such a body of highly specialized knowledge would culminate in and/or lead to the "attainment of a bachelor's or higher degree in the specific specialty (or its equivalent)," as required for the position to qualify as a specialty occupation. See § 214(i)(1) of the Act. While it is recognized that such courses would certainly benefit someone entering this occupation, this opinion does not demonstrate why such courses leading to a bachelor's or higher degree in dental laboratory technology, or its equivalent, is required to enter this occupation in the United States. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). Therefore, when weighed against the standard industry information in the *Handbook*, which indicates that a specialty baccalaureate degree is not required for entry into this occupation, the AAO finds that the letter from [REDACTED] does not establish that the

proffered position is a specialty occupation.²

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

As stated earlier, in determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent.

In addition, as previously discussed, the expert opinion letter submitted by counsel in response to the RFE is questionable as [REDACTED] did not provide a sufficient evidentiary basis for his conclusion that it is a standard practice to require at least a bachelor's degree in dental laboratory technology or a related field, or its equivalent for entry into the proffered position. As such, it does not refute the findings of the Bureau of Labor Statistics that a specialty, baccalaureate degree is not a minimum entry requirement for this occupation.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, counsel submitted four letters from other dental laboratory companies in response to the RFE. The letters provided, however, establish at best that a bachelor's degree "equivalent" is generally required, but the authors of these letters do not detail what is deemed "equivalent" to a bachelor's degree. More importantly, the letters do not state that a bachelor's degree in a *specific specialty* or its equivalent is required. Further, the credibility of the letters from [REDACTED] and [REDACTED] are questionable as they appear to be slight variations of one another, using identical phrases in part. They therefore appear to

² As noted above, the petitioner also submits a letter from [REDACTED]. While this letter details the intense training and certification programs available through the Los Angeles City College and the University of California, Los Angeles, it does not state or otherwise conclude that the standard, minimum entry requirement for a dental laboratory technician position is a bachelor's or higher degree in dental laboratory technology or its equivalent.

have been written by the same individual. As a result, the petitioner has not established that similar organizations in the same industry commonly require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.

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).

Furthermore, the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of dental laboratory technician. As such, the petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree."

Specifically, even though the petitioner and its counsel claim that the proffered position's duties are so complex that a bachelor's degree is required, the petitioner failed to demonstrate how the dental laboratory technician duties as described 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. For instance, 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 the duties it claims are so complex. While certain courses in the dental sciences, laboratory technology, and computer programming may certainly be beneficial in performing certain duties of a dental laboratory technician position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in dental laboratory technology or its equivalent are required to perform the duties of the particular position here proffered.³

Therefore, the evidence of record does not establish that this position is significantly different from other dental laboratory technician positions such that it refutes the *Handbook's* information to the effect that a high school diploma is acceptable for entry into dental laboratory technician positions. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than dental laboratory technician 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 of dental laboratory technician is so complex or unique relative to other dental laboratory technician 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).

Next, the AAO concludes that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), by establishing that, for the proffered position, the petitioner normally requires at least a bachelor's degree, or the equivalent, in a specific specialty.

³ Although the letter from [REDACTED] refers to certain responsibilities of the proffered position as being "complex," he does not identify which duties those are or otherwise explain how they are complex relative to other dental laboratory technician positions for which the *Handbook* does not indicate a minimum entry requirement of a bachelor's or higher degree in a specific specialty.

It should be noted that, to satisfy this criterion, the record must establish 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 or its equivalent as the minimum for entry into the occupation as required by section 214(i)(1) of the Act. To interpret the regulation 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 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. *See id.* at 388.

Here, the petitioner claims that it has an established history of hiring three individuals with the equivalent of a U.S. bachelor's degree in dental laboratory technology. In support of this assertion, it submits two credential evaluations for [REDACTED] and [REDACTED]. A credential evaluation for the third employee [REDACTED] was not submitted. First, it must be noted that the credential evaluations are unacceptable to establish that these two individuals possess the equivalent of a U.S. bachelor's degree in dental laboratory technology. Specifically, as the evaluations are based in whole or in part on experience, they must establish that the evaluators are officials who have "authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience." 8 C.F.R. § 214.2(h)(4)(iii)(D)(I).

As neither evaluation was performed by such an authorized official at such an accredited college or university and as no evaluation was submitted for [REDACTED] the record lacks sufficient evidence to establish that the petitioner has a history of hiring only individuals with bachelor's or higher degrees in dental laboratory technology, or its equivalent, for the proffered position. In fact, the evidence as presented supports the opposite conclusion, i.e., the petitioner has an established history of hiring experienced, but non-specialty, baccalaureate degreed individuals for the proffered position of dental laboratory technician.⁴

⁴ This conclusion is further supported by the fact that [REDACTED] I-140 immigrant petition [REDACTED] filed by the petitioner presumably for the same occupation, was only classified by DOL as a skilled worker position and not as a profession as that term is defined in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), and 8 C.F.R. § 204.5(k)(2).

The primary, fundamental difference between qualifying as a profession and qualifying as a specialty occupation is that specialty occupations require the U.S. bachelor's or higher degree, or its equivalent, to be in a specific specialty. *See* § 214(i)(1) of the Act. Thus, even if the proffered position qualified as a

Second, while it is recognized that the proffered position in this matter requires a very experienced and skilled worker, such as the beneficiary, this does not in itself qualify the position as a specialty occupation. Many vocational trade occupations, e.g., master plumbers and electricians, require years of experience and thousands of hours of training to master and, as a consequence, demand a high salary. This does not mean that the minimum entry requirement for an experienced skilled worker position is a bachelor's or higher degree in a specific specialty. Absent evidence to the contrary, it would simply mean that the position would require an experience skilled worker, such as the beneficiary, none of whom have a bachelor's degree in dental laboratory technology.

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. The *Handbook* describes the duties of the proffered position as analogous to that of a dental laboratory technician, a position that does not require a bachelor's degree in a specific specialty, or its equivalent. There is no evidence in the record that would show that the duties of the proffered position rise beyond this level such that it would mandate at least a bachelor's degree in dental laboratory technology, or its equivalent, to perform its duties. Consequently, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has therefore failed to establish that it has satisfied any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). As such, the petitioner has not established that the proffered position qualifies as a specialty occupation, and the appeal must be dismissed and the petition denied for this reason.

Beyond the decision of the director, the record does not establish that the beneficiary is qualified to perform the services of an occupation requiring a U.S. bachelor's degree in dental laboratory technology. The petitioner submitted a credential evaluation from [redacted] and evaluator for [redacted] with the initial petition. The petitioner also submitted a second evaluation from [redacted] in response to the director's RFE. Both evaluations find that the beneficiary's work experience is equivalent to a U.S. bachelor's degree in dental laboratory technology. The record, however, does not establish that the evaluators are officials who have authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit, as required by 8 C.F.R. § 214.2(h)(4)(iii)(d)(1).

For instance, no documentation was provided establishing that, at the time [redacted] produced their evaluations for the petitioner, (1) the University of Southern California or

profession as that term is defined in section 101(a)(32) of the Act, that occupation would not necessarily qualify as a specialty occupation unless it also met the definition of that term at section 214(i)(1) of the Act. Here, as DOL has only certified this occupation as a skilled worker position, however, it has been determined that it does not even require a bachelor's degree as the minimum requirement for entry into the occupation.

██████████ had a program for granting college-level credit in the pertinent academic specialty for work experience in that specialty, and (2) that these evaluators had authority for granting such credit based upon a person's work experience. Accordingly, these evaluations do not meet the standard of 8 C.F.R. § 214.2(h)(4)(iii)(D)(I) for competency to render to USCIS an opinion on the educational equivalency of the beneficiary's work experience.

Thus, the opinions do not establish that the beneficiary has the equivalent of a U.S. bachelor's degree in dental laboratory technology. In other words, even if the proffered position were established as being a specialty occupation requiring a U.S. bachelor's or higher degree in dental laboratory technology, the petitioner failed to demonstrate that the beneficiary is qualified for that specialty occupation. For this additional reason, the petition may not be approved.

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.

Finally, while the issue was not raised by the petitioner on appeal, USCIS records indicate that H-1B petitions have previously been approved for ██████████ again presumably for the same position that is being petitioned for in this matter. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, however, the approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved nonimmigrant petitions filed by the same petitioner for the same position, the AAO would not be bound to follow the contradictory decision(s) of a service center. *See Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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. § 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.