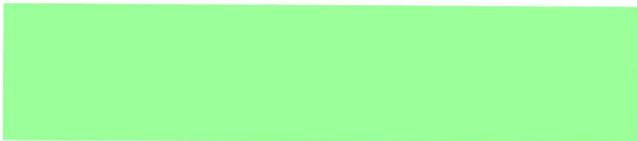


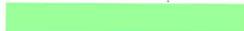


U.S. Citizenship  
and Immigration  
Services

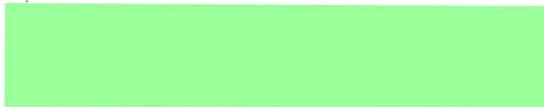
(b)(6)



DATE: APR 03 2013

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:

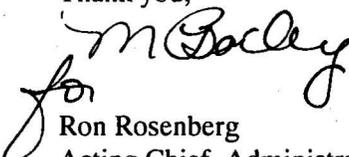
SELF-REPRESENTED

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  
Ron Rosenberg  
Acting 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 submitted a Petition for Nonimmigrant Worker (Form I-129) to the California Service Center on May 21, 2012. In the Form I-129 visa petition, the petitioner describes itself as a law firm established in 2008.<sup>1</sup> In order to employ the beneficiary in what it designates as a law clerk position, the petitioner seeks to classify her 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 August 13, 2012, finding that the petitioner 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 basis for denial of the petition was 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 and supporting documentation. 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, and 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 establish that it would pay the beneficiary an adequate salary for her work if the petition were granted; and (2) failed to submit a Labor Condition Application (LCA) that corresponds to the petition. For these additional reasons, the petition may not be approved, with each considered as an independent and alternative basis for denial.<sup>2</sup>

In this matter, the petitioner stated in the Form I-129 that it seeks the beneficiary's services as a law clerk to work on a full-time basis at a rate of pay of \$32,406 per year. In a support letter dated May 18, 2012, the petitioner stated the following regarding the duties and responsibilities of the proffered position:

At present [the petitioner] seeks to employ [the beneficiary] as an entry level Law Clerk to assist in client intake and document review, form and application

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<sup>1</sup> In the Form I-129 petition, the petitioner indicated that it does not have any employees.

<sup>2</sup> The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

preparation, legal writing for briefs, cover letters, and internal office memorandums regarding legal as well as related, but non-legal research. Moreover the position requires [the beneficiary] to keep current clients abreast of certain developments in their respective cases.

[The petitioner] would also require [the beneficiary] to work on cases with [the petitioner's] corporate clientele assisting in matters related to H1-B specialty occupation visas and employment-based permanent residence (Labor Certifications & Employment based petitions). [The beneficiary] would also review corporate documents and incorporate the same as needed into client forms and overall applications.

[The petitioner] plans on opening an office in [redacted] India in the near future, and in light of that fact, it is imperative that the law clerk be able to communicate and understand our clients from abroad seeking to enter the United States.

All the work in this position would be done under the direct supervision of the principal attorney.

In its letter of support accompanying the initial I-129 petition, the petitioner did not state the minimum educational requirements for the proffered position.

The petitioner stated that the beneficiary is qualified to perform the duties of the proffered position by virtue of her foreign education and her Master in Laws (LLM) from [redacted] School of Law. In support of this assertion, the petitioner provided copies of academic diplomas and transcripts in the beneficiary's name.

In addition, the petitioner submitted an LCA in support of the instant H-1B petition. The AAO notes that the LCA designation for the proffered position corresponds to the occupational classification "Judicial Law Clerks" - SOC (ONET/OES) code 23-1012, at a Level I (entry level) wage.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on June 1, 2012. The director outlined the evidence to be submitted. The AAO notes that the director specifically requested that the petitioner submit probative evidence to establish that the proffered position is a specialty occupation.

On July 30, 2012, the petitioner responded to the director's RFE by providing a revised description of the proffered position and additional evidence. Specifically, the petitioner indicated that the beneficiary would perform the following duties in the law clerk position:<sup>3</sup>

- [The beneficiary] reviews, interprets, dissects corporate documents such as tax

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<sup>3</sup> The AAO here summarizes the duties as described by the petitioner, adding bullet point formatting for clarity.

returns, incorporation papers, Human Resource policy memorandum for employment based jobs, and individual employee contracts. This job requires the candidate to research case law, interpret holdings, and provide internal memoranda on specific subjects to discuss strategy and positions for litigation in removal proceedings and appeal work. Then after discussions, [the beneficiary] must organize, analyze, compile research, and execute the writing of [the petitioner's] position in drafting briefs for submission to the various government institutions. This includes the drafting of affidavits and other documents. (30%)

- This position also involves significant client contact to assist in preparing clients for merits hearings and immigration interviews. [The beneficiary] will also do client intake and analysis of supporting documents to determine if additional documents are needed or if certain documents may not be accepted by government entities. In this light, [the beneficiary] will research government research modalities such as the CFR, the FAM (Foreign Affairs Manual), and the EOIR Immigration Court Practice Manual, as well as the Adjudicators Field Manual to cross reference government guidance with the supporting documentation [the petitioner has]. (20%)
- [The beneficiary] is also responsible for keeping abreast, regularly, with the updates of procedures and abilities with the National Visa Center (NVC), [t]he Kentucky Consular Center (KCC) and various embassies and consulates that we deal with most often. . . . In connection, with these changes and updates, [the beneficiary] is responsible for cross referencing these matters with any active cases that [the petitioner has] to see if there are any that would be affected. [The beneficiary] will also draft briefs on possible Advisory opinions [the petitioner] need[s] to seek from the Department of State Visa Office in Washington, DC. In drafting advisory opinion request, [the beneficiary] must often undertake significant research, analytical interpretation, and citation in order present queries of incorrect decisions where there are issues of law or law & fact. (20%)
- [The beneficiary] serves an important role of interpreting and translating with clients for [the petitioner's] office. This service extends to the ability to make sure that Hindi written documents say exactly what [the petitioner] believe[s] that they say. Moreover, the skill is particularly useful for research on areas where an abundance of material is written in Hindi. Since [the principal attorney] cannot speak, read, or write Hindi, [the beneficiary] often plays an important role in bridging the gap. About 10-15% of [the beneficiary's] time would be spent doing interpretive or translation work as it relates to research, direct client interaction, and review of client documents.
- [The beneficiary] is also responsible and will be responsible for client file organization and distribution. . . . [The beneficiary] is responsible for making

sure that the files are in the office that they need to be at all times, if they are not, [the beneficiary] is responsible for sifting through files to create digital temporary files so that whatever needs to be done can be done to continue or working operations. (5%)

- Another 10% of [the beneficiary's] time is spent on client database creation and assistance on form filling.

(Errors in original.) In addition, the petitioner submitted a letter from [redacted] of Sicklin School of Business, Baruch College, City University of New York (CUNY); a printout from the Illinois Courts Student Learning Center website entitled "Law Related Careers"; and samples of the beneficiary's work product. The petitioner also provided a printout of a summary report from the Occupational Information Network (O\*NET) OnLine for the occupational category "23-2092.00 Law Clerks" and a printout from the Foreign Labor Certification (FLC) Data Center Online Wage Library (OWL). Notably, both of these documents were printed in August 2011 – over nine months prior to the submission of the H-1B petition and almost a year prior to the submission of the RFE response.

The director reviewed the information provided by the petitioner. 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 August 13, 2012. The petitioner submitted an appeal of the denial of the H-1B petition.

The issue before the AAO is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. 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 finds that there are significant discrepancies in the record of proceeding with regard to the proffered position. The AAO will now highlight an aspect of the petition that undermines the petitioner's credibility with regard to the actual nature and requirements of the proffered position. This particular aspect is the discrepancy between what the petitioner claims about the occupational classification and level of responsibility inherent in the proffered position set against the contrary occupational classification and level of responsibility conveyed by the wage level indicated on the LCA submitted in support of the petition. Notably, these material conflicts, when viewed in the context of the record of proceeding, undermine the claim that the proffered position qualifies as a specialty occupation under the pertinent statutory and regulatory provisions.

The Standard Occupational Classification (SOC) system is used by statistical agencies to classify workers into occupational categories for the purpose of collecting, calculating, or disseminating data. Workers are classified into occupations according to their occupational definition. To facilitate classification, detailed occupations are combined to form broad occupations, minor groups, and major groups. Occupations with similar job duties, and in some cases similar skills,

education, and/or training, are grouped together in the SOC. For example, some of the occupations relevant to "Legal Occupations" are provided below:

**23-0000 Legal Occupations**

**23-1000 Lawyers, Judges, and Related Workers**

23-1010 Lawyers and Judicial Law Clerks

23-1011 Lawyers

23-1012 Judicial Law Clerks

**23-2000 Legal Support Workers**

23-2010 Paralegals and Legal Assistants

23-2011 Paralegals and Legal Assistants

23-2090 Miscellaneous Legal Support Workers

23-2091 Court Reporters

23-2093 Title Examiners, Abstractors, and Searchers

23-2099 Legal Support Workers, All Other

As previously stated, the petitioner submitted an LCA in support of the instant petition that designated the proffered position under the occupational category "Judicial Law Clerks" - SOC (ONET/OES Code) 23-1012. The petitioner stated in the LCA that the wage level for the proffered position was Level I (entry) and claimed that the prevailing wage in New York County (New York, NY) for the proffered position was \$32,406 per year. The prevailing wage source is listed in the LCA as the OES (Occupational Employment Statistics) OFLC (Office of Foreign Labor Certification) Online Data Center.<sup>4</sup> The LCA was certified on April 17, 2012 and signed by the petitioner on May 18, 2012.

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

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<sup>4</sup> The Occupational Employment Statistics (OES) program produces employment and wage estimates for over 800 occupations. See Bureau of Labor Statistics, U.S. Department of Labor, on the Internet at <http://www.bls.gov/oes/>. The OES All Industries Database is available at the Foreign Labor Certification Data Center, which includes the Online Wage Library for prevailing wage determinations and the disclosure databases for the temporary and permanent programs. The Online Wage Library is accessible at <http://www.flcdatacenter.com/>.

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.

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](http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf). DOL guidance further provides that the O\*NET OnLine description for occupations (<http://online.onetcenter.org/>) is used to determine the appropriate occupational category. *Id.*

In the instant case, the petitioner indicated on the LCA that the proffered position falls under the occupational category "Judicial Law Clerks." The AAO reviewed the O\*NET OnLine description for this occupational category, and notes that O\*NET OnLine states the following about the tasks of this occupation:

**Details Report for:  
23-1012.00 - Judicial Law Clerks**

Assist judges in court or by conducting research or preparing legal documents.

**Tasks**

- Attend court sessions to hear oral arguments or record necessary case information.
- Communicate with counsel regarding case management or procedural requirements.
- Confer with judges concerning legal questions, construction of documents, or granting of orders.
- Draft or proofread judicial opinions, decisions, or citations.
- Keep abreast of changes in the law and inform judges when cases are affected by such changes.
- Participate in conferences or discussions between trial attorneys and judges.
- Prepare briefs, legal memoranda, or statements of issues involved in cases, including appropriate suggestions or recommendations.
- Research laws, court decisions, documents, opinions, briefs, or other information related to cases before the court.
- Review complaints, petitions, motions, or pleadings that have been filed to determine issues involved or basis for relief.
- Review dockets of pending litigation to ensure adequate progress.
- Verify that all files, complaints, or other papers are available and in the proper order.
- Compile court-related statistics.

- Coordinate judges' meeting and appointment schedules.
- Enter information into computerized court calendar, filing, or case management systems.
- Maintain judges' law libraries by assembling or updating appropriate documents.
- Perform courtroom duties, including calling calendars, administering oaths, and swearing in jury panels and witnesses.
- Prepare periodic reports on court proceedings, as required.
- Respond to questions from judicial officers or court staff on general legal issues.
- Supervise law students, volunteers, or other personnel assigned to the court.

After reviewing the O\*NET OnLine report dealing with "Judicial Law Clerks," the AAO is not persuaded by the petitioner's claim that the proffered position falls under this occupational category. The assertion is not supported by the petitioner's job description or by evidence in the record of proceeding. On the Form I-129, the petitioner described itself as a law firm established in 2008 with no employees and "only [a] sole principal attorney."<sup>5</sup> The petitioner has not described itself as a court, or any other entity that might employ a judge. Further, the petitioner has stated that it consists of one individual: an attorney. The petitioner has not established that the beneficiary will "[a]ssist judges in court or by conducting research or preparing legal documents." Moreover, the AAO observes that the record of proceeding lacks supporting evidence substantiating the petitioner's claim that it has such work that primarily involves the job duties as described above for the beneficiary. The fact that the beneficiary may apply some general legal principles in the course of her job is not in itself sufficient to establish the position as a judicial law clerk.

Notably, in response to the RFE, the petitioner submitted a printout of a summary report from the O\*NET OnLine for the occupational category "23-2092.00 Law Clerks" and a printout from the Foreign Labor Certification (FLC) Data Center Online Wage Library. As previously mentioned, both of these documents were printed in August 2011 – over nine months prior to the submission of the H-1B petition and almost a year prior to the submission of the RFE response. The AAO observes the occupational category "Judicial Law Clerks" – SOC Code 23-1012 (which was designated on the LCA) is a separate and distinct occupational category from "Law Clerks" – SOC Code 23-2092.00.<sup>6</sup>

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<sup>5</sup> Furthermore, the petitioner designated its business operations under the NAICS code 541111 - "Offices of Lawyers." The U.S. Department of Commerce, Census Bureau website describes this NAICS code as follows:

This industry comprises offices of legal practitioners known as lawyers or attorneys (i.e., counselors-at-law) primarily engaged in the practice of law. Establishments in this industry may provide expertise in a range or in specific areas of law, such as criminal law, corporate law, family and estate law, patent law, real estate law, or tax law.

U.S. Dep't of Commerce, U.S Census Bureau, 2007 NAICS Definition, 541111 – Offices of Lawyers, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited March 27, 2013).

<sup>6</sup> Notably, the occupation Judicial Law Clerks – SOC Code **23-1012** falls under the category of "**23-1000** Lawyers, Judges, and Related Workers," while the occupation Law Clerks – SOC Code **23-2092** falls under

The U.S. Bureau of Labor Statistics publishes a guide to SOC codes, which includes a list of the new SOC codes and a list of the SOC codes that will no longer be used. Prior to the instant H-1B filing, the U.S. Bureau of Labor Statistics stated that the SOC code 23-2092 for "Law Clerks" would no longer be used. For additional information, see [http://www.bls.gov/soc/soc\\_2010\\_whats\\_new.pdf](http://www.bls.gov/soc/soc_2010_whats_new.pdf). Furthermore, O\*NET OnLine provides the following information for the occupational category "Law Clerks":

**23-2092.00 Law Clerks**

This occupational code is no longer in use. In the future, please use 23-1012.00 (Judicial Law Clerks) or 23-2011.00 (Paralegals and Legal Assistants) instead.

The petitioner provided no explanation for claiming in the LCA that the proffered position falls under the occupational category "Judicial Law Clerks" - SOC Code 23-1012 on the LCA, but thereafter submitting documentation for the distinct and separate occupational category "Law Clerks" - SOC Code 23-2092, an occupational code that is no longer in use. Moreover, it appears that because O\*NET OnLine states that the occupational code for law clerks "is no longer in use," the petitioner submitted printouts from August 2011, rather than contemporaneous printouts.

The AAO further observes that in response to the RFE, the petitioner stated that "[t]here is no doubt that some of the duties that [the beneficiary] performs are similar to what some paralegals do." The petitioner continued by stating that the proffered "position of [the petitioner's] law clerk and a paralegal are related." In the appeal, the petitioner further reported that it "conceded that there was some overlap with the general area of work that Paralegals do and what the Law Clerk does."

The AAO notes that the prevailing wage designated on the LCA of \$32,406 per year corresponds to a Level I for the occupation "Judicial Law Clerks" for New York County (New York, NY).<sup>7</sup> For a Level I wage in the same area, the prevailing wage for "Paralegals and Legal Assistants" was \$41,974 per year.<sup>8</sup> Thus, the prevailing wage for "Paralegals and Legal Assistants" was substantially higher. If the position is described as a combination of O\*NET occupations, then according to DOL guidance, the petitioner should select the relevant occupational code for the highest paying occupation, in this case "Paralegals and Legal Assistants." Instead, the petitioner chose the occupational category for the lowest paying occupation. The difference in salary is over \$9,560 per year.

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the category of "23-2000 Legal Support Workers."

<sup>7</sup> See the All Industries Database for 7/2011 - 6/2012 for Judicial Law Clerks at the Foreign Labor Certification Data Center, Online Wage Library on the Internet at <http://www.flcdcenter.com> (last visited March 27, 2013).

<sup>8</sup> See the All Industries Database for 7/2011 - 6/2012 for Paralegals and Legal Assistants at the Foreign Labor Certification Data Center, Online Wage Library on the Internet at <http://www.flcdcenter.com> (last visited March 27, 2013).

Under the H-1B program, a petitioner must offer a beneficiary wages that are at least the actual wage level paid by the petitioner to all other individuals with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application. See section 212(n) of the Act, 8 U.S.C. 1182(n). The prevailing wage rate is defined as the average wage paid to similarly employed workers in a specific occupation in the area of intended employment. As such, the petitioner has failed to establish that it would pay an adequate salary for the beneficiary's work, as required under the Act, if the petition were granted. Thus, for this reason as well, the H-1B cannot be approved.

Moreover, the record of proceeding contains discrepancies between what the petitioner claims about the level of responsibility inherent in the proffered position set against the contrary level of responsibility conveyed by the wage level indicated by the LCA submitted in support of petition.

Wage levels should be determined only after selecting the most relevant O\*NET 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. It is important to note that prevailing wage determinations start with an entry-level wage (Level I) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) 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 the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties.<sup>9</sup> The U.S. Department of Labor (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.

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

**Level I** (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

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<sup>9</sup> 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.

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](http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf).

In the instant case, the petitioner has provided inconsistent information regarding the proffered position. In the letter of support submitted with the initial petition, the petitioner claims that it "seeks to employ [the beneficiary] as an entry level Law Clerk." The petitioner states that "[a]ll work in this position would be under the direct supervision of the principal attorney." The petitioner further asserts that the beneficiary will be "working under close supervision of the principal attorney."

Thereafter, in response to the RFE, the petitioner references the "complexity of the issues that [its] office deals with on a regular basis" and claims that it "has a reputation for handling complex issues that many attorneys do not or cannot handle." The petitioner asserts that the proffered position involves "significant research, analytical interpretations, and citation" as well as "critical reading ability, strong analytical skills, and [the] decisive ability to write persuasively." In addition, the petitioner describes the beneficiary's responsibilities as "quite complex." The petitioner reports that it must be able to rely on a law clerk with "an exceptional mind and diligent work ethic to accomplish this job."

The petitioner further asserts that the beneficiary will be responsible for "client intake and analysis of supporting documents to determine if additional documents are needed or if certain documents may not be accepted by government entities." The petitioner equates the proffered position to that of a "law associate or summer associate" and states that in order to complete the "complex" work of the position, the beneficiary must possess "significant problem-solving ability." Further, the petitioner states that as a duty of the proffered position, the beneficiary "reviews, interprets, dissects corporate documents such as tax returns, incorporation papers, Human Resource policy memorandum for employment based jobs, and individual employee contracts." According to the petitioner, the beneficiary will "[a]ssist in preparing clients for merits hearings and immigration interviews." The petitioner continues by describing the in-depth, complexity and advanced aspects necessary for the legal development of cases in connection with the duties of the proffered position. The petitioner reiterates this point, emphasizing that the proffered position is "advanced."

In addition, the AAO notes that in response to the RFE, the petitioner reported that the proffered position requires the ability to interpret and translate Hindi. More specifically, the petitioner stated the following regarding the language abilities required of the beneficiary:

[The beneficiary] serves the important role of interpreting and translating with clients

for [the petitioner]. This service extends to the ability to make sure that Hindi written documents say exactly what [the petitioner] believes that they say. . . Moreover, since [the principal attorney] cannot speak, read, or write Hindi, [the beneficiary] often plays an important role in bridging the gap. About 10-15% of [the beneficiary's] time would be spent doing interpretive or translation work as it relates to research, direct client interaction, and review of client documents.

Furthermore, the petitioner submitted a letter from [redacted] of Sicklin School of Business, Baruch College, City University of New York (CUNY). According to [redacted], "the holder of the position is required to apply sophisticated legal concepts and principles while preparing a range of critical immigration-related materials and submissions." He further states that the beneficiary will be responsible for "performing in-depth research and analysis . . . of the more challenging submissions" as well as "writing, drafting, and presenting original, sophisticated legal memoranda, advisory opinions, and legal materials." [redacted] claims that the beneficiary's work will impact the "direction and success of the [petitioner's] most fundamental immigration-related legal operations." [redacted] also notes the "sophistication of the position's application of legal analysis and research." He claims that the duties "transcend the duties associated with lower-level paralegal or clerk positions." He continues by stating that the petitioner's position involves "advanced and professional legal research, analysis, writing in business immigration procedures."

[redacted] claims that the beneficiary will execute her duties "across a complex, multi-phase legal immigration case process" and will "play an immersive, high-impact role." Furthermore, Mr. [redacted] states that the beneficiary will prepare "briefs and appeals that will bear significantly upon the overall success or failure of the firm's immigration filings" and that the beneficiary will be responsible for numerous "complex legal duties." [redacted] asserts that the "position will be charged with developing sophisticated materials beyond what would normally be handled by a paralegal" and that the beneficiary will "work extensively with clients – a duty that is significant in distinguishing the position." [redacted] references the "specialty nature" of the position and claims that it is "derived from such aspects as the responsibility for performing advanced research, drafting fully professional memorandums and other documents (for use in advanced legal processes), serving as a key communicator to government agencies (as well as clients)."

Furthermore, [redacted] states the beneficiary will provide "a resource for expertise in international-scale legal interpretations, strategies and case histories." He further claims that the beneficiary will "develop, monitor, and implement immigration-related policy and practices (thereby requiring the acute logical thinking and reasoning to actually formulate effective strategy)." He continues by stating that the beneficiary will "explain accurately and concisely complex legal and administrative concepts." He reports that the beneficiary's work will "impact directly upon the [petitioner's] legal strategy" and that she will "serve an important and highly responsible role in communicating on behalf of the [petitioner] to important external participants." He also claims that the duties are "inherently complex, but the complexity of the position's duties is magnified even further when one considers" the petitioner's expanding business operations. [redacted] states that the petitioner needs "a full-qualified legal specialist in the role of Law Clerk, capable of independently interpreting and applying the fine points of immigration law and of acting with appropriate autonomy."

According to [REDACTED], the Law Clerk position "handles a substantial and highly sophisticated body of legal and analytical duties" and claims that they are greater than the duties performed by a paralegal of lower-level clerk in other practice areas. He continues by claiming that the law clerks in this field "assume an unusually large proportion of case-management duties" and that the beneficiary will "perform fully professional and specialty-level duties." In addition, he asserts that the beneficiary will provide "expertise in immigration elements that inform hiring processes" and that the position "requires independent decision-making, the ability to exercise wide latitude in determining and pursuing original strategies" as well as "high intellect and acumen" and "advanced comprehension." He concludes by emphasizing the "sophistication of the position."

Upon review of the record of proceeding, the AAO must question the level of complexity, independent judgment and understanding required for the proffered position. The petitioner initially stated that the position is an entry-level position and that the beneficiary will be directly and closely supervised. Additionally, the LCA is certified for a Level I entry-level position. Thereafter, the characterization of the position and the claimed duties and responsibilities were revised (by the petitioner and [REDACTED]) and appear to conflict with the wage-rate element of the LCA selected by the petitioner, which, as reflected in the discussion above, is indicative of a comparatively low, entry-level position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

Moreover, as mentioned earlier, the petitioner claims that knowledge of the Hindi language is required for the position. The AAO notes that a language requirement other than English in a petitioner's job offer generally is considered a special skill for all occupations, with the exception of Foreign Language Teachers and Instructors, Interpreters, and Caption Writers. In the instant case, the petitioner has not established that the foreign language requirement has been reflected in the wage-level for the proffered position.

Upon review of the record of proceeding, the AAO finds that these discrepancies undermine the credibility of the petition, and, in particular, the credibility of the petitioner's assertions regarding the demands, level of responsibilities and requirements of the proffered position.<sup>10</sup> It is incumbent

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<sup>10</sup> The record contains materially conflicting statements as to the nature of the proffered position. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). A petitioner may of course change a material term and condition of employment. However, such a change cannot be made to a petition after it has already been filed with USCIS. Instead, the change must be documented through the filing of an amended or new petition. See 8 C.F.R. § 214.2(h)(2)(i)(E). The only recognized legal procedure for amending a previously approved petition is by filing an amended or new petition, with the appropriate fees and LCA. *Id.* The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the requested benefit. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978).

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. 582, 591-92 (BIA 1988).

As noted below, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(2) specifies that certification of an LCA does not constitute a determination that an occupation is a specialty occupation:

Certification by the Department of Labor [DOL] of a labor condition application in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation. The director shall determine if the application involves a specialty occupation as defined in section 214(i)(1) of the Act. The director shall also determine whether the particular alien for whom H-1B classification is sought qualifies to perform services in the specialty occupation as prescribed in section 214(i)(2) of the Act.

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 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 corresponds to the claimed duties and requirements of the proffered position, that is, specifically, that corresponds to the level of work, responsibilities and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work, responsibilities and requirements in accordance with the pertinent LCA regulations.

The statements regarding the claimed level of complexity, independent judgment, understanding and requirements necessary for the proffered position are materially inconsistent with the certification of the LCA for a Level I entry-level position. This conflict undermines the overall credibility of the petition. The AAO finds that, fully considered in the context of the entire record of proceedings, the petitioner failed to establish the nature of the proffered position and in what capacity the beneficiary will actually be employed.

A review of the enclosed LCA indicates that the information provided does not correspond to the level of work and requirements that the petitioner ascribed to the proffered position and to the

wage-level corresponding to such a level of work and requirements in accordance with the pertinent LCA regulations. As a result, even if it were determined that the petitioner overcame the other independent reason for the director's denial, the petition could still not be approved for this reason.

The AAO will now address the director's basis for denial of the petition, namely that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, and for the specific reasons described below, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes a specialty occupation.

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."

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable 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. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 147 (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular 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 directly related to the duties and responsibilities of the particular position, fairly

represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether the proffered position qualifies as a specialty occupation, the AAO now turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). In the interest of efficiency, the AAO hereby incorporates the above discussion and analysis regarding the duties and requirements of the proffered position into the analysis of each criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which follows below.

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 normally the minimum requirement for entry into the particular position.

The petitioner stated that the beneficiary would be employed in a law clerk position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. 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 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 DOL's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>11</sup> As previously mentioned, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Judicial Law Clerks."

The AAO reviewed the *Handbook* regarding the occupational category "Judicial Law Clerks." The AAO notes that "Judicial Law Clerks" is one of the occupations not covered in detail by the *Handbook*. The *Handbook* states the following about these occupations:

**Data for Occupations Not Covered in Detail**

Employment for the hundreds of occupations covered in detail in the *Handbook* accounts for more than 121 million, or 85 percent of all, jobs in the economy. [The *Handbook*] presents summary data on 162 additional occupations for which employment projections are prepared but detailed occupational information is not developed. These occupations account for about 11 percent of all jobs. For each occupation, the Occupational Information Network (O\*NET) code, the occupational definition, 2010 employment, the May 2010 median annual wage, the projected

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<sup>11</sup> 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/>.

employment change and growth rate from 2010 to 2020, and education and training categories are presented. For guidelines on interpreting the descriptions of projected employment change, refer to the section titled "Occupational Information Included in the OOH."

Approximately 5 percent of all employment is not covered either in the detailed occupational profiles or in the summary data given here. The 5 percent includes categories such as "all other managers," for which little meaningful information could be developed.

The *Handbook* provides the following job description for the occupational category "Judicial Law Clerks":

**Judicial Law Clerks**

(O\*NET 23-1012.00)

Assist judges in court, by conducting research, or by preparing legal documents. Excludes "Lawyers" (23-1011) and "Paralegals and Legal Assistants" (23-2011).

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Date for Occupations Not Covered in Detail, on the Internet at <http://www.bls.gov/ooH/About/Data-for-Occupations-Not-Covered-in-Detail.htm#legaloccupations> (last visited March 27, 2013).

The AAO observes that although the *Handbook* does not cover this occupation in detail, the information provided is sufficient for the AAO to ascertain that proffered position clearly does not pertain to this occupational category. The *Handbook* states that judicial law clerks "[a]ssist judges in court, by conducting research, or by preparing legal documents." As previously mentioned, on the Form I-129, the petitioner described itself as a law firm established in 2008 with no employees and "only [a] sole principal attorney." The petitioner has not described itself as a court, or any other entity that might employ a judge. Further, the petitioner has stated that it consists of one individual: an attorney. Therefore, the proffered position does not entail "assisting judges in court" as described by the *Handbook*.<sup>12</sup>

The AAO incorporates and reiterates by reference its earlier comments in this decision regarding the inconsistencies and discrepancies in the record of proceeding with regard to the nature of the position, as well as the lack of evidence substantiating the duties and requirements for the actual performance of the beneficiary's work.<sup>13</sup> The petitioner must establish that the position offered to

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<sup>12</sup> When reviewing the *Handbook*, the AAO again notes that the petitioner designated the proffered position as a Level I (entry level) position on the LCA. This designation is indicative of a comparatively low, entry-level position. Again, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that she would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she would receive specific instructions on required tasks and expected results.

<sup>13</sup> On appeal, the petitioner references unpublished decisions in which the AAO determined that the

the beneficiary when the petition was filed merits classification for the requested benefit. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 249.

In the director's decision, the director indicated that the proffered position falls under the occupational category of "Paralegals and Legal Assistants." The AAO reviewed the sections of the *Handbook* relating to "Paralegals and Legal Assistants," including the sections regarding the typical duties and requirements, and agrees with the director's conclusion that the proffered position falls under this occupational category.

The "Paralegals and Legal Assistants" chapter of the 2012-2013 edition of the *Handbook* describes the duties of a paralegal as follows:

Paralegals and legal assistants do a variety of tasks to support lawyers, including maintaining and organizing files, conducting legal research, and drafting documents.

#### Duties

Paralegals and legal assistants typically do the following:

- Investigate the facts of a case
- Conduct research on relevant laws, regulations, and legal articles
- Organize and present the information
- Keep information related to cases or transactions in computer databases
- Write reports to help lawyers prepare for trials
- Draft correspondence and other documents, such as contracts and mortgages
- Get affidavits and other formal statements that may be used as evidence in court
- Help lawyers during trials

Paralegals and legal assistants help lawyers prepare for hearings, trials, and corporate meetings. However, their specific duties may vary depending on the size of the firm or organization.

In smaller firms, paralegals duties tend to vary more. In addition to reviewing and organizing information, paralegals may prepare written reports that help lawyers determine how to handle their cases. If lawyers decide to file lawsuits on behalf of clients, paralegals may help prepare the legal arguments and draft documents to be filed with the court.

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petitioners in those matters established that their proffered positions qualified as specialty occupations. Upon review of the enclosed decisions, the AAO finds that the cases involve distinct issues from the instant H-1B petition and the petitioner does not sufficiently establish the cases relevancy here. The petitioner has furnished no evidence to indicate that the facts of the instant petition are analogous to those in the enclosed, unpublished decisions. Moreover, the AAO again notes that the petitioner has provided inconsistent information regarding the nature of its proffered position. Furthermore, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

In larger organizations, paralegals work mostly on a particular phase of a case, rather than handling a case from beginning to end. For example, a litigation paralegal might only review legal material for internal use, maintain reference files, conduct research for lawyers, and collect and organize evidence for hearings. Litigation paralegals often do not attend trials, but might prepare trial documents or draft settlement agreements.

Law firms increasingly use technology and computer software for managing documents and preparing for trials. Paralegals use computer software to draft and index documents and prepare presentations. In addition, paralegals must be familiar with electronic database management and be up to date on the latest software used for electronic discovery. Electronic discovery refers to all electronic materials that are related to a trial, such as emails, data, documents, accounting databases, and websites.

Paralegals can assume more responsibilities by specializing in areas such as litigation, personal injury, corporate law, criminal law, employee benefits, intellectual property, bankruptcy, immigration, family law, and real estate. In addition, experienced paralegals may assume supervisory responsibilities, such as overseeing team projects or delegating work to other paralegals.

Paralegal tasks may differ depending on the type of department or the size of the law firm they work for.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Paralegals and Legal Assistants, <http://www.bls.gov/ooh/Legal/Paralegals-and-legal-assistants.htm#tab-2> (last visited March 27, 2013).

As previously discussed, the petitioner has also indicated that the occupational category "Paralegals and Legal Assistants" is relevant in the instant case.<sup>14</sup> That is, in response to the RFE, the petitioner

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<sup>14</sup> As previously mentioned, wage levels should be determined only after selecting the most relevant O\*NET 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. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties.

Thus, if the petitioner believed "there was some overlap with the general are of work that Paralegals do and what the Law Clerk does . . . but that this particular position was much more advanced," the petitioner was able to signify this assertion through the designation of the proper occupational category ("Paralegals and Legal Assistants") at a higher wage level on the LCA. However, in the instant case, the petitioner selected the occupational category "Judicial Law Clerks" (which does not correspond to the duties of the proffered

stated that "[t]here is no doubt that some of the duties that [the beneficiary] performs are similar to what some paralegals do." The petitioner continued by stating that the proffered "position of [the petitioner's] law clerk and a paralegal are related." Furthermore, in the appeal, the petitioner reported that "I conceded that there was some overlap with the general area of work that Paralegals do and what the Law Clerk does."

The AAO finds that the *Handbook* does not indicate that paralegals and legal assistants comprise an occupational group for which normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. The subchapter of the *Handbook* entitled "How to Become a Paralegal or Legal Assistant" states, in part, the following about this occupation:

Most paralegals and legal assistants have an associate's degree in paralegal studies, or a bachelor's degree in another field and a certificate in paralegal studies. In some cases, employers may hire college graduates with a bachelor's degree but no legal experience or education and train them on the job.

### Education

There are several paths to become a paralegal. Candidates can enroll in a community college paralegal program to earn an associate's degree. A small number of schools also offer bachelor's and master's degrees in paralegal studies. Those who already have a bachelor's degree in another subject can earn a certificate in paralegal studies. Finally, some employers hire entry-level paralegals without any experience or education in paralegal studies and train them on the job; though these jobs typically require a bachelor's degree.

Associate's and bachelor's degree programs in paralegal studies usually combine paralegal training, such as courses in legal research and the legal applications of computers, with other academic subjects. Most certificate programs provide this intensive paralegal training for people who already hold college degrees. Some certificate programs only take a few months to complete.

More than 1,000 colleges and universities offer formal paralegal training programs. However, only about 270 paralegal programs are approved by the American Bar Association (ABA).

Many paralegal training programs also offer an internship, in which students gain practical experience by working for several months in a private law firm, the office of a public defender or attorney general, a corporate legal department, a legal aid organization, or a government agency. Internship experience helps students improve their technical skills and can enhance their employment prospects.

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position) at a Level I wage level. Again, the prevailing wage salary for "Judicial Law Clerks" for a Level I position is over \$9,560 per year less than the prevailing wage for "Paralegals and Legal Assistants" for a Level I position.

*Handbook, 2012-13 ed.*, Paralegals and Legal Assistants, <http://www.bls.gov/ooh/Legal/Paralegals-and-legal-assistants.htm#tab-4> (last visited March 27, 2013).

The *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty is normally the minimum requirement for entry into this occupation. Rather, the *Handbook* states that most paralegals and legal assistants have an associate's degree in paralegal studies, or a bachelor's degree in another field and a certificate in paralegal studies. The narrative of the *Handbook* indicates that there are several educational paths to become a paralegal, including obtaining an associate, baccalaureate or master's degree in paralegal studies, as well as earning a certificate in paralegal studies (for those who already have a bachelor's degree in another subject). For entry into the occupation, the *Handbook* indicates that some employers hire paralegals without any experience or education in paralegal studies and train them on the job. The *Handbook* states that these jobs typically require a bachelor's degree. The *Handbook* does not conclude that normally the minimum requirement for entry into these positions is at least a bachelor's degree in a specific specialty, or its equivalent.

The AAO acknowledges that the *Handbook* states that the specific duties of paralegals and legal assistants may vary depending on the size of the firm or organization. The AAO notes it is reasonable to assume that the size of an employer's business has or could have an impact on the duties of a particular position. See *EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). Thus, the size of a petitioner may be considered as a component of the nature of the petitioner's business, as the size impacts upon the duties of a particular position. In matters where a petitioner's business is relatively small, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient complexity to indicate that it would employ the beneficiary in position requiring the theoretical and practical application of a body of highly specialized knowledge that may be obtained only through a baccalaureate degree or higher in a specific specialty, or its equivalent. Additionally, when a petitioner employs relatively few people, it may be necessary for the petitioner to establish how the beneficiary will be relieved from performing non-qualifying duties. In the instant case, the petitioner stated on the Form I-129 petition that it does not have any employees, and consists of one sole principal attorney. The petitioner did not provide an explanation as to how the beneficiary would be relieved from performing non-qualifying duties.

The AAO notes that in response to the RFE, the petitioner asserts that the O\*NET Job Zone and Education & Training Zone provided in the FLC Data Center Online Wage Library (OWL) printout is relevant to this matter.<sup>15</sup> Notably, the OWL statement is a condensed version of what the O\*NET actually states about its Job Zone designations. See O\*NET OnLine Help Center, at <http://www.onetonline.org/help/online/zones>, for a discussion of Job Zones. Furthermore, the AAO observes that the occupational category "Paralegals and Legal Assistants" is grouped with occupations designated as Job Zone 3, which indicates that medium preparation is needed. It also

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<sup>15</sup> The AAO will not address the O\*NET Job Zone and Education & Training Zone for the occupational category "Judicial Law Clerks," as the petitioner has not established that the proffered position falls under this occupational category.

indicates that most occupations in this zone require training in vocational schools, related on-the-job experience, or an associate's degree.<sup>16</sup> Therefore, despite the assertion to the contrary, the O\*NET information is not probative of the proffered position qualifying as a specialty occupation.

Further, the AAO finds that the printout from the Illinois Court Student Learning Center Website submitted in response to the RFE, is insufficient to establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor's degree in a specific specialty or its equivalent. Notably, the document indicates that it is one of six pages. However, the petitioner submitted only the first page of the printout. No explanation was provided for failing to submit the entire document. Moreover, the section of the Illinois Court printout provided by the petitioner does not address paralegal and legal assistant positions. The duties of the few positions on the printout are not sufficiently developed for the AAO to determine that the printout is relevant to the instant petition. Additionally, the section of the printout provided by the petitioner does not provide any references or supporting authority (e.g., statistical surveys, authoritative industry publications, professional studies, scholarly research) for the statements presented regarding the positions. The AAO also questions the petitioner's submission from the State of Illinois regarding a position that will be located at the petitioner's firm in the State of New York. The petitioner did not provide the reason it did not provide information from the New York Court.

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

Next, the AAO reviews the record of proceeding regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, 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 at 1165 (quoting

<sup>16</sup> Nevertheless, even if the occupation was designated as a Job Zone 4 or higher, the O\*NET information is insufficient to establish that the position qualifies as a specialty occupation normally requiring at least a bachelor's degree in a specific specialty, or its equivalent. The O\*NET does not demonstrate that a bachelor's degree in any *specific specialty* is required, and does not, therefore, demonstrate that a position so designated qualifies as a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

*Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As previously 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 of at least a bachelor's degree in a specific specialty, or its equivalent. Thus, the AAO incorporates by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement.

As previously mentioned, in the Form I-129, the petitioner stated that it is a law firm established in 2008. The petitioner further stated that it does not have any employees, and consists of one sole principal attorney. The petitioner listed its gross annual income as approximately \$90,000 and its net annual income as approximately \$63,000. As previously mentioned, the petitioner designated its business operations under the NAICS code 541111 - "Offices of Lawyers."

The AAO notes that under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner must establish that "the degree requirement is common to *the industry in parallel positions among similar organizations.*" (Emphasis added.) For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, letters submitted by other organizations are generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether 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). It is not sufficient for the petitioner to claim that the organizations are similar and in the same industry without providing a legitimate basis for such an assertion. 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. 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

The AAO notes that, in response to the RFE and again on appeal, the petitioner provided an opinion letter from [REDACTED] of Sicklin School of Business, Baruch College, City University of New York (CUNY). The AAO reviewed the letter in its entirety.

A recognized authority means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. The regulations require that a recognized authority's opinion include the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii). The AAO observes that [REDACTED] failed to provide copies or citations of any research material used. Furthermore, the opinion letter contains no evidence that it was based on scholarly research conducted by [REDACTED] in the specific area upon which he is opining. In reaching this determination, [REDACTED] provides no documentary support for his ultimate conclusion regarding the education required for the position (e.g., statistical surveys, authoritative industry or government publications, or professional studies). [REDACTED] asserts a general industry educational standard, without referencing any supporting authority or any empirical basis for the pronouncement.

Furthermore, [REDACTED] claims that he "reviewed a detailed description of the job duties requires for the subject position of 'Law Clerk' at [the petitioner's offices]." As previously noted, the petitioner submitted two job descriptions for the proffered position to the director regarding the proffered position. No information was provided as to whether [REDACTED] reviewed one of these job descriptions or a separate job description. Moreover, upon review of the opinion letter, there is no indication that [REDACTED] possesses any knowledge of the petitioner's proffered position beyond the job description.

In the letter, [REDACTED] seeks to distinguish the proffered position from "lower-level paralegal or clerk positions." [REDACTED] indicates that he reviewed the duties of the proffered position and found that the beneficiary will have a "high-impact role" within the petitioner's business operation. [REDACTED] states that due to the petitioner's expansion to a third office in [REDACTED] that the beneficiary must be "capable of independently interpreting and applying the fine points of immigration law and of acting with appropriate autonomy in the execution of the analysis and research that will support immigration-related actions."

However, it does not appear that the petitioner informed [REDACTED] that the proffered position is an "entry level" position and that the beneficiary will be directly and closely supervised (as stated by the petitioner in its letter dated May 18, 2012). More specifically, in the letter of support submitted with the initial petition, the petitioner claims that it "seeks to employ [the beneficiary] as an entry level Law Clerk." The petitioner further states that "[a]ll work in this position would be under the direct supervision of the principal attorney." Additionally, the petitioner claims that the beneficiary will be "working under close supervision of the principal attorney." Further, it appears that Mr. [REDACTED] is unaware that the petitioner designated the proffered position as a Level I (entry level) position on the LCA. As previously noted, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that she would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she would receive specific instructions on required tasks and expected results. Further, it is not clear that he is aware that the petitioner designated the proffered position under the occupational category "Judicial Law Clerks" (and that the prevailing wage for this occupation is substantially lower than that of "Paralegals and Legal Assistants").<sup>17</sup>

It appears that [REDACTED] has based his assessment on incomplete information regarding the proffered position. Without this information, the petitioner has not demonstrated that [REDACTED] possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately determine parallel positions based upon job duties and responsibilities.

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<sup>17</sup> The AAO notes that the prevailing wage of \$32,406 per year on the LCA corresponds to a Level I position for the occupational category of "Judicial Law Clerks" for New York, N.Y. Notably, if the proffered position had been designated under the occupational category of "Paralegals and Legal Assistants," the prevailing wage at that time would have been \$41,974 per year for a Level I position.

The AAO may, in its discretion, use as advisory opinions or statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). As a reasonable exercise of its discretion the AAO discounts the advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, the AAO hereby incorporates the above discussion and analysis regarding the opinion letter into its analyses of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Thus, based upon a complete review of the record of proceeding, the AAO finds that the petitioner has not established that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. Thus, 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 its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

The AAO acknowledges that the petitioner may believe that its particular position is so complex and/or unique that it can be performed only by an individual with at least a bachelor's degree. However, the petitioner did not submit sufficient probative evidence regarding its business operations or the proffered position to establish how the beneficiary's responsibilities and day-to-day duties are so complex or unique that the position can be performed only by an individual with a bachelor's degree in a specific specialty, or its equivalent.<sup>18</sup> The petitioner fails to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position. The AAO finds that the petitioner has not provided sufficient 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, or its equivalent.

More specifically, the petitioner fails to demonstrate how the duties of the proffered position as described in the record of proceeding require the theoretical and practical application of a body of highly specialized knowledge such that a baccalaureate 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 that it may believe are so complex or unique. While 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 particular position here. The petitioner makes various claims about the duties of the

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<sup>18</sup> In the instant case, the petitioner submitted a letter from [REDACTED] regarding the proffered position. The AAO reviewed the letter in its entirety. However, for the reasons already discussed, the opinion letter is not probative of any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

proffered position, but fails to explain or clarify which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment.

The AAO reviewed the record in its entirety and finds that the petitioner has not provided sufficient 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, or its equivalent. This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, the LCA indicates a Level I (entry level) wage. The wage-level of the proffered position indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

Without further evidence, it is simply not credible that the petitioner's proffered position is complex or unique as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage. For example, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."

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. Thus, the record lacks sufficient probative evidence 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. In other words, the record lacks sufficiently detailed information to discern the proffered position as unique from or more complex than similar positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

The AAO observes that the petitioner has indicated that the beneficiary's educational background and prior experience working for the petitioner will assist her in carrying out the duties of the proffered position, and takes particular note of her language skills. 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. The petitioner does not explain or clarify at any time in the record which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. The petitioner has thus failed to establish the proffered position as satisfying the second prong of the criterion at 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 in a specific specialty, or its equivalent, for the position. To this end, 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 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. Upon review of the record of proceeding, the petitioner has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

While a petitioner may believe or otherwise assert that a proffered position requires a specific 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 petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if 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").

The petitioner stated in the Form I-129 petition that it does not have any employees and that it consists of one sole principal attorney. The petitioner further indicated that its business operations were established in 2008 (approximately four years prior to the filing of the H-1B petition). The record of proceeding does not contain any documentation regarding employees who have previously held the position and/or probative evidence regarding the petitioner's recruiting and hiring practices. It appears that the proffered position is a new position. The record is devoid of information to satisfy this criterion of the regulations.

Upon review of the record, the petitioner has not provided any evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, 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 in a specific specialty, or its equivalent.

In response to the RFE, the petitioner asserts that "the nature of [the proffered position's] duties . . . are so complex that to carry them out one would really need a bachelor's degree or higher." The AAO acknowledges that the petitioner may believe 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, or its equivalent. The AAO reviewed the documentation submitted by the petitioner and finds that it fails to support the assertion that the proffered position qualifies as a specialty occupation under this

criterion of the regulations. More specifically, in the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. As previously discussed, the petitioner has provided inconsistent information regarding the nature of the proffered position.

The record lacks sufficient probative evidence regarding the petitioner's business operations and/or the proffered position to support such a claim. The petitioner provided a few legal memoranda and affidavits, which the petitioner states were prepared by the beneficiary. However, this evidence is insufficient 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, or its equivalent. Furthermore, the AAO also reiterates its earlier comments and findings with regard to the implication of the petitioner's designation of the proffered position in the LCA as a Level I (the lowest of four assignable levels). That is, the Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category, and hence one not likely distinguishable by relatively specialized and complex duties. As noted earlier, DOL indicates that a Level I designation is appropriate for "beginning level employees who have only a basic understanding of the occupation."

The AAO acknowledges that the petitioner submitted a letter from [REDACTED] regarding the proffered position. However, as previously discussed in detail, the AAO discounts the advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established 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 in a specific specialty, or its equivalent. The AAO, therefore, concludes that the petitioner 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 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.

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 145 (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.