U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

Date: APR 19 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:

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, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

In the Petition for a Nonimmigrant Worker (Form I-129), the petitioner stated that it is a veterinary medical services firm. To employ the beneficiary in what it designates as a "[v]eterinary clinical/surgical co-coordinator/supervisor" position, the petitioner endeavors 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, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

The issue on appeal is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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, the position must also meet one of the following criteria:

> (*1*) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
>
> (*2*) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
>
> (*3*) The employer normally requires a degree or its equivalent for the position; or
>
> (*4*) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (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.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position corresponds to Standard Occupational Classification (SOC) code and title 29-2056.00 Veterinary Technologists and Technicians from the *Dictionary of Occupational Titles* (*DOT*) maintained by the United States Department of Labor (DOL). The petitioner indicated on the LCA that it would pay the beneficiary at a rate of $16.60 per hour.

With the visa petition, counsel provided evidence that the beneficiary has an "Associate of Occupational Science" degree from the veterinary technician program at and a Bachelor of Science degree in animal sciences and agricultural technology from Thailand. No evaluation of the beneficiary's foreign degree was submitted with the petition.

Counsel also submitted a letter, dated March 31, 2011, from the petitioner's president, which contains the following description of the duties of the proffered position:

> Supervise clinical services & perform surgical-other Vet Tech duties. Specific duties will include: assist in medical surgeries & dentistry, taking X-rays, interpreting common lab work results, assist in treating inpatient animals, physical therapy. Client education, diet discussion, and assist in updating the vaccination protocol.

The petitioner's president further stated: "In order to perform the duties of this position, the incumbent must have a minimum of a Bachelor's Degree in Animal Science or its equivalent."

On May 9, 2011, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center outlined the specific evidence to be submitted.

In response, counsel submitted, *inter alia*, four letters from other people in the veterinary industry. Those letters will be discussed below.

The director denied the petition on August 31, 2011, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More

specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In an addendum to the Form I-290B, counsel states the following:

> A detailed job description of the job position (a summary version was provided upon I-129H1B [sic] filing) is attached. Such description essentially describes the Veterinary technologist position.
>
> * * *
>
> Note, the research products aspect of the position (since this is the leading holistic practice in the [sic] WA State) also makes such offered position fall within the veterinary technologist position (i.e., four years of schooling needed).
>
> * * *
>
> To be completed as part of brief in 30 days.

In addition to counsel's notation in the addendum, counsel indicated in Part 2 of the I-290B that he would submit a brief and/or evidence to the AAO within 30 days of filing the appeal. Neither a brief nor additional evidence was submitted to the AAO after filing the appeal.

The description of the duties of the proffered position provide duties relevant to Reception, Exam Rooms, Radiology, Surgical, Treatment Area, Hospitalized Patients, Laboratory, Computer/Software, Holistic modalities, Public relation/promotion of clinics, and Staff training. A full page of those duties is dedicated to "Reception" duties, and includes the duties of making appointments and reminding clients of their appointments, arranging hiring and firing of front desk reception staff, and providing estimates of the cost of surgeries and other procedures.

Further, the duty description states duties such as setting up exam rooms for examination by veterinarian, setting up surgery rooms/tables/equipment, helping veterinarian by patient holding/handling, stocking up supplies of exam rooms, sanitation/cleaning of exam rooms, prepping patients for IV catheter placement, and providing proper post-surgical recovery care.

The duty description also states:

> Have adequate knowledge for different restraining techniques, devices.
>
> Knowledge of different digital equipment, processor, monitor
>
> Knowledge of different X-ray techniques . . . .

> Knowledge of different surgical procedures to be performed, general measurements, intra-abdominal surgeries, such as foreign body removal, intestinal blockages, intestinal intussusception, removal of spleen, liver lobe removal, nephrectomies, cystomies [sic], orthopedic surgeries, fractures, amputation of limbs.

The description does not make clear whether the beneficiary would perform those duties or merely be required to have some degree of knowledge of that work.

It is noted that the petitioner failed to submit a breakdown of the duties that it claims the beneficiary will perform. That is, what percentage of her time would be spent on reception duties, for instance, is unknown, as is what percentage of her time would be spent on various other duties that might not qualify as specialty occupation duties.

Counsel also provided an evaluation of the beneficiary's foreign degree and evidence pertinent to colleges which offer four-year bachelor's degrees in veterinary technology. As a preliminary matter, the AAO does not question that such programs exist, but notes that the existence of such programs is not relevant to any material issue in this case. The issue in the instant case is not whether such specialized four-year degrees are available, but whether such a degree, or its equivalent, is required for the proffered position.

The AAO will now discuss the application of the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

The AAO will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*), which is satisfied if a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position.

The AAO recognizes the U.S. Department of Labor's *Occupational Outlook Handbook* (*Handbook*) as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.[1] The petitioner asserts in the LCA that the proffered position falls under the occupational category "Veterinary Technologists and Technicians."

In the "Veterinary Technologists and Technicians" chapter, the *Handbook* provides the following discussion of the duties of those positions:

> Veterinary technologists and technicians perform medical tests under the supervision of a licensed veterinarian to treat or to help veterinarians diagnose the illnesses and injuries of animals.

---

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

Duties

Veterinary technologists and technicians typically do the following:

- Observe the behavior and condition of animals
- Provide nursing care or emergency first aid to recovering or injured animals
- Administer anesthesia to animals and monitor their responses
- Collect laboratory samples, such as blood, urine, or tissue, for testing
- Perform laboratory tests, such as urinalyses and blood counts
- Take and develop x rays
- Prepare animals and instruments for surgery
- Administer medications, vaccines, and treatments prescribed by a veterinarian
- Collect and record patients' case histories

To provide superior animal care, veterinarians rely on the skills of veterinary technologists and technicians, who do many of the same tasks for a veterinarian that nurses would for a doctor. Despite differences in formal education and training, veterinary technologists and technicians carry out many similar tasks.

Many veterinary technologists and technicians work in private clinics, animal hospitals, and veterinary testing laboratories. They conduct a variety of clinical and laboratory procedures, including postoperative care, dental care, and specialized nursing care.

Veterinary technologists and technicians who work in research-related jobs do similar work. For example, they are responsible for making sure that animals are handled carefully and humanely. They commonly help veterinarians or scientists on research projects in areas such as biomedical research, disaster preparedness, and food safety.

Veterinary technologists and technicians most often work with small-animal practitioners who care for cats and dogs, but they may also do a variety of tasks with mice, rats, sheep, pigs, cattle, and birds.

Veterinary technologists and technicians can specialize in a particular discipline. Specialties include dental technology, anesthesia, emergency and critical care, and zoological medicine.

The differences between technologists and technicians are the following:

> ***Veterinary technologists*** usually have a 4-year bachelor's degree in veterinary technology. Although some technologists work in private clinical practices, many work in more advanced research-related jobs, usually under the guidance of a scientist and sometimes a veterinarian. Working primarily in a laboratory setting, they may administer medications; prepare tissue samples for examination; or record information on an animal's genealogy, weight, diet, food intake, and signs of pain.
>
> ***Veterinary technicians*** usually have a 2-year associate's degree in a veterinary technology program. Most work in private clinical practices under the guidance of a licensed veterinarian. Technicians may perform laboratory tests, such as a urinalysis, and help veterinarians conduct a variety of other diagnostic tests. Although some of their work is done in a laboratory setting, many technicians also talk with animal owners. They explain, for example, a pet's condition or how to administer medication prescribed by a veterinarian.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook,* 2012-13 ed., "Veterinary Technologists and Technicians," http://www.bls.gov/ooh/healthcare/veterinary-technologists-and-technicians.htm#tab-2 (last visited April 10, 2013).

The *Handbook* suggests that veterinary technologist positions are more complex than veterinary technician positions, and that technologist positions require a bachelor's degree in veterinary technology. *See id.;* http://www.bls.gov/ooh/healthcare/veterinary-technologists-and-technicians.htm#tab-4 (last visited April 10, 2013). However, the *Handbook* does little else to distinguish the two types of positions except to state that many technologists work in "advanced research-related jobs," rather than in private clinical practices.

Counsel contends that the proffered position is a veterinary technologist position by stating that the petitioner is the "leading holistic [veterinary] practice" in Washington State and pointing to the "research products aspect" of the proffered position. However, counsel provided no evidence to support his assertion that the beneficiary would be conducting research. It is also noted that it has not been shown that the petitioner is the leading holistic veterinary practitioner in Washington State. Even if those assertions had been demonstrated with documentary evidence, those two facts alone would not establish that the proffered position is a veterinary technologist position. The AAO observes that the proffered position is with a private clinical practice and whether the beneficiary would be involved in advanced research has not been demonstrated. The *Handbook* and evidence in the record do not demonstrate that the proffered position is a veterinary technologist position.

The duties provided by the petitioner and counsel appear to include in part, duties performed by veterinary assistants. The *Handbook* states the following with regard to the duties of veterinary assistants in its chapter on "Veterinary Assistants and Laboratory Animal Caretakers":

> **What Veterinary Assistants and Laboratory Animal Caretakers Do**

Veterinary assistants and laboratory animal caretakers look after nonfarm animals in laboratories, animal hospitals, and clinics. They care for the well-being of animals by doing routine tasks under the supervision of veterinarians, scientists, or veterinary technologists or technicians.

Duties

Veterinary assistants and laboratory animal caretakers typically do the following:

- Monitor and care for animals after surgery
- Maintain and sterilize surgical instruments and equipment
- Clean and disinfect cages, kennels, and examining and operating rooms
- Help provide emergency first aid to sick or injured animals
- Give medication or immunizations that veterinarians prescribe
- Do routine laboratory tests, such as taking x rays
- Feed and bathe animals
- Collect samples such as blood, urine, or tissue for testing

Veterinary assistants and laboratory animal caretakers do many daily tasks, such as feeding, weighing, and taking the temperature of animals. Other routine duties may include giving medication, cleaning cages, or providing nursing care before and after surgery or other medical procedures.

Veterinary assistants and laboratory animal caretakers play a large role in helping veterinarians and scientists with surgery and other procedures. They may prepare equipment and pass surgical instruments and materials to veterinarians during surgery. They may also move animals and hold or restrain them during testing and other procedures.

Veterinary assistants work mainly in clinics and animal hospitals, helping veterinarians or veterinary technicians and technologists treat the injuries and illnesses of animals.

Laboratory animal caretakers work in laboratories under the supervision of a veterinarian, scientist, veterinary technician, or veterinary technologist. Their daily tasks include feeding animals, cleaning kennels, and monitoring the general well-being of laboratory animals.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook,* 2012-13 ed., "Veterinary Assistants and Laboratory Animal Caretakers," http://www.bls.gov/ooh/healthcare/veterinary-assistants-and-laboratory-animal-caretakers.htm#tab-2 (last visited April 10, 2013).

According to the petitioner, the duties of the proffered position include client education, diet discussion, assisting in updating the vaccination protocol, supervising clinical services, and performing surgical and other veterinary duties, including assisting in surgery and dentistry, providing proper post-surgical recovery care, taking X-rays, interpreting lab results, assisting in treating inpatient animals, and physical therapy. According to the petitioner, the beneficiary would also check animals' vital signs, restrain animals, set up examination rooms and surgery rooms for veterinarians, maintain examination room supply inventories, and perform various other duties that appear to be consistent with veterinary assistant positions as described in the *Handbook*.

Furthermore, as noted above, the petitioner devoted an entire page of duties to "Reception" duties indicating that a large part of the beneficiary's proposed duties are receptionist duties. The *Handbook* states the following with respect to the work performed by receptionists:

> **What Receptionists Do**
>
> Receptionists perform various administrative duties, including answering telephones and giving information to the public and customers.
>
> **Duties**
>
> Receptionists typically do the following:
>
> - Answer, screen, and forward telephone calls
> - Greet walk-in customers and other visitors and escort them to specific destinations
> - Contribute to the security of the office by helping to monitor visitors' access
> - Obtain or send information or documents using a computer, mail, or a fax machine
> - Perform other administrative support tasks, such as keeping appointment calendars
> - Copy, file, and maintain documents and records
> - Collect, sort, distribute, and prepare mail and courier deliveries
> - Process and prepare travel vouchers or other documents
>
> Receptionists are often the first employee that the public or customer has contact with. They are responsible for making a good first impression for the organization, which can affect the organization's success.
>
> Although some tasks are common to most receptionists, their specific responsibilities vary depending on their work establishment. For example, receptionists in hospitals and in doctors' offices may gather patients' personal and insurance information and direct patients to the proper waiting room. In corporate headquarters, they may greet visitors and manage the scheduling of the board room or common conference area.

> In beauty or hair salons, they arrange appointments, direct clients to the hairstylist, and may serve as cashiers. In factories, large corporations, and government offices, receptionists may provide identification cards for visitors and arrange for escorts to take visitors to the proper office. Those working for bus and train companies respond to passengers' inquiries about departures, arrivals, stops, and other related matters.
>
> Receptionists use the telephone, computers, and other electronic devices. Despite the widespread use of voice mail or other automated systems, many receptionists still take messages and inform other employees of the public's or customers' arrivals or cancellations of appointments. When they are not busy with callers, most workers are expected to help other administrative employees by doing a variety of other office tasks.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook,* 2012-13 ed., "Receptionists," http://www.bls.gov/ooh/office-and-administrative-support/receptionists.htm#tab-2 (last visited April 10, 2013).

Upon review, the AAO has determined that the proffered position's duties reflect the duties of (1) a veterinary technician, covered by the *Handbook* under its chapter on "Veterinary Technologists and Technicians"; (2) a veterinary assistant, covered by the *Handbook* under its chapter on "Veterinary Assistants and Laboratory Animal Caretakers"; and (3) a receptionist, covered by the *Handbook* under its chapter on "Receptionists." In other words, the proffered position requires the beneficiary to perform the duties of at least three separate occupations. By choosing to combine the duties of multiple occupations into one petition, the petitioner has in effect requested that USCIS assess whether *all* of the non-incidental duties, and not simply a portion of them, qualify the combined position as a specialty occupation.

To that end, the AAO will look next to what the *Handbook* states with regard to the educational requirements of veterinary technicians, veterinary assistants, and receptionists.

As to the educational requirements of veterinary technician positions, the *Handbook* states:

> There are primarily two levels of education and training for entry into this occupation: a 4-year program for veterinary technologists and a 2-year program for veterinary technicians. Typically, both technologists and technicians must take a credentialing exam and must become registered, licensed, or certified, depending on the state.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook,* 2012-13 ed., "Veterinary Technologists and Technicians," http://www.bls.gov/ooh/healthcare/veterinary-technologists-and-technicians.htm#tab-4 (last visited April 10, 2013).

As to the educational requirements of veterinary assistant positions, the *Handbook* states:

> **How to Become a Veterinary Assistant or Laboratory Animal Caretaker**
>
> Most veterinary assistants and laboratory animal caretakers have a high school diploma and learn on the job. Experience working with animals can be useful.
>
> **Education**
>
> There is no postsecondary education requirement for becoming a veterinary assistant or laboratory animal caretaker. However, most workers entering the occupation have a high school diploma or its equivalent.
>
> **Training**
>
> Most veterinary assistants and laboratory animal caretakers are trained on the job, but some employers prefer candidates who already have experience working with animals.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook,* 2012-13 ed., "Veterinary Assistants and Laboratory Animal Caretakers," http://www.bls.gov/ooh/healthcare/veterinary-assistants-and-laboratory-animal-caretakers.htm#tab-4 (last visited April 10, 2013).

Regarding receptionists, the *Handbook* states:

> **How to Become a Receptionist**
>
> Although hiring requirements vary by industry and employer, most receptionists need a high school diploma.
>
> **Education and Training**
>
> Receptionists generally need a high school diploma or its equivalent.
>
> Most receptionists receive their training on the job. They learn how to operate the telephone system and computers and learn the proper procedures for greeting visitors. While many of these skills can be learned quickly, those who give information to the public or customers may need several weeks to learn details about the organization.
>
> Employers often look for applicants who know spreadsheets, word processing software, or other industry specific software applications. Some employers may prefer applicants who have some formal office education or training.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook,* 2012-13 ed., "Receptionists," http://www.bls.gov/ooh/office-and-administrative-support/receptionists.htm#tab-4 (last visited April 10, 2013).

The *Handbook* does not indicate that veterinary technician, veterinary assistant, and receptionist positions require a minimum of a bachelor's degree in a specific specialty or its equivalent. The *Handbook* states that entry into a veterinary technician position requires two years of preparation, which makes clear that such positions do not require a bachelor's degree, let alone a minimum of a bachelor's degree in a specific specialty or its equivalent. The *Handbook* indicates that most veterinary assistant and receptionist positions require only a high school diploma which, again, makes clear that such positions do not require a bachelor's degree, let alone a minimum of a bachelor's degree in a specific specialty or its equivalent.

It is noted that, where a petitioner seeks to employ a beneficiary in two or more distinct occupations, if only one aspect of a combined position qualifies as a specialty occupation, USCIS would be required to deny the entire petition as the pertinent regulations do not permit the partial approval of only a portion of a proffered position and/or the limiting of the approval of a petition to perform only certain duties. *See generally* 8 C.F.R. § 214.2(h). Therefore, given that a significant portion of the proffered position's duties do not qualify as specialty occupation duties, even if it were found that the proffered position includes duties performed by veterinary technologists, an occupation that requires a 4-year bachelor's degree in veterinary technology, the proffered position as a whole cannot qualify for classification as a specialty occupation.[2]

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

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively 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 a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's

---

[2] Where the proffered position involves the duties of three distinct occupations, the petitioner may instead file three separate petitions, requesting concurrent, part-time employment for each occupation. In this way, where two occupations may not qualify as a specialty occupation but one may, the petition for the qualifying occupation may still be approved, provided the other remaining eligibility criteria, such as licensing, have been established.

professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava,* 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or any other authoritative, objective, and reliable resource, reports a standard industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent.

Also, there are no submissions from professional associations attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions. As noted above, the record does contain the four letters from others in the petitioner's industry.

The first letter states: "The position of Veterinary Clinical, Surgical Co Coordinator and Supervisor is a leadership position and one in which would be best filled [sic] by a person with a college degree."

The second letter states:

> [The beneficiary], with a B.S. degree as well as formal veterinary technician training; would appear to offer special talents to compliment [sic] [the beneficiary's] unique expertise in a discipline quite foreign to the average American.

The third letter states:

> It is my professional opinion that the position of Veterinary Clinical/Surgical coordinator for a veterinary hospital is a specialized occupation. It requires theoretical and practical application, a body of specialized knowledge, and that [sic] the duties require the attainment of a bachelor's or higher degree.

Similarly, the fourth letter states:

> The position of Veterinary Clinical/Surgical Co-Coordinator/Supervisor requires theoretical and practical application, of a body of specialized knowledge and that [sic] the duties require the attainment of a bachelor's or higher degree.

Contrary to counsel's assertion, however, the letters do not document that parallel positions require a bachelor's degree in animal science or veterinary technology. To the contrary, none of those letters contains any similar assertion.

That the proffered position would be *best* filled by someone with a college degree, as stated in the first letter discussed above, does not indicate that a degree is a minimum requirement. Further, even

if that letter stated that a college degree were the minimum educational requirement for the proffered position, it would not indicate that the proffered position requires a minimum of a bachelor's degree *in a specific specialty* or its equivalent. For both reasons, the first letter does not state that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

The second letter states that the beneficiary's degree and training "would appear to offer special talents to compliment [sic] [the beneficiary's] unique expertise in a discipline quite foreign to the average American." That letter neither states nor implies that any aspect of the proffered position would require a minimum of a bachelor's degree in a specific specialty or its equivalent.

The third and fourth letters state with little analysis, that, in the writers' opinions, the proffered position requires attainment of a bachelor's degree. They do not, however, state that the degree must be in any specific specialty. Although those letters state that the proffered position requires theoretical and practical application of a body of specialized knowledge and requires a bachelor's degree, they do not indicate that the proffered position requires a degree *in a specific specialty* or its equivalent.

None of the four letters suggest that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. They are of no weight in demonstrating that similar businesses in the petitioner's industry require a minimum of a bachelor's degree in a specific specialty or its equivalent for positions parallel to the proffered position.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, 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 establishes that the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with a minimum of a bachelor's degree in a specific specialty or its equivalent.

The record does not demonstrate any complexity or unique nature of the proffered position that distinguishes it from similar but non-specialty degreed or even non-degreed employment under the second prong of the criterion. A review of the record indicates that the petitioner has failed to credibly demonstrate what duties the beneficiary will be responsible for or perform on a day-to-day basis. Nevertheless, even assuming the beneficiary will perform the duties as described, these duties do not entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty or its equivalent.

Moreover, the petitioner and counsel have not specifically identified any tasks that are so complex or unique that only a specifically degreed individual could perform them, or submitted information to

demonstrate that a detailed course of study leading to a specialty degree is necessary to perform the duties of the proffered position. While related courses may be beneficial in performing some of the proposed duties, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position. The record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational categories that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).[3]

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than positions within the same occupational categories that are not usually associated with a degree in a specific specialty.

For the reason discussed above, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

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.

---

[3] While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the 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").

It is noted that even if the proffered position were demonstrated to be a veterinary technologist position, the visa petition would not be approvable, as the beneficiary has not been shown to be qualified for such a position.

First, the *Handbook* states that veterinary technologists need a bachelor's degree in veterinary technology. The evidence in the record shows that the beneficiary has an associate of occupational science degree from a veterinary technician program and the equivalent of a bachelor's degree in animal sciences. The record contains no evidence that the beneficiary has any other degrees and no evidence that either of those two degrees considered separately, or both considered together, are equivalent to a bachelor's degree in veterinary technology. As such, even if the proffered position was shown to be a veterinary technologist position, the beneficiary would not have been shown to possess the education requisite to the position, and the visa petition would be denied on that basis.

The record suggests an additional issue that was not addressed in the decision of denial but that, nonetheless, also precludes approval of this visa petition. In his March 31, 2011 letter, the petitioner's president stated that one requirement of the proffered position is, "Must have or be eligible for WA State Veterinary Technician License" indicating that the beneficiary will be performing duties that require licensure in the State of Washington. Further, in the State of Washington, the proffered position appears to require licensure pursuant to section of the Washington Administrative Code. Because the record contains no evidence that the beneficiary has such a license and no evidence that the beneficiary is exempt from licensure,[4] even if the proffered position were demonstrated to be a veterinary technologist or veterinary technician position, the beneficiary would not have been shown to be qualified for the position. The petition must be denied for this additional reason.

---

[4] In his March 31, 2011 letter, the petitioner's president stated:

> [The beneficiary] has been granted a Veterinary Technician/Technology degree (Associate of Occupational Science) from one the 3 [sic] such accredited colleges in), and thus is grandfathered under WA State Veterinary Technician License requirements to practice Veterinary Technician duties.

By stating that she is "grandfathered," the petitioner's president appears to assert that she is exempt from licensure requirements passed after she received her associate's degree. However, no citation to any "Grandfather Clause" was provided. The record contains no evidence to support the assertion that the beneficiary is exempt from licensure.

Subsequently in the same letter, the petitioner's president stated: "The active licensing registration as Veterinary Technician is attached to the present letter." In so stating, the petitioner's president appeared to assert that the beneficiary is licensed as a veterinary technician, or perhaps that she has applied to take the pertinent examination. In either event, the document referred to by the petitioner's president is not in the record, and the record contains no indication that the beneficiary has a veterinary technician license.

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

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

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

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