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



U.S. Citizenship  
and Immigration  
Services

DATE: **APR 29 2013**

OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

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:

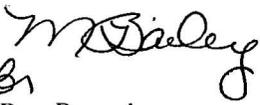
SELF-REPRESENTED

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,

  
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 Vermont Service Center on April 11, 2011. In the Form I-129 visa petition, the petitioner describes itself as an export/import business established in 2009. In order to employ the beneficiary in what it designates as a Russian export operations specialist 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 March 26, 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 petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

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

In this matter, the petitioner stated in the Form I-129 that it seeks the beneficiary's services as a Russian export operations specialist to work on a full-time basis.<sup>1</sup> With the Form I-129 petition, the petitioner submitted a description of the proffered position. Notably, the document is not on company letterhead, is not dated and has not been signed. The document provides the following description of the duties and requirements for the proffered position:

DUTIES:

- Working with US Supply companies to ensure procurement of export products that will comply with Russian customs law
- Coordinating with Shippers and Transportation companies for exporting shipments
- Tracking shipment[s]
- Preparation of all necessary paperwork in order to clear products at Russian customs including product evaluation[,] worth and duty calculations

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<sup>1</sup> In the Form I-129 petition and the LCA, the petitioner indicated that the beneficiary would be employed on a full-time basis.

- Preparation of all necessary paperwork in order to certify a product for resale in Russia, including obtaining permission from various Russian government departments
- Responsible for the product obtaining certification and is properly delivered to distributor
- Completing processing of ocean shipments, including pick-up arrangements and shipping transfer
- Forwarding, follow-up, tracing, problem identification/resolution (when authorized)
- Control, measure, and regulate efficient inventory levels of purchased products in support of operations
- Maintain distributor contact throughout the process while choosing the appropriate routing to meet the distributor's demands and/or instructions
- Negotiating cost-effective rates with Carriers
- Participating in quotes for overseas offices, as requested
- Coordinating prompt payment to the Suppliers and receipt of payment from Distributors

REQUIREMENTS:

- Master's Degree or higher preferably in the field of economics, finance or accounting
- Fluency of Russian language, spoken and written
- 5 or more years of relevant experience in the areas of export and import
- Knowledge of Russia's customs and border control laws, as well as expertise in obtaining Certifications for resale of products
- Knowledge of Quickbooks and Microsoft
- Some accounting experience preferred

With the initial petition, the petitioner submitted documentation regarding the beneficiary's academic credentials, including a diploma in the beneficiary's name, and an evaluation of foreign education credentials from [REDACTED]. The evaluation indicates that the beneficiary has "the equivalence of a U.S. Master of Science Degree in Economics, with a major in World Economy, granted by a regionally accredited academic institution in the United States." The petitioner also provided the beneficiary's resume.

The petitioner also submitted several documents in support of the petition, including an employment agreement between the petitioner and the beneficiary; and a 2009 tax return for the petitioner.

The petitioner also submitted a Labor Condition Application (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 of "Business Operations Specialists, All Other" – SOC (ONET/OES Code) 13-1199.99, at a Level I wage.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on June 3, 2011. In the RFE, the director notified the petitioner that additional evidence was needed to establish eligibility for the benefit sought. The petitioner was asked to submit probative evidence to establish that a specialty occupation position exists for the beneficiary. Furthermore, the director acknowledged that the petitioner had submitted a job description, but notified the petitioner that it was not persuasive in establishing that the proffered position is a specialty occupation. The director provided examples of documentation for the beneficiary to submit, including a "detailed description of the proffered position, to include approximate percentages of time for each duty the beneficiary will perform." The petitioner was also asked to submit evidence to confirm its corporate status, and documentation regarding the beneficiary's qualifications. The director outlined the specific evidence to be submitted.

On July 19, 2011, the petitioner responded to the RFE by submitting a letter and additional evidence. Specifically, the petitioner submitted the following: (1) evidence related to the petitioner's business operations (including a lease agreement, corporate documents, correspondence from the Internal Revenue Service); (2) a document entitled "Business Plan 2011-2012"; (3) a transcript in the beneficiary's name; and (4) a description of the proffered position.

The AAO reviewed the description of the proffered position provided by the petition in response to the RFE. The petitioner included the percentage of time that the beneficiary would spend performing each job duty. Specifically, the job description states the following:

DUTIES:

- Preparation of all necessary paperwork in order to clear products at Russian customs including product evaluation[,] worth and duty calculations (15%)
- Preparation of all necessary paperwork in order to certify a product for resale in Russia, including obtaining permission from various Russian government departments (15%)
- Responsible for the product obtaining certification and is properly delivered to distributor (15%)
- Negotiating cost-effective rates with Carriers (10%)
- Coordinating prompt payment to the Suppliers and receipt of payment from Distributors (8%)
- Participating in quotes for overseas offices, as requested (8%)
- Control, measure, and regulate efficient inventory levels of purchased products in support of operations (7%)

- Forwarding, follow-up, tracing, problem identification/resolution (when authorized) (7%)
- Coordinating with Shippers and Transportation companies for exporting shipments (5%)
- Working with US Supply companies to ensure procurement of export products that will comply with Russian customs law (4%)
- Tracking shipment[s] (2%)
- Maintain distributor contact throughout the process while choosing the appropriate routing to meet the distributor's demands and/or instructions (2%)
- Completing processing of ocean shipments, including pick-up arrangements and shipping transfer (2%)

The AAO notes that the description of the proffered position provided in response to the RFE is identical to the job description submitted with the initial petition, with the addition of the percentage of time to be spent on each duty and the job duties rearranged. Thus, despite the director's request that the petitioner provide a "detailed" description of the proffered position, the petitioner elected to provide the same description of the duties that was originally submitted. No explanation was provided.

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 March 26, 2012. The petitioner submitted an appeal of the denial of the H-1B petition. In support of the Form I-290B, the petitioner submitted additional evidence.

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.

To ascertain the intent of a petitioner, USCIS must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. 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."

In the instant case, the petitioner has provided inconsistent information regarding the requirements of the proffered position. The petitioner submitted job descriptions with the initial H-1B petition and in response to the RFE stating a requirement of a "**Master's Degree** or higher **preferably** in the field of economics, finance or **accounting** (emphasis added)." In the appeal, the petitioner stated that "we consider our position to require a minimum of a **Bachelor's Degree** in the field of Economics, **Business Operations**, Finance, etc. (emphasis added)." No explanation for the variance was provided.

The AAO notes that 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). While a petitioner is certainly permitted to change its intent with regard to non-speculative employment, e.g., a change in requirements, it must nonetheless document such a material change in intent through an amended or new petition. The request to alter the requirements of the proffered position as stated in the original petition is, therefore, rejected.

The AAO observes that the petitioner's claimed entry requirement of a "Master's Degree or higher preferably in the field of economics, finance or accounting" for the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. The petitioner has indicated that it *requires* a master's degree, and *prefers* a degree in economics, finance, or accounting. The AAO notes that obviously, a *preference* for a degree in one of several fields does not state a *requirement* for the same. USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to *require* a degree in a *specific specialty* that is directly related to the proposed position.<sup>2</sup> The petitioner has indicated that a degree in one of several fields is preferred but not required, indicating that the duties of the proffered position can be performed by an individual with a master's degree in any field. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Furthermore, while the petitioner has identified its proffered position as that of a Russian export operations specialist, the description of the beneficiary's duties, as provided by the petitioner, lacks the specificity and detail necessary to support the petitioner's contention that the position is a specialty occupation. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in the context of the petitioner's business operations, demonstrate a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition. In the instant case, it is not evident that the proposed duties as described in this record of proceeding, and the position that they comprise, merit recognition of the proffered position as a specialty occupation. To the extent that they are described, the AAO finds the

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<sup>2</sup> It is not sufficient to assert that a few courses taken while obtaining a degree in economics, finance, or accounting may be helpful in performing the duties of the proffered position. The petitioner has not demonstrated 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 proffered.

proposed duties do not provide a sufficient factual basis for conveying the substantive matters that would engage the beneficiary in the actual performance of the proffered position for the entire period requested, so as to persuasively support the claim that the position's actual work would require the theoretical and practical application of any particular educational level of highly specialized knowledge in a specific specialty directly related to the duties and responsibilities of the proffered position. The job description fails to communicate (1) the actual work that the beneficiary would perform on a day-to-day basis; (2) the complexity, uniqueness and/or specialization of the tasks; and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty.

The abstract level of information provided about the proffered position and its constituent duties is exemplified by the petitioner's assertion that 30% of the beneficiary's time will be spent on the "[p]reparation of all necessary paperwork" to clear products at Russian customs and to certify products for resale in Russia. In addition, the beneficiary will be responsible for tracking shipments. The petitioner's statements that the beneficiary will be responsible for the preparation of paperwork and tracking shipments – as so generally described – do not illuminate the substantive application of knowledge involved or any particular educational attainment associated with such application. The petitioner also claims that the beneficiary will be responsible for negotiating cost-effective rates with carriers and coordinating prompt payments and receipt of payments. These statements fail to provide any particular details regarding the demands, level of responsibilities and requirements necessary for the performance of these duties. This is further illustrated by the petitioner's statement that the beneficiary will be "[p]articipating in quotes for overseas office." The statement does not delineate the actual work the beneficiary will perform, and the petitioner does not explain the beneficiary's specific role in "participating." The petitioner also claims that the beneficiary will be coordinating with shippers and transportation companies for exporting shipments. The petitioner does not identify such information as with whom the beneficiary will coordinate, which organizational units are involved, the method(s) used, etc. According to the petitioner, the beneficiary will be responsible for "[f]orwarding, follow-up, tracing, problem identification/resolution (when authorized)." The statement fails to provide any specifics regarding the beneficiary's role and it does not provide any information as to the complexity of the job duties, the amount of supervision required, and the level of judgment and understanding required to perform the duty. Furthermore, the phrase could cover a range of issues, and without further information, does not provide any insights into the beneficiary's day-to-day work.

Upon review of the record of proceeding, the AAO finds that the overall responsibilities for the proffered position contain insufficient information regarding the particular work, and associated educational requirements, into which the duties would manifest themselves in their daily performance. Furthermore, although the petitioner submitted general documentation regarding its business operations, the petitioner did not provide sufficient documentation to establish and substantiate the actual job duties and responsibilities of the proffered position. That is, the petitioner submitted a few documents regarding its business operations (i.e., 2009 tax return, unaudited financial documents, business plan, lease), however, the petitioner did not submit probative evidence to establish the actual duties that the beneficiary will perform. The petitioner failed to establish the beneficiary's specific role within its business operations.

Moreover, the AAO notes that 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 operations are 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 or its equivalent in a specific specialty. 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 Form I-129, the petitioner described itself as an import/export business with two employees and a net annual income of approximately \$15,000. The petitioner submitted its 2009 tax return, indicating that its officer(s) have been compensated, but that the petitioner has not paid "salaries and wages" to employees.

In the RFE, the director specifically noted that "it is not clear how the beneficiary will be relieved from performing non-qualifying functions because you have only 2 employees. Therefore, additional evidence is required." In response to the RFE, the petitioner indicated that it was providing a business plan and a description of the proffered position "in response to Ability to Employ Beneficiary and Relieve from Non-Qualifying Duties." The business plan indicates that the petitioner employs two individuals: the owner who serves as president, and another individual who serves as the director of operations. In the business plan, the petitioner states that it intends to hire additional employees in the future.<sup>3</sup> However, the AAO notes that the petitioner's claim that it intends to hire additional employees in the future is insufficient, as a petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). Furthermore, the petitioner did not specifically address how the beneficiary will be relieved from

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<sup>3</sup> The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to adequately address this issue in the initial submission and in response to the RFE. On appeal, the petitioner claims that it has hired additional employees and that it is contemplating hiring other employees. Furthermore, the petitioner claims that its income has increased. In support of these assertions the petitioner provided its 2011-2012 business plan and a job description for the proffered position (both of which had previously been submitted), along with a one-page unaudited "Balance Sheet As of May 24, 2012" and LCA. The documentation does not establish that the petitioner has hired additional employees. Without documentary evidence to support the claim, the assertions of the petitioner will not satisfy its burden of proof. Moreover, the AAO notes that the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). If the petitioner wishes for a new set of facts to be considered, it may file a new petition, with a valid LCA and the proper fee(s), for USCIS to consider.

performing non-qualifying duties for the entire period of requested employment. A position may be awarded H-1B classification only on the basis of evidence of record establishing that, at the time of the filing, definite, non-speculative work would exist for the beneficiary for the period of employment specified in the Form I-129.

Although the petitioner requested that the beneficiary be granted H-1B classification, the evidence does not establish that the petitioner would be able to sustain an employee performing the full-time duties of a Russian export operations specialist at the level required for the H-1B petition to be granted. The petitioner failed to establish that the petition was filed on the basis of employment for the beneficiary as a full-time export operations specialist that, at the time of the petition's filing, was definite and nonspeculative. The petitioner has not established that the beneficiary's overall day-to-day duties would require at least a baccalaureate degree or the equivalent in a specific specialty, or its equivalent, as required for classification as a specialty occupation. Without further clarification by the petitioner, it appears that the beneficiary will be employed in a lesser capacity or serving in a different position. The record of proceeding lacks evidence that the beneficiary's duties ascribed would actually require the theoretical and practical application of at least a baccalaureate level of a body of highly specialized knowledge in a specific specialty, as required by the Act.

Furthermore, the AAO observes that 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. That is, the petitioner provided an LCA in support of the instant petition that indicates the occupational classification for the position is "Business Operations Specialists, All Other" at a Level I (entry level) wage.

Wage levels should be determined only after selecting the most relevant Occupational Information Network (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>4</sup> The U.S. Department of Labor (DOL)

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<sup>4</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.

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 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).

The petitioner has indicated that it seeks an educated and experienced individual to fill the proffered position, and that it will be relying heavily on this individual to improve its business operations and reduce costs. In its description of the proffered position, the petitioner states that it requires an individual who has a "master's degree or higher preferably in the field of economics, finance or accounting"; is fluent in spoken and written Russian; has five or more years of experience in the areas of export and import; and has knowledge of Russian customs laws and expertise in obtaining certifications for resale of products. The petitioner claims that the nature of the proffered position involves complex, unique and/or specialized tasks. According to the petitioner, the position is "unique and highly specialized." The petitioner claims that it "requires specialized knowledge, expertise and network (*sic*)." In the document entitled "Business Plan," submitted in response to the RFE, the petitioner indicates that it intends to hire a "Customs Specialist" (which is later identified as an "Export Specialist") to reduce consulting costs. Moreover, the petitioner asserts that the proffered position must be filled by an individual "with knowledge of Russian custom clearance laws and import product certification requirements, who would also be fully bilingual, [and] have a network of contacts in Russian ports and various public agencies."

The AAO must question the level of complexity, independent judgment and understanding required for the proffered position as the LCA is certified for a Level I entry-level position. The characterization of the position and the claimed duties and responsibilities as described by the petitioner and counsel 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.

Furthermore, the petitioner claims that knowledge of the Russian language is required for the position. 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 notes that this aspect of the LCA undermines 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. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 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 and understanding required 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, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes 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 at 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 make its determination 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).

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 Russian export operations specialist 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>5</sup> In the instant case, the petitioner provided an LCA in support of the petition that indicates the occupational classification for the proffered position is "Business Operations Specialists, All Others." The AAO reviewed the *Handbook* regarding the occupational category "Business Operations Specialists, All Others." However, the *Handbook* simply describes this category as "[a]ll business operations specialists not listed separately." Upon review of the record, the AAO notes that the *Handbook* does not provide a detailed narrative account nor does it provide summary data for the occupational category "Business Operations Specialists, All Others." Accordingly, the *Handbook* lacks sufficient information regarding the occupational category (e.g., duties, academic requirements) to be deemed probative evidence in this matter.

The AAO notes there are occupational categories which are not covered in detail by the *Handbook*, as well as occupations for which the *Handbook* does not provide any information. 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

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<sup>5</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/>.

*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 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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Data for Occupations Not Covered in Detail, on the Internet at <http://www.bls.gov/ooH/About/Data-for-Occupations-Not-Covered-in-Detail.htm> (last visited April 10, 2013).

Thus, the narrative of the *Handbook* indicates that there are over 160 occupations for which only brief summaries are presented. (That is, detailed occupational profiles for these 160+ occupations are not developed.) The *Handbook* continues by stating that approximately five percent of all employment is not covered either in the detailed occupational profiles or in the summary data. The *Handbook* suggests that for at least some of the occupations, little meaningful information could be developed.

Accordingly, in certain instances, the *Handbook* is not determinative. When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise qualifies as a specialty occupation under this criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that indicates whether the position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider all of the evidence presented to determine whether a beneficiary qualifies to perform in a specialty occupation. The petitioner has failed to do so in the instant case. That is, the petitioner has failed to submit probative evidence that normally the minimum requirement for positions falling under the occupational category "Business Operations Specialists, All Others" is at least a bachelor's degree in a specific specialty, or its equivalent.

As previously mentioned, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec.

158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that normally the minimum requirement for entry is a baccalaureate or higher degree in a specific specialty, or its equivalent. 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 first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO reviews the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong 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 1151, 1165 (D. Minn. 1999) (quoting *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 for 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. Furthermore, the petitioner did not submit any letters or affidavits from similar firms or individuals in the petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals." 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 for positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner.

The record is devoid of any evidence to establish that a degree requirement is common to the industry in parallel positions among organizations similar to the petitioner. Thus, the AAO finds that 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.

In support of its assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted various documents, including evidence regarding its business operations. For example, the petitioner submitted a business plan for 2011-2012; a lease agreement; its 2009 tax return, and unaudited financial documents. The AAO reviewed the record of proceeding in its entirety. However, upon review of the record, the AAO finds that the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of Russian export operations specialist.

A review of the record of proceeding indicates that the petitioner has failed to credibly demonstrate the duties the beneficiary will be responsible for or perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty, or its equivalent. Notably, the duties of the proffered position involve activities such as preparing paperwork, coordinating payments, negotiating rates with carriers, and tracking shipments. The petitioner has not established that the duties of the proffered position require at least a baccalaureate degree in a specific specialty, or the equivalent. Furthermore, the petitioner has not established why a few related courses or industry experience alone is insufficient preparation for the proffered position. Additionally, 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. This is further evidenced by the LCA submitted by the petitioner in support of the instant petition.

More specifically, the LCA indicates a wage level at a Level I (entry level) wage. As previously mentioned, 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."<sup>6</sup>

The petitioner failed 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 is equivalent. Thus, based upon the record of proceeding, including the LCA, it does not appear that the proffered position is so complex or unique that it can only be performed by an individual who has completed a baccalaureate program in a specific discipline that directly relates to the proffered position. Specifically, the petitioner fails to demonstrate how the

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<sup>6</sup> For additional information regarding wage levels as defined by DOL, see Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), at [http://www.foreignlaborcert.doleta.gov/pdf/Policy\\_Nonag\\_Progs.pdf](http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf).

duties of the position as described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it may believe are so complex and unique. While a few related courses may be beneficial, or even required, in performing certain duties of the position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position. The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

The AAO observes that the petitioner has indicated that the beneficiary's educational background and experience working in export operations will assist her in carrying out the duties of the proffered position. In addition, the petitioner states that it will rely on the beneficiary's Russian 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. In the instant case, the petitioner does not establish 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 fails to demonstrate 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. Consequently, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

To satisfy 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. In the instant case, the record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree 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").

On the Form I-129, the petitioner indicated that it was established in 2009. The petitioner did not submit any documentation regarding its recruitment and hiring practices. The petitioner indicated that the Russian export operations specialist position is a new position. The record is devoid of information to satisfy this criterion of the regulations.

Upon review of the record of proceeding, the AAO finds that the petitioner has not provided probative 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 the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

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. In support of the petition, the petitioner submitted various documents, including evidence regarding its business operations. For instance, the petitioner submitted a business plan for 2011-2012; a lease agreement; its 2009 tax return, and unaudited financial documents. The AAO reviewed the documentation submitted by the petitioner but 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 mentioned, 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).

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 of "Business Operations Specialists, All Other" 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." Without further evidence, it is simply not credible that the petitioner's proffered position is one with

specialized and complex duties 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 instance, as previously mentioned, 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 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.

A beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner has failed to establish that the proffered position requires a baccalaureate or higher degree in a specific specialty, or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications.

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.