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



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **APR 30 2013**

Office: CALIFORNIA SERVICE CENTER

File: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:

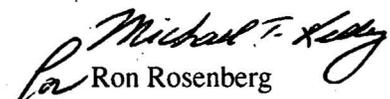
[Redacted]

INSTRUCTIONS:

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

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


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 states that it is a metal component manufacturer established in 2000. In order to employ the beneficiary in a position that it designates as a “CNC¹ machine operator A/ industrial engineer,” the petitioner filed this H-1B petition to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the grounds that the petitioner failed to establish that the beneficiary is qualified to perform services in a specialty occupation.

The record of proceeding before the AAO contains: (1) the petitioner’s Form I-129, Petition for a Nonimmigrant Worker (“Form I-129”) and supporting documentation; (2) the director’s request for evidence (“RFE”); (3) the petitioner’s response to the RFE; (4) the director’s notice of decision denying the petition; and (5) the petitioner’s Form I-290B, Notice of Appeal or Motion (“Form I-290B”) and additional evidence. The AAO reviewed the record in its entirety before issuing its decision.

For the reasons to be discussed below, the AAO concludes that the director’s decision to deny the petition for its failure to establish the beneficiary as qualified to serve in a specialty occupation was correct. Accordingly, the appeal will be dismissed, and the petition will be denied.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The degree referenced by section 214(i)(1)(B) of the Act means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position.

¹ “CNC” is an abbreviation for “computerized numerical control.”

In implementing section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) would require one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program ("CLEP"), or Program on Noncollegiate Sponsored Instruction ("PONSIS");
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;²
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

² The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.

- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . .

According to the express terms of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), to satisfy this U.S. Citizenship and Immigration Services ("USCIS")-determination criterion, a petitioner must demonstrate three years of specialized training and/or work experience for each year of college-level training the alien lacks. This provision imposes strict evaluation standards, stating:

[I]t must be *clearly demonstrated* [(1)] that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; [(2)] that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and [(3)] that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;³
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

[Italics added.]

The beneficiary does not meet any of the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1), (2) and (3), as there is no evidence of a U.S. accredited college or university baccalaureate or higher

³ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

degree, of a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university, or of an unrestricted state license, registration or certification which authorizes the beneficiary to fully practice and be immediately engaged in a specialty occupation position in the state of intended employment.

This leaves only 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and its provision for establishing a beneficiary as qualified to serve in an H-1B specialty occupation by establishing that he or she “[has] education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and [has] recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.”

In order to equate a beneficiary’s credentials to a U.S. baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual’s training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (“CLEP”), or Program on Noncollegiate Sponsored Instruction (“PONSI”);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;⁴
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . . .

The AAO finds that none of the above criteria have been satisfied, and that, accordingly, the appeal must be dismissed.

⁴ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service’s evaluation of *education only*, not experience.

Based upon its review of the record of proceeding, the AAO specifically finds the following with regard to the documentary evidence submitted into this record of proceeding.

The "evaluation" submission from [REDACTED] at the [REDACTED] does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), for it does not constitute documentation for consideration under this criterion, that is:

An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience.

Also, there is no evidence for consideration under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), that is, no results of recognized college-level equivalency examinations or special credit programs, such as the CLEP or PONSI.

Next, the record of proceeding contains no evidence within the scope of 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), which is precisely defined as "[a]n evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials."

Likewise, as there is no "[e]vidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty," the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(4) is also not a factor in this appeal.

Finally, while USCIS examined this criterion, USCIS has obviously not rendered a determination that the beneficiary is qualified to serve in a specialty occupation in accordance with the agency's standards specified for such a determination at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Not only is this particular criterion not at issue in the appeal, but, moreover, the AAO finds that the record of proceeding lacks evidence by which the beneficiary's qualification could have been "clearly demonstrated" under this criterion's standards, which are, again:

[T]hat [(1)] the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that [(2)] the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that [(3)] the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;⁵

⁵ *Recognized authority* means a person or organization with expertise in a particular field, special skills

- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

Upon review of the record, the AAO finds that the petitioner has not provided corroborating evidence as outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge in a field related to the proffered position; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the beneficiary has recognition of expertise in the industry.

In summary, as discussed above, the appeal will be dismissed and the petition will be denied because the record of proceeding contains no documentary evidence that establishes the beneficiary as qualified to serve in a specialty occupation in accordance with the controlling regulations, at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

At this point, the AAO will focus more specifically upon the evidentiary deficiencies that led the AAO to accord no probative weight to [REDACTED]. The AAO will discuss the particular bases for its conclusion that [REDACTED] evaluation of the beneficiary's experience carries no probative weight towards establishing the beneficiary as qualified to serve in any position that would require at least a bachelor's degree, or the equivalent, in a specific specialty.

As previously mentioned, the petitioner is seeking the beneficiary's services in what it designates as a CNC machine operator A/ industrial engineer position. In its support letter dated November 7, 2011, the petitioner stated that it "requires a CNC Machine Operator A/ Industrial Engineer to have a bachelor's degree in Industrial Engineering, Mechanical Engineering or the equivalent experience." The petitioner also stated the following regarding the beneficiary's qualifications for the proffered position:

or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

With his 24 years of experience in operating, programming, managing, and assuring quality control in metal component production, [the beneficiary] would be a tremendous asset to our company. His skills would help us compete globally.

As already noted in this decision, and notwithstanding the petitioner's arguments to the contrary, the AAO finds that the evidence of record does not establish that [redacted] is recognizable by the AAO as competent to assess the educational equivalency of training or work experience for H-1B beneficiary-qualification purposes.

That is, the evidence in the record of proceeding fails to establish that [redacted] is, in the words of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), "an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience."

The AAO will first examine the relevant document from [redacted] (as he has developed two for the petitioner) for what it says that is relevant to the issue of whether, at the time he rendered his opinion of the educational equivalency of the beneficiary's experience, [redacted] was indeed, "an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience." The document relevant to this discussion is the July 22, 2011 document that [redacted] entitled [redacted] (hereinafter referred to simply as [redacted] document).

The pertinent language of [redacted] document is the following statement of his credentials for rendering to USCIS an opinion on the educational equivalency of the beneficiary's work training and work experience, which appears within the second Summary paragraph on the last page of the document:

The foregoing evaluation of [the beneficiary] has been completed by me, [redacted] this day of July 22, 2011. In my position as [redacted] which I hold at the [redacted] I have the authority to grant college level credit for experience, training, and/or courses taken at other U.S. or international universities.

The AAO finds that this broad-self endorsement does not even amount to a claim that [redacted] is an official within the umbrella of 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). That is, while [redacted] asserts that he is an official at the [redacted] and that he has "authority to grant college level credit for experience, training, and/or courses taken at other U.S. or international universities," he does not even assert that he satisfies any of the following elements which are essential to establishing himself as an 8 C.F.R. § 214.2(h)(4)(iii)(D)(I) official in compliance with the terms of that provision: (1) that his educational institution has a program for granting college-level credit for experience or training in the specialty upon which he is opining (namely, Industrial Engineering); and (2) that, pursuant

to such a program, his educational institution has granted him authority to grant college-level credit specifically in Industrial Engineering, that is, the specialty about which [REDACTED] is opining. Accordingly, [REDACTED] broad assertion of authority does not satisfy the precise elements of proof stated at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). For these reasons, the AAO accords no probative value to [REDACTED] document. Additionally, and as a separate and independent reason for discounting [REDACTED] document, the AAO notes that [REDACTED] assertion of authority is ambiguous, as it could be naturally read as an assertion that his college-level-credit authority extends only to college-gained or university-gained experience and/or training. As a matter of discretion, USCIS may accept expert opinion testimony. However, USCIS will reject an expert opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence or to determine a fact in issue.'").

Aside from and in addition to the above discussed fatal deficiencies of [REDACTED] document, the AAO also finds that the very content of the document would not be probative, even if the document were accepted at face value. The reason is, as will now be discussed, the content of the document is conclusory and lacks sufficient factual and analytical foundations to establish that its conclusions are reliable and merit any evidentiary weight or deference. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. at 791.

In the document, [REDACTED] does not list the reference materials on which he relies on as a basis for his conclusion but appears to basically summarize the beneficiary's professional experience and training, as listed on the beneficiary's resume, employment verification letters (translated as "evaluation letters") and training certificates. [REDACTED] then concludes - without documenting any particular analyses that led to this conclusion - that the beneficiary possesses the equivalent of a bachelor's degree in industrial engineering. In pertinent part, the letter states as follows:

The foregoing summary of [the beneficiary's] professional experience itemizes his responsibilities during a period of at least twenty[-]three years of employment experience and training in the concentration of Industrial Engineering.

After assessing the specifics of [the beneficiary's] work experience in detail, it becomes apparent that the responsibilities throughout his career are indicative of university level course work in Industrial Engineering, and related subjects. The knowledge obtained during [the beneficiary's] work experience directly corresponds to the knowledge obtained by a student completing a Bachelor's Degree program in Industrial Engineering consisting of a curriculum with the courses listed above. . . .

On the basis of at least twenty[-]three years of work experience and professional training in Industrial Engineering and related areas, [the beneficiary] has attained the equivalent of a Bachelor's Degree in Industrial Engineering from an accredited institution of higher education in the United States. . . .

Next, the AAO notes that the record does not contain persuasive evidence independently establishing that [redacted] is "an authorized official" within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(D)(I).

The AAO notes that on June 4, 2012, in response to the RFE, counsel for the petitioner submitted a letter, dated May 22, 2011, from [redacted]

The AAO acknowledges that [redacted] letter states that "[t]he [redacted] offers academic programs in which students are granted credit based on course work, training, and experience in a wide range of fields," and that "[i]n his capacity as Full Professor in our school, [redacted] authorizes the granting of credit to students for completion of degree program requirements." The AAO finds that this letter shares materially fatal evidentiary deficiencies noted with regard to [redacted] letter, namely, (1) [redacted] does not attest that his educational institution has a program for granting college-level credit for experience or training in the specialty upon which [redacted] has opined (namely, Industrial Engineering); and (2) [redacted] does not attest that, pursuant to such a program, his educational institution has granted [redacted] authority to grant college-level credit specifically in Industrial Engineering, that is, the specialty about which [redacted] is opining.

Again, as evidenced above, [redacted] also does not provide any documentation corroborating that he has the authority to grant academic credit for training and/or experience in the specific specialty upon which he opines, namely industrial engineering. Furthermore, [redacted] does not even state that his academic institution has a program for granting such credit based on a person's training and/or work experience.

In summary, then [redacted] has not established that he is competent under 8 C.F.R. § 214.2(h)(4)(iii)(D)(I) to evaluate the educational equivalency of the beneficiary's work experience. Accordingly, this evaluation, does not meet the standard of 8 C.F.R. § 214.2(h)(4)(iii)(D)(I) for competency to render to USCIS an opinion on the educational equivalency of work experience. Consequently, the portion of the letter addressing work experience merits no weight. It, of course, follows that the author's ultimate conclusion also merits no weight in that it is largely dependent upon his assessment of work experience.

As will now be discussed, aside from the decisive fact that the evidence of record does not establish [redacted] as competent under 8 C.F.R. § 214.2(h)(4)(iii)(D)(I) to evaluate the beneficiary's experience, the AAO also finds that the content of his statements regarding the

beneficiary's experience would merit no weight, even if [REDACTED] were qualified under 8 C.F.R. § 214.2(h)(4)(iii)(D)(I).

The AAO notes that in the RFE, dated April 13, 2012, USCIS requested that the petitioner provide:

... copies of pertinent pages from the college or university catalog to show that it has a program for granting college-level credit based on training and/or experience. Merely stating in a letter that the school has such a program is insufficient. The program must be clearly substantiated.

On June 4, 2012, in response to the RFE, counsel for the petitioner submitted a printout from the website of the [REDACTED] which states, "Academic Credit for Internship: The [REDACTED] offers academic credit for internship experiences only during the Summer terms. . . ."

Therefore, even if [REDACTED] had been shown to have authority to grant academic credit for training and/or experience in the specialty to his institution's summer interns (which is not the case), and even if the record established that the beneficiary had attained 23 years of employment experience and training in industrial engineering, that experience would not qualify for academic credit, as the evidence indicates that consideration for such credit is reserved only for summer internships approved for and taken for such credit while the intern is a [REDACTED] student. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Next, the AAO notes that on appeal, counsel enclosed information regarding the EXCL (Experiential Portfolio Development) program at the [REDACTED] which counsel claims "allows a student to complete a maximum of 30 credits based on experience . . . for an undergraduate degree." Also, according to counsel, "[a] student must complete a minimum of 15 graded semester hours to be eligible to graduate." Here, even if the record established that the beneficiary had attained 23 years of employment experience and training in industrial engineering, the beneficiary would not be eligible to participate in the EXCL program and those aforementioned 23 years would not qualify for academic credit, as the beneficiary (1) was not "currently enrolled as a student at the [REDACTED]" (2) did not complete "3 credit hours of study at the [REDACTED] or transfer a minimum of 30 credits, if newly admitted"; (3) was not a student and therefore not "in good academic standing with a cumulative GPA of 2.0 or greater"; (4) was not a student and therefore not "pursuing an undergraduate degree"; and (5) does not appear to have "evidence of a college-level writing course or satisfactory score on the [REDACTED] writing placement." Further, thus, the EXCL program is not relevant to the facts of this proceeding. As stated above, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

Moreover, as already addressed earlier in this decision, and notwithstanding [REDACTED] claim to the contrary, USCIS has not established a so-called three-for-one rule whereby USCIS is to

accept, without any qualifying conditions, any “three years of work experience and/or specialized training” in a specialty as categorically equivalent to a year of college-level coursework in that specialty. The record of proceeding contains no statutory or regulatory basis for any such rule; and, the AAO finds, the claim to such a rule is based upon a truncated, inaccurate reading of the rule at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), which allows USCIS, upon its own independent determination, to recognize three years of work experience and/or training to be equivalent to one year of college-level courses in a specific specialty, but only if the evidence related to those three years establishes that they met the stringent conditions specified at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Such is not the case here.

For the reasons related in the preceding discussions, the AAO affirms the director’s decision that the beneficiary is not qualified to perform the duties of a specialty occupation requiring a bachelor’s or higher degree in a specific specialty, or its equivalent. Thus, the appeal must be dismissed and the petition denied for these reasons.⁶

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.

⁶ The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 145. However, as the appeal is dismissed for the reasons discussed above, the AAO will not further discuss the additional issues and deficiencies that it observes in the record for this of proceeding.