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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

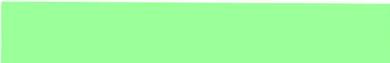


U.S. Citizenship
and Immigration
Services



Date: **FEB 04 2013** Office: VERMONT SERVICE CENTER

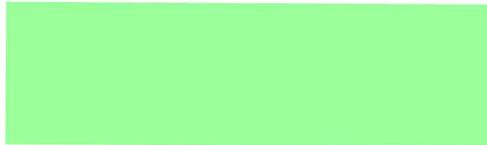
FILE: 

IN RE: Petitioner: 

Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

In the Petition for a Nonimmigrant Worker (Form I-129), the petitioner stated that it is a distributor and manufacturer of "green" industrial lighting and consumer goods. To employ the beneficiary in what it designates as an actuarial manager position, the petitioner endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position, and failed to demonstrate that the beneficiary is qualified for the proffered position. On appeal, counsel asserted that the director's bases for denial were erroneous and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in his decision to deny the petition on each of the bases specified in his decision. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

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

The AAO will first address the specialty occupation basis of denial.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would employ the beneficiary in a specialty occupation position.

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, the position must also meet one of the following criteria:

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

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

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

as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

With the visa petition, counsel submitted a letter, dated August 30, 2010, in which he stated that the beneficiary has (1) a "bachelors [sic] degree from [REDACTED] PA," (2) a "mathematics and finance background [sic]," (3) "completed three of four parts of the examination to become a certified actuary," and (4) experience with [REDACTED]

Counsel also submitted, *inter alia*, the following with the petition: (1) a certified Labor Condition Application (LCA); (2) a description of the proffered position; and (3) the petitioner's "2010 - 2014" business plan.

The submitted job description of the proffered position provides the additional job title of "CFO" and lists the following duties:

- Support rapidly growing Energy Efficient company's expansion in the United States, South America and South Africa on a Financial and Human Resource level.

- Build teams that analyze and project costs of establishing manufacturing plants and quickly expanding workforce over the next 3 years to facilitate supplying governmental agencies with growing need for Energy Efficient and carbon reducing LED lights and solar panels[.]

- Lead Financial division with Human Resource specialization to optimize employee benefits with cost effective solutions and establish department that satisfies controller and treasury functions to meet operational and profitability goals.

- Work with external Actuaries, Financial and Human Resource experts to comply with regulatory and financial compliance on an international level[.]

- Utilize multinational and deep Actuarial Consulting expertise to guide organization in Financial Risk forecasting and Human Resource planning[.]

- Facilitate merger and acquisition deals, to encompass growth plans[.]

- Review and sign government forms, employee benefit calculation and payment (including retirement, death, termination) and nondiscrimination compliance[.]

- Oversee financial teams development and interpretation of complex actuarial models, benefit strategies, demographic analysis tools, statistical data and forecasting financial models[.]

- Establish pension retirement plan and health benefit plans, including regulatory and financial planning regarding ongoing maintenance, strategy and supervision. Ensure corporate compliance with ERISA funding standards and FASB reporting.

- Develop team to analyze and understand financial implications on pension and postretirement welfare plans.

Create division to understand demographic workforce trends in the United States, South America, South Africa and other countries with increase [sic] need for Energy Efficient product for future economic expansion[.]

This document also states that the proffered position requires a "[b]achelor's degree in Business Administration, Economics, Finance, Actuarial Sciences, Statistics, Mathematics or related fields" as well as the following:

At least 4 actuarial exams
International exposure
Consulting, statistical, business and finance experience

On January 21, 2011, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center also specifically requested evidence that the beneficiary has a minimum of a bachelor's degree or its equivalent in a specific specialty closely related to the proffered position.

In response, counsel submitted (1) a letter, dated July 13, 2010, on petitioner's letterhead, offering the position of "Actuarial Analyst and CFO (Chief Financial Officer) financial department" to the beneficiary; (2) the beneficiary's résumé, (3) an evaluation of the proffered position, dated March 3, 2011; and (4) a letter, dated March 7, 2011, from counsel.

The July 13, 2010 letter from the petitioner to the beneficiary states the following as the duties of the position:

- Attend to all financial analysis and strategic planning
- Maintaining financial records and applying actuarial valuation models to forecast future financial earnings
- Review and complete government forms
- Provide internal training sessions
- Develop and interpret financial models and terminology
- Coordinate project teams, work plans and resource allocation
- Assist in the development of client proposals/presentations
- Facilitation of client meetings
- Demonstrate advanced communication and consulting skills
- Project, manage and assist in the delivery of the results of various special projects such as mergers and acquisitions, benefit plan strategy and design, regulatory compliance and nondiscrimination testing
- Advanced knowledge of valuation software, demographic analysis tools and liability forecasting models
- Demonstrate proficiency in the programming of Excel macros using Visual Basic
- Demonstrate thorough understanding of regulatory items including ERISA funding, FAS #87, FAS #88, FAS #106 and FAS #132

- Determine the future economic implications on the US workforce resulting from current demographics, statistics and trends

As to the minimum educational requirement of the proffered position, that letter states the following:

- Bachelors [sic] of Science in Mathematics, Statistics, Risk Management, Finance, or Actuarial Science and a minimum of five years of actuarial job experience
- Successfully written at least four exams sponsored by the Society of Actuaries or the Joint Board for the Enrollment of Actuaries
- Advanced experience with Microsoft suite (Word, Excel, Powerpoint)

The beneficiary's résumé states that the beneficiary has a bachelor's degree in business administration with a concentration in finance awarded by [REDACTED] Pennsylvania; and a bachelor's degree in actuarial science and computer science awarded by the [REDACTED], South Africa. No evidence was then provided to support the beneficiary's assertion on her résumé that she has those two degrees, or either of them.

The evaluation of the proffered position was prepared by [REDACTED]

[REDACTED] It reiterates the duties of the proffered position as described in the job description submitted with the petition. The evaluation states that those duties "would require strong analytical and problem-solving abilities acquired in four years of academic study towards the U.S. Bachelor's degree in Business Administration, Finance, Actuarial Science, or related area"

In his own letter, counsel reiterated many of the assertions he made in his August 30, 2010 letter. He also cited [REDACTED] evaluation of the proffered position as evidence that it qualifies for classification as a specialty occupation position.

The director denied the petition on April 6, 2011, finding, *inter alia*, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserted that the proffered position requires a minimum of a bachelor's degree in "business administration, economics, finance, actuarial science, statistics, or related field or the equivalent thereof." Counsel further cited the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* as evidence that the proffered position qualifies as a specialty occupation position. In that analysis, counsel asserted that the proffered position is an actuary position.

Counsel also contends that the beneficiary qualifies for the proffered position based on (1) her "six years [of] experience with [REDACTED] Ohio"; (2) "SOA passing grades on actuarial examinations"; and (3) "actual completion of her degree [sic] in finance [sic] at [REDACTED] PA."

As a preliminary matter, the petitioner's and counsel's claim that a bachelor's degree in business administration is a minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, 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. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).¹

Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. 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.

The AAO finds that despite the director's request for additional evidence demonstrating that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the record is devoid of substantial documentary evidence as to the specific duties of the proffered position. Given the lack of detail and corroborating evidence, the AAO cannot determine that the proffered position substantially reflects the duties of an actuary as indicated by the petitioner on the LCA. The AAO notes that several of the stated duties of the proffered position are directly related to

¹ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 (Comm'r 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

Id.

the petitioner's alleged expansion in the United States, South America and South Africa. Specifically, the petitioner states that the beneficiary will "[b]uild teams that analyze and project costs of establishing manufacturing plants and quickly expanding workforce over the next 3 years to facilitate supplying governmental agencies with growing need for Energy Efficient and carbon reducing LED lights and solar panels"; however, the record is devoid of any evidence that the petitioner conducts business overseas, or that it has concrete plans to expand overseas. In fact, the submitted "2010 – 2014" business plan does not indicate such a plan. There also is no indication in the same business plan that the petitioner which describes itself therein as an "importer and reseller of trendy hair accessories and costume jewelry," has any plans to sell "Energy Efficient and carbon reducing LED lights and solar panels."

Based on the lack of documentary evidence that corroborates the claimed duties of the proffered position, the AAO has determined that the petitioner has failed to distinguish the proffered position from a position that does not qualify as a specialty occupation. There is no basis upon which it can be determined that the petitioner has demonstrated a need for an actuarial manager and that the beneficiary will be performing the claimed duties on a full-time basis. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Furthermore, 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).

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." Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Furthermore, there must be sufficient, corroborating evidence in the record that demonstrates not only actual, non-speculative employment for the beneficiary, but also enough details and specificity to establish that the work the beneficiary will perform for the petitioner will more likely than not be in a specialty occupation. While the petitioner provides a description of the proffered position's claimed duties, there is insufficient evidence in the record that the petitioner, a small firm with three employees, requires a full-time actuarial manager requiring the "theoretical and practical application of a body of highly specialized knowledge" to perform these claimed duties on a full-time basis. See INA § 214(i)(1).

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.

USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. 103.2(b)(1) and 103.2(b)(12). The petitioner's

failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

As the petitioner has failed to present sufficient, credible evidence of the actual job duties the beneficiary will perform, it has therefore failed to demonstrate that the occupation more likely than not requires a bachelor's or higher degree in a specific specialty or its equivalent as a minimum for entry. *See* INA § 214(i)(1). The petitioner also has not shown through submission of documentary evidence, that it meets any of the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Rather, while the petitioner claims that it requires an actuarial manager and that the proffered position requires a "[b]achelor's degree in Business Administration, Economics, Finance, Actuarial Sciences, Statistics, Mathematics or related fields"² it has not credibly shown that it requires an actuarial manager and that the work requires such a degree. Thus, the petitioner has not met its burden of proof in this regard, 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.

Even if it were established that the proffered position is that of an actuary, a review of the *Handbook's* education and training requirements for this occupational category, however, indicates that it does not normally require at least a bachelor's degree or higher in a specific specialty or its equivalent for entry into this occupation in the United States.³ Specifically, the *Handbook* indicates that those with general degrees in business may enter the occupation, which undermines the petitioner's claim that the proffered position qualifies for classification as a specialty occupation. *See* U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 Edition, "Actuaries," <http://www.bls.gov/ooh/math/actuaries.htm#tab-4> (last visited January 28, 2013).

A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close

² In contrast, the petitioner also states that it requires a "Bachelors [sic] of Science in Mathematics, Statistics, Risk Management, Finance, or Actuarial Science" 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).

³ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). In addition to proving that a job requires the theoretical and practical application of a body of specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must also establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, USCIS interprets the supplemental degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

The beneficiary's qualifications are the remaining issue discussed in the decision of denial.

In his August 30, 2010 letter, submitted with the visa petition, counsel stated that the beneficiary has a bachelor's degree from [REDACTED] and a mathematics and finance background. He did not then provide any evidence to support that assertion.

In the January 21, 2011 RFE, the service center requested evidence that the beneficiary "has at least a baccalaureate degree within the same field, or a closely related field, as the proffered position, or the combination of experience and education." Subsequently, in response to that RFE, counsel submitted the beneficiary's résumé, which states that the beneficiary has a bachelor's degree in business administration with a concentration in finance from [REDACTED], and a bachelor's degree in actuarial science and computer science from the [REDACTED] in South Africa. Counsel also stated in his March 7, 2011 letter that the beneficiary's degree from [REDACTED] is in mathematics and finance. Counsel provided no evidence to corroborate those statements. The appeal was denied because, *inter alia*, the petitioner had failed to demonstrate that the beneficiary is qualified to work in a specialty occupation position.

On appeal, counsel provided documents that purport to be copies of the petitioner's diploma and transcript from [REDACTED]. Transfer credits on that transcript appear to confirm that the beneficiary took classes at the [REDACTED] but not that she received any degree there. The transcript also indicates that the beneficiary has a Bachelor of Science in Business Administration with concentrations in finance and *economics* which contradicts counsel's statement that the beneficiary has a degree in mathematics and finance from [REDACTED]. Counsel asserted that the evidence submitted is sufficient to overcome the beneficiary qualifications basis for the decision of denial.

The petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to timely submit the requested evidence and has now submitted it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988);

Matter of Obaigbena, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated without consideration of the tardily submitted diploma and transcript. Absent that evidence, the petitioner has not demonstrated that the beneficiary has a minimum of a bachelor's degree in a specific specialty or its equivalent, and has not, therefore, demonstrated that she is qualified to work in any specialty occupation position.

Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The appeal must be dismissed for this additional reason.

Beyond the decision of the director, upon review of the record, the AAO finds that the petitioner failed to establish that the beneficiary would be paid at least the prevailing wage. The LCA filed in support of the Form I-129 was certified for a prevailing wage of \$67,621. In the Form I-129 petition, the petitioner stated that the beneficiary would be employed on a full-time basis at a salary of \$68,000 per year. It also asserted in the LCA in Part F that the beneficiary would be paid \$68,000 per year. However, the petitioner stated in its July 13, 2010 letter to the beneficiary that it would pay the beneficiary \$65,000.

Under the H-1B program, a petitioner must offer a beneficiary wages that are at least the actual wage level paid by the petitioner to all other individuals with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application. See section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A). In this matter, the LCA was certified for a prevailing wage of \$67,621; however, the petitioner has offered to pay the beneficiary a lower wage, i.e., \$65,000. Therefore, the petition cannot be approved as there is insufficient evidence that the petitioner will pay the beneficiary at least the prevailing wage amount.

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 director's decision will be affirmed and the petition will be denied 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.

(b)(6)



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