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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: FEB 04 2013

OFFICE: VERMONT 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:

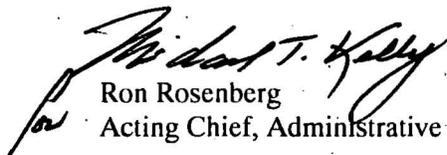
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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.

On the Form I-129 visa petition, the petitioner describes itself as a horse farm established in 2000. In order to employ the beneficiary in what it designates as an “equine business specialist” position,¹ the petitioner seeks 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 basis of his determination that the petitioner had failed to demonstrate that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director’s request for additional evidence (RFE); (3) the petitioner’s response to the RFE; (4) the director’s letter denying the petition; and (5) the Form I-290B and supporting documentation.²

Upon review of the entire record of proceeding, the AAO finds that the petitioner has failed to overcome the director’s ground for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

Beyond the decision of the director, the AAO finds two additional aspects which, although not addressed in the director’s decision, nevertheless also preclude approval of the petition. First, the petitioner provided as the supporting Labor Condition Application (LCA) for this petition an LCA which does not correspond to the petition, in that: (1) the occupational category (Farm and Home Management Advisors) does not correspond to the proffered position and its constituent duties as described in the record of proceeding; and (2) the LCA was certified for a wage level below that which is compatible with the level of responsibility the petitioner claimed for the proffered position through its descriptions of the position’s constituent duties. Second, the petitioner has failed to demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation.³ For these additional two reasons, the petition must also be denied.

¹ The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for the SOC (O*NET/OES) Code 25-9021, the associated Occupational Classification of “Farm and Home Management Advisors,” and a Level I (entry-level) prevailing wage rate.

² Although counsel referenced “the troubling issues of fact and law outlined in the attached brief,” on the Form I-290B, Notice of Appeal or Motion, she did not attach a brief to the Form I-290B. Although counsel checked the box on the Form I-290B to indicate that a brief and/or additional evidence would be submitted to the AAO within 30 days, to date, more than nine months later, the AAO has not received a brief and/or additional evidence from counsel.

³ The AAO conducts appellate review on a *de novo* basis (See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)), and it was in the course of this review that the AAO identified these additional two grounds for denial.

The Proffered Position and its Constituent Duties

In its November 8, 2011 letter of support, the petitioner stated that the duties of the proffered position would include the following tasks:

- Reviewing, revising, and overseeing the implementation of a systematic approach to the petitioner's farm operations, in order to streamline costs and enhance its expansion efforts with respect to equine training, health, and medical practices;
- Reviewing, revising, and overseeing the implementation of advanced nutrition, reproduction, and exercise programs;
- Researching and making suggestions regarding animal selection, feeding, exercising, and breeding practices in order to increase production efficiency, improve progeny, and obtain other desirable results;
- Preparing recommendations for breeding and operations management, based upon the needs of the farm as well as reviews of recent studies and knowledge of international markets;
- Overseeing and monitoring farm maintenance and management practices;
- Instructing personnel on best practices and implementing programs to enhance the productivity of the petitioner's operation;
- Conferring with veterinarians during wellness and sick visits to ensure the proper care of the animals, administration of medicine, and accurate keeping of records in order to ensure conformity with optimal health practices and policies; and
- Conferring with personnel and assisting with the implementation of designed programs and policies.

The petitioner explained the duties of the proffered position in further detail in its February 6, 2012 letter submitted in response to the director's November 28, 2011 RFE. In that letter, the petitioner added the following narrative:

[The beneficiary] will review, revise and implement effective feeding and nutrition programs, evaluating the overall quality of the science upon which we have been relying and enabling us [to] implement newer developments in equine nutrition and supplements, specifically tailored to each horse. He will identify areas for improvement, such as eliminating excess use of supplies, use of transportation, and make recommendations based on his professional expertise and experience and implementation of systems used by other equine operations abroad and/or in his home country. He will work with management to develop effective mare nutrition programs,

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and outline any cost savings opportunities, while continually maintaining or improving upon our standard of care, and ensuring our horses' optimal health.

As our Equine Business Specialist, [the beneficiary] will ensure that we are on the cutting edge of equine science and management, and stay abreast of current trends in our industry. He will review each horse's nutrition and exercise plan, to ensure that horses with special dietary or exercise needs (such as mares in foal, or weanlings) are being properly fed, provided with the proper nutritional supplements and formulas, and exercised in accordance with their age, health, conditioning level, or other medical conditions. He will also make recommendations as to new and cutting edge nutritional programs that may be beneficial for our horses, relying on his advanced knowledge of industry trends and developments.

He will review each mare's reproductive history and devise breeding programs, in accordance with our practices and business needs and in keeping with our efforts to improve progeny to obtain desirable traits in the horses produced by [the petitioner]. He will ensure that our current breeding operations and programs are devised – first and foremost – to place the utmost importance upon the good health of each of our mares, but also that our current operations are advantageous for our business needs. He will meet with our veterinarian, farrier, dentist, and other equine specialists to discuss the health needs and treatment of our horses, and ensure that they/we are performing routine care, administering vaccines and prescribing treatments that meet our standard of care.

[The beneficiary] will rely on his past training and specialized knowledge regarding principles of equine science and farm management, to review the status of each of our young horses in training and advise our clients or potential clients with regard to the overall care and progress of the horses in our care. He will be fully versed in our daily operations, and [will] provide updates or recommendations to our clientele, on the progress and development of our young horses, whenever needed or requested by [the petitioner's owner].

[The beneficiary] will review existing records for each horse in our care, and [will] maintain those records in concert with our Owner/Head Trainer/Manager. He will evaluate and analyze those records, and rely upon them as a basis for the design of future breeding programs, to make recommendations to management about improved progeny and training techniques. He will review past mating records and the offspring's performance in the racing industry to make recommendations for proposed matings for the best possible progeny. He will help us develop long-term breeding programs and plans at our request (or our clients' requests) and ensure that breeding targets and goals are being attained, while maintaining a high level of care for each horse.

He will review and modify and help to manage all schedules related to the care of our horses, including ensuring that management has properly arranged for standard

veterinary care on a monthly or bi-monthly schedule depending on the horse (i.e., monthly for mares, foals should be seen bi-monthly) and factoring in other programs in place for each horse.

[The beneficiary] will ensure proper monitoring and administration of feed formulas, supplements, medications pre- and post-breeding of mares, and post-foaling, including ensuring worming and vaccinations are administered or completed in a timely [manner]. He will review our medication and supplies ordering systems, and identify areas for cost savings using new services or online ordering, to improve cost efficiency and ensure that we maintain proper inventory at all times.

He will also assist [the petitioner's] management in decision-making with regard to the sale and acquisition of broodmares, and ensure the proper preparation of each weanling for sale at auction to ensure that we attain the maximum purchase price for each horse.

[The beneficiary] will analyze and evaluate each horse's condition and source, such as horses that come off the competition circuit to the farm, who need additional exercise and care to ensure that their fitness is maintained. He will study and monitor their moods, demeanor, manure output, feed consumption and water intake, as well as other behaviors, no matter how minute, to assess the mental and physical condition/well-being of our horses, and identify any issues that need immediate action to ensure the health and safety of our mares in foal, and the foals themselves, once born. He will advise management of any areas of concern, and keep management, clients, and our veterinary, farrier, and other care providers updated on any observed deficiencies, therefore mitigating illnesses, disease, or medical issues with the horses in our care.

In its November 8, 2011 letter the petitioner stated that it requires an individual with at least a bachelor's degree, or the equivalent, in equine science, animal science, farm/agricultural management, or a closely-related field.

The LCA Submitted in Support of the Petition

The petitioner's statements regarding the duties to be performed by the beneficiary conflict with both the occupational category and the wage-level designated in the LCA that the petitioner submitted with the petition. First, it is noted that the record contains multiple claims regarding the complexity and specialization of the duties of the proffered position, as well as with regard to the position the beneficiary would occupy within the petitioner's organizational hierarchy.

For example, with regard to the position the beneficiary would occupy within the petitioner's organizational hierarchy, the petitioner listed in its November 8, 2011 letter, as among the duties that the beneficiary would perform, overseeing and monitoring the petitioner's farm maintenance and its management practices, and instructing the petitioner's personnel on best practices. In its February 6, 2012 letter the petitioner claimed that the beneficiary would "retain and oversee the services of outside maintenance workers or veterinary/equine professional service providers" and assist the petitioner's decision-making process. The petitioner claimed further that the beneficiary would

“oversee and direct [the] performance” of its “group of service providers,” which would include two veterinarians, an equine dentist, an equine acupuncture specialist, a farrier, and three individuals who would provide tractor and equipment maintenance, barn construction, maintenance, and repair, and landscaping and weed removal.

With regard to the claimed complexity and specialization of the position and its constituent duties, the petitioner asserted in its November 8, 2011 letter that the performance of the proposed duties “requires the services of an equine professional with highly specialized knowledge and experience[.]” In its February 6, 2012 letter, the petitioner stated the following:

The duties outlined above are all highly dependent upon advanced and specialized knowledge These duties can not be filled by someone with general farm experience, even substantial years of experience. These duties require that [the] person possessing them have advanced understanding of detailed subjects. . . .

In addition, the petitioner claimed that the duties performed by the eight “service providers” listed above would allow the beneficiary “to focus on performing the specialized and managerial duties of” the position.

On appeal, counsel references “the specialized nature of this position.”

As will now be discussed, these assertions materially conflict with both the occupational category and the wage level designated in the LCA that the petitioner submitted with the petition. Again, the LCA submitted by the petitioner in support of the instant position specifies the occupational classification for the position as “Farm and Home Management Advisors,” SOC (O*NET/OES) Code 25-9021, at a Level I (entry level) wage. The *Prevailing Wage Determination Policy Guidance*⁴ issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

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 [emphasis in original].

The petitioner’s assertions regarding the proposed duties’ level of complexity and specialization and the occupational understanding required to perform them, as well as the position the beneficiary would occupy within the petitioner’s organizational hierarchy, are materially inconsistent with the

⁴ Available at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf (last accessed January 10, 2013).

petitioner's submission of an LCA certified for a Level I, entry-level position. The LCA's wage level (Level I, the lowest of the four that can be designated) is only appropriate for a low-level, entry position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels quoted above, this wage rate is appropriate for positions in which the beneficiary is only required to have a basic understanding of the occupation; will be expected to perform routine tasks requiring limited, if any, exercise of judgment; will be closely supervised and his work closely monitored and reviewed for accuracy; and will receive specific instructions on required tasks and expected results.

This aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the petitioner's assertions regarding the proffered position's educational demands and level of responsibilities. 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. 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).

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(2) makes clear that certification of an LCA does not constitute a determination that a position qualifies for classification as a specialty occupation:

Certification by the Department of Labor 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 the content of 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 an LCA that corresponds to the claimed duties of the proffered position. Specifically, it has failed to

submit an LCA that corresponds to the level of work and responsibilities that the petitioner claims for the proffered position and to the wage-level appropriate for such a level of work and responsibilities in accordance with the requirements of the pertinent LCA regulations.

The statements of record regarding the claimed level of complexity, specialization, and occupational understanding required for the proffered position are materially inconsistent with the certification of the LCA for a Level I entry-level position, and this conflict undermines the overall credibility of the petition. The record contains no explanation for this inconsistency regarding the proposed position's wage level. Thus, even if it were determined that the petitioner had overcome the director's ground for denying this petition (which it has not), the petition could still not be approved due to the petitioner's failure to submit an LCA certified for the proper wage classification.

Moreover, the petitioner's certification of the LCA under the O*NET occupational code classification of "Farm and Home Management Advisors" constitutes a second reason why the submitted LCA does not correspond to the petition, as the proposed duties as described in the record of proceeding do not comprise the type of position (Farm and Home Management Advisors) designated in the LCA.

The appropriate wage level is determined only after selecting the most relevant O*NET occupational code classification. The aforementioned *Prevailing Wage Determination Policy Guidance* issued by the DOL states that "[t]he O*NET description that corresponds to the employer's job offer shall be used to identify the appropriate occupational classification" for determining the prevailing wage for the LCA.

The O*NET Details Report for the occupational category "Farm and Home Management Advisors" summarizes that occupation as follows:

Advise, instruct, and assist individuals and families engaged in agriculture, agricultural-related processes, or home economics activities. Demonstrate procedures and apply research findings to solve problems; and instruct and train in product development, sales, and the use of machinery and equipment to promote general welfare. Includes county agricultural agents, feed and farm management advisors, home economists, and extension service advisors.

See Employment & Training Administration, U.S. Dep't of Labor, O*Net OnLine, Summary Report for Farm and Home Management Advisors, available at <http://www.onetonline.org/link/details/25-9021> (accessed January 10, 2013).

The O*NET Details Report also lists the following "core tasks" that are performed by farm and home management advisors:

- Collaborate with producers in order to diagnose and prevent management and production problems;

- Conduct classes or deliver lectures on subjects such as nutrition, home management, and farming techniques;
- Advise farmers and demonstrate techniques in areas such as feeding and health maintenance of livestock, growing and harvesting practices, and financial planning;
- Research information requested by farmers;
- Prepare and distribute leaflets, pamphlets, and visual aids for educational and informational purposes;
- Collect and evaluate data in order to determine community program needs;
- Maintain records of services provided and the effects of advice given;
- Schedule and make regular visits to farmers;
- Organize, advise, and participate in community activities and organizations such as county and state fair events and 4-H Clubs;
- Collaborate with social service and health care professionals in order to advise individuals and families on home management practices such as budget planning, meal preparation, and time management;
- Conduct field demonstrations of new products, techniques, or services;
- Conduct agricultural research, analyze data, and prepare research reports; and
- Act as an advocate for farmers or farmers' groups.

Id.

DOL reports that as of May 2011, there were 10,500 farm and home management advisors employed in the United States. According to DOL, 7,170 (approximately 68%) were employed by colleges, universities, and professional schools; 1,440 (approximately 14%) were employed by local governments; 230 (approximately 2%) were employed by "other schools and instruction"; and 180 (approximately 2%) were employed by state governments. See Bureau of Labor Statistics, U.S. Dep't of Labor, Occupational Employment Statistics, Occupational Employment and Wages, May 2011 "25-9021 Farm and Home Management Advisors," <http://www.bls.gov/oes/current/oes259021.htm> (accessed January 10, 2013).

These duties do not correspond to the duties of the proffered position as described in the record of proceeding. While it does appear as though the beneficiary would perform a few of the tasks defined as "core" ones by DOL, the majority of these core tasks do not fall within those proposed

for him. For example, the beneficiary would not conduct classes or deliver lectures; research information; prepare and distribute leaflets, pamphlets, and visual aids for educational and informational purposes; collect and evaluate data in order to determine community program needs; maintain records of services provided and the effects of advice given; schedule and make regular visits to farmers; organize, advise, and participate in community activities and organizations such as county and state fair events and 4-H Clubs; collaborate with social service and health care professionals in order to advise individuals and families on home management practices such as budget planning, meal preparation, and time management; conduct field demonstrations of new products, techniques, or services; conduct agricultural research, analyze data, and prepare research reports; or act as an advocate for farmers or farmers' groups. As such, the beneficiary would perform very few of the core tasks listed by O*Net as among those normally performed by farm and home management advisors, and the AAO finds that, notwithstanding the title that the petitioner has assigned to it, the evidence of record indicates that the proffered position is not actually that of a Farm and Home Management Advisor.

Furthermore, the O*NET Details Report for the occupational category "Farm and Home Management Advisors" states that three percent of farm and home management advisors possess a doctoral or professional degree, and that seventy-nine percent of them possess at least a master's degree. See DOL at <http://www.onetonline.org/link/details/25-9021>. As will be discussed later in this decision, the petitioner has failed to demonstrate that the beneficiary possesses the equivalent of a bachelor's degree, let alone that he has the equivalent of a master's, doctoral, or other professional degree. Although neither a decisive nor material factor in the AAO's decision, the beneficiary's lack of qualifications listed by the DOL as among those normally possessed by farm and home management advisors supports the AAO's determination that the proffered position is not actually that of a farm and home management advisor.⁵

DOL guidance specifies that when ascertaining the proper occupational classification, a determination should be made by "consider[ing] the particulars of the employer's job offer and compar[ing] the full description to the tasks, knowledge, and work activities generally associated with an O*NET-SOC occupation to insure the most relevant occupational code has been selected." See *Prevailing Wage Determination Policy Guidance*. In this case, the petitioner has provided no explanation of its apparently erroneous claim that the position's primary and essential tasks, knowledge, and work activities are those generally associated with the occupational category of "Farm and Home Management Advisors" as depicted by O*Net. As such, it has not established that this LCA actually corresponds to this petition for this additional reason, and, therefore, the petition could not be approved even if it were determined that the petitioner had overcome the director's ground for denying this petition (which it has not).

⁵ It is noted further that, according to DOL, the overwhelming majority of farm and home management advisors are employed by colleges, universities, and professional schools; "other schools and instruction"; and state and local government. See DOL at <http://www.bls.gov/oes/current/oes259021.htm>. While certainly not dispositive (as the DOL does indicate that a small minority of farm and home management advisors are employed by other types of organizations), the fact that the petitioner is not one of these types of employers lends further weight to the AAO's determination that the proffered position is not actually a farm and home management advisor.

As reflected in this decision's earlier discussion regarding the fact that the LCA does not correspond to the petition, that conflict between the petition and the LCA in itself precludes approval of this petition, independently from and regardless of the merits of the petition. Also, as previously noted, the conflict between the LCA and the petition also adversely affects the merits of the petition, because it materially undermines the credibility of the petition's statements therein with regard to the nature and level of work that the beneficiary would perform. That being said, the AAO will now continue to address the evidence in the record of proceeding.

Classification as a Specialty Occupation

The AAO will now explore the matter of whether the evidence of record establishes that the proffered position is a specialty occupation. 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 in the record of proceeding constitutes a specialty occupation.

To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires [(1)] 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 requires [(2)] the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

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

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

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not rely simply upon a proffered position’s title. The specific duties of the 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 beneficiary, and determine whether the position qualifies

as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 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.

However, the AAO finds that, even when read in the aggregate, neither the above duty descriptions, nor any other in this record of proceeding, distinguish the proposed duties, or the position that they comprise, as so complex, specialized, or unique as to require the practical and theoretical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty, as required to establish a specialty occupation in accordance with the definitions at section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii).

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

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

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 it addresses.⁶ As discussed above, the AAO does not agree with the petitioner that the duties of the proffered position align with those of farm and home management advisors as outlined in the *Handbook*. Instead, the AAO finds that the duties of the proffered position align with those normally performed by farmers, ranchers, and other agricultural managers as that range of occupations is described in the *Handbook*. The *Handbook* states the following with regard to the duties of farmers, ranchers, and other agricultural managers:

Farmers, ranchers, and other agricultural managers run establishments that produce crops, livestock, and dairy products. . . .

* * *

Farmers and ranchers own and operate mainly family-owned farms. They also may lease land from a landowner and operate it as a working farm.

The size of the farm or range determines which tasks farmers and ranchers handle. Those who operate small farms or ranges usually do all tasks. In addition to growing

⁶ The *Handbook*, which is available in printed form, may also be accessed online at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are from the 2012-13 edition available online.

crops and raising animals, they keep records, service machinery, and maintain buildings.

Those who operate large farms, however, have employees—including agricultural workers—who help with physical work. Some employees of large farms are in nonfarm occupations, working as truck drivers, sales representatives, bookkeepers, and IT specialists.

Both farmers and ranchers operate machinery and maintain their equipment and facilities. They track technological improvements in animal breeding and seeds, choosing new products that might improve output.

Agricultural managers take care of the day-to-day operation of one or more farms, ranches, nurseries, timber tracts, greenhouses, or other agricultural establishments for corporations, farmers, or owners who do not live and work on their farm or ranch.

Agricultural managers usually do not do production activities themselves. Instead, they hire and supervise farm and livestock workers to do most daily production tasks.

Managers may determine budgets. They may decide how to store and transport the crops. They oversee proper maintenance of equipment and property.

* * *

Livestock, dairy, and poultry farmers, ranchers, and managers feed and care for animals. They keep livestock in barns, pens, and other well-maintained farm buildings. These workers also oversee breeding and marketing.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Farmers, Ranchers, and Other Agricultural Managers," <http://www.bls.gov/ooh/management/farmers-ranchers-and-other-agricultural-managers.htm#tab-2> (accessed January 10, 2013).

The AAO finds that these duties reflect the ones proposed for the beneficiary more accurately than those normally performed by farm and home management advisors. The *Handbook* states the following with regard to the educational requirements necessary for entrance into this occupational grouping:

Farmers, ranchers, and other agricultural managers typically gain skills through work experience and usually have at least a high school diploma. Traditionally, experience growing up on or working on a family farm or ranch was the most common way farmers and ranchers learn their trade.

However, as farm and land management has grown more complex, more farmers, ranchers, and other agricultural managers now have a bachelor's degree in

agriculture or a related field. In addition, a number of government programs help new farmers get training. . . .

Most farmers, ranchers, and other agricultural managers have a high school diploma. Completing a degree at a college of agriculture is becoming important for workers who want to make a living from this occupation.

All state university systems have at least one land-grant college or university with a school of agriculture. Common programs of study include business with a concentration in agriculture, farm management, agronomy, dairy science, and agricultural economics.

Id. at <http://www.bls.gov/ooh/management/farmers-ranchers-and-other-agricultural-managers.htm#tab-4>.

The statements made by DOL in the *Handbook* regarding entrance into this occupational category do not support a finding that a bachelor's degree, or the equivalent, in a specific specialty is normally required. Although the *Handbook* indicates that a bachelor's degree is becoming increasingly important, it does not state that a bachelor's degree or the equivalent in a specific specialty, or its equivalent, is normally required for entry, and therefore does not support the proffered position as being a specialty occupation.

The information from O*NET OnLine submitted by counsel does not establish that the proffered position satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), either. O*NET OnLine is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a requirement for a given position, as its JobZone designations make no mention of the specific field of study from which a degree must come. As was noted previously, the AAO 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 proposed position. Additionally, the Specialized Vocational Preparation (SVP) rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. For all of these reasons, the O*NET OnLine excerpt is of little evidentiary value to this issue.

Nor does the record of proceeding contain any persuasive documentary evidence from any other relevant authoritative source⁷ establishing that the proffered position's inclusion in this occupational category would be sufficient in and of itself to establish the proffered position as, in the words of

⁷ The information that counsel submits regarding college degree programs in equine and other animal sciences is neither persuasive nor authoritative. The AAO does not dispute the existence of these degree programs. These programs' existence, however, is not the issue on appeal, and the fact that they exist does not mean that completing them is necessarily a normal minimum requirement for positions such as the one proffered here.

this criterion, a “particular position” for which “[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry.”

Finally, as previously discussed, the petitioner submitted an LCA certified for a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation, which signifies that the beneficiary is only expected to possess a basic understanding of the occupation.

As the evidence in the record of proceeding does not establish that a baccalaureate degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of this petition, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent, is common to the petitioner’s industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms “routinely employ and recruit only degreed individuals.” See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor’s degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals,⁸ or similar firms in the petitioner’s industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor’s degree in a specific specialty or its equivalent for entry into those positions.⁹

⁸ The record contains information regarding the qualifications of R-W- (name withheld to protect individual’s identity), who apparently owns a business called [REDACTED]. According to this information, R-W- possesses a bachelor’s degree in bio-agricultural science and a master’s degree in reproductive physiology. However, this information does not establish the proffered position as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the fact that R-W- apparently possesses these credentials does not demonstrate 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.

⁹ Although the petitioner stated in its February 6, 2012 letter that “it is extremely common throughout our industry for Saddlebred farm owners to hire individuals with at least a Bachelor’s degree in Equine Science/Studies, Farm Management, Agriculture or a closely-related field,” it submitted no evidence backing that assertion. Going on record without supporting documentary evidence is not sufficient for purposes of

Nor do the five job vacancy announcements submitted by counsel satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). First, the petitioner has not submitted any evidence to demonstrate that the positions being advertised in these vacancy announcements are “parallel” to the position proffered here.¹⁰ Second, the petitioner has not submitted any evidence to demonstrate that any of these advertisements is from a company “similar” to the petitioner.¹¹ The petitioner has submitted no evidence to establish that any of these advertisers are similar to the petitioner in size, scope, scale of operations, business efforts, expenditures, or other fundamental dimensions. Nor has the petitioner established that the job-vacancy announcements require a bachelor’s degree, or the equivalent, in a specific specialty.¹² Nor does the petitioner submit any evidence regarding how representative these advertisements are of the industry’s usual recruiting and hiring practices with regard to the position advertised. Again, simply 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. at 165.¹³

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)).

¹⁰ For example, the International Farming Corporation, the State of New Mexico, the two unnamed dairy facilities, and Crop Production Services Canada all require work experience. However, as noted above, the wage-level designated by the petitioner on the LCA wage level indicates that the proffered position is actually a low-level, entry position relative to others within the occupation.

It is also noted that the International Farming Corporation prefers a master’s degree in business administration for its advertised position, which is not a requirement for the position proffered in this petition. Eaton Sales requires a bachelor’s degree in rural estate management, which is also not a requirement for the position proffered in this petition. The two unnamed dairy facilities require a bachelor’s degree in dairy management, which is also not a requirement for the position proffered in this petition.

¹¹ The Form I-129 and its allied submissions indicate that the petitioner is a horse farm with three employees. In contrast, the International Farming Corporation states that it “purchases farm land [and] leases it to farmers”; the State of New Mexico is a government entity; the unnamed dairy facilities are dairy facilities; and Crop Production Services Canada describes itself as “one of the largest farm market retailers in North America.” The petitioner did not provide any information regarding the business operations of [redacted]. The petitioner did not explain how its business operations are similar to any of these companies in terms of size, scope, scale of operations, business efforts, expenditures, or other fundamental dimensions.

¹² The State of New Mexico requires a bachelor’s degree, but it does not require that it be in a specific specialty.

¹³ Furthermore, according to the *Handbook* there were approximately 1,202,500 persons employed as farmers, ranchers, and other agricultural managers in 2010. *Handbook* at <http://www.bls.gov/ooh/management/farmers-ranchers-and-other-agricultural-managers.htm#tab-6> (accessed January 10, 2013). Based on the size of this relevant study population, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from the five submitted vacancy announcements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately

Therefore, the petitioner has not satisfied the first of the two alternative prongs described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish a requirement for at least a bachelor's degree in a specific specialty as 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.

Next, the AAO finds that the petitioner did not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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."

In this particular case, the petitioner has failed to credibly demonstrate that the duties the beneficiary would 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, or the equivalent, in a specific specialty. The AAO finds that the duties proposed for the beneficiary are similar to those outlined in the *Handbook* as normally performed by farmers, ranchers, and other agricultural managers, and the petitioner's description of the duties which collectively constitute the proffered position lacks the detail and specificity required to establish that they surpass or exceed the duties performed by typical farmers, ranchers, and other agricultural managers in terms of complexity or uniqueness. As noted above, the *Handbook* indicates that the performance of such duties does not normally require a bachelor's degree, or the equivalent, in a specific specialty. The AAO finds further that, even outside the context of the *Handbook*, the petitioner has simply not established complexity or uniqueness as attributes of the proffered position, let alone as attributes of such an elevated level as to require the services of a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

Additionally, the AAO incorporates here by reference and reiterates its earlier discussion regarding the LCA and its indication that the petitioner would be paying a wage-rate that is only appropriate for a low-level, entry position relative to others within the occupation, as this factor is inconsistent with the relative complexity and uniqueness required to satisfy this criterion. Based upon the Level I wage rate specified in the LCA, the beneficiary is only required to have a basic understanding of the occupation. Moreover, that wage rate is indicative of a position where the beneficiary would perform routine tasks that require limited, if any, exercise of independent judgment; that the

determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if these five job-vacancy announcements established that the employers that issued them routinely recruited and hired for the advertised positions only persons with at least a bachelor's degree in a specific specialty closely related to the positions, it cannot be found that these five job-vacancy announcements that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

beneficiary's would be closely supervised and monitored; that he would receive specific instructions on required tasks and expected results; and that his work will be reviewed for accuracy.

The petitioner therefore failed to establish how the beneficiary's responsibilities and day-to-day duties constitute a position so complex or unique it can be performed only by an individual with at least a bachelor's degree, or the equivalent, in a specific specialty.

Consequently, as it did not show that the particular position for which it filed this petition is so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO turns next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which entails an employer demonstrating that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position. The AAO's review of the record of proceeding under this criterion necessarily includes whatever evidence the petitioner has submitted with regard to its past recruiting and hiring practices and with regard to employees who previously held the position in question.

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. 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 the performance requirements of the proffered position.¹⁴ 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, or the equivalent, in a specific specialty.

While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a

¹⁴ Any such assertion would be undermined in this particular case by the fact that the petitioner indicated in the LCA that it would be paying the beneficiary a wage-rate that is only appropriate for a low-level, entry position relative to others within the occupation.

specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the actual performance requirements of the position necessitate a petitioner's history of requiring a particular degree in its recruiting and hiring for the position. See generally *Defensor v. Meissner*, 201 F. 3d at 387. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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 a specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proposed position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. See *id.* at 388.

The record indicates that the petitioner has never employed an equine business specialist. Although the fact that a proffered position is a newly-created one is not in itself generally a basis for precluding a position from recognition as a specialty occupation, certainly an employer that has never recruited and hired for the position cannot satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

As the petitioner has failed to demonstrate a history of recruiting and hiring only individuals with a bachelor's degree, or the equivalent, in a specific specialty for the proffered position, it has failed to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, the AAO finds that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered position's 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.

Both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, the petitioner's designation of an LCA wage-level I is indicative of duties of relatively low complexity.

As earlier noted, the *Prevailing Wage Determination Policy Guidance* issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

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 [emphasis in original].

The pertinent guidance from the Department of Labor, at page 7 of its *Prevailing Wage Determination Policy Guidance* describes the next higher wage-level as follows:

Level II (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O*NET Job Zones.

The above descriptive summary indicates that even this higher-than-designated wage level is appropriate for only “moderately complex tasks that require limited judgment.” The fact that this higher-than-here-assigned, Level II wage rate itself indicates performance of only “moderately complex tasks that require limited judgment,” is very telling with regard to the relatively low level of complexity imputed to the proffered position by virtue of its Level I wage-rate designation.

Further, the AAO notes the relatively low level of complexity that even this Level II wage-level reflects when compared with the two still-higher LCA wage levels, neither of which was designated on the LCA submitted to support this petition.

The aforementioned *Prevailing Wage Determination Policy Guidance* describes the Level III wage designation as follows:

Level III (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O*NET Job Zones would be indicators that a Level III wage should be considered.

Frequently, key words in the job title can be used as indicators that an employer’s job offer is for an experienced worker. . . .

The *Prevailing Wage Determination Policy Guidance* describes the Level IV wage designation as follows:

Level IV (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use

advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibilities.

Here the AAO again incorporates its earlier discussion and analysis regarding the implications of the petitioner's submission of an LCA certified for the lowest assignable wage-level. By virtue of this submission the petitioner effectively attested that the proffered position is a low-level, entry position relative to others within the occupation, and that, as clear by comparison with DOL's instructive comments about the next higher level (Level II), the proffered position did not even involve "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II). The AAO also finds that, separate and apart from the petitioner's submission of an LCA with a wage-level I designation, the petitioner has also failed to provide sufficiently detailed documentary evidence to establish that the nature of the specific duties that would be performed if this petition were approved 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.

For all of these reasons, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the petitioner has not satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied on this basis.¹⁵

¹⁵ Even if the petitioner had successfully established the proffered position as being that of a farm and home management advisor, it still would have failed to establish it as a specialty occupation. The petitioner would not have satisfied 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) because the *Handbook* does not address the educational requirements for farm and home management advisor positions; because O*Net OnLine does not establish that such positions normally require at least a bachelor's degree, or the equivalent, *in a specific specialty*; and because the petitioner failed to submit any persuasive documentary evidence from any other relevant authoritative source establishing that inclusion in this occupational category would be sufficient in and of itself to establish the proffered position as a "particular position" for which "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry." Alternatively, the proffered position would not have constituted a specialty occupation under the remaining three criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2)-(4) for the same reasons discussed in the main body of this decision.

Furthermore, even if the proffered position had been established as being that of a farm and home management advisor, and the AAO had found it to be a specialty occupation (which, again, it has not), the remaining deficiencies identified by the AAO in this decision regarding the LCA and the beneficiary's qualifications to perform the duties of a specialty occupation would still preclude approval of the petition.

The Beneficiary's Qualifications to Perform the Duties of a Specialty Occupation

Finally, as noted at the outset of this discussion, the AAO also finds, beyond the decision of the director, that the petitioner has failed to demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation. Thus, even if the petitioner had established that the proffered position qualifies for classification as a specialty occupation, which it did not, the petition still could not be approved because the petitioner has not demonstrated the beneficiary's qualifications to perform its duties.

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.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also 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 are 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.

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary possesses the requisite license or, if none is required, that he or she has completed a degree in the specialty that the occupation requires. Alternatively, if a license is not required and if the beneficiary does not possess the required U.S. degree or its foreign degree equivalent, the petitioner must show that the beneficiary possesses both (1) education, specialized training, and/or progressively responsible experience in the specialty equivalent to the completion of such degree, and (2) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

As the beneficiary did not earn a baccalaureate or higher degree from an accredited college or university in the United States, he does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1). As he does not possess a foreign degree that has been determined to be equivalent to a baccalaureate or higher degree from an accredited college or university in the United States, she does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), either.¹⁶ As the petitioner has not demonstrated that the beneficiary holds an unrestricted state license, registration or certification to perform the duties of a specialty occupation, he does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3), either. Accordingly, 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), remains as the only avenue for the petitioner to demonstrate the beneficiary's qualifications to perform the duties of the proffered position.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) requires a demonstration that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary also has recognition of that 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 a beneficiary's credentials to a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) is determined by at least one 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;

¹⁶ Although the record of proceeding contains an evaluation of the beneficiary's academic credentials, it does not establish that those credentials are equivalent to a bachelor's degree awarded by an accredited institution of higher education in the United States. Instead, it finds his academic studies equivalent to "the first two years of course work in a four-year Bachelor's Degree program at an accredited institution of higher education in the United States." Accordingly, that evaluation does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). Although this evaluation also evaluates the beneficiary's work experience, and that portion of the evaluation will be discussed below when the AAO analyzes the beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), that portion of the evaluation is not material to the AAO's analysis under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) because it addresses the beneficiary's work experience. In order to be relevant under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), an evaluation must be based upon the beneficiary's academic credentials alone.

- (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;¹⁷
- (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 record contains an evaluation of the beneficiary's academics and work experience prepared by [REDACTED] Professor of Operations Management and Management Science at the [REDACTED] [REDACTED] dated October 26, 2011. According to [REDACTED] the beneficiary's foreign education and work experience are equivalent to a bachelor's degree in farm management awarded by an accredited institution of higher education in the United States.

However, [REDACTED] evaluation does not demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), as the petitioner has not demonstrated both: (1) that [REDACTED] has the authority to grant college-level credit for training and/or experience at the [REDACTED]¹⁸ and (2) that the [REDACTED] has a program for granting such credit, in the pertinent specialty, based on an individual's training and/or work experience. Again, simply 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. at 165.

For all of these reasons, the beneficiary does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

¹⁷ 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.

¹⁸ Although [REDACTED] claims to possess such authority, he presents no evidence to support his assertion. Simply 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. at 165.

No evidence has been submitted to establish, nor does the petitioner assert, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), which requires submission of 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).

Nor does the beneficiary qualify under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). As was the case under 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1) and (2), the beneficiary is unqualified under this criterion because he did not earn a baccalaureate or higher degree from an accredited college or university in the United States and does not possess a foreign degree that has been determined to be equivalent to a baccalaureate or higher degree from an accredited college or university in the United States.

No evidence has been submitted to establish, nor does the petitioner assert, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), which requires that the beneficiary submit 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) states the following with regard to analyzing an alien's qualifications:

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; 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 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;¹⁹
- (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

¹⁹ *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. See 8 C.F.R. § 214.2(h)(4)(ii).

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.

Although the record contains some information regarding the beneficiary's work history, it does not establish that this work experience included the theoretical and practical application of specialized knowledge required by the proffered position; that it was gained while working with peers, supervisors, or subordinates who held a bachelor's degree or its equivalent in the field; and that the beneficiary achieved recognition of expertise in the field as evidenced by at least one of the five types of documentation delineated in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i)-(v).

Accordingly, the beneficiary does not qualify under any of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i)-(v) and therefore does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). As such, the petitioner has failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation, and the petition must be denied for this additional reason.

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