



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: JAN 11 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 stated that it is a restaurant. In a letter subsequently submitted, counsel stated that the petitioner operates four [REDACTED] restaurant franchises. The visa petition further states that the beneficiary would work at [REDACTED] [REDACTED] presumably the location of one of the restaurants.

To employ the beneficiary in what it designates as an assistant general manager position, the petitioner endeavors 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, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

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

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

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

Section 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. 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.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is an Assistant General Manager position, and that it corresponds to Standard Occupational Classification (SOC) code and title 11-9051.00 Food Service Managers from the *Dictionary of Occupational Titles (DOT)* maintained by the United States Department of Labor (DOL). Page three of the LCA, which would reveal the wage level and wage rate at which the petitioner would employ the beneficiary was not provided with the visa petition. However, the visa petition states that the petitioner would pay the beneficiary \$34,000 annually, which is consistent only with a Level I position in the area where the petitioner proposes to employ the beneficiary. The evidence in the record therefore shows that the LCA is approved for an entry level or Level I Food Service Manager position.

With the visa petition, counsel provided no evidence, and did not even assert, that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. Counsel did provide evidence that the [REDACTED] awarded the beneficiary a bachelor's degree with a major in International Finance/International Economics, and a master's degree in International Economics and Entrepreneurship. An evaluation of the beneficiary's foreign education states that it is equivalent to a U.S. bachelor's degree in business administration.

On June 6, 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.

In response, counsel submitted (1) a list of the duties of the proffered position; (2) what purports to be an organizational chart of the petitioner's operations; (3) a chapter of the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* pertinent to Advertising, Marketing, Promotions, Public Relations, and Sales Manager positions; (4) counsel's own letter, dated July 19, 2011; and (5) what purports to be an undated letter from the petitioner's Operations Supervisor. The AAO observes that the position of Operations Supervisor is not included on the organizational chart provided.

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The list of the duties of the proffered position states that, in the proffered position, the beneficiary would assist in coordinating promotions; assist in product launches; be responsible for training employees; oversee inventory, order products, equipment, supplies; maintain records of supply, product purchases; arrange for routine maintenance of facility, investigate and resolve customer complaints; monitor health and safety regulations; coordinate work/travel student orientation; prepare payroll; complete paperwork to comply with licensing, tax, etc., assist with cash audits; and project monthly sales and service goals.

A paragraph appended to that list of duties states, "The [beneficiary would be] responsible for the duties of a food service manager and duties of the advertising, marketing, promotions, and sales manager." Counsel cited the *Handbook* chapter provided for the proposition that a bachelor's degree is usually preferred for such positions.

In his own July 19, 2011 letter, counsel stated that the petitioner employs more than 200 employees at four [redacted] locations. The AAO observes that the visa petition states that the beneficiary would work at [redacted]. The petitioner's operations at other locations have not been shown to be relevant to the instant visa petition.

Counsel further stated that the proffered position is a proposed new position, and that it requires a bachelor's degree. Counsel did not state that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent, or identify the specific specialty that would be directly related to the proffered position, if it did require such a degree.

In his undated letter, the petitioner's operations supervisor stated that the beneficiary would act as general manager when the actual general manager of the restaurant is not on duty. He did not indicate that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

The director denied the petition on August 30, 2011, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel reiterated the duties of the proffered position as previously described, and stated that those duties are diverse and complex. He referred to the *Handbook* chapter pertinent to Accountants and Auditors in support of that assertion. He also stated, "[the proffered position] very clearly includes duties of Advertising, Marketing, Promotions, Public Relations, and Sales manager[s]," and again cited the *Handbook* for the proposition that, for some of those positions, employers often prefer candidates with a bachelor's degree in business administration with an emphasis on marketing.

Counsel stated that the petitioner prefers that the person in the proffered position have a bachelor's degree. He further stated that the petitioner employs two managers with bachelor's degrees.

Counsel stated, yet further, that the beneficiary will coordinate the employment of employees with J-1 visas, and asserted that the beneficiary is "uniquely qualified" for that role as he has worked as a J-1 visa holder in the past. Counsel provided no argument for the proposition that supervising J-1 employees requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

In fact, neither counsel nor the petitioner has ever even alleged that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. Although he stated that the petitioner prefers candidates with bachelor's degrees for this newly created position, he did not state that such a degree is a minimum requirement, nor that the preferred degree should be in any specific specialty. The failure of the petitioner and counsel even to allege that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent is a sufficient reason, in itself, to find that the petitioner has not demonstrated that the proffered position is a specialty occupation position; and sufficient reason, therefore, to deny the visa petition. However, the AAO will continue its analysis of the specialty occupation issue, in order to identify other evidentiary deficiencies that preclude approval of this petition.

The AAO will now discuss the application of the additional, supplemental standards 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)(1), which is satisfied if a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position.

The AAO recognizes the *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹ Here, the LCA submitted with the visa petition is approved for a Food Service Manager position. In the "Food Service Managers" chapter, the *Handbook* provides the following description of the duties of those positions:

Food service managers are responsible for the daily operations of restaurants and other establishments that prepare and serve food and beverages to customers. Managers ensure that customers are satisfied with their dining experience.

More specifically, the *Handbook* states:

Food service managers typically do the following:

- Interview, hire, train, oversee, and sometimes fire employees
- Oversee the inventory and ordering of food and beverage, equipment, and supplies

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

- Monitor food preparation methods, portion sizes, and the overall presentation of food
- Comply with health and food safety standards and regulations
- Monitor the actions of employees and patrons to ensure everyone's personal safety
- Investigate and resolve complaints regarding food quality or service
- Schedule staff hours and assign duties
- Keep budgets and payroll records and review financial transactions
- Establish standards for personnel performance and customer service

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Food Service Managers," <http://www.bls.gov/ooh/management/food-service-managers.htm#tab-2> (last visited January 8, 2012).

The duties attributed to the proffered position are consistent with the duties of food service managers as described in the *Handbook*. On the balance, the AAO finds that the proffered position is a food service manager position as described in the *Handbook*.²

As to the educational requirements of food service manager positions, the *Handbook* states, "Although most food service managers have less than a bachelor's degree, some postsecondary education is increasingly preferred for many manager positions." *Id.* at <http://www.bls.gov/ooh/management/food-service-managers.htm#tab-4>.

The *Handbook* makes clear that food service manager positions, as a category, do not normally require a minimum of a bachelor's degree or the equivalent, let alone a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of food service, but do not establish any particular level of formal, post-secondary

² In assertions previously described, counsel implied that the proffered position may qualify as an advertising, marketing, promotions, public relations, or sales manager position, or, perhaps in the alternative, that it requires a bachelor's degree because it requires performance of duties described in the *Handbook* chapter pertinent to Accountants and Auditors. The AAO observes that the duties of the proffered position do not correspond closely to either of those positions and, even if they did, the visa petition would be deniable on the basis that it is not accompanied by a corresponding LCA, as required by 8 C.F.R. § 214.2(h)(4)(i)(B)(1). That is, if the proffered position is an advertising, marketing, promotions, public relations, or sales manager position, or an accountant or auditor position, then the LCA submitted in this case may not be used to support the instant visa petition, as it is certified for the employment of a food service manager. The regulation at 20 C.F.R. § 655.705(b) makes clear that USCIS has the responsibility to ensure that the content of an LCA corresponds with a visa petition.

education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

Further still, the record shows that the petitioner has designated the proffered position as a Level I position, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. The classification of the proffered position as a Level I position does not support the assertion that it is a position that cannot be performed without a minimum of a bachelor's degree in a specific specialty or its equivalent, especially as the *Handbook* indicates that most food service manager positions do not require even a bachelor's degree.

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

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

In determining whether there is a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or any other authoritative, objective, and reliable resource, reports a standard industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, 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.

Further, as was noted above, the petitioner has designated the proffered position as a Level I position, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. In order to attempt to show that parallel positions require a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged to demonstrate that other Level I food service manager positions, i.e., entry-level positions

requiring only a basic understanding of food service management, require a minimum of a bachelor's degree in specific specialty or its equivalent, the proposition of which is not supported by the *Handbook*.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner establishes that the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with a minimum of a bachelor's degree in a specific specialty or its equivalent.

The record contains very little evidence that would differentiate the work of the proffered position from the work of food service manager positions in general. The duties of the proffered position (such as assisting in coordinating promotions; assisting in product launches; being responsible for training employees; overseeing inventory, ordering products, equipment, and supplies; maintaining records of supply and product purchases; and arranging for routine maintenance of facility) are described in terms of functions common to food service manager positions in general, and so have not been shown to be more complex or unique than the duties of other food service manager positions, most of which, the *Handbook* indicates, do not even require a minimum of a bachelor's degree.

Counsel further stated that the beneficiary will coordinate the employment of employees with J-1 visas, and asserted that the beneficiary is "uniquely qualified" for that role as he has worked as a J-1 visa holder in the past. Counsel provided no evidence to support the proposition that supervising J-1 employees is so complex or unique that it requires a minimum of a bachelor's degree in a specific specialty or its equivalent. In addition, past experience as a J-1 nonimmigrant is irrelevant to qualifying as an H-1B nonimmigrant unless such status subjects the individual to a two-year home residence requirement.

Further, as was noted above, the petitioner has indicated that the proffered position is a Level I food service manager position, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of food service management. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree, especially as the *Handbook* indicates that some food service manager positions do not require such a degree.

For both of the above reasons, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, the AAO will address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which is satisfied if the petitioner demonstrates that the petitioner normally requires a minimum of a bachelor's degree in a

specific specialty or its equivalent for the proffered position.³ The proffered position is a proposed position. The petitioner does not now employ anyone in the proffered position and has never previously employed anyone in the proffered position. The petitioner is unable to demonstrate, therefore, that it has previously required a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

Counsel asserted that the duties of the proffered position are the same as those of its general manager positions, and that it employs two managers with bachelor's degrees. Counsel provided no evidence pertinent to those degrees, did not state that they are in any specific specialty directly related to the proffered position, and did not state how many other managers the petitioner employs who do not have bachelor's degrees. The evidence does not demonstrate that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for its general manager positions.

Counsel also asserted, "[The petitioner] prefers that [candidates for the proffered position] have a degree given the proposed duties." A preference is not a minimum requirement, and counsel did not allege that the petitioner even prefers a degree in any specific specialty for the proffered position.

For all of these reasons, the petitioner has not demonstrated that the proffered position qualifies as a specialty occupation position pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties, including investigating and resolving customer complaints; monitoring health and safety regulations; coordinating work/travel student orientation; preparing payroll; completing paperwork to comply with licensing, tax, etc.; assisting with cash audits; projecting monthly sales and service goals; and coordinating the employment of J-1 visa holders have not been described with sufficient specificity to show that they

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

are more specialized and complex than food service manager positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Further, as was noted above, the petitioner filed the instant visa petition for a Level I food service manager position, a position for a beginning level employee with only a basic understanding of food service management. This does not support the proposition that the nature of the specific duties of the proffered position is so specialized and complex that their performance is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, directly related to food service management, especially as the *Handbook* indicates that food service manager positions require no such degree.

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

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

The record suggests an additional issue that was not addressed in the decision of denial but that, nonetheless, also precludes approval of this visa petition.

As was stated above, the petitioner is seeking to classify the beneficiary 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). As was also previously stated, section 214(i)(1)(B) of the Act states that specialty occupation positions require attainment of a bachelor's or higher degree in the specific specialty or its equivalent.

The degree referenced by section 214(i)(1)(B) of the Act, 8 U.S.C. § 1184(i)(1)(B), means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position.

A bachelor's degree does not, *per se*, qualify a beneficiary for employment in a specialty occupation. Rather, the position must require a degree in a specific specialty. *Cf. Matter of Michael Hertz, Assoc.*, 19I&N Dec. 558,560 (Comm'r. 1988). Further, the beneficiary must have a degree in that specific specialty. *See Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm'r 1968).

Even if the proffered position were a specialty occupation, which it is not, the beneficiary would not qualify to perform the duties of that specialty occupation based on his education credentials as evaluated, because it has not been demonstrated that the beneficiary possesses a degree in a specialized field of study.

Specifically, while an evaluation of the beneficiary's academic credentials prepared by a credential evaluator states that the beneficiary possesses the equivalent to a U.S. Bachelor's degree in Business Administration, it fails to designate any specific business specialty. The AAO notes that a general

degree in business administration alone is insufficient to qualify the beneficiary to perform the services of a specialty occupation, unless the academic courses pursued and knowledge gained is a realistic prerequisite to a particular occupation in the field. *Matter of Ling*, 13 I&N Dec. 35. The petitioner must demonstrate that the beneficiary obtained knowledge of the particular occupation in which he or she will be employed. *Id.* Thus, even if the petitioner had demonstrated that the proffered position requires at least a bachelor's degree in a specific specialty or its equivalent, the petition could not be approved, because the petitioner failed to demonstrate that the beneficiary has taken courses or gained knowledge considered to be a realistic prerequisite to any specific specialty within the field of business. For this additional reason, the petition must be denied.

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.

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