

(b)(6)

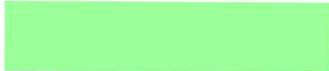
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



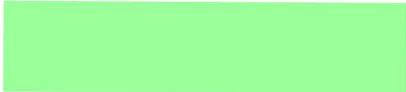
U.S. Citizenship
and Immigration
Services



Date: **JUN 13 2013** Office: CALIFORNIA SERVICE CENTER

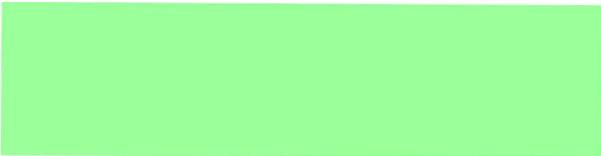


IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 specialty food manufacturer/importer with two employees. To employ the beneficiary in what it designates as a food technologist position, the petitioner endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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

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.

As indicated above, the issue on appeal before the AAO is whether 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 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.

(b)(6)

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 providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and 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 simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

With the visa petition, counsel submitted evidence showing that the beneficiary has a bachelor's degree in food technology awarded by the [REDACTED], Republic of the Philippines. An evaluation provided states that the beneficiary's foreign degree is equivalent to a U.S. bachelor's degree in Food Technology.

Counsel also provided a letter, dated September 23, 2010, from the petitioner's president, which states the following about the duties of the proffered position:

To put it simply, the Food Technologist will apply food research to develop food that is safer and healthier. The Food Technologist will create different kinds of food products that will eventually appear on the shelves for consumers. She will work in all aspects of the food industry specifically fresh foods like fish and may specialize in a particular type of food, in this case, Filipino specialty products such as *bagoong*. Moreover, she will also work in research, quality control, production supervision or marketing.

As to the educational requirement of the proffered position, the petitioner's president stated, "The position of Food Technologist requires the completion of a 4[-]year degree in Food Technology or Science." Counsel also provided two vacancy announcements.

On January 12, 2011, the service center issued an RFE in this matter. The service center requested, *inter alia*, additional evidence that the petitioner would employ the beneficiary in a specialty occupation, including a more detailed description of the duties of the proffered position.

In response, counsel submitted (1) three vacancy announcements; (2) a printout of information from a website maintained by the [REDACTED] and (3) a printout of information from a website maintained by the [REDACTED]

The printout from the IFT website states that admission to that organization requires either a minimum of a bachelor's degree, or the equivalent, in food science and technology, or "any non-food

(b)(6)

Page 5

science[-]related bachelor[']s or higher degree, or equivalent . . . [and] Ten years of documented contributions to the profession and, if applicable, IFT.

The printout from the [REDACTED] website indicates that food technologist positions that involve product development require a minimum of a bachelor's degree in agricultural science.

The director denied the petition on March 31, 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 criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserted that the evidence submitted is sufficient to demonstrate that the proffered position qualifies as a specialty occupation position.

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

The AAO observes, initially, that the only description provided of the duties of the proffered position is insufficient to show that it qualifies as a specialty occupation position. That the beneficiary would "apply food research" to create safer, healthier foods; that she would work in all aspects of the food industry, especially fresh foods like fish; that she may specialize in a particular kind of food, such as Filipino specialty products; and that she will work in research, quality control, production supervision, or marketing is too abstract to demonstrate the level of education the proffered position requires.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4. This is sufficient reason, in itself, to find that the petitioner has not demonstrated that the proffered position is a specialty occupation position, and sufficient reason, in itself, to deny the visa petition.

Further, despite the director's specific request for "a more detailed description of the work to be performed by the beneficiary," the petitioner failed to respond to this material request for evidence. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). For this reason as well, the petition must be denied.

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

The AAO recognizes the U.S. Department of Labor's (DOL's) *Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹

As a preliminary matter, it must be noted that there is a fundamental discrepancy between how the petitioner classified the proffered position when seeking approval from DOL for its Labor Condition Application (LCA) and how it now describes and classifies the position in this petition filed with USCIS. Specifically, despite counsel's and the petitioner's repeated claims that the proffered position is a food scientist or technologist position (SOC (ONET/OES) code 19-1012), the LCA submitted in support of this petition was certified by DOL for a food science technician position (SOC (ONET/OES) code 19-4011.02). Therefore, based on the petitioner's attestations on the valid LCA that the proffered position is that of a food science technician, the AAO finds that the position is more likely than not that of a food science technician and not a food technologist as subsequently claimed by the petitioner, especially given the minimal position description provided and the petitioner's refusal to provide a more detailed description when provided an additional opportunity to do so. 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).

In the "Agricultural and Food Science Technicians" chapter, the *Handbook* provides the following description of the educational and training requirements for this occupational category:

Agricultural and food science technicians typically need an associate's degree in animal science or a related field. Technicians who have only a high school diploma typically get more on-the-job training than do those with a college degree.

Education and Training

People interested in this occupation should take as many high school science and math classes as possible. A solid background in applied chemistry, physics, and math is vital.

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.

Agricultural and food science technicians typically need an associate's degree in animal science or a related field from an accredited college or university. While in college, prospective technicians learn through a combination of classroom and hands-on learning, such as an internship.

A background in the biological sciences is important for food and agricultural technicians. Students should take courses in biology, chemistry, animal science, and agricultural engineering as part of their programs. Many schools offer internships, cooperative-education, and other experiential programs designed to enhance employment prospects.

Technicians with a high school diploma usually complete an extensive training program under the supervision of a more-experienced technician. These training programs can last a year or more.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Agricultural and Food Science Technicians," <http://www.bls.gov/ooh/life-physical-and-social-science/agricultural-and-food-science-technicians.htm#tab-4> (last visited June 10, 2013).

As the *Handbook* clearly indicates that a high school degree or an associate's degree is sufficient to enter a food science technician position, it does not support the assertion that a bachelor's or higher degree in a specific specialty or its equivalent is required to enter this occupation. In addition, as the other evidence submitted in the record relates only to food science and technology positions, it is irrelevant to establishing whether the proffered position, i.e., a food science technician position, qualifies as a specialty occupation.

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 an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from 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. Again, as the other evidence submitted in support of the petitioner and counsel's assertions relates only to food science and technology positions, it is irrelevant to establishing whether the proffered position, i.e., a food science technician position, qualifies as a specialty occupation.

For example and as was noted above, counsel provided two vacancy announcements with the visa petition and three additional vacancy announcements with the response to the RFE. Those vacancy announcements are for positions entitled Food Technologist, Product Development Specialist, Product Development Food Scientist, and Food Technologist II – Desserts. One of those vacancy announcements is for a position with a dietary supplement manufacturer. One is for a position with a healthcare products provider. Another is for a position with [REDACTED], a large food manufacturer. The other two positions announced are with unidentified companies in unidentified industries. Whether any of those companies should be considered to be within the petitioner industry is unclear. Some, however, are clearly not.

In any event, each appears to relate to food technology positions, not food science technician positions. Therefore, in addition to the other evidence submitted in support of the petition, these advertisements are irrelevant to determining whether the proffered position, a food science technician position, qualifies as a specialty occupation.

Further, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry, which they are not, and each stated that the position announced requires a minimum of a bachelor's degree in a specific specialty or its equivalent, which they do not, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from five announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.²

² Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from five job postings 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 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 the job announcements submitted supported the finding that the position of food science technician for a company similar to the petitioner and in the petitioner's industry required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of

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 such credentials.

The record contains no evidence that would differentiate the work of the proffered position from the work of positions that are not so complex or unique that they require a minimum of a bachelor's degree in a specific specialty or its equivalent. Here, the LCA submitted in support of the petition was certified for a Level I food science technician 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. Therefore, it is not credible that the position is one with complex or unique duties, as such a higher-level position would likely be classified as a Level IV position, requiring a significantly higher prevailing wage.

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

Counsel and the petitioner's president implied that the proffered position is a new position, that is, that the petitioner has never previously hired anyone to fill the proffered position. In any event, the record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).³

postings that may 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 or its equivalent for entry into the occupation in the United States.

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").

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.

Relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. As noted above, the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. Therefore, it is not credible based on the evidence presented that the position is one with specialized and complex duties, as such a higher-level position would likely be classified as a Level IV position, requiring a significantly higher prevailing wage. Again, 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. at 591-92. The petitioner has not, therefore, 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 additional reason.

Finally and as discussed, *supra*, the LCA provided in support of the instant petition was certified by DOL at a Level I prevailing wage for a food science technician position. Again, this demonstrates that the LCA is at odds with the petitioner and counsel's claims that the proffered position is a food scientist or technologist position.

Given that the LCA submitted in support of the petition is for a Level I food science technician position, it must therefore be concluded that either (1) the proffered position is an entry-level food science technician; or (2) the LCA does not correspond to the petition. In other words, even if the petitioner established that the proffered position is a food scientist and/or technologist position, the petition could still not be approved due to the petitioner's failure to submit an LCA that corresponds to that occupational category.

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 a valid LCA that corresponds to the claimed food scientist or technologist position, and the petition would have to be denied for this reason alone if, in fact, the petitioner had demonstrated the proffered position to be a food scientist and/or technologist.

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.

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. The appeal will be dismissed and the petition denied.

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