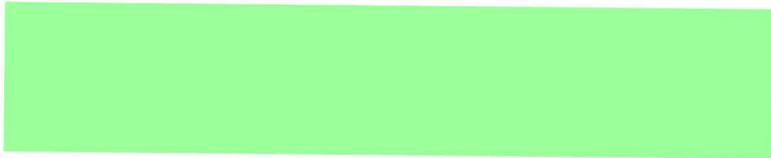
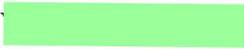




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JUN 19 2013** Office: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen 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 nonimmigrant visa petition was denied by the service center director, 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 homecare, recruitment, and placement agency with 16 employees, established in 2006. In order to employ the beneficiary in what it designates as a "Corporate Communications Director," the petitioner seeks 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).

The director denied the petition, finding that the petitioner had failed to submit sufficient evidence demonstrating that a credible offer of employment existed for the beneficiary. On appeal, counsel for the petitioner asserts that the director's basis for denial was erroneous, and contends that the petitioner satisfied all evidentiary requirements. Counsel submits a brief and additional evidence in support of this contention.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's notice denying the petition; and (5) the petitioner's Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.¹

For the reasons that will be discussed below, the AAO agrees with the director's decision that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

In its letter of support, dated October 26, 2009, the petitioner stated that it is "a family owned and managed corporation with years of experience in [the] home health care industry." It further indicated that it provided non-skilled nursing care in the privacy of patients' homes.

According to the petitioner, this H-1B specialty occupation petition was filed in order for it to employ the beneficiary in what the petitioner designated as a corporate communications director position to work on a part-time basis (24 hours per week) at a salary of \$15.53 per hour. The Labor Condition Application (LCA) which the petitioner submitted for the petition has been certified for a position in the "Public Relations Specialists" occupational classification, which is identified by the SOC (ONET/OES) code 27-3031. Also, the LCA identified the beneficiary's work location as Glendale Heights, Illinois.

The director found that the petitioner had failed to submit sufficient evidence pertaining to the proposed employment of the beneficiary, and issued an RFE on November 24, 2009. Specifically, the director noted that the petitioner seemed to lack the organizational complexity required to

¹ The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

employ the beneficiary in the type of position specified in the petition, and, accordingly, the RFE requested evidence to demonstrate that the petitioner's need for the beneficiary's services was legitimate. The director requested evidence of the petitioner's ongoing marketing plans, including copies of reports and documents demonstrating the methods used to gather statistical data and other pertinent information. The director also requested evidence to substantiate the petitioner's annual income, current number of employees, and type of business, as well as a copy of the petitioner's lease agreement and quarterly wage reports. Finally, an organizational chart demonstrating the composition of the petitioner's internal structure was requested.²

The director found the petitioner's response to the RFE insufficient, and denied the petition on March 9, 2010.

The director framed the denial of the petition as being based upon what she termed the petitioner's failure to establish that "there exists a credible offer of employment" to the beneficiary. The content of the director's decision conveys that the director found that, even as expanded by the petitioner's submissions in response to the RFE, the record of proceeding lacked a sufficient factual foundation to support a U.S. Citizenship and Immigration Services (USCIS) determination that the beneficiary would be employed in the position and occupational classification specified in the petition, and, if he were so employed, that he would be working in a specialty occupation. The AAO also finds that the director's decision also conveyed an even more fundamental determination, namely, that the petitioner had failed to establish that, at the time of the petition's filing, it had secured any employment at all for the beneficiary for the period of employment specified in the petition.

Also, the director's decision communicated that the director's ultimate decision to deny the petition was based upon her finding that the evidence in the record of proceeding was not only insufficient but also so inconsistent as to undermine the credibility of the petition as a whole.

The AAO will first address the credibility issue, which is at the heart of the director's decision to deny the petition.

The AAO finds that the record of proceeding is so rife with material inconsistencies that it compels the AAO to find that the claim that the beneficiary would be employed as stated in the petition is not credible. For this reason alone, the appeal must be dismissed and the petition must be denied. In this regard, the petitioner should note that USCIS approval of a petition may not be based upon a record of proceeding that contains material assertions or material evidence that USCIS determines to be not credible.³

² The director also requested evidence demonstrating that the proffered position was a specialty occupation, as well as evidence demonstrating that the beneficiary was qualified to perform the services of a specialty occupation.

³ Aside from the fact that, as a matter of inherent evidentiary value and impact, the negative weight of such evidence naturally undermines the credibility of a petition, USCIS regulations recognize credibility of evidence as an essential element in the determination of whether an H-1B petition should be approved. See the regulation at 8 C.F.R. § 214.2(h)(10)(ii): "The petition will be denied if it is determined that the

The AAO will now identify one particular aspect of the record of proceeding that the AAO finds materially inconsistent with the nature of the petitioner's business operations as depicted in the record of proceeding. This aspect of the record, which the AAO finds sufficient in itself to require dismissal of the appeal, is the material inconsistency between, on the one hand, what the petitioner has asserted about the nature of its business operations, and on the other hand, some of the work that the petitioner claims for the beneficiary's position in the job description submitted in response to the RFE.

For the nature of the petitioner's business operations, the AAO refers the petitioner to the printouts from its Internet site that were submitted as part of the response to the RFE. The AAO observes that the printouts indicate that the petitioner is engaged in "Home Health CareGiver services," which "makes possible that [its] elderly clients live independently and enjoy life to the fullest in the comfort and safe[ty] of their own home." While the printouts promise coordination between the elderly client and that person's physician, there is no indication that the petitioner counts among its clients any hospital or caregiving facility; nor is there any indication in the printouts that the petitioner is affiliated with any such institution.

Yet, the AAO finds that the petitioner's description of the job proposed for the beneficiary indicates a far broader scope of business, which, the AAO also finds, is nowhere corroborated by any evidence in the record of proceeding. In this regard, the AAO finds materially inconsistent with the rest of the evidence within the record of proceeding the following assertions in the "Duties and Responsibilities Of Our Communications Director" document submitted as part of the RFE response: (1) "advise and require in-house marketers . . . to use appropriate corporate language" (as there is no evidence anywhere in the record that there are any such marketers); (2) "coordinate and work closely with our IT personnel" (as there is no indication anywhere in the record that such "IT personnel" are in fact part of the petitioner's staff); (3) "act and represent our organization in discussing issues with concerned facilities" (as the evidence in the record of proceeding does not indicate that the petitioner is actually involved with any "concerned facilities," and renders unlikely any such involvement in light of the nature of the petitioner's stated business as a provider of caregivers for persons at their homes); and (4) "maintain and ensure sound relationship with our client healthcare facilities" and "[c]ommunicate promptly . . . with the complaining client healthcare facility" (as there is no evidence of any such relationship, and as such relationship is not consistent with the petitioner's services as depicted in the aforementioned Internet printouts). The AAO further finds that, aside from and in addition to the lack of any evidence of there being any client healthcare facilities with which the beneficiary would coordinate, the Internet printouts which the petitioner submitted as proof of its business activities affirmatively indicate, by the statements and solicitations therein, that the petitioner deals directly with its clientele (elderly people in need of at-home care) and without the intervention or assistance of any healthcare facility. Additionally, the AAO here incorporates as an additional, independent basis for not accepting the petition as credible, the

statements on the petition were inaccurate, fraudulent, or misrepresented a material fact." *See also* the regulation at 8 C.F.R. § 214.2(h)(11)(iii)(2) that a notice of intent to revoke approval of a petition must be issued, if, at any time after the approval, the director finds that "[t]he statement of facts contained in the petition . . . was not true and correct, inaccurate, fraudulent, or misrepresented a material fact."

discussions later in this decision with regard to the payment of persons working for them. The AAO is left to question the validity of the petitioner's claim and the remainder of the beneficiary's claimed duties. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Therefore, the AAO will leave undisturbed the director's determination that the petition is not credible.

Next, the AAO finds that the appeal must be dismissed, and the petition must be denied, because the petitioner failed to provide the evidence requested in the RFE that was material to the question of the actual nature of the employment, if any, in which the beneficiary would engage if this petition were approved. In particular, the AAO notes that, as noted by the director, the petitioner failed to provide the following documentary evidence that had been requested in the RFE: (1) a "line-and-block organizational chart showing the petitioner's hierarchy and staffing levels," which the AAO finds was within the scope of the RFE because the duties submitted with the RFE indicated that the beneficiary would be in a position to direct others, at least with regard to how to use language commensurate with proper corporate decorum; (2) the requested lease documentation, which, the AAO finds relevant to the service center's concerns as to whether the petitioner was actually engaged in business and maintained a facility that is adequate in space for the petitioner's staff, including, but not limited to, the asserted "in-house marketers," "IT personnel," "Finance Department," and "Human Resources Department"; and (3) "the petitioner's State quarterly wage reports for all employees for the last 4 quarters," which the AAO finds a materially relevant request for corroborative evidence to allay the service center's concerns about whether the petitioner in fact employs persons as it claims. The AAO finds that the petitioner's decision to not provide that documentation defeated the director's attempt to obtain an evidentiary record sufficient to adequately inform her about the factual foundation for and adequacy of the petitioner's claims that it would employ the beneficiary as claimed in the petition.

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 the reasons discussed above, the AAO finds that the appeal must be dismissed and the petition denied on this ground also. The AAO further finds that this basis of denial was adequately conveyed in the director's statements, in a paragraph at page 3 of her decision, that the petitioner only provided some of the requested information and left the director "[w]ithout sufficient business information" to enable her to determine "whether the petitioner is a bona fide employer and if there exists a reasonable and credible offer of employment."

Next, the AAO finds that, contrary to counsel's assertions on appeal, the evidence of record also failed to establish the existence of a valid employer-employee relationship between the petitioner and the beneficiary that is a necessary for any finding of an H-1B specialty occupation. Thus, the petition must also be denied due to the petitioner's failure to establish that it qualifies as a United States employer.

The AAO here incorporates into this discussion this petition's earlier analysis and findings with regard to the evidentiary inconsistencies and deficiencies of this petition and the resulting lack of credibility of the petition's claims with regard to the work that the petitioner would perform. The

AAO here also adds its additional finding with regard to the credibility of the petitioner's claims with regard to actually employing persons to the extent claimed in the petition.

Prior to adjudication, the petitioner submitted copies of its Form 1120, U.S. Corporation Income Tax Return, for 2007 and 2008, along with copies of internal quarterly payroll records for its employees for 2009. The tax returns for 2007 and 2008 indicate on Line 13 that the petitioner paid no salaries or wages, despite claiming that it employed 16 persons. The director cited this discrepancy in her denial.

On appeal, counsel addressed the director's concerns, and claimed that "[the petitioner's] employees were actually compensated as independent contractors." Counsel submits copies of the petitioner's "Other Deductions" list appended to the 2007 and 2008 returns, which list independent contractor compensation on Line 26. Counsel also submits a copy of the petitioner's Form 1120 for 2009, which reports salaries and wages paid in the amount of \$6,141 on Line 13 and independent contractor compensation of \$265,372 on Line 26 of its Other Deductions list. Counsel concludes by asserting that the reporting of wages paid on Line 13 of the 2009 return demonstrates that the petitioner has an employer-employee relationship with employees. The AAO disagrees.

The AAO finds counsel's explanation regarding the discrepancies noted by the director in the 2007 and 2008 returns acceptable, yet questions the validity of these claims since the petitioner's internal payroll summaries are not accompanied by corroborating evidence such as 1099 forms or cancelled checks demonstrating that this compensation was actually paid to contractors as claimed. Moreover, the AAO notes that Line 26 of the Other Deductions list for the 2009 return claims that \$265,372 was paid in non-employee compensation, whereas the petitioner's internal payroll records for 2009 total only \$155,213.85. Although the petitioner lists the check numbers representing each claimed payment, no bank statements or cancelled checks have been submitted to corroborate these payments. 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. 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. *Id.*

As discussed earlier with regard to the lack of credibility of the duty descriptions provided by the petitioner, the record of proceeding lacks sufficient documentation evidencing what exactly the beneficiary would do for the period of time requested or where exactly and for whom the beneficiary would be providing services. Given this specific lack of evidence, and the questions of the petitioner's status as an actual employer of others that it claimed to employ, the petitioner has failed to establish who has or will have actual control over the beneficiary's work or duties, or the condition and scope of the beneficiary's services. In other words, the petitioner has failed to establish whether it has made a bona fide offer of employment to the beneficiary based on the evidence of record or that the petitioner, or any other company which it may represent, will have and maintain the requisite employer-employee relationship with the beneficiary for the duration of the requested employment period. *See* 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "United States

employer" and requiring the petitioner to engage the beneficiary to work such that it will have and maintain an employer-employee relationship with respect to the sponsored H-1B nonimmigrant worker). Again and as previously discussed, there is a lack of credible evidence sufficient to establish what exactly the beneficiary would do if the petition were approved – and for whom - and to establish that, at the time of the petition's filing, material aspects of the work claimed for the beneficiary actually existed. Therefore the appeal must be dismissed and the petition must be denied for this additional reason. In this regard, counsel should note that its claim on appeal that, after the H-1B petition's filing, the petitioner filed business registration documents in the State of Virginia, securing permission to expand its business there, is not probative that any work for the petitioner or any other entity existed at the time of the petition's filing.

Finally, the AAO finds that in the particular context of this record of proceeding, with the aforementioned evidentiary deficiencies and inconsistencies, the petitioner has, consequently, also failed to establish the proffered position as a specialty occupation.⁴

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 [(2)] which 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, a proposed 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;

⁴ This basis for denying the petition was also communicated in the director's discussions regarding the failure of the evidence to establish a *bona fide* position within the H-1B specialty-occupation context.

- (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 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), 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(iv)(A) provides that “[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation.”

The petitioner's letter of support, dated October 26, 2009, claimed that as corporate communications director, the beneficiary would be responsible for planning and directing the petitioner's public relations programs, and provided the following list of specific duties associated with the position:

- Ensure courteous, honest, and efficient services to our company's present and potential customers coming from various disciplines engaged by our corporate business structure[;]
- Research, design, initiate, develop and implement state of the art customer service center to our organization's client base[;]
- Apply the latest technology and methodologies in customer relations service which would eventually ensure cost reduction outcome to our organization at large[;]
- Formulate procedures, standards and guidelines in handling customer complaints[;]
- Provide, develop and implement promotions and incentive or reward schemes for the organization's professional scouts in the recruitment thrust[s] and strategies[; and]
- Coordinate with the Human Resources Department on issues relative to resolution of some technical problems raised by our client healthcare facilities based on job performance by field personnel[.]

As previously discussed, in the RFE, the director requested additional evidence to demonstrate that the proffered position was a specialty occupation, and specifically requested additional information regarding the petitioner's organizational structure in order to determine the nature of the beneficiary's role in the petitioner's organization. Although the petitioner submitted an expanded description of the duties of the position as well job postings for other communications positions, no

independent documentation to further explain the nature and scope of these duties was submitted. Despite the director's specific request for an organizational chart, the petitioner failed to comply.

As discussed above, the petitioner failed to provide an overview of the manner in which its business operates. The failure of the petitioner to submit an organizational chart renders it impossible for the AAO to determine whether the petitioner's organization has a legitimate need for the services of a corporate communications director, since the petitioner appears to have had no employees for the years 2007 and 2008 and only a small number of employees for 2009 based on the minimal wages paid of \$6141. 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).⁵

The petitioner's failure to provide the requested evidence pertaining to its organizational structure and business operations, and the already discussed credibility issues regarding the claims in the petition, render it impossible to establish the substantive nature of the work to be performed by the beneficiary. The AAO is therefore precluded from 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's 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. For this additional reason, the petition must be denied.⁶

⁵ It is noted that, on appeal, the petitioner, through counsel, submitted an organizational chart for the petitioner. The regulations indicate that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary in the adjudication of the petition. See 8 C.F.R. §§ 103.2(b)(8); 214.2(h)(9)(i). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. § 103.2(b)(1), (8), and (12). The 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).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the organizational chart to be considered, it should have submitted it in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted for the first time on appeal.

⁶ It is noted that, even if a legitimate need for a corporate communications director was established, a review of the U.S. Department of Labor's *Occupational Outlook Handbook* (hereinafter the *Handbook*) does not indicate that such a position qualifies as a specialty occupation. Although the position as titled is not listed in the *Handbook*, a review of the stated duties of the position and the evidence submitted by the petitioner indicate that the proffered position is most akin to the *Handbook's* description regarding the occupational category "Customer Service Representatives," an occupational category for which the *Handbook* does not

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications, except to note that the petitioner did not submit an evaluation of the beneficiary's foreign degree or sufficient evidence to establish that his degree is the equivalent of a U.S. bachelor's degree in a specific specialty.¹² As such, since evidence was not presented that the beneficiary has at least a bachelor's degree or the equivalent in a specific specialty, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

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.

state that a U.S. bachelor's or higher degree in a specific specialty or its equivalent is required. *See* U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 Edition, "Customer Service Representatives," available on the Internet at <http://www.bls.gov/ooh/office-and-administrative-support/customer-service-representatives.htm#tab-4> (last accessed June 17, 2013). As such, absent evidence that the proffered position satisfies one of the alternative criteria available under 8 C.F.R. § 214.2(h)(4)(iii)(A), the instant petition could not be approved for this additional reason.

¹² The AAO notes that an educational evaluation is submitted for the first time on appeal. As with the organizational chart, when a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the evaluation to be considered, it should have submitted it in response to the director's request for evidence. *Id.*