



U.S. Citizenship
and Immigration
Services

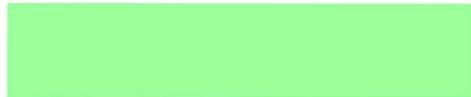
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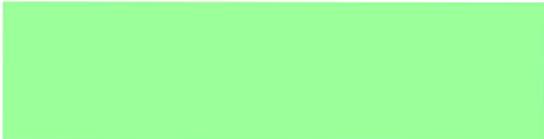
OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will remain denied.

On the Form I-129 visa petition, the petitioner describes itself as an institute of higher education established in 1949. In order to employ the beneficiary in what it designates as an education specialist I position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner (1) failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions; and (2) failed to establish that the beneficiary is qualified to serve in a specialty occupation position by virtue of possessing a baccalaureate degree in a specific field of study, or its equivalent, which is clearly related to the position being offered. On appeal, counsel for the petitioner asserts that the director's bases for denial of the petition were erroneous and contends that the petitioner satisfied all evidentiary requirements.

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

For the reasons that will be discussed below, the AAO agrees with the director 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. The petition will remain denied.

The first issue for consideration is whether the petitioner's 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 applicable 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.

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;
- (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), 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.

In the petition signed on May 4, 2012, the petitioner indicates that it wishes to employ the beneficiary as an education specialist I on a full-time basis at the rate of pay of \$40,000 per year. With the initial petition, the petitioner submitted a document entitled "Position Description and Requirements" for the position of enrollment (education) specialist I. The document describes the duties of the position as follows:

SUMMARY: Responsible for responding to inbound and outbound calls from prospective students enabling them to get information needed to consider [the petitioner] as school of choice.

ESSENTIAL DUTIES, RESPONSIBILITIES, AND EXPECTATIONS:

- Delivers superior customer service to all prospective [petitioner] students.
- Qualifies prospective students by asking fact-finding questions, ensuring prospective students are transferred to the correct enrollment counselor and sales team.
- Provides inbound and outbound support to enrollment teams, qualifying prospective students and accurately entering prospect's contact information in to the appropriate lead management system.
- Meets performance standards including data entry accuracy, productivity, phone, schedule adherence and attendance.
- Utilizes student contact database accurately and ensures all transactions with students is [sic] recorded[.]
- Tracks, reports, and trends lead qualification data[.]

- General familiarity with standard concepts, practices, and procedures of quality customer service.
- Accurately follows provided qualification scripts and process flowcharts[.]

In addition, the document indicates the following:

Education and/or Experience:

- Bachelor's degree required. Can be within one year of degree completion if meets minimum work experience.
- Minimum one year of customer service experience.

The AAO observes that the document does not indicate that the minimum academic requirement for the position is a bachelor's degree *in a specific specialty*, or its equivalent.

The petitioner also submitted the beneficiary's transcript from the petitioner, which indicates that he was awarded a Bachelor of Science degree in Justice Studies on May 3, 2011. Moreover, the petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The AAO notes that the LCA designation for the proffered position corresponds to the occupational classification "Educational, Guidance, School, and Vocational Counselors" - SOC (ONET/OES Code) 21-1012. The petitioner designated the proffered position as a Level I (entry-level) position.

The director found the initial evidence insufficient to establish eligibility for the benefit sought and issued an RFE on May 26, 2012. The petitioner was asked to submit probative evidence to establish (1) that a specialty occupation position exists for the beneficiary; (2) that the beneficiary is qualified to perform in the claimed specialty occupation; and (3) that a valid employer-employee relationship exists between the petitioner and the beneficiary. The director outlined the specific evidence to be submitted. The AAO notes that the director specifically requested the petitioner to provide a more detailed description of the work to be performed by the beneficiary for the entire period requested, including the specific job duties, the percentage of time to be spent on each duty, and level of responsibility, etc.

On August 20, 2012, the petitioner responded to the RFE by submitting an undated and unsigned letter, along with additional evidence. Specifically, the petitioner submitted an email correspondence regarding its offer of employment to the beneficiary and a document entitled "Position Description and Requirements" for the position of enrollment counselor.¹

In the undated and unsigned letter, the petitioner provided a revised job description of the proffered position as follows:

In this position, the Beneficiary will support [the petitioner's] international online

¹ As previously noted, in the Form I-129, the petitioner indicated that the proffered position is "education specialist I." Thus, this document is irrelevant.

students in the pursuit of a college degree by:

- Providing advice and counseling to currently enrolled international students and potential students in obtaining and completing their degree.
- Instructing and guiding students in their online classrooms to ensure their level of participation meets the required academic standards[.]
- Discusses and facilitates understanding of financial requirements and ensures student takes advantage of all options[.]

The AAO observes that despite the director's finding that the petitioner's description of the proposed duties was nonspecific, the petitioner elected not to provide a more detailed description of the duties the beneficiary would perform. Consequently, in the instant case, the petitioner did not provide any specific information with regard to the order of importance and/or frequency of occurrence with which the beneficiary will perform the functions and tasks. Thus, the petitioner failed to specify which tasks were major functions of the proffered position; moreover, it did not establish the frequency with which each of the duties would be performed (e.g., regularly, periodically or at irregular intervals). As a result, the petitioner did not establish the primary and essential functions of the proffered position. No explanation for failing to submit this information was provided.

The director reviewed the information provided by the petitioner. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The director denied the petition on August 30, 2012. Counsel submitted an appeal of the denial of the H-1B petition.

To ascertain the intent of a petitioner, USCIS must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

The AAO observes that in the above job description (submitted in response to the RFE), the petitioner expanded the beneficiary's duties, adding items such as: providing advice and counseling to currently enrolled international students and potential students in obtaining and completing their degree; and instructing and guiding students in their online classrooms to ensure their level of participation meets the required academic standards.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially

change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's RFE did not simply clarify or provide more specificity to the original duties of the position, but rather added new generic duties to the job description.

Furthermore, upon review of the duties of the proffered position submitted by the petitioner with the initial petition and in response to the RFE, the AAO notes that the job descriptions are generalized and generic, as the petitioner fails to convey either the substantive nature of the work that the beneficiary would actually perform, or any particular body of highly specialized knowledge that would have to be theoretically and practically applied to perform the proffered position.

The petitioner failed to provide sufficient details regarding the nature and scope of the beneficiary's employment or any substantive evidence regarding the actual work that the beneficiary would perform. Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The tasks as described fail to communicate (1) the actual work that the beneficiary would perform, (2) the complexity, uniqueness and/or specialization of the tasks, and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty.

In addition, upon review of the record of proceeding, the AAO notes that there are numerous inconsistencies and discrepancies in the petition and supporting documents, which undermine the veracity of the petitioner's statements with regard to the services the beneficiary will perform, as well as the actual nature and requirements of the proffered position. When a petition includes numerous errors and discrepancies, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The AAO observes that the petitioner provides conflicting information as to the job title of the proffered position. For example, in the Form I-129, the petitioner referred to the proffered position as "Education Specialist I." In the LCA, the petitioner referred to the proffered position as "Education Specialist." Further, the petitioner provided a document entitled "Position Description and Requirements" for the position of "Enrollment (Education) Specialist I" with the initial petition. In the undated and unsigned letter, submitted in response to the RFE, the petitioner referred to the proffered position as "Educational Specialist (Enrollment Counselor)." In addition, in the email correspondence, submitted in response to the RFE, the petitioner referred to the proffered position as "Online Enrollment Counselor." Moreover, the petitioner submitted a document entitled "Position Description and Requirements" for the position of "Enrollment Counselor" in response to the RFE. No explanation for the variances was provided.

Further, the AAO notes that the petitioner has provided inconsistent information regarding the beneficiary's rate of pay. In the Form I-129, the petitioner indicated that the beneficiary will be compensated at the rate of \$40,000 per year. However, in the LCA, the petitioner indicated that the beneficiary will be paid at the rate of \$17.14 per hour (\$35,651.20 per year). Further, in the email correspondence, submitted in response to the director's RFE, the petitioner stated that the beneficiary's hourly rate would be "\$19.2307" (\$39,999.85 per year). The petitioner did not acknowledge or provide any explanation for the discrepancies.

Moreover, the record of proceeding contains materially inconsistent information regarding the beneficiary's place of employment. In the Form I-129 and LCA, the petitioner indicated that the beneficiary's worksite is [REDACTED]. However, the document entitled "EVIDENCE PERTAINING TO RIGHT TO CONTROL," submitted in response to the RFE, indicated that the beneficiary works at the petitioner's Military Education Division, [REDACTED]. The petitioner did not acknowledge or provide any explanation for the discrepancies.

The petitioner also provided inconsistent information regarding the minimum requirements for the proffered position. For example, the document entitled "Position Description and Requirements" for the position enrollment (education) specialist I, submitted with the initial petition, indicated that the position requires a bachelor's degree and a minimum of one year of customer service experience. In response to the RFE, the petitioner stated that "[t]he position is professional in nature and requires, a Bachelor's degree from a -year college or university." Further, the document entitled "Position Description and Requirements" for the position of enrollment counselor, submitted in response to the RFE, indicated that a "Bachelor's Degree [is] required preferably in marketing, education or business administration."² No explanation for the variances was provided.

Furthermore, based upon a review of the record of proceeding, the AAO finds that there are additional discrepancies and inconsistencies with regard to the proffered position that preclude the approval of the petition. For instance, there are discrepancies between what the petitioner claims about the occupational classification and level of responsibility inherent in the proffered position set against the contrary occupational classification and level of responsibility conveyed by the wage level indicated on the LCA submitted in support of the petition.

As previously discussed, the petitioner submitted an LCA in support of the petition that designated the proffered position to the corresponding occupational category of "Educational, Guidance, School, and Vocational Counselors" - SOC (ONET/OES) code 21-1012. The wage level for the proffered position in the LCA corresponds to a Level I (entry-level) position. The prevailing wage source is listed in the LCA as the OES (Occupational Employment Statistics) OFLC (Office of Foreign Labor Certification) Online Data Center.³ The petitioner signed the LCA on May 1, 2012,

² A *preference* for a degree in marketing, education, or business administration is not an indication of a *requirement* of a degree in one of these disciplines.

³ The Occupational Employment Statistics (OES) program produces employment and wage estimates for over 800 occupations. See Bureau of Labor Statistics, U.S. Department of Labor, on the Internet at

and by completing, submitting and by signing the LCA, the petitioner attested that the information contained in the LCA was true and accurate.

Wage levels should be determined only after selecting the most relevant Occupational Information Network (O*NET) occupational code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.

Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties.⁴ U.S. Department of Labor (DOL) emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is described as follows:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research

<http://www.bls.gov/oes/>. The OES All Industries Database is available at the Foreign Labor Certification (OFLC) Data Center, which includes the Online Wage Library for prevailing wage determinations and the disclosure databases for the temporary and permanent programs. The Online Wage Library is accessible at <http://www.flcdatacenter.com/>.

⁴ A point system is used to assess the complexity of the job and assign the wage level. Step 1 requires a "1" to represent the job's requirements. Step 2 addresses experience and must contain a "0" (for at or below the level of experience and SVP range), a "1" (low end of experience and SVP), a "2" (high end), or "3" (greater than range). Step 3 considers education required to perform the job duties, a "1" (more than the usual education by one category) or "2" (more than the usual education by more than one category). Step 4 accounts for Special Skills requirements that indicate a higher level of complexity or decision-making with a "1" or a "2" entered as appropriate. Finally, Step 5 addresses Supervisory Duties, with a "1" entered unless supervision is generally required by the occupation.

fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf.

In the appeal, counsel claims that the duties of the proffered position are complex, unique and/or specialized. For example, counsel states that "the position is so complex that it can be performed only by an individual with a degree and the nature of these special duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Counsel further states that "[t]he petitioner submitted ample evidence as to the complexity of the position in the response to the RFE."

Upon review of the assertions made by counsel, the AAO must question the level of complexity, independent judgment and understanding actually required for the proffered position as the LCA is certified for a Level I entry-level position. This characterization of the position and the claimed duties and responsibilities conflict with the wage-rate element of the LCA selected by the petitioner, which, as reflected in the discussion above, is indicative of a comparatively low, entry-level position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, the selected wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; that he will be expected to perform routine tasks that require limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results.

The claimed level of complexity, independent judgment and understanding is materially inconsistent with the LCA certification for a Level I entry-level position. Given that the LCA submitted in support of the petition is for a Level I wage, it must therefore be concluded that the LCA does not correspond to the petition.

As noted below, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(2) specifies that certification of an LCA does not constitute a determination that an occupation is a specialty occupation:

Certification by the Department of Labor of a labor condition application in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation. The director shall determine if the application involves a specialty occupation as defined in section 214(i)(1) of the Act. The director shall also determine whether the particular alien for whom H-1B classification is sought qualifies to perform services in the specialty occupation as prescribed in section 214(i)(2) of the Act.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed

for a particular Form I-129 actually supports that petition. See 20 C.F.R. § 655.705(b), which states, in pertinent part:

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.

(Italics added). 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 duties and requirements of the proffered position, that is, specifically, that corresponds to the level of work, responsibilities and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work, responsibilities and requirements in accordance with the pertinent LCA regulations. Thus, for this reason as well, the petition cannot be approved.

The statements regarding the claimed level of complexity, independent judgment and understanding required for the proffered position are materially inconsistent with the certification of the LCA for a Level I entry-level position. This conflict, along with the discrepancies in the job title, worksite, and academic and professional requirements, undermines the overall credibility of the petition. The AAO finds that fully considered in the context of the entire record of proceedings, the petitioner failed to establish the nature of the proffered position and in what capacity the petitioner actually intended to employ the beneficiary. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92. As previously mentioned, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.*

Accordingly, as the petitioner has not presented a cohesive account of the duties and responsibilities that the beneficiary would perform as its "education specialist I," it has failed to meet its burden of demonstrating that the proffered position is a specialty occupation.

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 remains denied.