



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: **MAY 03 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:  
[Redacted]

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

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

Thank you,  


Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the California Service Center on October 17, 2011. In the Form I-129 visa petition, the petitioner describes itself as a professional consulting and technical placement services business established in 1989. In order to employ the beneficiary in what it designates as a systems analyst 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 on June 12, 2012, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements.

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 response to the RFE; (4) the director's denial letter; and (5) the Form I-290B.<sup>1</sup> 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, and the petition will be denied.

Later in this decision, the AAO will also address an additional, independent ground, not identified by the director's decision, that the AAO finds also precludes approval of this petition. Specifically, beyond the decision of the director, the AAO finds that the petitioner failed to submit a Labor Condition Application (LCA) that complies with the applicable statutory and regulatory provisions. For this additional reason, the petition may not be approved, as this separate ground of ineligibility is considered an independent and alternative basis for denial.<sup>2</sup>

In this matter, the petitioner stated in the Form I-129 that it seeks the beneficiary's services as a team lead to work on a full-time basis at a rate of pay of \$53.00 per hour. In a support letter dated October 12, 2011, the petitioner stated the following regarding the duties of the proffered position:

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<sup>1</sup> Although counsel indicated on the Form I-290B that a brief would be submitted directly to the AAO within 30 days, the AAO has not received an appeal brief in this matter as of the date of this decision. Therefore, the record of proceeding will be considered complete as currently constituted.

<sup>2</sup> The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

We propose to employ [the beneficiary] as a Team Lead (Lead Systems Analyst) working in-house here at our Testing and Project Center in our headquarters office in [redacted] Michigan. In this senior role, he will initiate, develop, and enforce standards and procedures in support of improved service to our healthcare [sic] industry clients. On a day-to-day basis, he will be involved in project oversight, completion of deliverables, project management, customer interfacing, fiscal management, resource planning, issue resolution, tactical and strategic direction, and cross-training/formal training, as necessary. In addition, he will provide ongoing, technical systems analysis and development expertise to team members.

In its letter of support accompanying the initial Form I-129 petition, the petitioner described the minimum educational requirements for the proffered position as "a Bachelor's degree in Computer Engineering, Electrical Engineering, Electronic Engineering, or a related field of study." The petitioner also provided a statement from [redacted] indicating that the beneficiary holds the U.S. equivalent of a Bachelor of Science in Electronic Engineering and a Master of Science in Electrical Engineering; copies of documents from the [redacted] appearing to relate to the beneficiary; and documents related to the petitioner's business operations (lease, brochures, Michigan corporate documents, articles of incorporation, employee handbook).

In addition, the petitioner submitted an 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 "Computer Systems Analysts" - SOC (ONET/OES Code) 15-1051, at a Level II wage.

The director found the initial evidence insufficient to establish eligibility for the benefit sought and issued an RFE on February 7, 2012. The director outlined the evidence to be submitted. The AAO notes that the director specifically requested that the petitioner submit probative evidence to establish that the proffered position is a specialty occupation. In the request, the petitioner was specifically asked 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, level of responsibility, etc.

On March 26, 2012, counsel for the petitioner responded to the director's RFE by providing a revised description of the duties of the proffered position and additional evidence. Specifically, counsel provided a statement from the petitioner with the following description, in part, of its team lead position:<sup>3</sup>

This lead role will be responsible for ensuring that changes occurring in the [redacted] [redacted] meet the expectations of our clients and are without defects.

The lead will have a span of control of teams comprised of about 5 people and will be responsible for client communications and reporting.

<sup>3</sup> The AAO notes that the statement from the petitioner is not signed.

Estimated Work Per Task:

1. Reviewing/Understanding [redacted] business requirement documents (20%) – systems changes are communicated via written documents called Business Requirement Documents (BRDs). Topics include:
  - Membership – patient information such as contract number, address, name, etc.
  - Claims – files that contains [sic] data such as services rendered, charge amount, allowed amount, deductible, etc.
  - Authorization – provides validation that patient is approved to have certain services
  - Financial output – explanation of benefits (eob), provider voucher, check information
  - Coordination of benefits – two or more payers providing insurance coverage (includes Medicare)
  - Benefits – determines what services are payable. For example, how many physical therapy visits are allowed for the insurance coverage
2. Supporting corporate initiatives associated with [redacted] (20%)
  - System expertise to help sales team with writing/supporting Request for Proposals/Information (RFPs/RFIs)
  - Attending conferences [redacted] etc.) as necessary
  - Communicating to staff information disseminated from corporate office
  - Representing [the petitioner] on conference calls with existing and potential clients
3. Providing technical guidance to team (20%)
  - Review and assessment of [redacted] architecture such as table and file structures and usage
  - Interpretation of [redacted] system specifications as documented in Customer Service Requests (CSRs) and Technical Design Documents (TDDs)
  - Understanding of interface files into and out of the [redacted]
  - Familiarity with HIPAA transaction formats (837, 835, 834, 270/271, 276/277)
4. Providing approach direction to client request (5%)
  - Understanding and communicating expectations from client to team
5. Managing project task dates (15%)
  - Ability to create and maintain project milestones
  - Knowledge of MS Excel
  - Ability to create project deliverables such as Test Execution Strategy,

- Test Data Strategy, and expected results
  - Ability to review/approval project deliverables created by others
6. Reporting status (5%)
- Ability to communicate status of project via verbal and written means with high quality
  - Ability to maintain consistent schedule
7. Providing performance feedback to team (15%)
- Leadership skills to manage team performance

In addition, the petitioner submitted organizational charts, information on its corporate structure and executives, statements of work for ongoing contracts, and photos of the petitioner's premises.

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 June 12, 2012. Counsel for the petitioner submitted an appeal of the denial of the H-1B petition on July 10, 2012.

The issue before the AAO is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, the AAO will make some preliminary findings that are material to the determination of the merits of this appeal.

When determining whether a position is a specialty occupation, the AAO must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, U.S. Citizenship and Immigration Services (USCIS) looks 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."

Upon review of the record of proceeding, the AAO notes that the enclosed LCA does not appear to correspond to the claimed duties and requirements of the proffered position. Consequently, as will be discussed below, the petitioner has failed to establish the nature of the proffered position and in what capacity the beneficiary will actually be employed.

More specifically, the petitioner provided an LCA in support of the instant petition that indicates the

occupational classification for the position is "Computer Systems Analyst" at a Level II (qualified level) wage. 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.<sup>4</sup> 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.<sup>5</sup> 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 as indicated by the job description.

The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels. A Level II wage rate is described by DOL as follows:

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

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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

In the instant case, the petitioner and its counsel repeatedly claim that the nature of the proffered

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<sup>4</sup> For additional information on wage levels, 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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

<sup>5</sup> 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.

position involves complex, unique and/or specialized tasks. In its letter dated October 12, 2011, the petitioner described the proffered position as a "senior" role. In response to the RFE, counsel for the petitioner highlighted the "technical complexity and responsibility inherent" in the proffered position. In a statement submitted by counsel in response to the RFE, the petitioner states that the beneficiary will "have a span of control of teams comprised of about five people." In response to the RFE, counsel indicated that there were two individuals employed by the petitioner who were "performing nearly identical roles" as the proffered position, and provided organizational charts describing the reporting structure of these positions. The AAO notes that the organizational charts show that one of the individuals has 28 employees reporting to him and the other has 50. On appeal, counsel states that the proffered position involves "highly complex functions and roles," and notes the "very senior level" of the offered position, including "scores of professional IT developers and analysts reporting up to [the beneficiary]." Thus, the petitioner and counsel indicate that the petitioner will be relying heavily on the beneficiary's extensive knowledge and expertise to manage "scores of IT professionals" in this "complex" and "senior role." This characterization of the proffered position appears to be at odds with a Level II position, i.e., a position that requires the performance of "moderately complex tasks that require limited judgment."

Thus, upon review of the assertions made by the petitioner and 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 II qualified-level position. This characterization of the position and the claimed duties and responsibilities as described by the petitioner and counsel 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-level position relative to others within the occupation. As noted above, in accordance with the relevant DOL explanatory information on wage levels, the selected wage rate indicates that the beneficiary is only required to perform "moderately complex tasks that require limited judgment." The proffered position, as characterized by the petitioner and its counsel, seems more consistent with at least a Level III (experienced position) where the incumbent performs "tasks that require exercising judgment," "may coordinate the activities of other staff," and "may have supervisory authority over those staff." 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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). The "Prevailing Wage Determination Policy Guidance" issued by DOL notes that titles that include words such as "lead" or "senior" may be indications of a Level III position. The AAO notes, however, that a Level IV position appears more consistent with the petitioner's characterization of the proffered position. In a Level IV (fully competent) position an incumbent would "plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques."

Under the H-1B program, a petitioner must offer a beneficiary wages that are at least the actual wage level paid by the petitioner to all other individuals with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application. See section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A).

The AAO notes that the prevailing wage of \$34.21 per hour (\$71,157 per year) on the LCA corresponds to a Level II position for the occupational category of "Computer Systems Analysts" for [REDACTED], MI).<sup>6</sup> The AAO further notes that the petitioner proposes to pay the beneficiary at a rate of \$53.00 per hour, which is substantially higher than the prevailing wage for a Level II position, a Level III position (\$39.83 per hour), and a Level IV position (\$45.44 per hour). Nevertheless, the wage level designation on the LCA must correspond to the duties and requirements of the proffered position. The AAO is not in a position to speculate as to why the petitioner proposes to pay the beneficiary an hourly wage far in excess of the prevailing wage for what it designates as a Level II position.

In any event, the petitioner's designation of the position as a Level II position, while describing its level of complexity as a position that is properly characterized as a Level III or IV, undermines the credibility of the petition and, in particular, the credibility of the petitioner's assertions regarding the demands, level of responsibilities and requirements of the proffered position. 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).

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 [DOL] 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 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*

<sup>6</sup> For additional information regarding the prevailing wage for Computer Systems Analysts in [REDACTED] see the All Industries Database for 7/2011 - 6/2012 for Computer Systems Analysts at the Foreign Labor Certification Data Center, Online Wage Library on the Internet at [REDACTED] (last visited April 30, 2013).

*is supported by an LCA which corresponds with the petition, whether the occupation named in the [LCA] is a specialty occupation . . . 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 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.

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 II qualified-level position. This conflict 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 beneficiary will actually be employed.

For the foregoing reasons, a review of the enclosed LCA indicates that the information provided does not correspond to the level of work and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work and requirements in accordance with the pertinent LCA regulations. As a result, even if it were determined that the petitioner overcame the director's basis for denial of the petition (which it has not), the petition could not be approved for this independent reason.

The AAO will now specifically address the director's basis for denial of the petition, namely that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, and for the specific reasons described below, the AAO agrees with the director and finds that the evidence fails to establish that the proffered position qualifies as a specialty occupation.

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. 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), 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 the proffered position qualifies as a specialty occupation, the AAO now turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). In the interest of efficiency, the AAO hereby incorporates the above discussion and analysis regarding the duties and requirements of the proffered position into the analysis of each criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which follows below.

The AAO will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

The petitioner stated that the beneficiary would be employed in a systems analyst position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, 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. *See* section 214(i)(1) of the Act.

The AAO recognizes DOL's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>7</sup> As previously mentioned, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Computer Systems Analysts." The AAO notes that on appeal, counsel asserts that the *Handbook* "clearly states that a Bachelor's degree is the common entry requirement

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<sup>7</sup> All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

for this occupation, and that most Systems Analysts do have Bachelor's degrees in a computer-related field."

The AAO reviewed the chapter of the *Handbook* (2012-2013 edition) entitled "Computer Systems Analysts" including the sections regarding the typical duties and requirements for this occupational category.<sup>8</sup> However, the *Handbook* does not indicate that "Computer Systems Analysts" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry.

The subchapter of the *Handbook* entitled "How to Become a Computer Systems Analyst" states the following about this occupational category:

A bachelor's degree in a computer or information science field is common, although not always a requirement. Some firms hire analysts with business or liberal arts degrees who know how to write computer programs.

#### **Education**

Most computer systems analysts have a bachelor's degree in a computer-related field. Because computer systems analysts are also heavily involved in the business side of a company, it may be helpful to take business courses or major in management information systems (MIS).

Some employers prefer applicants who have a Master of Business Administration (MBA) with a concentration in information systems. For more technically complex jobs, a master's degree in computer science may be more appropriate.

Although many analysts have technical degrees, such a degree is not always a requirement. Many systems analysts have liberal arts degrees and have gained programming or technical expertise elsewhere.

Some analysts have an associate's degree and experience in a related occupation.

Many systems analysts continue to take classes throughout their careers so that they can learn about new and innovative technologies and keep their skills competitive. Technological advances come so rapidly in the computer field that continual study is necessary to remain competitive.

Systems analysts must also understand the business field they are working in. For example, a hospital may want an analyst with a background or coursework in

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<sup>8</sup> For additional information regarding the occupational category "Computer Systems Analysts," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Computer Systems Analysts, on the Internet at <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-1> (last visited April 30, 2013).

health management. An analyst working for a bank may need to understand finance.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., Computer Systems Analysts, available on the Internet at <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-4> (last visited April 30, 2013).

When reviewing the *Handbook*, the AAO must again note that the petitioner designated the proffered position as a Level II position on the LCA. As previously discussed, this designation is indicative of a comparatively low level position relative to others within the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to perform "moderately complex tasks that require limited judgment."

The *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into these positions. The *Handbook* indicates that there is a spectrum of degrees acceptable for positions in this occupation, including an associate's degree and degrees not in a specific specialty.

The narrative of the *Handbook* states that some analysts have an associate's degree and experience in a related occupation. The *Handbook* does not state that the experience gained by a candidate must be equivalent to at least a bachelor's degree in a specific specialty. While the *Handbook* indicates that a bachelor's degree in a computer or information science field is common, the *Handbook* does not report that such a degree is normally a minimum requirement for entry. The *Handbook* continues by stating that some firms hire analysts with business or liberal arts degrees who know how to write computer programs. According to the *Handbook*, many systems analysts have liberal arts degrees and have gained programming or technical expertise elsewhere. The *Handbook* reports that many analysts have technical degrees. The AAO observes that the *Handbook* does not specify a degree level (e.g., associate's degree, baccalaureate) for these technical degrees. Moreover, the *Handbook* specifically states that such a degree is not always a requirement.

The text of the *Handbook* suggests instead that a baccalaureate degree or higher may be a preference among employers of computer systems analyst in some environments, but that some employers hire employees with less than a bachelor's degree, including candidates that possess an associate's degree or a bachelor's degree in an unrelated specialty. Thus, the *Handbook* does not support the claim that the proffered position falls under an occupational group for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent.

The petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding, particularly in light of the Level II wage designation on the LCA, do not indicate that this particular position is one for which a baccalaureate or higher degree in a specific

specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO will review the record of proceeding regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

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

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports a standard, industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Thus, the AAO incorporates by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the petitioner did not submit any letters or affidavits from similar firms or individuals in the petitioner's industry attesting firms "routinely employ and recruit only degreed individuals."

Thus, based upon a complete review of the record of proceeding, the AAO finds that the petitioner has not established that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. Thus, for the reasons discussed above, the petitioner has not 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 shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

In support of his view that the proffered position qualifies as a specialty occupation, counsel asserts on appeal that the list of duties submitted in response to the director's RFE "included significant detail describing highly complex functions and role inherent in the lead position offered to [the beneficiary]." The AAO has reviewed the list of duties provided, reproduced in their entirety above, but does not find that these duties demonstrate that the proffered position can only be performed by an individual with at least a bachelor's degree in a specific specialty. The AAO observes that the beneficiary will spend 20% of his time "reviewing [and] understanding" business documents from the end client. Neither the petitioner nor counsel has established why a bachelor's degree in a specific specialty is required to review and understand client communications. Similarly, the list of duties indicates that the beneficiary will spend 20% of his time "[s]upporting

corporate initiatives associated with [REDACTED]. This duty involves assisting sales staff in the preparation of RFPs, attending conferences, communicating corporate messages to staff, and representing the petitioner on conference calls with existing and potential clients. The AAO does not find that any of these tasks, as described, are properly characterized as "complex" or "unique" and notes that the petitioner and counsel have failed to establish that performance of these tasks requires a bachelor's degree in a specific specialty. Further, the duties of "[p]roviding approach direction to client request," which, according to the petitioner means "understanding and communicating expectations from client to team"; "managing project tasks"; "reporting status" [of projects]; and "providing performance feedback to team," are general project management duties that will occupy 35% of the beneficiary's time. The generic description of these duties does not indicate that a bachelor's degree in a specific specialty is required to perform them. The AAO notes that only 20% of the beneficiary's time will be spent "providing technical guidance to [the] team," which is the only portion of the job description that appears to require any specialized knowledge or training. However, neither the petitioner nor counsel has established that the knowledge required to "provid[e] technical guidance" is obtained through the completion of a bachelor's degree in a specific specialty, or its equivalent.

The AAO reviewed the record of proceeding in its entirety, including evidence related to the petitioner's business operations (e.g., a lease, brochures, Michigan corporate documents, articles of incorporation, employee handbook, organizational charts, information on its corporate structure and executives, statements of work for ongoing contracts, and photos of the petitioner's premises). However, even with the context provided by these documents, the AAO finds that the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of team lead. The duties of the proffered position, as described by the petitioner, are not detailed with sufficient specificity for the AAO to assess exactly what the beneficiary will do on a day-to-day basis. The AAO is thus unable to find that the very generalized list of duties provided by the petitioner indicate that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor's degree in a specific specialty, or its equivalent.

The AAO notes that, on appeal, counsel asserts that the two individuals who currently hold positions entitled "team lead," are "filling identical roles to that offered to [the beneficiary]" as described in the statement from the petitioner's VP of Service Delivery. Assuming *arguendo* that these individuals hold positions identical to the proffered position, which the evidence does not establish, the AAO observes that the individuals who hold these positions both hold bachelor's degrees in business administration. A general degree in business administration, however, is not a degree in a specific specialty.<sup>9</sup>

A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree

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<sup>9</sup> Although the resume for one individual claims his business administration degree includes a concentration in computer information systems, this claim is not supported by the attached photocopy of this person's degree, which does not specify any concentration or specialty.

with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

Thus, contrary to their intended purpose, the evidence of the degrees held by other individuals in the same position indicates that the duties of the proffered position can be performed without a bachelor's degree in a specific specialty. Thus, as further discussed below, the petitioner itself does not require at least a baccalaureate degree in a *specific specialty* or its equivalent to perform the duties of the proffered position.

Additionally, the AAO finds that the petitioner has not provided sufficient documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent. This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, the LCA indicates a wage level at a Level II (qualified level) wage. As previously discussed, the wage-level of the proffered position, as so designated by the petitioner, indicates that the beneficiary is only required to perform "moderately complex tasks that require limited judgment." Without further evidence, it is simply not credible that the petitioner's proffered position is complex or unique as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position. For example, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."<sup>10</sup>

The petitioner failed to establish how the beneficiary's responsibilities and day-to-day duties are so complex or unique that the position can be performed only by an individual with a bachelor's degree in a specific specialty or its equivalent. Thus, based upon the record of proceeding, including the LCA, it does not appear that the proffered position is so complex or unique that it can only be performed by an individual who has completed a baccalaureate program in a specific discipline that directly relates to the proffered position, or its equivalent.

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<sup>10</sup> For additional information regarding wage levels as defined by DOL, 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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

Moreover, the petitioner fails to demonstrate how the duties of the team lead as described in the record require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it claims are so complex and unique. While some courses in computer science or computer programming may be beneficial or even required to perform certain duties of a computer systems analyst position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the particular position here proffered.

The AAO observes that the petitioner and counsel have indicated that the beneficiary's educational background and experience in the industry will assist him in carrying out the duties of the proffered position, and takes particular note of his academic degrees and professional experience working with computer systems. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. In the instant case, the petitioner does not establish which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. The petitioner failed to demonstrate that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent. Consequently, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. In assessing this criterion, the AAO usually reviews the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

To satisfy this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. In the instant case, the record does not establish a prior history of employing in the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

As noted above, counsel has asserted that there are two individuals currently holding positions with the petitioner that are "nearly identical" or "identical" to the proffered position, and that these individuals each hold a bachelor's degree. The AAO first observes that the evidence of record does not establish that these individuals hold "identical" positions to the proffered position, as no job descriptions for these other team lead positions have been provided, and the petitioner itself has not asserted that the positions are the same. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506

(BIA 1980). Further, the AAO notes that the block-and-line organizational charts provided in response to the RFE indicate that the two individuals currently holding team lead positions do not have the same subordinate reporting structure or the same number of subordinate reports. The AAO also notes that in its statement submitted in response to the RFE, the petitioner indicated that the proffered position "will have a span control of teams comprised of about five people." The block-and-line organizational charts indicate that both of the current team lead positions manage teams that are comprised of many more than five individuals, and that they do not manage the same number of teams. Thus, absent independent objective evidence resolving this apparent inconsistency, the AAO must question whether the proffered position is in fact "nearly identical" or "identical" to the other two team lead positions, as counsel asserts. *See Matter of Ho*, 19 I&N Dec. at 591-92.

Assuming *arguendo* that the positions are in fact identical, the evidence of record does not indicate that the petitioner normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. In its letter dated October 12, 2011, the petitioner indicated a minimum education requirement for the proffered position of "at least a Bachelor's degree in Computer Engineering, Electrical Engineering, Electronic Engineering, or a related field of study." The record reveals that neither individual that currently holds the team lead positions has a bachelor's degree in any of the fields specified by the petitioner. Rather, both individuals appear to hold bachelor's degrees in business administration. Counsel points out on appeal that these individuals also have "direct IT education and/or an IT major field of study." The AAO notes that there is no probative evidence in the record, such as university transcripts, which show that either individual completed a "major" in Information Technology (IT). In response to the RFE, counsel provided copies of these individuals' diplomas, which simply state "Bachelor of Business Administration." Counsel also provided copies of certificates from various institutes and colleges that indicate that one team lead has completed a program in project management, and the other has completed training in project management, computer programming, and IT service management. However, there is insufficient evidence in the record to show that these individuals have a combination of education, training, and/or experience that is properly considered "equivalent" to the petitioner's stated educational requirement of "at least a Bachelor's degree in Computer Engineering, Electrical Engineering, Electronic Engineering, or a related field of study."

While a petitioner may believe or otherwise assert that a proffered position requires a specific degree, that opinion alone without sufficient 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 petitioner 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 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if 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").

Upon review of the record of proceeding, the petitioner has not provided sufficient probative evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

On appeal, counsel asserts that the proffered position is a "senior role, with substantial inherent complexity." The AAO acknowledges that counsel and the petitioner believes that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. The AAO, however, reviewed the documentation submitted by the petitioner and finds that it fails to support the petitioner's assertion that the proffered position qualifies as a specialty occupation under this criterion of the regulations. More specifically, in the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The AAO hereby incorporates its earlier discussion regarding the generalized nature of the duties of the proffered position

Furthermore, the AAO also reiterates its earlier comments and findings with regard to the implication of the petitioner's designation of the proffered position in the LCA as a Level II. That is, the Level II wage designation is indicative of a lower-level position relative to others within the occupational category of "Computer Systems Analysts," and hence one not likely distinguishable by relatively specialized and complex duties. As noted earlier, DOL indicates that a Level II designation is appropriate for an employee who performs "moderately complex tasks that require limited judgment." Without further evidence, it is simply not credible that the petitioner's proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage. For instance, as previously mentioned, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. The AAO, therefore, concludes that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As a final note, counsel on appeal refers to "the literally thousands of H-1B petitions approved each year by the Service for Computer Systems Analyst positions across the country, for countless employers, including dozens of approvals of nearly identical petitions filed by [the petitioner]"

specifically," as a reason that the instant petition should be approved. First, there is no evidence in the record of proceeding to support these assertions of counsel. Second, when any person makes an application for a "visa or any other document required for entry, or makes an application for admission [ . . . ] the burden of proof shall be upon such person to establish that he is eligible" for such relief. 8 U.S.C. § 1361; *see also Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm'r 1972). Any suggestion that USCIS must review unpublished decisions and possibly request and review each case file relevant to those decisions, while being impractical and inefficient, would also be tantamount to a shift in the evidentiary burden in this proceeding from the petitioner to USCIS, which would be contrary to section 291 of the Act, 8 U.S.C. § 1361. Accordingly, neither the director nor the AAO is required to request and/or obtain a copy of the unpublished decisions alluded to by counsel.

If a petitioner wishes to have unpublished decisions considered by USCIS in its adjudication of a petition, the petitioner is permitted to submit copies of such evidence that it either obtained itself through its own legal research and/or received in response to a Freedom of Information Act request filed in accordance with 6 C.F.R. Part 5. Otherwise, "[t]he non-existence or other unavailability of required evidence creates a presumption of ineligibility." 8 C.F.R. § 103.2(b)(2)(i). In the instant case, the petitioner failed to submit a copy of the unpublished decisions or to even provide their receipt numbers. As the record of proceeding does not contain any evidence of the unpublished decisions, there were no underlying facts to be analyzed and, therefore, no prior, substantive determinations could have been made to determine what facts, if any, were analogous to those in this proceeding. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Further, despite any number of previously approved petitions filed by a particular petitioner, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* § 291 of the Act, 8 U.S.C. § 1361.

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

Lastly, a 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 has failed to establish that the proffered position requires a baccalaureate or higher degree in a specific specialty or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications.

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 145 (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.