



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAY 29 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.

On the Form I-129 visa petition and supporting documentation, the petitioner describes itself as a non-profit organization, established in 1971, that provides social services for children including day care centers.¹ In order to employ the beneficiary in what it designates as a day care group or head teacher position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, counsel for the petitioner 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 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 be denied.

The primary 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

¹ With the Form I-129 petition, the petitioner submitted a Form G-28 (Notice of Entry of Appearance as Attorney or Representative) signed by [REDACTED] and indicated in Box #4 the following:

I am a [REDACTED] of a Filipino community org. in New York City helping its members and family on immigration, labor certifications & citizenship issues. I appear in this case at specific request of employer petitioner with but token remunerations.

The AAO noted that the regulation at 8 C.F.R. § 103.2(a)(3) specified that a petitioner may be represented "by an attorney in the United States, as defined under 1.1(f) of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter." The AAO further observed that 8 C.F.R. § 292.1(a)(3) permits reputable individuals appearing without direct or indirect remuneration to represent a petitioner in certain circumstances. The AAO also noted that an accredited representative is defined in 8 C.F.R. § 292.1(a)(4) as a representative of an organization described in 8 C.F.R. § 292.2, which, in turn, states that only nonprofit religious, charitable, social service, or similar organizations recognized by the Board of Immigration Appeals may be so classified. In this case, the AAO finds that [REDACTED] does not fall within any of the categories of representatives authorized to file a Form G-28 on behalf of the petitioner.

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 September 12, 2011, the petitioner indicates that it wishes to employ the beneficiary as a day care group or head teacher on a full-time basis at the rate of pay of \$14.58 per hour (\$30,326.40 per year). The petitioner submitted a letter, dated September 12, 2011, which provides a brief description of its operations. The AAO reviewed all of the information submitted by the petitioner, and observes that the petitioner did not state that there are any particular academic requirements for the proffered position. Moreover, the petitioner did not submit any documents regarding the academic and/or professional credentials of the beneficiary.

With the initial petition, the petitioner submitted a photocopy of job description for a teacher position. The document contains a list of eleven "Tasks" with corresponding "Standards." However, the document is partially illegible. Moreover, the document is not on the petitioner's

letterhead and it is not endorsed by the petitioner. The document does not identify the petitioner (or the beneficiary). The record of proceeding does not indicate the source of the duties and responsibilities that are attributed to the "teacher" position. In addition, the petitioner provided a document entitled "Analysis of the Teacher's Job Description." The list includes three of the "Tasks" and corresponding "Standards" from the job description, along with an entry described as "Non-Teaching Responsibilities and Others." The list has been reproduced below:

Implementing the approved curriculum – bi-weekly lesson plans to include Mathematics, Science, English, etc., weekly visits to libraries, daily outdoor activities, play areas, trips.	50%
Record keeping – Assessment, Teacher interviews, Classroom observations, Lesson plans, Samples of children's work, Parent Teacher conference	10%
Enhancing children's literary skills – Sequence, Language, Computer Skills, Classifications, Listening Skills, Problem Solving, Story Telling, and Multicultural Awareness.	30%
Total Early Childhood Teaching Responsibilities	90%
Non-Teaching Responsibilities and Others	10%
Total	100%

The petitioner also 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 of "Preschool Teachers, Except Special Education" - SOC (ONET/OES Code) 25-2011.00. The petitioner designated the proffered position at a Level II wage.

The director found the initial evidence insufficient to establish eligibility for the benefit sought and issued an RFE on March 27, 2012. The petitioner was asked to submit probative evidence to establish that a specialty occupation position exists for 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, level of responsibility, etc.

On May 2, 2012, the petitioner responded by submitting further information regarding the proffered position and additional evidence. Notably, the petitioner submitted the same description of the job duties as it submitted with the initial petition. No explanation was provided. 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.

In addition, the petitioner submitted, in part, (1) documents from the City of New York – (2) a Memorandum of Agreement dated February 11, 2005; (3) job vacancy advertisements posted by the ; and (4) copies of the petitioner's job postings.

The petitioner also submitted a copy of the beneficiary's foreign diploma and transcript, along with an educational evaluation from [REDACTED]. The evaluation indicates that the beneficiary has "the equivalent of an individual with the Degree, Bachelor of Elementary Education, from a regionally accredited institution of higher education in the United States."²

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 July 16, 2012. Counsel for the petitioner submitted an appeal of the denial of the H-1B petition. With the Form I-290B, counsel submitted a brief and additional evidence.³

The issue before the AAO is whether the petitioner has provided sufficient evidence to establish that it would employ the beneficiary in a specialty occupation position. To make this determination, the AAO turns to the record of proceeding. 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. 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."

² Title 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) states that a petitioner may submit "an evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials" to support an assertion that a beneficiary has achieved a level of knowledge, competence, and practice in the specialty occupation that is equal to that of an individual who has a baccalaureate or higher degree in the specialty. In the instant case, the petitioner did not provide information or documentation regarding the credentials evaluation service and/or the evaluator.

³ With regard to the documentation submitted on appeal that was encompassed by the director's RFE, the AAO notes that this evidence is outside the scope of the appeal. The regulations indicate that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary in the adjudication of the petition. See 8 C.F.R. §§ 103.2(b)(8); 214.2(h)(9)(i). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. § 103.2(b)(1), (8), and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

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

Upon review of the duties of the "teacher" position submitted by the petitioner, the AAO notes that the job description is generalized and generic as the petitioner fails to convey either the substantive nature of the work that the beneficiary would actually perform, any particular body of highly specialized knowledge that would have to be theoretically and practically applied to perform it, or the educational level of any such knowledge that may be necessary. The responsibilities for the proffered position contain generalized functions without providing sufficient information regarding the particular work, and associated educational requirements, into which the duties would manifest themselves in their day-to-day performance within the petitioner's business operations. Furthermore, the petitioner did not provide sufficient documentation to substantiate the job duties and responsibilities of 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.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, the AAO first turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (hereinafter the *Handbook*), on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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)).

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁴ As previously discussed, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Preschool Teachers, Except Special Education."

⁴ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

The AAO reviewed the chapter of the *Handbook* entitled "Preschool Teachers," including the sections regarding the typical duties and requirements for this occupational category.⁵ However, the *Handbook* does not indicate that normally the minimum requirement for entry into these positions is at least a bachelor's degree in a specific specialty, or its equivalent.

The subchapter of the *Handbook* entitled "How to Become a Preschool Teacher" states, in part, the following about this occupation:

Education and training requirements vary based on settings and state regulations. They range from a high school diploma and certification to a college degree.

Education

In childcare centers, preschool teachers generally are required to have at least a high school diploma and a certification in early childhood education. However, employers may prefer to hire workers with at least some postsecondary education in early childhood education.

Preschool teachers in Head Start programs must have at least an associate's degree. However, by 2013, at least 50 percent of preschool teachers in Head Start programs nationwide must have a bachelor's degree in early childhood education or a related field. As a result, Head Start programs may prefer to hire workers with a bachelor's degree. Those with a degree in a related field must have experience teaching preschool-age children.

In public schools, preschool teachers are generally required to have at least a bachelor's degree in early childhood education or a related field. Bachelor's degree programs teach students about children's development, strategies to teach young children, and how to observe and document children's progress.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Preschool Teachers, on the Internet at <http://www.bls.gov/ooh/education-training-and-library/preschool-teachers.htm#tab-4> (last visited May 8, 2013).

When reviewing the *Handbook*, the AAO must note that the petitioner designated the proffered position as a Level II position (out of four possible wage-levels).⁶ This designation is indicative

⁵ For additional information regarding the occupational category "Preschool Teachers," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Preschool Teachers, on the Internet at <http://www.bls.gov/ooh/education-training-and-library/preschool-teachers.htm#tab-1> (last visited May 8, 2013).

⁶ The AAO notes that the prevailing wage and offered wage correspond to a Level I position. The petitioner has incorrectly attributed the proffered position as a Level II position. See the All Industries Database for 7/2011 - 6/2012 for "Preschool Teachers, Except Special Education" at the Foreign Labor Certification Data Center, Online Wage Library on the Internet at <http://www.flcdcenter.com/OesQuickResults.aspx?area=35644&code=25-2011&year=12&source=1> (last

that the beneficiary is expected to have a good understanding of the occupation and that she will perform moderately complex tasks that require limited judgment relative to others within the occupation.⁷

DOL guidance indicates that a requirement for years of education and/or experience that are generally required as described in the Occupational Information Network (O*NET) Job Zones would be an indication that a wage determination at Level II would be proper classification for a position. The occupational category "Preschool Teachers, Except Special Education " has been assigned an O*NET Job Zone 3, which groups it among occupations for which medium preparation is needed. More specifically, most occupations in this zone "require training in vocational schools, related on-the-job experience, or an associate's degree." See O*NET OnLine Help Center, at <http://www.onetonline.org/help/online/zones>, for a discussion of Job Zone 3. In the instant case, the petitioner designated the proffered position as a Level II position. This suggests that the petitioner's academic and/or professional experience requirements for the proffered position would be the same as those stated for occupations designated as O*NET Job Zone 3.

The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into this occupation. Rather, the *Handbook* states that although there is a range of acceptable credentials, most preschool teachers are required to have a high school diploma. The *Handbook* further indicates that some employers prefer to hire workers with some postsecondary education in early childhood education. Obviously, a preference for a particular level of education does not indicate a requirement.

visited May 8, 2013).

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.

⁷ 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.

The *Handbook* discusses the requirements for preschool teachers in Head Start programs and in public schools. The petitioner does not claim, and has not provided any documentation to support a finding, that it has a Head Start program or is a public school. Thus, these paragraphs of the *Handbook* are not relevant to the instant matter.

The AAO notes that the *Handbook* indicates that the minimum educational requirements for preschool teachers may vary by state. In response to the RFE, the petitioner submitted documentation from the City of New York – [REDACTED] and a Memorandum of Agreement dated February 11, 2005. The petitioner claims that it falls under the "Annual Salaries Per Collective Bargaining Agreement" and that the proffered position is classified as a "Teacher II" position. However, upon review of the document, the AAO observes that the salary for a "Teacher II" position was \$32,216 per year for new hires in April 2005. (The instant petition was submitted in September 2011.) The petitioner's offered salary of \$14.58 per hour (\$30,326 per year) is below the salary for required wage for "Teacher II" positions. Moreover, the document does not contain any information regarding the duties and responsibilities of a "Teacher II" position. The petitioner has not demonstrated that the proffered position falls under this category. Further, the documentation does not indicate that a baccalaureate or higher degree *in a specific specialty*, or its equivalent, is normally the minimum requirement for entry into such positions.

The AAO notes that on appeal, counsel references the Dictionary of Occupational Titles (hereinafter the DOT). The AAO notes that DOT was last updated in 1991 (approximately 20 years prior to the submission of the H-1B petition) and has been superseded by O*NET.⁸ The petitioner and counsel have failed to establish its relevancy here to establish the current educational requirements for entry into the occupation.

Nevertheless, the AAO reviewed the information provided by counsel in its entirety. However, upon review of the information, the AAO finds that it is insufficient to establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor's degree in a specific specialty or its equivalent. The information indicates that the occupational title of "Teacher, Preschool (education)" has a Specialized Vocational Preparation (SVP) rating of 7. It must be noted that an SVP rating of 7 is not indicative of a specialty occupation. This is obvious upon reading Section II of the DOT's Appendix C, Components of the Definition Trailer, which addresses the SVP rating system.⁹ The section reads:

⁸ See, for instance, this note at the opening page of the U.S. Department of Labor Internet site at <http://www.oalj.dol.gov/libdot.htm> (last visited May 8, 2013):

The Dictionary of Occupational Titles (DOT) was created by the Employment and Training Administration, and was last updated in 1991. It is included on the Office of Administrative Law Judges (OALJ) web site because it was a standard reference in several types of cases adjudicated by the OALJ, especially in older labor-related immigration cases. **The DOT, however, has been replaced by the O*NET.**

(Emphasis in the original).

⁹ Section II of the DOT's Appendix C, Components of the Definition Trailer, can be found on the Internet at

II. SPECIFIC VOCATIONAL PREPARATION (SVP)

Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

Specific vocational training includes training given in any of the following circumstances:

- a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);
- b. Apprenticeship training (for apprenticeable jobs only);
- c. In-plant training (organized classroom study provided by an employer);
- d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);
- e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

Level	Time
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month
3	Over 1 month up to and including 3 months
4	Over 3 months up to and including 6 months
5	Over 6 months up to and including 1 year
6	Over 1 year up to and including 2 years
7	Over 2 years up to and including 4 years
8	Over 4 years up to and including 10 years
9	Over 10 years

Note: The levels of this scale are mutually exclusive and do not overlap.

Thus, an SVP rating of 7 does not indicate that at least a four-year bachelor's degree is required, or more importantly, that such a degree must be in a specific specialty directly related to the duties and responsibilities of that occupation. Therefore, the DOT information regarding the occupation's SVP rating is also not probative of the proffered position being a specialty occupation.

It is incumbent upon the petitioner to provide persuasive evidence that the proffered position qualifies as a specialty occupation under this criterion, notwithstanding the absence of *Handbook* support on the issue. 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." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Upon review of the record, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the 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 first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

As stated earlier, 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

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 its previous discussion on the matter. The petitioner did not submit any documentation from the industry's professional association stating that it has made a degree a minimum entry requirement. The petitioner also did not submit any letters or affidavits from firms or individuals in the industry in support of this criterion of the regulations.

In response to the director's RFE, the petitioner submitted a document entitled "Job Opportunities Bulletin" in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. However, upon review of the document, the AAO finds that the petitioner's reliance on the bulletin is misplaced.

In the Form I-129 petition and supporting documentation, the petitioner described itself as a non-profit organization, established in 1971, that provides social services for children including day care centers. The petitioner further stated in the Form I-129 petition that it has 491 employees. The petitioner also stated that it has a gross annual income of approximately \$7 million and a net annual income of "ZERO (non-profit org.)." The petitioner designated its operations under the North American Industry Classification System (NAICS) code 624410 – Child Day Care Services.¹⁰ The NAICS website describes this industry as follows:

This industry comprises establishments primarily engaged in providing day care of infants or children. These establishments generally care for preschool children, but may care for older children when they are not in school and may also offer pre-kindergarten educational programs.

See U.S. Dep't of Commerce, U.S. Census Bureau, 2007 NAICS Definition, 624410 – Child Day Care Services, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited May 8, 2013).

Notably, the petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers' recruiting history for the type of jobs advertised. Further, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices.

Upon review of the documentation, the petitioner fails 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.

For instance, the petitioner did not provide sufficient information to establish that the advertising employers and the petitioner share the same general characteristics, as well as information regarding which aspects or traits (if any) the advertising organizations share with it. For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, postings or other documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the

¹⁰ According to the Department of Commerce, U.S. Census Bureau, the North American Industry Classification System is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy, and each establishment is classified to an industry according to the primary business activity taking place there. See <http://www.census.gov/eos/www/naics/> (last visited May 8, 2013).

petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). Notably, it is not sufficient for the petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

Furthermore, the petitioner has not established that the advertised positions are parallel to the proffered position. For example, the bulletin includes advertisements for positions with Head Start programs. The petitioner does not claim, and has not provided any documentation to support a finding, that it has a Head Start program. Additionally, the petitioner indicated that postings for a special education teacher and for a bi-lingual teacher are relevant to the instant matter. However, the AAO observes that the petitioner designated the proffered position on the LCA under the occupational category "Preschool Teachers, Except Special Education." Further, the petitioner has not indicated that duties of the proffered position require a candidate for the proffered position to be bi-lingual.

Moreover, the bulletin includes postings which do not contain sufficient information regarding the duties of the advertised positions such that the AAO can ascertain if they are parallel to the proffered position. For instance, there is no information regarding student-teacher ratio and whether the children attend half-day or full-day programs. Additionally, the job postings lack information regarding the complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Accordingly, it is unclear whether the duties and responsibilities of these positions are the same or parallel to the proffered position. The advertisements provide insufficient information regarding the specific duties of the jobs to ascertain whether the positions are parallel to the proffered position. Notably, the petitioner did not supplement the record of proceeding to establish that the positions are parallel to the proffered.

Additionally, contrary to the purpose for which the advertisements were submitted, some of the postings do not establish that at least a bachelor's degree in a specific specialty, or its equivalent, is required for the positions. For example, some of the advertisements (including [REDACTED] and [REDACTED]) did not include the educational requirements for the position. The petitioner also submitted a posting for [REDACTED], which states that a "[b]achelor's degree in Early Childhood Education [is] preferred." Obviously, a *preference* for a degree in early childhood education is not an indication of a minimum *requirement*. Furthermore, the AAO observes that some of the advertisements (such as [REDACTED]) did not specify the level of education required (e.g., associate's degree, baccalaureate) for the positions. Thus, the qualifications listed in the postings do not support a finding that the advertised positions require a *baccalaureate* (or higher degree) in a *specific specialty*, or its equivalent.

The AAO reviewed all of the advertisements submitted by the petitioner. However, as the documentation does not establish that the petitioner has met this prong of the regulations, further

analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed.

It must be noted that even if all of the job postings indicated that a requirement of a bachelor's degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations (which they do not), the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations.

Moreover, although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the proffered position for organizations similar to the petitioner required a bachelor's or higher degree in a specific specialty, or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

Thus, based upon a complete review of the record, the petitioner has not established 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. 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 the instant case, the petitioner does not claim 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. Nevertheless, the AAO reviewed the record of proceeding to determine eligibility under this criterion of the regulations.

In the instant case, the record of proceeding contains information regarding the petitioner's operations and the proffered position, including a Summary of Funding & Enrollment, amended

budget summaries, statements of deposits and filings, as well as a job description and analysis. However, upon review of the record of proceeding, the AAO finds that the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position. The AAO hereby incorporates into this analysis this decision's earlier comments and findings regarding the generalized level of the information and evidence provided with regard to the proposed duties and the position that they are said to comprise. As reflected in those earlier comments and findings, the petitioner has not developed or established complexity or uniqueness as attributes of the proffered position that would require the services of a person with at least a bachelor's degree in a specific specialty, or its equivalent.

That is, the petitioner failed to demonstrate how the duties of the position as described 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 of the proffered position. While related courses may be beneficial or in some cases even required to perform certain duties of a day care group or head teacher 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.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, the LCA indicates a wage level based upon the occupational classification "Preschool Teachers, Except Special Education" at a Level II wage. This designation indicates that it is a position for an employee who has a good understanding of the occupation but who will only 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, requiring a significantly higher prevailing wage. For instance, 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."¹¹

Therefore, the evidence of record does not establish that this position is significantly different from other positions such that it refutes the *Handbook's* information to the effect that a bachelor's degree in a specific specialty, or its equivalent, is not required for entry into the occupation in the United States. The record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

¹¹ 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.

The AAO observes that the petitioner has indicated that the beneficiary's education and credentials will assist her in carrying out the duties of the proffered position. 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. To this end, the AAO usually reviews the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

To merit approval of the petition under this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency in its prior recruiting and hiring for the position. Further, it should be noted that 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 employing in the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

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").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See*

generally Defensor v. Meissner, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

In the instant case, the petitioner submitted "Posting Notice for filing an ETA-9035" ["Notice of Filing of the LCA"]. The referenced documentation states that it is being posted in compliance with 20 C.F.R. 734. The "Notice of Filing of the LCA" is a statement to the petitioner's workers that it has a job opportunity available, that a foreign worker may be placed in the position and that interested parties may read the notice and provide comments to DOL. Its primary purpose is not intended to be a form of recruitment. The document, which appears to have been posted in connection with the LCA on behalf of the beneficiary, is not sufficient to establish a history of employing for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

In response to the director's RFE, the petitioner submitted a copy of a newspaper advertisement for a "Teacher, DayCare." Notably, the newspaper advertisement is dated July 10, 2005. (The petition was submitted on September 29, 2011, thus it appears that the advertisement was posted over six years before the H-1B petition was filed.) In addition, the AAO observes that the newspaper advertisement indicates that the salary for the position is \$32,216 per year. Furthermore, the position requires a degree and two years of experience. The petitioner did not indicate that experience is required for the proffered position. Furthermore, as previously noted, the petitioner reported the offered wage for the proffered position as \$14.58 per hour (\$30,326.40 per year). Thus, it appears that the advertised position may be for a more senior position.

In addition, the petitioner submitted an advertisement posted in the [REDACTED] Job Opportunities Bulletin in February 2009. The advertisement does not contain a description for the position. The job posting lacks information regarding the complexity of the job duties, supervisory duties (if any), independent judgment required and the amount of supervision received. Accordingly, it is unclear whether the duties and responsibilities of the advertised position are the same as the proffered position.

The petitioner stated in the Form I-129 petition that it was established in 1971 (approximately 40 years prior to the H-1B submission). The petitioner did not provide the total number of people it currently or in the past has employed to serve in the proffered position but claims that it currently employs approximately 491 individuals. Consequently, it cannot be determined how representative the submission of *two job vacancy announcements over a 40 year period* is of the petitioner's normal recruiting and hiring practices. The petitioner has not persuasively established that it

normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the position.

Upon review of the record, the petitioner has not provided sufficient 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.

In support of the petition, the petitioner provided documentation regarding its business operations, including a Summary of Funding & Enrollment, amended budget summaries, and statements of deposits and filings. The AAO reviewed the record of proceeding and notes that the petitioner has not provided sufficient probative evidence to satisfy this criterion of the regulations. In the instant case, relative specialization and complexity have not been developed by the petitioner as an aspect of the proffered position.

As reflected in this decision's earlier comments and findings with regard to the generalized level at which the proposed duties are described, the petitioner has not presented the proposed duties with sufficient specificity and substantive content to even establish relative specialization and complexity as distinguishing characteristics of those duties, let alone that they are at a level that would require knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or its equivalent. That is, the proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. The AAO incorporates by reference and reiterates its earlier discussion that the petitioner designated the proffered position as a Level II position.¹² This designation is only appropriate for positions for which the petitioner expects the beneficiary to have a good understanding of the occupation to perform moderately complex tasks that require limited judgment relative to others within the occupation. The designation of the proffered position as a Level II position is not consistent with claims that the nature of the specific duties of the proffered position is specialized and complex. Without further evidence, it is simply not credible that the petitioner's proffered position is specialized and complex 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. 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."¹³

¹² Moreover, as previously discussed, the petitioner incorrectly designated the proffered position as a Level II position on the LCA. The prevailing wage and offered wage correspond to a Level I position.

¹³ For additional information on Level IV 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.

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).

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.

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 further.

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 1043, *aff'd*, 345 F.3d 683; see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.