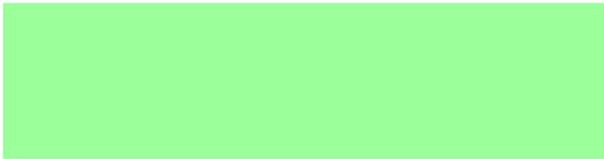


(b)(6)

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



U.S. Citizenship
and Immigration
Services



DATE: **NOV 25 2013** OFFICE: VERMONT 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)

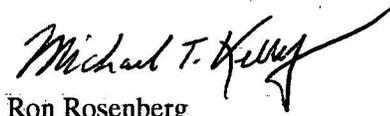
ON BEHALF OF PETITIONER:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

for 
Ron Rosenberg
Chief, Administrative Appeals Office

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

On the Form I-129 visa petition, the petitioner states [REDACTED] as the type of business in which it is engaged and also states that it was established in 2002. In order to employ the beneficiary in a part-time position to which the petitioner assigns the title "Market Research Analyst," at a salary of \$42,500 per year,¹ 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, concluding that the petitioner failed to demonstrate that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's letter denying the petition; and (5) the Form I-290B and supporting documentation.

Upon review of the entire record of proceeding, the AAO finds that the petitioner has failed to overcome the director's ground for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

Beyond the decision of the director, the AAO finds an additional aspect which, although not addressed in the director's decision, nevertheless also precludes approval of the petition, namely, the petitioner's failure to certify on Form I-129 Supplement H, Section 1, that it would be liable for the reasonable costs of return transportation of the alien beneficiary if he were dismissed by the employer prior to the expiration of the period of authorized stay.² For this additional reason, the petition must also be denied.

I. The Petitioner and its Proffered Position

As noted above, the petitioner stated that it is engaged in the ethnic food store and catering business. In his April 6, 2011 letter of support that was filed with the Form I-129, the petitioner's president described the petitioner as "a financially successful company" that has been in business since 2002. The letter further describes the petitioner as "a supermarket that offers any kind of East-European groceries, including fish, seafood, caviar, sausages, dairy, bakery, preserves, and souvenirs." That

¹ The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for use with a job prospect within the "Market Research Analyst and Marketing Specialist" occupational classification, SOC (O*NET/OES) Code 13-1161.

² The AAO conducts appellate review on a *de novo* basis (*See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)), and it was in the course of this review that the AAO identified this additional ground for denial.

letter also states that, at the time of the petition's filing, the petitioner was operating five (5) stores. According to the letter, the petitioner's major clients are "immigrants from East European countries and lovers of Russian food and culture."

The aforementioned letter of support introduces the duties of the proffered position as follows:

Job Duties

To thrive in hard economic times and for further development and growth, [the petitioner] is in need of to further determine who are the competitors, what is the best selection of Russian food, and whether it is practicable to open new locations.

The duties claimed by the position offered are as follows:

- Collect and analyze data to evaluate existing and potential product and service markets in an effort to maintain and increase profits;
- Identify and monitor competitors;
- Research market conditions or changes in the industry that may impact sales and conduct benchmarking;
- Analyze existing markets and potential new markets, including market penetration, market development, product development and diversification;
- Prepare reports and illustrate data graphically related to opening new stores;
- Use the data obtained to update the employees, so as to aid in the improvement of user acquisition quality, increase revenue, and gain competitive advantage;
- Increase the company's social media reach substantially;
- Identify a target market and develop a marketing mix that will appeal to potential customers; and,
- Collect and analyze data on customer demographics, preferences, needs, and buying habits.

In its support letter, the petitioner described the position's educational requirements as follows:

The position of a Market Research Analyst demands knowledge of management and business administration, including informational technologies, economics, accounting, development and pedagogical psychology, visual aids and new information techniques,

neuropathology, psychopathology, and special preschool pedagogy. Considering the nature of the work UCC requires at least a Bachelor's degree in Special Education.

From the outset, we note that after about the first third of the educational requirements laid out in the support letter, none of the requirements appear to relate to marketing. In fact, this section of the letter relates the proffered position to educational requirements that appear to have no actual relationship to the type of position specified in the letter. These unrelated requirements include knowledge of "development and pedagogical psychology," knowledge of "neuropathology," knowledge of "psychopathology," and knowledge of "special preschool pedagogy." Also, this section identifies, without any apparent basis, "Special Education" as the pertinent specialty.

Also, from the overall context of the record of proceeding, it appears that this paragraph on educational requirements does not in fact pertain to the petition before us at all, as the petitioner is nowhere else referred to as "UCC" and as many of the stated requirements – such as for a degree in Special Education - do not reasonably relate to the content of the rest of the record of proceeding.

The fact that the petitioner's president signed a letter with such erroneous information indicates a lack of attention to the details of the letter, and it suggests the possibility that the petitioner may not have paid due attention to other documents submitted into the record. The same implication applies to the inconsistency, noted later in this decision, regarding how the petitioner's assertions and Dr. [REDACTED] letter, submitted by the petitioner, differ in their characterizations of the condition of the petitioner's business.

Further, that the letter ascribes such discordant educational requirements to the proffered position and at least partly relies upon them to support the need for a bachelor's degree so impacts against the reliability of the letter that it depletes the letter of any probative value.

II. Specialty Occupation

The AAO will now address the director's finding that the proffered position is not a specialty occupation. Based upon a complete review of the record of proceeding, the AAO agrees with the director that the evidence of record fails to establish that the position as described constitutes a specialty occupation. Accordingly, the appeal will be dismissed, and the petition will be denied.

To meet its burden of proof in establishing the proffered position as a specialty occupation, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires [(1)] 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 requires [(2)] 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, the position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in 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 rely simply upon a proffered position’s title. The specific duties of the 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 beneficiary, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 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.

As a preliminary matter, the AAO finds that upon consideration of the totality of all of the petitioner’s duty descriptions - including its assertions made in the initial filing, those in response to the director’s RFE, and counsel’s assertions made on appeal- the evidence of record of proceeding does not establish the depth, complexity, or level of specialization, or substantial aspects of the matters in which the petitioner says that the beneficiary will engage. Rather, the proposed duties of the proffered position, and the position itself, are described in relatively generalized and abstract terms that do not relate substantial details about either the position or its constituent duties. Further, the AAO finds, that the petitioner has not supplemented the job and duty descriptions with documentary evidence establishing the substantive nature of the work that the beneficiary would perform, whatever practical and theoretical applications of highly specialized knowledge in a specific specialty would be required to perform such substantive work, and whatever correlation may exist between such work and associated performance-required knowledge and attainment of a particular level of education, or educational equivalency, in a specific specialty.

As evident in the above-quoted list of duties from the petitioner’s letter of support, the petitioner relates the duties - and by extension, the position which they comprise - in terms of generalized functions. While such descriptions are sufficient to align the proffered position with the Market Research Analysts occupational category, they are not sufficiently detailed and explained to distinguish the proffered position from other market research analyst positions, including those which do not require,

or are performed by persons without, at least a bachelor's degree or the equivalent in a specific specialty.³

That being said, the AAO will now proceed to a discussion of the application of each supplemental, alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding, with the understanding that, for economy's sake, the above comments and findings are deemed to be incorporated into the analysis of each criterion that follows below.

First, we will address the March 25, 2013 letter that the petitioner submits on appeal from [REDACTED] Ph.D., a professor of Marketing at [REDACTED]. The letter is submitted for consideration as an expert opinion.

For the reasons now to be discussed, the AAO finds that the Dr. [REDACTED] letter is not probative evidence that the particular position here proffered is one that requires at least a bachelor's degree or higher in a specific specialty.

According to the letter, Dr. [REDACTED] provided the letter as a favor for another member of his faculty who does not appear to have any relation to the petitioner.

In the letter's first paragraph, Dr. [REDACTED] states that the purpose of the letter is twofold. The first purpose is "to present my opinions regarding the role and value of marketing research in small to medium retail establishments in general and [the petitioner], a niche retailer in the [REDACTED] area in particular." The letter indicates that the second purpose is to comment on possession of a "BS degree" as "a minimum requirement for marketing research competence." The letter phrases that second purpose as follows:

The second matter I have been asked to comment on is that a minimum requirement for marketing research competence is that a minimum requirement for marketing researcher competence is to possess a BS degree.

Dr. [REDACTED] states that he is "qualified to comment on these two questions" by virtue of his "training and experience as a university professor who has conducted over one hundred marketing research projects for over [sic] my forty year career in the field."

Based upon the studies that Dr. [REDACTED] quotes and his comments upon them, the AAO accepts Dr. [REDACTED] opinion that market research is valuable, and even key, to small and medium retail establishments, including the petitioner. Accordingly, the AAO has included this aspect of Dr. [REDACTED] opinion in its consideration of this appeal. However, such evidence of the utility of marketing research to the petitioner and other businesses is not relevant to the issue of whether performance of the proffered position would require the theoretical and practical application of at least a bachelor's degree level of highly specialized knowledge in a specific specialty.

³ That entry into the Market Research Analysts occupational category does not require at least a bachelor's degree, or the equivalent, in a specific specialty will become clear in the discussion of the pertinent chapter of the U.S. Department of Labor's *Occupational Outlook Handbook*, which is soon to follow.

As will now be discussed, the AAO accords no probative weight to [REDACTED] letter when it comes to the issue of the minimum educational credentials that would be required to perform the particular position that is the subject of this petition.

The AAO notes that Dr. [REDACTED] does not state or indicate by the content of his letter that he has visited the petitioner, observed, or otherwise attained an understanding of the scope of the petitioner's particular operations, market niche, or market research needs. Likewise, it is not apparent that Dr. [REDACTED] had any substantive discussions with the petitioner regarding the petitioner's particular marketing research needs or plans. In short, the AAO finds that Dr. [REDACTED] has not demonstrated that he has sufficient familiarity with the petitioner, its operations, its understanding of its basic customer base, its business plans, or its marketing needs to provide a reliable factual foundation for conclusions regarding the petitioner and the nature and level of education required for any person performing marketing research for it.

In the above regard, the AAO finds that Dr. [REDACTED] fails to provide a sufficient basis of knowledge about the petitioner's particular business, business plans, and market-research needs. The AAO also notes that Dr. [REDACTED] characterization of the petitioner materially conflicts with the petitioner's own characterization of itself. Dr. [REDACTED] opines that a "relatively new, struggling" business like the petitioner could benefit from using market research. We note, however, that the petitioner has been in business for over eleven years, and, according to the record, has expanded during that time and runs several different stores throughout the metropolitan area. Dr. [REDACTED] description of the petitioner is incongruous with contrary assertions by the petitioner, such as those with regard to its growing customer base and its success being reflected in the recent opening of a fifth store, as well as counsel's statement, in her December 31, 2012 letter relying to the RFE, that the petitioner "is contemplating to open new stores in the area heavily populated by the immigrants from [the] former U.S.S.R." This is indicative of Dr. [REDACTED] not having a substantial understanding of the very business entity about which he is opining.

For the reasons discussed in the paragraphs above, the AAO finds that neither Dr. [REDACTED] letter, its brief resume of Dr. [REDACTED] credentials, the similar one-page Internet profile of Dr. [REDACTED] that was submitted with the record, nor any other evidence in the record of proceeding establishes that Dr. [REDACTED] has sufficient knowledge of the petitioner and its proffered position for his opinion regarding the petitioner's market research needs or its proffered market-research-analyst position to merit any weight towards satisfying any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

There is an additional, separate, and independent basis for the AAO's according no probative weight to the Dr. [REDACTED] opinion so far as it extends to the particular academic credentials required to perform the proffered position, namely, the lack of foundational evidence establishing that this professor's experience and/or academic positions equipped him with special or expert knowledge with regard to that particular area upon which he opines. In this regard, the AAO notes that Dr. [REDACTED] does not even claim that any of his market research projects dealt with the type of business in which the petitioner engages or with the particular scope, size, and type of business operations that characterize this petitioner. Further, nothing in the evidence of record indicates that Dr. [REDACTED] has specialized in, or has been recognized as an authority on, determining the educational requirements for performing

whatever market research analysis may be required by a relatively small, niche-market firm in the type of business in which this petitioner is engaged. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In any event, even if fully accepted at face value - which, as discussed above, would not be supported by the evidence of record in this matter - Dr. [REDACTED] opines only that "competency" requires at least a bachelor's degree, or a "BS degree," but not one in a specific specialty. Therefore, even if it were not devalued by the deficiencies and discrepancies discussed above, and even if its content were fully accepted by the AAO, Dr. [REDACTED] letter would not establish that the proffered position would require at least a bachelor's degree, or the equivalent, in a specific specialty.

That being said, the AAO also finds that a particular line of statements in Dr. [REDACTED] letter is questionable, that is, the statements to the effect that the each and all of the following courses are necessary "for marketing researcher competence":

- Advertising;
- Consumer Behavior Research;
- Economic Statistics;
- Introduction to Psychology;
- Introduction to Research Methodology;
- Introduction to Sociology;
- Informational Technologies;
- Management of Catering Institutions;
- Management of Finances;
- Marketing;
- Microeconomics;
- Personnel Management;
- Research Methodology;
- Strategic Marketing; and
- Universal Quality Management.⁴

Dr. [REDACTED] does not explain if the courses listed above are even offered, much less required, at every institution that may offer a degree in marketing research. Nor does Dr. [REDACTED] provide a substantive, analytical discussion of how he reached his conclusions with regard to the necessity of these courses (which, the AAO notes, happen to mirror the courses that the petitioner identified in its letter of support). Rather, the letter bears this conclusory statement of self-endorsement, which the AAO finds neither informative, corroborative, nor persuasive:

⁴ Although we need not enter a finding on the beneficiary's qualifications, we do note that according to the record, the beneficiary has not taken any of the courses listed above.

On the question of the minimum requirements for marketing researcher competence[,] I based my statement on my training and experience as a university professor and Area Chair of Marketing in the [REDACTED]

Dr. [REDACTED] provides no substantive explanation of how such “training and experience” equipped him with the special knowledge that he claims in this area of educational requirements. 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)).

Furthermore, as noted earlier, nothing in his narrative establishes or even claims that Dr. [REDACTED] has actually examined the petitioner’s operations and has evaluated the exact nature of the position at issue. The broad and generalized statements which match tasks of the position with college courses fail to provide specifics indicating what type of analytical tools would be employed to complete the tasks. This lack of detail about the petitioner’s actual operations also undermines the reliability of Dr. [REDACTED] letter’s comments and conclusion regarding the minimum required educational credentials.

For the many distinct reasons discussed above, the AAO accords no probative weight to Dr. [REDACTED] opinion with regard to the minimum educational requirements for the proffered position. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm’r 1988).

As the above comments and findings bear upon the analysis of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO hereby incorporates them into its discussion and analysis of each criterion, which follows below.

The AAO will now discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is satisfied by establishing that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of the petition.

The AAO recognizes the U.S. Department of Labor’s (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.⁵ As already noted, the AAO agrees with counsel and the petitioner that the proposed duties generally align with the generic duties ascribed to the Market Research Analysts occupational classification.

In relevant part, the *Handbook* summarizes the duties typically performed by market research analysts as follows:

⁵ The *Handbook*, which is available in printed form, may also be accessed online at <http://www.stats.bls.gov/oco/>. The AAO’s references to the *Handbook* are from the 2012-13 edition available online.

Market research analysts typically do the following:

- Monitor and forecast marketing and sales trends
- Measure the effectiveness of marketing programs and strategies
- Devise and evaluate methods for collecting data, such as surveys, questionnaires, or opinion polls
- Gather data about consumers, competitors, and market conditions
- Analyze data using statistical software
- Convert complex data and findings into understandable tables, graphs, and written reports
- Prepare reports and present results to clients or management

Market research analysts perform research and gather data to help a company market its products or services. They gather data on consumer demographics, preferences, needs, and buying habits. They collect data and information using a variety of methods, such as interviews, questionnaires, focus groups, market analysis surveys, public opinion polls, and literature reviews.

Analysts help determine a company's position in the marketplace by researching their competitors and analyzing their prices, sales, and marketing methods. Using this information, they may determine potential markets, product demand, and pricing. Their knowledge of the targeted consumer enables them to develop advertising brochures and commercials, sales plans, and product promotions.

Market research analysts evaluate data using statistical techniques and software. They must interpret what the data means for their client, and they may forecast future trends. They often make charts, graphs, or other visual aids to present the results of their research.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Market Research Analysts," <http://www.bls.gov/ooh/Business-and-Financial/Market-research-analysts.htm#tab-2> (last visited October 22, 2013).

The *Handbook* states the following with regard to the educational requirements necessary for entrance into this field:

Market research analysts need strong math and analytical skills. Most market

research analysts need at least a bachelor's degree, and top research positions often require a master's degree.

Market research analysts typically need a bachelor's degree in market research or a related field. Many have degrees in fields such as statistics, math, or computer science. Others have a background in business administration, one of the social sciences, or communications. Courses in statistics, research methods, and marketing are essential for these workers; courses in communications and social sciences—such as economics, psychology, and sociology—are also important.

Many market research analyst jobs require a master's degree. Several schools offer graduate programs in marketing research, but many analysts complete degrees in other fields, such as statistics, marketing, or a Master of Business Administration (MBA). A master's degree is often required for leadership positions or positions that perform more technical research.

Id. at <http://www.bls.gov/oooh/Business-and-Financial/Market-research-analysts.htm#tab-4>.

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties.⁶ Section 214(i)(1)(b) of the Act (emphasis added).

Here, although the *Handbook* indicates that a bachelor's or higher degree is "typically" required, it also indicates that baccalaureate degrees in various fields are acceptable for entry into the occupation. In addition to recognizing degrees in disparate fields, i.e., social science and computer science as acceptable for entry into this field, the *Handbook* also states that "others have a background in business administration." 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. Therefore, the *Handbook's* recognition that a general, non-specialty "background" in business

⁶ Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. As just stated, this also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not a normal, minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that the Marketing Research Analyst occupational group does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry, it does not support the proffered position as satisfying the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The materials from the Occupational Information Network (O*NET) do not establish that the proffered position satisfies the first criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A), either. The O*NET is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a requirement for a given position, as its Job Zone Four designation (the one assigned to Market Research Analysts) makes no mention of any specific field of study from which a degree must come.⁷ As was noted previously, the AAO 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 proposed position.

The AAO also notes that, in addition to the O*NET, Dr. Harvey referenced the following internet site: <http://www.marketresearchcareers.com/jdmarketresearchanalyst.aspx>. Dr. [REDACTED] referenced the site as, in his words, stating that "the requirements for the profession includes [sic] 'a bachelor[']s or advanced degree in business, mathematics, or the sciences.'" The AAO was able to access the main website, but did not find there the requirements information cited by Dr. [REDACTED]. In any event though, the AAO finds that the main website [REDACTED] indicates that the Internet site is maintained by a staffing agency that specializes in filling market research jobs. Neither the internet site itself nor any information supplied by Dr. [REDACTED] indicates that this site is produced by an organization or entity recognized as an authoritative source on the minimum educational requirements for positions within the Market Research Analysts occupational group; and Dr. [REDACTED] does not provide any documentary evidence to that effect. Accordingly, the AAO assigns no significant weight to the quotation that Dr. [REDACTED] attributes to the referenced site.

The record of proceeding does not contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in the Market Research Analysts occupational category is sufficient in and of itself to establish the proffered position as, in the words of this criterion, a "particular position" for which "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry."

As the evidence in the record of proceeding does not establish that at least a baccalaureate degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of this petition, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

⁷ See the Job Zone section of the O*NET Summary Report for Market Research Analysts and Marketing Specialists, on the Internet at <http://www.onetonline.org/link/summary/13-1161.00> (visited November 13, 2013).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is 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 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or any other authoritative resource, reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

On October 10, 2012, the director issued an RFE to the petitioner which in part requested that the petitioner submit evidence that: "in your company or industry, a baccalaureate degree in a specific field of study is a standard minimum requirement for the job offered. Attestations to industry standards must be for similar positions among similarly situated companies..." In response, the petitioner provided eight printouts from online job advertisements seeking to employ market research analysts. However, the record contains no evidence that any of these employers were specialty ethnic grocery stores; nor is there evidence which indicates that they were similar to the petitioner in terms of scope, size, and type of organization. Four of the advertisements did not state what industry they were in; one made commemorative figurines; another was in the wine and tobacco industry; and the final employer was in the education industry. In short, nothing in the record supports a finding that these employers were in the same industry or were similarly situated to the petitioner. Finally, we note that one employer preferred a bachelor's degree, but did not require it. For all of these reasons, the AAO accords no probative weight to the collection of job-vacancy advertisements that the petitioner submitted into the record.

Therefore, the petitioner has not satisfied the first of the two alternative prongs described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish a requirement for at least a bachelor's degree in a specific specialty as 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.

Next, the AAO finds that the petitioner did not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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."

In this particular case, the petitioner has failed to credibly demonstrate that the duties the beneficiary will perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

As reflected in this decision's earlier comments and findings regarding the absence of evidence establishing the substantive nature and substantive knowledge requirements of the proffered position and its constituent duties, the record of proceeding does not contain evidence establishing relative complexity or uniqueness as aspects of the proffered position, let alone that the position is so complex or unique as to require the theoretical and practical application of a body of highly specialized knowledge such that a person with a bachelor's or higher degree in a specific specialty or its equivalent is required to perform that position. Rather, the AAO finds, the petitioner has not distinguished either the proposed duties, or the position that they comprise, from generic market-research-analysis work, which, the *Handbook* indicates, does not necessarily require a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

Furthermore, the LCA submitted by the petitioner in support of the instant position specifies the occupational classification for the position as "Market Research Analyst and Marketing Specialist," SOC (O*NET/OES) Code 13-1161, at a Level I (entry-level) wage. The *Prevailing Wage Determination Policy Guidance*⁸ issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

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

Thus, not only does the evidence of record not support a finding of the relative complexity or uniqueness required to satisfy this criterion, but also such a finding would be materially inconsistent in this case with the petitioner's submission of an LCA certified for a Level I, entry-level position. The LCA's wage level (Level I, the lowest of the four that can be designated) is only appropriate for a low-level, entry position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels quoted above, this wage rate is appropriate for positions in which the beneficiary is only required to have a basic understanding of the occupation; will be expected to perform routine tasks requiring limited, if any, exercise of judgment; will be closely

⁸ Available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf (accessed October 22, 2013).

supervised and have her work closely monitored and reviewed for accuracy; and will receive specific instructions on required tasks and expected results.

Consequently, as it has not been shown that the particular position for which this petition was filed is so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO turns next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which entails an employer demonstrating that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

The AAO's review of the record of proceeding under this criterion necessarily includes whatever evidence the petitioner has submitted with regard to its past recruiting and hiring practices and employees who previously held the position in question.

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. Further, 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 the performance requirements of the proffered position.

In the instant case, the evidence of record does not establish a prior history of recruiting and hiring for the proposed position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty. Accordingly, the evidence does not satisfy this particular criterion.

Although academic in this particular case, the AAO will further address the requirements of this criterion.

Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position 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 at 387. 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 a 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 proposed 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 any event, the record indicates that the beneficiary is the only market research analyst that petitioner has ever sought to employ. Consequently, the petitioner has no evidence to present that would relate to this criterion.

As the record of proceeding does not present a history of recruiting and hiring only individuals with a bachelor's degree, or the equivalent, in a specific specialty for the proffered position, it does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, the AAO finds that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered position's 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.

As reflected in this decision's earlier comments and findings regarding the relatively abstract and generalized level at which the proposed duties and the position that they comprise are presented in this record of proceeding, the AAO finds that the petitioner has not presented the proposed duties in sufficiently specific and substantive details to establish any level of relative specialization and complexity as an aspect of their nature, and, therefore, there is no evidentiary basis for the AAO to find therein the requisite specialization and complexity to satisfy this criterion.⁹

Further, there is the countervailing weight of the wage-level of the LCA. Both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, the petitioner's designation of an LCA wage-level I is indicative of entry level skills and responsibilities.

We also note that Level I positions are those where the "work is closely monitored and reviewed for accuracy." Although this is the first market research analyst position the petitioner has sought to fill, by virtue of the LCA's Level I wage-rate designation, it should be expected someone in the

⁹ As earlier mentioned, the AAO incorporates into the present analysis, and into the analysis of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), this decision's earlier comments and findings with regard to the evidentiary deficiencies of the petitioner's statements and documentary submissions about the proposed duties.

petitioner's organization would closely monitor and review the beneficiary's work for accuracy. Additionally, wage Level I positions should allow the employee to gain experience with the employer's relevant methods and processes. Here, though, the record contains a list of employees and their job descriptions which indicates that no one in the petitioner's organization has extensive experience in market research. Thus, the position when filled would not likely be supervised or monitored by someone with substantial knowledge of market research analysis. This undermines the petitioner's assertion that the position is so specialized or complex that it requires the attainment of a bachelor's degree.

Further, the AAO notes the low level of complexity that this Level I wage-level reflects when compared with the three still-higher LCA wage levels, none of which were designated on the LCA submitted to support this petition.

The *Prevailing Wage Determination Policy Guidance*¹⁰ issued by DOL states the following with regard to Level II wage rates:

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.

The aforementioned *Prevailing Wage Determination Policy Guidance* describes the Level III wage designation as follows:

Level III (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O*NET Job Zones would be indicators that a Level III wage should be considered.

Frequently, key words in the job title can be used as indicators that an employer's job offer is for an experienced worker. . . .

The *Prevailing Wage Determination Policy Guidance* describes the Level IV wage designation as follows:

Level IV (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct

¹⁰ 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) (last visited Oct. 20, 2013).

work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibilities.

By virtue of this LCA submission the petitioner effectively attested that the proffered position requires no more than an entry level employee who will be trained on the petitioner's processes, and will be closely monitored and checked for accuracy. The position is not for a Level II employee with a "limited" degree of professional judgment. Nor is the position for a job with duties that are "moderately complex," (Level III). Thus, the LCA submitted for the proffered position is not even appropriate for a position which would require "a sound understanding of the occupation"

For all of these reasons, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the petitioner has not satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

III. Beyond the Decision of the Director

The AAO finds that the petitioner failed to sign a material attestation in the Form I-129 H Supplement and thereby precluded approval of this petition.

The AAO notes that even if the petitioner were to overcome the director's ground for denial of the petition (which it has not), the petition could not be approved. That is, upon review of the record of proceeding, the AAO notes that in the instant case, another issue, not addressed by the director, precludes the approval of the H-1B petition.¹¹ As will be explained below, the Form I-129 petition was not properly completed by the petitioner. More specifically, the petitioner failed to certify that it would be liable for the reasonable costs of return transportation if the beneficiary is dismissed from its employment prior to the period of authorized stay.

The regulation at 8 C.F.R. § 103.2(a)(1) states, in pertinent part, the following:

Every benefit request or other document submitted to DHS [Department of Homeland Security] must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary, and such instructions are incorporated into the regulations requiring its submission.

¹¹ The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The instructions for Form I-129 state that the petition must be properly signed. The instructions further indicate that a petition that is not properly signed will be rejected. Moreover, according to the instructions, a petitioner that fails to completely fill out the form will not establish eligibility for the benefit sought and the petition may be denied.

The regulation at 8 C.F.R. § 103.2(a)(2), which concerns the requirement of a signature on applications and petitions, states the following:

An applicant or petitioner must sign his or her benefit request. . . . By signing the benefit request, the applicant or petitioner . . . certifies under penalty of perjury that the benefit request, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on a benefit request that is being filed with the USCIS [United States Citizenship and Immigration Services] is one that is either handwritten or, for benefit requests filed electronically as permitted by the instructions to the form, in electronic format.

Pursuant to 8 C.F.R. § 103.2(a)(7)(i) and (iii), an application or petition which is not properly signed shall be rejected as improperly filed, and will not retain a filing date.

The regulation at 8 C.F.R. § 103.2(b)(1) provides, in pertinent part, the following:

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. Each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions.

A petitioner must establish that it is eligible for the requested benefit at the time of filing the petition. All required petition forms must be properly completed and filed with any initial evidence required by applicable regulations and the form instructions. *See* 8 C.F.R. § 103.2(b)(1).

In the instant case, the petitioner failed to comply with the signature requirement. More specifically, the Form I-129 (page 9) contains a signature block that is devoid of any signature from the petitioning employer. This section of the form reads as follows:

As an authorized official of the employer, I certify that the employer will be liable for the reasonable costs of return transportation of the alien abroad if the alien is dismissed from employment by the employer before the end of the period of authorized stay.

By failing to sign this signature block of the Form I-129, the petitioner has failed to attest that it will comply with § 214(c)(5) of the Act, which states the following:

In the case of an alien who is provided nonimmigrant status under section 101(a)(15)(H)(i)(b) or 101(a)(15)(H)(ii)(b) and who is dismissed from employment by the employer before the end of the period of authorized admission, the employer shall be liable for the reasonable costs of return transportation of the alien abroad.

The regulation at 8 CFR § 214.2(h)(4)(iii)(E) further states, in pertinent part, the following:

The employer will be liable for the reasonable costs of return transportation of the alien abroad if the alien is dismissed from employment by the employer before the end of the period of authorized admission pursuant to section 214(c)(5) of the Act Within the context of this paragraph, the term "abroad" refers to the alien's last place of foreign residence. This provision applies to any employer whose offer of employment became the basis for an alien obtaining or continuing H-1B status.

Thus, the petition has not been properly filed because the petitioning employer did not sign the signature block certifying that it would be liable for the reasonable costs of return transportation if the beneficiary is dismissed from its employment prior to the period of authorized stay. Pursuant to 8 C.F.R. § 103.2(a)(7)(i), an application or petition which is not properly signed shall be rejected as improperly filed, and no receipt date can be assigned to an improperly filed petition. While the director did not reject the petition, the AAO is not controlled by service center decisions. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 at 3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001). The AAO notes that the integrity of the immigration process depends on the employer signing the official immigration forms in all the required places. As previously mentioned, the AAO conducts appellate review on a *de novo* basis, and it was in the exercise of this function that the AAO identified this additional ground for dismissing the petition. *See Soltane v. DOJ*, 381 F.3d 143. For this reason also, the petition may not be approved.

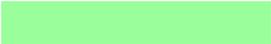
IV. Conclusion

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

(b)(6)



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NON-PRECEDENT DECISION

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