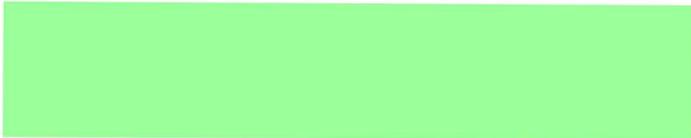


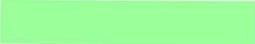


U.S. Citizenship
and Immigration
Services

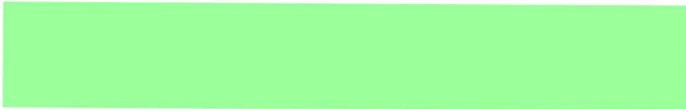
(b)(6)



DATE: **OCT 02 2013**

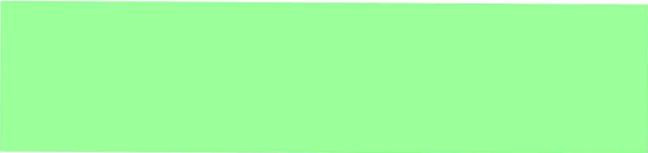
OFFICE: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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 Michael T. Kelly
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 describes itself as a 14-employee professional language services company¹ established in 1986. In order to employ the beneficiary in a full-time position to which it assigns the job title “network systems and data communications analyst,” at a salary of \$48,194 per year,² 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 demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation.³ For this additional reason, the petition must also be denied.

I. The Duties of the Proffered Position

In its November 20, 2012 response to the director’s RFE, the petitioner stated that the beneficiary would spend sixty percent of his time implementing and managing the petitioner’s [REDACTED] project,

¹ The petitioner provided a North American Industry Classification System (NAICS) Code of 541930, “Translation and Interpretation Services.” U.S. Dep’t of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, “541930 Translation and Interpretation Services,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (accessed Aug. 26, 2013).

² The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for use with a job prospect within the occupational classification of “Information Security Analysts, Web Developers, and Computer Network Architects,” SOC (O*NET/OES) Code 15-1179, and for which the appropriate prevailing wage level would be Level I (the lowest of the four assignable wage-rates).

³ 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.

which would entail adding users and monitoring and training all users and clients; twenty percent of his time managing the petitioner's website; fifteen percent of his time preparing advertising and marketing materials for the [REDACTED] project; and five percent of his time interpreting, translating, and providing talent for the petitioner's voiceover services.

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 and finds that the evidence fails to establish that the position as described constitutes a specialty occupation.

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.

The AAO will now discuss 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.

The AAO will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), 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.⁴ As noted above, the LCA that the petitioner submitted in support of this petition was certified for a job offer falling within the "Information Security Analysts, Web Developers, and Computer Network Architects" occupational category. The AAO agrees with the petitioner that some of the duties proposed for the beneficiary fall within those described in the *Handbook* as normally performed by web developers.

On appeal, counsel argues on appeal that the duties of the proffered position fall within those of the "Network and Computer Systems Administrators" occupational category. The AAO finds that some of the duties of the proffered position fall within that category and, as such, agrees with counsel in part.

Finally, the AAO finds that many of the translation and interpretation duties of the proffered position fall within the "Interpreters and Translators" occupational category.

The AAO, therefore, finds that the duties of the proffered position combine those of three separate occupational categories: (1) Information Security Analysts, Web Developers, and Computer Network Architects; (2) Network and Computer Systems Administrators; and (3) Interpreters and Translators. Having made that determination, the AAO will explore the *Handbook's* discussion of each occupational category.

In its discussion of the "Information Security Analysts, Web Developers, and Computer Network Architects" occupational category, the *Handbook* states the following with regard to the duties typically performed by web developers:

Web developers design and create websites. They are responsible for the look of the site. They are also responsible for the site's technical aspects, such as performance.

⁴ 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.

and capacity, which are measures of a website's speed and how much traffic the site can handle. They also may create content for the site.

Web developers typically do the following:

- Meet with their clients or management to discuss the needs of the website and the expected needs of the website's audience and plan how it should look
- Create and debug applications for a website
- Write code for the site, using programming languages such as HTML or XML
- Work with other team members to determine what information the site will contain
- Work with graphics and other designers to determine the website's layout
- Integrate graphics, audio, and video into the website
- Monitor website traffic

When creating a website, developers have to make their client's vision a reality. They work with clients to determine what sites should be used for, including ecommerce, news, or gaming. The developer has to decide which applications and designs will fit the site best.

The following are some types of web developers:

Web architects or programmers are responsible for the overall technical construction of the website. They create the basic framework of the site and ensure that it works as expected. Web architects also establish procedures for allowing others to add new pages to the website and meet with management to discuss major changes to the site.

Web designers are responsible for how a website looks. They create the site's layout and integrate graphics; applications, such as a retail checkout tool; and other content into the site. They also write web-design programs in a variety of computer languages, such as HTML or JavaScript.

Webmasters maintain websites and keep them updated. They ensure that websites operate correctly and test for errors such as broken links. Many webmasters respond to user comments as well.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Information Security Analysts, Web Developers, and Computer Network Architects," <http://www.bls.gov/ooh/computer-and-information-technology/information-security-analysts-web-developers-and-computer-network-architects.htm#tab-2> (accessed Aug. 26, 2013).

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

Educational requirements for web developers vary with the setting they work in and the type of work they do. Requirements range from a high school diploma to a bachelor's degree. An associate's degree may be sufficient for webmasters who do not do a lot of programming.

Id. at <http://www.bls.gov/ooh/computer-and-information-technology/information-security-analysts-web-developers-and-computer-network-architects.htm#tab-4> (accessed Aug. 26, 2013).

The AAO finds that the statements made by DOL in the *Handbook* do not support a finding that a bachelor's degree, or the equivalent, in a specific field of study is required for entry as a web developer. To the contrary, DOL specifically states that educational requirements vary, that such requirements range from a high school diploma to a bachelor's degree, and it does not indicate that for those positions which do require a bachelor's degree, the degree must be in a specific specialty. Accordingly, inclusion of the proffered position within this occupational category would not in itself be sufficient to establish the position as one for which the normal minimum entry requirement is at least a bachelor's or higher degree, or the equivalent, in a specific specialty.

Having made that determination, the AAO turns next to that portion of the proposed duties which coincide with those described in the *Handbook* as falling within the "Network and Computer Systems Administrators" occupational category.

The *Handbook's* discussion of the duties typically performed by network and computer systems administrators states, in pertinent part, the following:

Computer networks are critical parts of almost every organization. Network and computer systems administrators are responsible for the day-to-day operation of these networks. They organize, install, and support an organization's computer systems, including local area networks (LANs), wide area networks (WANs), network segments, intranets, and other data communication systems. . . .

Network and computer systems administrators typically do the following:

- Determine what the organization needs in a network and computer system before it is set up
- Install all network hardware and software and make needed upgrades and repairs

- Maintain network and computer system security and ensure that all systems are operating correctly
- Collect data to evaluate the network's or system's performance and help make the system work better and faster
- Train users on the proper use of hardware and software when necessary
- Solve problems quickly when a user or an automated monitoring system lets them know about a problem

Administrators manage an organization's servers. They ensure that email and data storage networks work properly. They also make sure that employees' workstations are working efficiently and stay connected to the central computer network. Some administrators manage telecommunication networks at their organization.

In some cases, administrators help network architects who design and analyze network models. They also participate in decisions about buying future hardware or software to upgrade the organization's network. Some administrators provide technical support to computer users, and they may supervise computer support specialists who help users with computer problems.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Network and Computer Systems Administrators," <http://www.bls.gov/ooh/computer-and-information-technology/network-and-computer-systems-administrators.htm#tab-2> (accessed Aug. 26, 2013).

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

Network and computer systems administrators must often have a bachelor's degree, although some positions require an associate's degree or professional certification along with related work experience. . . .

Id. at <http://www.bls.gov/ooh/computer-and-information-technology/network-and-computer-systems-administrators.htm#tab-4> (accessed Aug. 26, 2013).

These findings do not indicate that a bachelor's degree in a specific specialty, or the equivalent, is normally required for entry into this occupational category. To the contrary, the *Handbook* specifically states that an associate's degree or professional certification along with related work experience is sufficient for some positions, and its statement that such individuals "must often" possess a bachelor's degree does not necessarily even indicate that a majority of systems administrators are required to possess that credential, let alone that it be in a specific specialty. Accordingly, inclusion of the proffered position within this occupational category would not in

itself be sufficient to establish the position as one for which the normal minimum entry requirement is at least a bachelor's or higher degree, or the equivalent, in a specific specialty.

Finally, the AAO turns to that portion of the proposed duties which coincide with this described in the *Handbook* as falling within the "Interpreters and Translators" occupational category.

In relevant part, the *Handbook* states the following with regard to the duties of interpreters and translators:

Interpreters and translators convert information from one language to another. Interpreters work in spoken or sign language, translators in written language. . . .

Interpreters and translators typically do the following:

- Convert concepts in the source language to equivalent concepts in the target language
- Speak, read, and write fluently in at least two languages, including English and one or more others
- Relay style and tone
- Manage work schedules to meet deadlines
- Render spoken ideas accurately, quickly, and clearly

Interpreters and translators aid communication by converting information from one language into another. Although some people do both, interpreting and translating are different professions: interpreters deal with spoken words, translators with written words.

Interpreters convert information from one spoken language into another—or, in the case of sign language interpreters, between spoken language and sign language. Interpreters must usually be fluent speakers or signers of both languages because they communicate back and forth among the people who do not share each other's language.

There are two modes of interpreting: simultaneous and consecutive.

Simultaneous interpreting requires interpreters to listen or watch and speak or sign at the same time someone is speaking or signing. Simultaneous interpreting requires a high level of concentration. For that reason, simultaneous interpreters usually work in pairs, each interpreting for about 20 to 30 minutes and then resting while the other

interprets. Simultaneous interpreters are often familiar with the subject matter so they can anticipate the end of a speaker's sentences.

In contrast, consecutive interpreting begins only after the speaker has said or signed a group of words or sentences. Consecutive interpreters often take notes while listening to or watching the speakers, so they must develop some type of notetaking or shorthand system.

Translators convert written materials from one language into another. The goal of a translator is to have people read the translation as if it were the original. To do that, the translator must be able to write sentences that flow as well as the original did while keeping the ideas and facts of the original accurate. Translators must consider any cultural references, including slang, and other expressions that do not translate literally.

Translators must read the original language fluently but may not need to speak it fluently. They usually translate only into their native language.

Nearly all translation work is done on a computer, and translators receive and submit most assignments electronically. Translations often go through several revisions before becoming final.

Interpreters' and translators' services are needed in a number of subject areas. Although these workers often do not specialize in any particular field or industry, many focus on one area of expertise.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Interpreters and Translators," <http://www.bls.gov/ooh/Media-and-Communication/Interpreters-and-translators.htm#tab-2> (accessed Aug. 26, 2013).

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

Although interpreters and translators typically need a bachelor's degree, the most important requirement is that they be fluent in English and at least one other language. Many complete job-specific training programs. . . .

The educational backgrounds of interpreters and translators vary, but it is essential that they be fluent in English and at least one other language. . . .

Id. at <http://www.bls.gov/ooh/Media-and-Communication/Interpreters-and-translators.htm#tab-4> (accessed Aug. 26, 2013).

These findings from the *Handbook* do not indicate that a bachelor's degree in a specific specialty, or the equivalent, is normally required for entry into this occupational group. Although the *Handbook*

does state that a bachelor's degree is typically required, it does not indicate that those translator positions which do require such training require that the degree be *in a specific specialty*.

The materials from DOL's Occupational Information Network (O*NET OnLine) do not establish that the proffered position satisfies the first criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A), either. O*NET OnLine 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 O*NET OnLine's Job Zone designations make no mention of the specific field of study from which a degree must come. 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 Specialized Vocational Preparation (SVP) rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. For all of these reasons, the O*NET OnLine excerpt submitted by counsel is of little evidentiary value to the issue presented on appeal.

Nor does the record of proceeding contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion within any of these occupational categories 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."

Finally, it is noted that the petitioner submitted an LCA certified for a job prospect with a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation, which signifies the petitioner's assessment that the beneficiary is only expected to possess a basic understanding of the occupation.⁵

⁵ The *Prevailing Wage Determination Policy Guidance* (available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf (accessed Aug. 26, 2013)) issued by 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].

Aside from the lack of supportive evidence relevant to establishing for the proffered position and its duties any particular level of complexity, uniqueness, and specialization, as well as any level of independent judgment and occupational understanding required to perform them, the LCA that the petitioner submitted is inconsistent with attributing to the position relatively high levels in any of those areas. This is because the LCA which the

As the evidence in the record of proceeding does not establish that at least a baccalaureate degree in a specific specialty, or its equivalent, 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 described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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.⁶

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)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for 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

petitioner submitted had been certified for use with a job opportunity at a Level I, entry-level wage-rate. Submission of such an LCA is tantamount to an assertion that the proffered position is actually a low-level, entry position relative to others within the occupational group. In accordance with the relevant DOL explanatory information on wage levels, this wage rate is appropriate if the beneficiary is only required to possess a basic understanding of the occupation; if he will be expected to perform routine tasks requiring limited, if any, exercise of judgment; if he will be closely supervised and will have his work closely monitored and reviewed for accuracy; and if he will receive specific instructions on required tasks and expected results.

⁶ Counsel argues on appeal with regard to this regulation as follows:

Further, USCIS erred by requiring this petitioner to prove that similar positions in its industry require a person with a Bachelor's degree[.]

Counsel, however, does not specifically explain *how* the director erred in his analysis of this criterion. Again, the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) 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. Given this specific regulatory requirement, it is not clear from counsel's argument how a petitioner *should* be able to satisfy this requirement without demonstrating, in the words of the regulation, that parallel positions in similar organizations require a bachelor's or higher degree in a specific specialty.

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.

Nor do the six job-vacancy announcements submitted into the record satisfy the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). First, the petitioner has not submitted any evidence to demonstrate that these advertisements are from companies within the petitioner's industry and that those companies are organizations "similar" to the petitioner in size, scope, and scale of operations, business efforts, expenditures, or other fundamental dimensions.⁷ Second, the petitioner has not established that these six positions are "parallel" to the proffered position.⁸ Nor does the petitioner submit any evidence regarding how representative these advertisements are of even the advertising firms' usual recruiting and hiring practices with regard to the positions advertised, let alone regarding how those advertisements from outside the petitioner's industry are even relevant to establishing the recruiting and hiring practices of firms in the petitioner's industry for positions parallel to the one that is here proffered. Simply 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)).⁹

⁷ As noted above, the petitioner described itself on the Form I-129 as a professional language services company and provided a North American Industry Classification System (NAICS) Code 541930, "Translation and Interpretation Services." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "541930 Translation and Interpretation Services," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (accessed Aug. 26, 2013).

However, [REDACTED] claim to be information technology companies; the [REDACTED] is a developer of advanced naval nuclear propulsion technology; [REDACTED] is a business process and document management company; and the [REDACTED] is a telecommunications company. The record contains no information regarding the company advertising its videoconferencing systems manager position through Monster.com. Moreover, neither the advertisements themselves nor any evidence of record indicate that the firms that issued the advertisements are within the same industry as the petitioner.

The petitioner did not explain its similarity to any of these companies. Nor does the record contain documentary evidence regarding the other six advertisers' business operations to establish that they are in fact "similar" to the petitioner in size, scope, and scale of operations, business efforts, expenditures, or other fundamental dimensions. Simply 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. at 165.

⁸ For example, it is noted that work experience is required for all six of these positions. However, as noted above, the petitioner indicated by the wage-level in the LCA that its proffered position is a comparatively low, entry-level position relative to others within its occupation and signifies that the beneficiary is only expected to possess a basic understanding of the occupation. It is therefore difficult to envision how these attributes assigned to the proffered position by the petitioner by virtue of its wage-level designation on the LCA would be parallel to these positions described in these job vacancy announcements.

⁹ Furthermore, according to the *Handbook* there were approximately 443,800 persons employed as network and computer systems administrators in 2010. *Handbook* at <http://www.bls.gov/ooh/Computer-and->

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.

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 the types of work typically performed by network and computer systems administrators, web developers, and interpreters and translators,

Information-Technology/Network-and-computer-systems-administrators.htm#tab-6 (accessed Aug. 26, 2013). According to the *Handbook* there were approximately 302,300 persons employed as web developers in 2010. *Handbook* at <http://www.bls.gov/ooh/computer-and-information-technology/information-security-analysts-web-developers-and-computer-network-architects.htm#tab-6> (accessed Aug. 26, 2013). According to the *Handbook* there were approximately 58,400 persons employed as interpreters and translators in 2010. *Handbook* at <http://www.bls.gov/ooh/Media-and-Communication/Interpreters-and-translators.htm#tab-6> (accessed Aug. 26, 2013). Based on the size of these relevant study populations, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from the six submitted vacancy announcements 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 these 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 these six job-vacancy announcements established that the employers that issued them routinely recruited and hired for the advertised positions only persons with at least a bachelor's degree in a specific specialty closely related to the positions, it cannot be found that these six job-vacancy announcements which 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 normally require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

which, the *Handbook* indicates, does not necessarily require a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

The petitioner therefore failed to establish how the beneficiary's responsibilities and day-to-day duties comprise a position *so* complex or unique that the position can be performed only by an individual with a bachelor's degree, or the equivalent, in a specific specialty.

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. 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.¹⁰ In the instant case, the 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.

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").

Counsel stated in her November 27, 2012 letter that this is a newly-created position. Although the fact that a proffered position is a newly-created one is not in itself generally a basis for precluding a position from recognition as a specialty occupation, certainly an employer that has never recruited

¹⁰ Any such assertion would be undermined in this particular case by the fact that, by submitting in support of this petition an LCA certified for a Level I wage rate, the petitioner effectively attested that the proffered position is a comparatively low, entry-level position relative to others within its occupational group.

and hired for the position cannot satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

As the petitioner has failed to demonstrate 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 has not satisfied 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 the specialty.

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 submission of an LCA certified for a wage-level I is tantamount to an attestation that the duties are of relatively low complexity.

As earlier noted, the *Prevailing Wage Determination Policy Guidance* 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].

The pertinent guidance from the Department of Labor, at page 7 of its *Prevailing Wage Determination Policy Guidance* describes the next higher wage-level 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.

The above descriptive summary indicates that even this higher-than-designated wage level is appropriate for only "moderately complex tasks that require limited judgment." The fact that this higher-than-here-assigned, Level II wage-rate itself indicates performance of only "moderately complex tasks that require limited judgment," is very telling with regard to the relatively low level of complexity imputed to the proffered position by virtue of its Level I wage-rate designation.

Further, the AAO notes the relatively low level of complexity that even this Level II wage-level reflects when compared with the two still-higher LCA wage levels, neither of which was designated on the LCA submitted to support this petition.

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 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.

Here the AAO again incorporates its earlier discussion and analysis regarding the implications of the petitioner's submission of an LCA certified for the lowest assignable wage-level. By virtue of this submission the petitioner effectively attested that the proffered position is a low-level, entry position relative to others within the occupation, and that, as clear by comparison with DOL's instructive comments about the next higher level (Level II), the proffered position did not even involve "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II). The AAO also finds that, separate and apart from the petitioner's submission of an LCA with a wage-level I designation, the petitioner has also failed to provide sufficiently detailed documentary evidence to establish that the nature of the specific duties that would be performed if this petition were approved 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.

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. Beneficiary Qualifications

As noted at the outset of this discussion, the AAO also finds, beyond the decision of the director, that the petitioner has failed to demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation. Thus, even if the petitioner had overcome the director's ground for denying the petition, which it did not, the petition still could not be approved because the petitioner has not demonstrated the beneficiary's qualifications to perform the duties of a specialty occupation.

The statutory and regulatory framework that the AAO must apply in its consideration of the evidence of the beneficiary's qualification to serve in a specialty occupation follows below.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In addition, 8 C.F.R. § 214.2(h)(4)(v)(A) states the following:

General. If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary possesses the requisite license or, if none is required, that he or she has completed a degree in the specialty that the occupation requires. Alternatively, if a license is not required and if the beneficiary does not possess the required U.S. degree or its foreign degree equivalent, the petitioner must show that the beneficiary possesses both (1) education, specialized training, and/or progressively responsible experience in the specialty equivalent to the completion of such degree, and (2) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

As the beneficiary did not earn a baccalaureate or higher degree from an accredited college or university in the United States, he does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1). As he does not possess a foreign degree that has been determined to be equivalent to a baccalaureate or higher degree from an accredited college or university in the United States, he does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), either.¹¹ As the petitioner has not demonstrated that the beneficiary holds an unrestricted state license, registration or certification to perform the duties of a specialty occupation, he does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3), either. Accordingly, 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) remains as the

¹¹ Although the record of proceeding contains an evaluation of the beneficiary's academic credentials, it does not establish that those credentials are equivalent to a bachelor's degree awarded by an accredited institution of higher education in the United States. Instead, it finds the *combination* of his academic studies and work experience equivalent to a bachelor's degree in computer information systems. Accordingly, that evaluation does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

In order to be relevant under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), an evaluation must be based upon the beneficiary's academic credentials alone.

only avenue for the petitioner to demonstrate the beneficiary's qualifications to perform the duties of the proffered position.

To qualify under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) the beneficiary must (1) “[h]ave education, specialized training, and/or progressively responsible experience” that is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and (2) “[h]ave recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.”

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equivalence to a completion of a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) is determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;¹²
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The record contains an evaluation of the beneficiary's academics and work experience prepared by Dr. [REDACTED], Professor and Chairman of the Department of Computer Information Systems at the [REDACTED]. According to Dr. [REDACTED] the beneficiary's foreign education and work experience collectively equate to a U.S. bachelor's degree in computer information systems.

¹² The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.

However, this evaluation does not demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), as the petitioner has not demonstrated that, at the time that he rendered his assessment, Dr. [REDACTED] possessed the authority to grant college-level credit for training and/or experience at an accredited college or university which had a program for granting such credit based on an individual's training and/or work experience. Again, simply 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. at 165.

Accordingly, the beneficiary does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

No evidence has been submitted to establish, and the petitioner does not assert, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), which requires submission of the results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI).

Nor does the beneficiary qualify under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), that is, by virtue of an "evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials."

As already reflected in this decision, the findings and ultimate opinion of the degree-equivalency evaluation submitted in the record (i.e., from Dr. [REDACTED] are in material part based upon an assessment of training/work experience. As such, the proposed evaluator in this instance – whom the record does not establish as an official possessing the authority required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) - reaches beyond the scope of competence that the regulations accord to a credentials evaluation service or any other person or entity other than a person who is, in the words of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), "an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience." Thus, there is no creditable evaluation that establishes the beneficiary's education as equivalent to a U.S. bachelor's degree in any specific specialty.

No evidence has been submitted to establish, and the petitioner does not assert, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), which requires that the beneficiary submit evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) states the following with regard to achieving a USCIS determination that a beneficiary has the requisite qualifications to serve in a specialty occupation:

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for

each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;¹³
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

Although the record contains some information regarding the beneficiary's work history, it does not establish that this work experience included the theoretical and practical application of specialized knowledge required by the proffered position; that it was gained while working with peers, supervisors, or subordinates who held a bachelor's degree or its equivalent in the field; and that the beneficiary achieved recognition of her expertise in the field as evidenced by at least one of the five types of documentation delineated in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i)-(v).

Accordingly, as the beneficiary does not qualify under any of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i)-(v) either, he does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). As such, the petitioner has failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation. Accordingly, the petition must also be denied on this basis. Thus, even if it were determined that the petitioner had overcome the director's grounds for denying this petition (which it has not), the petition could still not be approved.

¹³ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. See 8 C.F.R. § 214.2(h)(4)(ii).

IV. Conclusion

As set forth above, the AAO agrees with the director's finding that the petitioner failed to demonstrate that the proffered position is a specialty occupation. Beyond the decision of the director, the petitioner has also failed to demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation.

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.

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