



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **AUG 01 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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,

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 project management solutions business¹ that was established in 1989 and employs over 300 people. The petitioner filed this particular petition in order to classify the beneficiary 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), so that the petitioner could employ him in a position which the petitioner identifies by the job title "Tower Engineer" in both the Form I-129 and the accompanying certified Labor Condition Application (LCA).

Of greater import to our consideration of this appeal is the fact that the LCA which the petitioner filed with the petition had been certified for a job opportunity within the Standard Occupational Classification (SOC) occupational category "Telecommunications Equipment Installers and Repairers, Except Line Installers" which is identified by the SOC Code 49-2022.² The LCA submitted by the petitioner specifies "49-2022" as the SOC Code and "Telecommunications Equipment Installers and [sic]" as the SOC occupation title.

The 2012 SOC system includes the following information about this particular occupational classification:

49-2022 Telecommunications Equipment Installers and Repairers, Except Line Installers

¹ The petitioner provided a North American Industry Classification System (NAICS) Code of 541618, "Other Management Consulting Services." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "541618 Other Management Consulting Services," <https://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited June 20, 2014).

² The official Internet site for the Standard Occupational Classification system describes the current (2010) system as follows:

The 2010 Standard Occupational Classification (SOC) system is used by Federal statistical agencies to classify workers into occupational categories for the purpose of collecting, calculating, or disseminating data. All workers are classified into one of 840 detailed occupations according to their occupational definition. To facilitate classification, detailed occupations are combined to form 461 broad occupations, 97 minor groups, and 23 major groups. Detailed occupations in the SOC with similar job duties, and in some cases skills, education, and/or training, are grouped together.

U.S. Dep't of Labor, Bureau of Labor Statistics, Standard Occupational Classification, <http://www.bls.gov/soc/> (last visited July 18, 2014).

Install, set-up, rearrange, or remove switching, distribution, routing, and dialing equipment used in central offices or headends. Service or repair telephone, cable television, Internet, and other communications equipment on customers' property. May install communications equipment or communications wiring in buildings. Excludes "Telecommunications Line Installers and Repairers" (49-9052).

Illustrative examples: *Private Branch Exchange (PBX) Installer and Repairer, Fiber Optic Central Office Installer*

Broad Occupation: 49-2020 Radio and Telecommunications Equipment Installers and Repairers

Minor Group: 49-2000 Electrical and Electronic Equipment Mechanics, Installers, and Repairers

Major Group: 49-0000 Installation, Maintenance, and Repair Occupations

The director denied the petition, concluding that the evidence of record does not demonstrate that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding before us 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, a letter from the petitioner, and supporting documentation.

Upon our independent review of the entire record of proceeding, we find that the evidence of record does not overcome the director's grounds for denying this petition. That is, we find that the director's decision to deny the petition on the grounds specified in her decision was correct. Accordingly, the appeal will be dismissed, and the petition will be denied.

I. SPECIALTY OCCUPATION: LEGAL FRAMEWORK

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 Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must also meet one of the following criteria:

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term

"degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

II. ANALYSIS

We will now address the director's determination that the evidence of record has not established that the proffered position is a specialty occupation. Based upon our complete review of the record of proceeding, we find that the evidence fails to establish that the position as described constitutes a specialty occupation. Accordingly, the appeal will be dismissed, and the petition will be denied.

As indicated above, the petitioner seeks to employ the beneficiary in a position that it describes as a "Tower Engineer" on a full-time basis. The petitioner stated at page 5 of the Form I-129 that the beneficiary would work full-time, and the petitioner stated on both the Form I-129 and the LCA that it would pay him a salary of \$39,520 per year. The LCA submitted by the petitioner had been certified for use with a job prospect within the "Telecommunications Equipment Installers and Repairers Except Line Installers" occupational classification, SOC (O*NET/OES) Code 49-2022, and at a Level II prevailing wage rate.

In its March 29, 2013 letter, the petitioner stated that it was seeking the beneficiary's skills in the position of Tower Engineer to perform the following duties:

- Installation and testing of RF and fiber systems to include all cables, antenna's, radio's and acillary (sic) gear on all types of wireless sites
- Support commissioning and integrations of cell toweres (sic)

- Conduct line and antenna work, and tower climbing and rigging for the purpose of antenna integration
- Conduct site audits and assessments, Radio Frequency preparation and installation, T1 testing and extension, and RF line sweeping and Hybrid fiber installation and testing
- Responsible for network element deployment
- Ensure all work is completed to satisfaction in accordance with all defined scope and technical specification documents and technical standards.

The petitioner went on to state that the position requires "the equivalent of at least a Bachelor's Degree in Electronics Engineering, Electrical Engineering or a related degree from an accredited college or university."

In an attachment to the petitioner's July 1, 2013 response to the director's RFE, the petitioner provided further details regarding the proffered position:

ESSENTIAL FUNCTIONS

- Read and understand engineering drawings- 5%
- Read and understand sweeps- 5%
- Read and understand specifications for each site- 5%
- Operate a capstan- 5%
- Conduct civil work related to the construction and integration of a cell site- 5%
- Build and upgrade all types of communication sites including self-supporting, guyed, monopoles and rooftop locations- 10%
- Independently conduct connector and RET work including integration and operation of such components- 20%
- Operate T-1 and RF testing and sweep equipment- 5%
- Ensure all work is conducted in accordance with all safety standards- 5%

- Daily inspection of all tools and equipment prior to starting work- 5%
- Provide necessary reporting to management on the status and progress of each site- 5%
- Integration of tower top electronic equipment into carrier networks- 15%
- RF troubleshooting and use of Radio Frequency and electronic test equipment- 5%
- Read and understand Radio Frequency Data Sheets for integration and testing of sites- 5%

As a preliminary matter, we will address the petitioner's claim, first made on appeal, that the director erred by finding that the proffered position is, in the petitioner's words, "consistent with the Department of Labor's O*Net position of telecommunications equipment installers and repairers." In pertinent part, the petitioner's letter on appeal states:

The position [the beneficiary] is being hired for is a cross between the Telecom Technician role and a Telecommunications Engineer role. The day-to-day duties are consistent with the Technician role, however [the beneficiary] will be expected to perform at a higher level and provide guidance and analysis at the Engineer level. Enclosed is the O*Net job description for the Telecom Engineer that highlights the engineering responsibilities he will have in addition to the technical responsibilities.³

As indicated above, the petitioner stated on both the Form I-129 and the LCA and its supporting documentation that the beneficiary would work full-time as a Tower Engineer and the LCA submitted was certified for use with a job prospect within the "Telecommunications Equipment Installers and Repairers Except Line Installers" occupational classification, SOC (O*NET/OES)

³ We note that DOL's Occupational Information Network (O*NET OnLine) information for Telecommunications Engineering Specialists does not establish that the position is a specialty occupation. To begin with, 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, we interpret 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. 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. Additionally, and more importantly, the O*NET Online print-out submitted by the petitioner for "Telecommunications Engineering Specialists" specifically states that "most occupations in this zone [Job Zone Three] require training in vocational schools, related on-the-job, experience, or an associate's degree." The O*NET OnLine information does not identify a baccalaureate degree as normally required for entry into this occupational group. For all of these reasons, the O*NET OnLine excerpt submitted on appeal is of little evidentiary value.

Code 49-2022, and a Level II prevailing wage rate. The petitioner did not assert that the beneficiary was being hired for a position that is a "cross between the Telecom Technician role and a Telecommunications Engineer role" until the instant appeal submission.

A petitioner cannot use an appeal, or an RFE reply, to offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). If a petitioner wishes to make such material changes, it must submit a new or amended petition, with applicable fees and a new LCA corresponding to the position as changed.

Further, when the duties of the proffered position involve more than one occupational category - as the petitioner now appears to claim on appeal - the Department of Labor (DOL) provides clear guidance for selecting the most relevant Occupation Information Network (O*NET) occupational code classification. The "Prevailing Wage Determination Policy Guidance" states the following:

In determining the *nature of the job offer*, the first order is to review the requirements of the employer's job offer and determine the appropriate occupational classification. The O*NET description that corresponds to the employer's job offer shall be used to identify the appropriate occupational classification If the employer's job opportunity has worker requirements described in a combination of O*NET occupations, the SWA should default directly to the relevant O*NET-SOC occupational code for the highest paying occupation. For example, if the employer's job offer is for an engineer-pilot, the SWA shall use the education, skill and experience levels for the higher paying occupation when making the wage level determination.

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

Thus, where, as here on appeal, the petitioner asserts that its proffered position is comprised of a combination of SOC/O*NET occupational groups, then according to DOL guidance, the petitioner is obliged to choose the relevant occupational code for the highest paying occupation.

We note that, pursuant to the LCA which the petitioner submitted, the petitioner asserted not only (1) that the proffered position would in the Telecommunications Equipment Installers and Repairers Except Line Installers occupational group, but also (2) that the associated prevailing-wage hourly rate that was the minimum that could be paid for such a position was \$18.86 - which the petitioner attested to being the pertinent Level II prevailing-wage rate for such a position for the pertinent period and location. However, if, as claimed on appeal, the proffered position involves "provid[ing]

guidance and analysis at the Engineer level," the petitioner was obliged to submit – and to bind itself to - an LCA certified for whatever type of position in the Engineers occupational categories would apply. This is because it appears that a position in an Engineers occupational category would likely require a much higher prevailing-wage rate than the rate specified in the LCA that the petitioner submitted. In this regard, we note for comparison that while the submitted LCA was certified for a Level II prevailing-wage rate of \$18.68 per hour, the DOL Online Wage Library indicates that, for the pertinent period and location related to an LCA submitted for DOL certification for the period 7/2013 – 6/2014 and a Chicago location (which appear to be the parameters used by the petitioner) the prevailing-wage rate for *even a Level I* engineer within the "Electrical Engineers" occupational group would be \$30.23 per hour.⁴ This, of course, is a prevailing-wage rate that is materially higher than that specified in the LCA that the petitioner submitted.

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

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. See 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.*

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Accordingly, we also find that, in fact the petitioner intended the petition to relate to an engineer petition, it failed to submit a valid LCA that had been certified for the higher paying occupational classification, and the petition would have to be denied for this additional reason.

⁴ See U.S. Dep't of Labor, Foreign Labor Certification Data Center, OnLine Wage Library (OWL), accessed at <http://www.flcdatacenter.com/OesQuickResults.aspx?code=17-2071&area=16974&year=14&source=1>.

In addition, we also find that the petition contains inconsistencies that so materially undermine the credibility of the petition as to preclude approval of the proffered position as being a specialty occupation.

The petitioner has provided conflicting versions of the job title and duties associated with the proffered position as outlined above. We also note that the petitioner has also submitted a printout from the O*NET OnLine Summary Report for yet another occupational classification, namely, "Telecommunications Engineering Specialists." In addition, in the initial submission and in response to the RFE, the petitioner did not state that the proffered position had any particular experience requirements. On appeal however, for the first time, the petitioner claimed that the position requires at least "5 years experience in tower installation, commissioning, and maintenance. . . 5 years experience with installation, termination and testing of T1/DS1 circuits. . . 5 years experience troubleshooting tower equipment issues. . . system and computer knowledge for completion of file folders, daily reports and site records. . . [and] knowledge of tower equipment circuits functions and interconnections." No explanation was provided for failing to previously state any experience requirements for the proffered position. Nor did the petitioner establish that the beneficiary did in fact meet these referenced experience requirements. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In short, we find that the appeal must be dismissed and the petition denied for the additional reason that, as a result of the material inconsistencies in the record of proceeding, there is an insufficient factual basis upon which we may rely as an accurate picture of what exactly the beneficiary would be doing and what level of educational or educational-equivalent attainment in any specific specialty he would have to apply. In the absence of fundamentally consistent evidence and claims regarding the substantive nature of the proffered position, its constituent duties, and their performance requirements, there is an insufficient factual foundation for us to reasonably and responsibly conclude that the proffered position is more likely than not a specialty occupation.

That all being said, in the interests of a very comprehensive decision, we will now discuss why 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 also requires that the appeal be dismissed.

Based on the Form I-129 and the supporting documentation submitted by the petitioner requesting H-1B classification in order for the beneficiary to work full-time as a Tower Engineer, and based on the corresponding LCA, submitted with the Form I-129 and certified for use with a job prospect within the "Telecommunications Equipment Installers and Repairers Except Line Installers" occupational classification, SOC (O*NET/OES) Code 49-2022, and a Level II prevailing wage, we will proceed with our discussion based on the proffered position of Tower Engineer, a job prospect within the "Telecommunications Equipment Installer and Repairers Except Line Installers" occupational classification. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). The regulations at 8 C.F.R. § 214.2(h)(2)(i)(E)

instead require that the petitioner "file an amended or new petition, with fee, with the service center where the original petition was filed to reflect any material changes in the terms and conditions of employment."

We will first consider 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.

We recognize the *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.⁵ As noted above, the LCA that the petitioner submitted in support of this petition was certified for a job offer falling within the "Telecommunications Equipment Installers and Repairers Except Line Installers" occupational category.

In pertinent part, the *Handbook* states the following with regard to this occupational classification:

Telecommunications equipment installers and repairers, also known as *telecom technicians*, set up and maintain devices or equipment that carry communications signals, connect to telephone lines, or access the Internet.

- Install communications equipment in offices, private homes, and buildings that are under construction
- Set up, rearrange, or replace routing and dialing equipment
- Inspect and service equipment, wiring, and phone jacks
- Repair or replace faulty, damaged, or malfunctioning equipment
- Test repaired, newly installed, or updated equipment to ensure that it works properly
- Adjust or calibrate equipment settings to improve its performance
- Keep records of maintenance, repairs, and installations
- Demonstrate and explain the use of equipment to customers

⁵ The *Handbook*, which is available in printed form, may also be accessed online at <http://www.bls.gov/ooh>. Our references to the *Handbook* are from the 2014-15 edition available online.

Telephone, computer, and cable telecommunications systems rely on equipment to process and transmit vast amounts of data. Telecommunications equipment installers and repairers—often called *telecom technicians*—install and service this equipment.

Telecom technicians use many different tools to inspect equipment and diagnose problems. For instance, to locate distortions in signals, they may employ spectrum analyzers and polarity probes. They also commonly use hand tools, including screwdrivers and pliers, to take equipment apart and repair it.

Many technicians also work with computers, specialized hardware, and other diagnostic equipment. They follow manufacturer's instructions or technical manuals to install or update software and programs for devices.

Those who work at a client's location must track hours worked, parts used, and bills collected. Installers who set up and maintain lines outdoors are classified as line installers and repairers.

The specific tasks of telecom technicians vary depending on their specialization and where they work.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Telecommunications Equipment Installers and Repairers Except Line Installers," <http://www.bls.gov/ooh/installation-maintenance-and-repair/telecommunications-equipment-installers-and-repairers-except-line-installers.htm#tab-2> (last visited June 20, 2014).

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

Telecom technicians typically need some postsecondary education in electronics, telecommunications, or computer technology and receive on-the-job training. Industry certification is required for some positions.

Postsecondary education in electronics, telecommunications, or computers is typically needed for telecom technicians.

Technical programs with courses in basic electronics, telecommunications, and computer science offered in community colleges and technical schools may be particularly helpful. Most programs lead to a certificate or an associate's degree in electronics repair, computer science, or related subjects.

Some employers prefer to hire candidates with an associate's degree, particularly for positions such as central office technicians, headend technicians, and those working with commercial communications systems.

Id. at <http://www.bls.gov/ooh/installation-maintenance-and-repair/telecommunications-equipment-installers-and-repairers-except-line-installers.htm#tab-4> (last visited June 20, 2014).

The statements made by DOL in the *Handbook* regarding entrance into this occupational category do not support a finding that a bachelor's degree, or the equivalent, in a specific specialty is normally required. The *Handbook* indicates that entrance "typically" requires "some postsecondary education." The *Handbook* does not in any way indicate that a minimum of a bachelor's degree in a specific specialty, or its equivalent, is normally required for this occupational category.

Accordingly, as the *Handbook* indicates that entry into the Telecommunications Equipment Installers and Repairers Except Line Installers occupational group does not normally require at least a bachelor's degree in a specific specialty or its equivalent, the *Handbook* does not support the proffered position as satisfying this first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 the Telecommunications Equipment Installers and Repairers Except Line Installers occupational group 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, we observe that the wage level at which the petitioner certified the proffered position on the LCA is inconsistent with the petitioner's description of the proffered position. Specifically, the petitioner designated the proffered position as a Level II (qualified level) position on the LCA.⁶ The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance."⁷ A Level II wage rate is described by DOL as follows:

Level II (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment.

⁶ Wage levels should be determined only after selecting the most relevant O*NET code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.

⁷ Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

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.

U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance, Nonagric. Immigration Programs* (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

Thus, in designating the proffered position at a Level II wage, the petitioner has indicated that the proffered position is a comparatively low level position relative to others within the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, the selected wage-rate indicates that the beneficiary would only be required to perform "moderately complex tasks that require limited judgment."

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook* (or other objective, authoritative source) indicates that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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, we find 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 (1) to the petitioner's industry; and (2) for positions within that industry that are both: (a) parallel to the proffered position, and (b) 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)).

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, the record contains no letters or affidavits from firms or persons in the

industry attesting to such a requirement. Further, there is no evidence of a professional association having made a bachelor's degree in a specific specialty, or the equivalent, a minimum requirement for entry.

Nor do the 4 vacancy announcements submitted by the petitioner satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). First, we discount 3 of the vacancy announcements because the petitioner has failed to establish that the positions advertised are "parallel" to the proffered position.⁸ Further, the petitioner has failed to establish that a number of the vacancy announcements relate to the petitioner's industry, as would be required if those submissions were to be within this prong's zone of consideration.⁹ Nor has the petitioner established that the positions advertised in a number of the vacancy announcements require a bachelor's degree, or the equivalent, in a specific specialty.¹⁰ Again, the vacancy announcements submitted by the petitioner do not establish that the petitioner has met this prong of the regulations. Thus, further analysis regarding the specific information contained in each of the vacancy announcements is not necessary. That is, not every deficit of every vacancy announcement has been addressed.

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

Next, we find that the evidence of record does 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."

The petitioner's statements with regard to the claimed complex and unique nature of the proffered position are acknowledged. As they are not substantiated by the evidence of record, we accord them no probative value. 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. 1972)). Also, those assertions are undermined by the fact that the petitioner

⁸ For example, it is noted that work experience is required in 3 of the job vacancy announcements submitted. Further, [REDACTED] states that "bachelor degree preferred." However, as noted by the petitioner in its March 29, 2013 letter under "Requirements," the position requires the equivalent of at least a Bachelor's Degree and does not reference any experience requirements for the proffered position.

⁹ For instance, with respect to the vacancy announcement from [REDACTED] the position title is Power/HVAC Engineer. It is unclear whether the hiring company is related to the petitioner's industry and, as such, it also cannot be determined whether the job would be considered parallel to that of the proffered position.

¹⁰ For example, the vacancy announcement for a Tower Structural Analyst in [REDACTED] Georgia specifies a bachelor's degree but does not reference a specific specialty.

submitted an LCA certified for a job prospect with a prevailing-wage rate (Level I) that is only appropriate for an employee who has a good understanding of the occupation but who will only perform moderately complex tasks that require limited judgment.

Accordingly, given the *Handbook's* indication that the "Telecommunications Equipment Installers and Repairers Except Line Installers" occupational category is typically performed by persons without at least a bachelor's degree in a specific specialty, or the equivalent, it is not credible that a position involving a good understanding of the occupation but who will only perform moderately complex tasks that require limited judgment *would* be so complex or unique that it could only be performed by a person with at least a bachelor's degree in a specific specialty or the equivalent. Even more fundamentally, the evidence of record does not establish that the proffered position possesses the relative complexity or uniqueness required to satisfy this criterion. In particular, we find that the record's descriptions of the duties said to comprise this position are limited to terms of generalized functions so broadly stated as to characterize positions generally grouped within the related occupational category without reference to their complexity or uniqueness relative to other positions within the occupational category. The record of proceeding simply does not develop relative complexity or uniqueness as aspects of the proffered position that would distinguish it from positions in that same occupational group not so complex or unique as to require the services of a person with at least a bachelor's degree, or the equivalent, in accounting or a closely related specialty.

The petitioner therefore did not 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.

As the evidence of record therefore fails 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 at least a bachelor's degree in a specific specialty or its equivalent, the petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) either.

We turn 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 in a specific specialty or its equivalent for the position.

Our 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. Additionally, 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.¹¹

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* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The director's July 10, 2013 RFE specifically requested the petitioner to document its past recruiting and hiring history with regard to the proffered position. The RFE included the following specific request for such documentation:

Position Announcement: To support the petitioner's contention that the position is a "specialty occupation," provide copies of the petitioner's present and past job vacancy announcements. The petitioner may also provide classified advertisements soliciting for the current position, showing that the petitioner requires its applicant to have a minimum of a baccalaureate or higher degree or its equivalent in a specific specialty.

Past Employment Practices: Provide evidence to establish that the petitioner has a past practice of hiring persons with a baccalaureate degree, or higher in a specific specialty, to perform the duties of the proffered position....

In response to the director's RFE, the petitioner states that "[t]he position in which [the beneficiary] will work is a new position for [the petitioner], and as such we have not previously employed individuals in this position. We are unable to provide information on individuals previously employed in this position." While a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, it is not possible that an employer that has never recruited and hired for the position would be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that the petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position. Even if the record contained such evidence, we would still find that the petitioner did not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) because the record does not, as indicated above, establish that its degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position.

¹¹ Any such assertion would be undermined in this particular case by the fact that the petitioner submitted an LCA that had been certified for a Level II wage-level, which is appropriate for indicating that it is a position for an employee who has a good understanding of the occupation but who will only perform moderately complex tasks that require limited judgment.

As the record of proceeding does not demonstrate that the petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the proffered position, it does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, we find that the evidence of record does not satisfy 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 specific specialty or its equivalent.

In reviewing the record of proceeding under this criterion, we reiterate our earlier discussion regarding the *Handbook's* entries for positions falling within the "Telecommunications Equipment Installers and Repairers Except Line Installers" occupational category. Again, the *Handbook* does not indicate that a bachelor's degree in a specific specialty, or the equivalent, is a standard, minimum requirement to perform the duties of such positions; and the record indicates no factors that would elevate the duties proposed for the beneficiary above those discussed in the *Handbook*. As reflected in this decision's earlier discussion of the petitioner's duty descriptions, the proposed duties as described in the record of proceeding contain no indication of specialization and complexity such that the knowledge they would require is usually associated with any particular level of education in a specific specialty. As generically and generally as they were described, the duties of the proposed position are not presented with sufficient detail and explanation to establish that their substantive nature, as they would be performed in the specific context of the petitioner's particular business operations, would be so specialized and complex as to require knowledge usually associated with at least a bachelor's degree in a specific specialty.

Furthermore, we reiterate our earlier comments and findings with regard to the implication of the petitioner's designation of the proffered position in the LCA at a Level II wage. That is, the Level II wage designation is indicative of a lower level position relative to others within the occupational category and hence one not likely distinguishable by relatively specialized and complex duties. Without further evidence, petitioner has not demonstrated that its proffered position is one with sufficiently specialized and complex duties. For instance, such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage. For instance, as previously mentioned, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."

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

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

III. BENEFICIARY'S QUALIFICATIONS

Beyond the decision of the director, we also find that the evidence of record does not establish that the beneficiary would be qualified to perform the duties of the proffered position if the petitioner had succeeded in establishing that, as the petitioner claims, performance of the proffered position would require "the equivalent of at least a Bachelor's Degree in Electronics Engineering, Electrical Engineering, or a related degree from an accredited college or university."

The statutory and regulatory framework that we must apply in our 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 is 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:

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.

In order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree, the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require 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

¹² The petitioner should note that, in accordance with this provision, we will accept a credentials evaluation service's evaluation of *education only*, not training and/or work experience.

- (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. . . .

In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5):

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.

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. 8 C.F.R. § 214.2(h)(4)(ii).

It is always worth noting that, by its very terms, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) is a matter strictly for USCIS application and determination, and that, also by the clear terms of the rule, experience will merit a positive determination only to the extent that the record of proceeding establishes all of the qualifying elements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) – including, but not limited to, a type of recognition of expertise in the specialty occupation.

As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree or its equivalent. Therefore, we need not address the beneficiary's qualifications in great detail, except to note that, in any event, the combined evaluation of the beneficiary's education and work experience submitted by the petitioner is insufficient to establish that the beneficiary possesses the equivalent of a U.S. bachelor's degree in any specific specialty.

Specifically, though, we find that the March 6, 2013 evaluation of the beneficiary's education and experience by Professor [REDACTED], Professor of Computer Science, [REDACTED] in his March 6, 2013, is not probative evidence towards establishing the beneficiary's qualifications under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C) and (D). The value of the evaluation is fatally undermined by each of several major defects, of which we shall name a few.

The evaluation partly relies upon but does not provide a copy of a referenced academic evaluation by [REDACTED]

The evaluator erroneously characterizes the pertinent beneficiary-qualification regulations as including a mandatory three-for-one "equivalency ratio" of "three years work experience for one year of college training," and he errs in basing his evaluation of experience on this misunderstanding.

The evidence of record, including the letter from the evaluator's Department Chair at his university, fails to establish that this evaluator qualifies for recognition as an evaluator of the educational equivalency of experience pursuant to the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

Also, we see that the evaluation is materially inconsistent in that its author signed the evaluation as "prepared and certified" by him on "this *thirty-first day of July 2007*" – but the evaluation's front page bears the date March 6, 2013.

Lastly, we see that the evaluator has provided no documentary support or evidence that the beneficiary has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty, as required to establish credit for experience under the relevant USCIS regulations. .

For the reasons discussed above, evidence was not presented that the beneficiary has at least a bachelor's degree in any specific specialty, or its equivalent, that would qualify him to perform the proffered position if the evidence of record had established it to be the specialty occupation position that the petitioner claimed it to be. For this reason also, the petition must be denied.

IV. CONCLUSION AND ORDER

An application or petition that fails to comply with the technical requirements of the law may be denied by this office 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 we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of our enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*. 345 F.3d 683.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, 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.