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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: DEC 17 2014 OFFICE: CALIFORNIA 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,

Ron Rosenberg
Chief, Administrative Appeals Office

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

I. FACTUAL AND PROCEDURAL HISTORY

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the California Service Center on 2013. In the Form I-129 visa petition, the petitioner describes itself as a non-profit organization engaged in research and education that was established in In order to employ the beneficiary in what it designates as a management analyst position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on 2014, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, counsel for the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements.

The record of proceeding contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Notice of Appeal or Motion (Form I-290B) and supporting materials. We reviewed the record in its entirety before issuing our decision.[1]

For the reasons that will be discussed below, we agree with the director that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed. The petition will be denied.

II. SPECIALTY OCCUPATION

A. The Law

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), defines the term "specialty occupation" as an occupation that requires:

[1] We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

(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.

B. The Proffered Position

In this matter, the petitioner stated in the Form I-129 that it seeks the beneficiary's services as a management analyst on a part-time basis (20 hours) for an hourly wage of $19.88. In a support letter dated August 23, 2013, the petitioner stated that the duties and responsibilities of the proffered position are as follows:

> Plan and develop small business projects within the [petitioning organization]. Plan and develop the different stages necessary for the establishment of a school of all academic levels, with emphasis on the social and evangelical. Conduct organizational studies and evaluations, design systems and procedures, conduct work simplification and measurement studies, and prepare operational procedure manuals to assist management in operating more efficiently and effectively. Develop annual budgets of the corporation. Prepare budgets for all individual projects and activities of the various ministries. Coordinate management accounting, preparation of documents and software management. Prepare proposals for achieving government and private funds. Responsible for coordinating all fundraising activities supported

by the treasurer of the Board of Directors. Designing and control activities schedules for different projects. Develop the organizational structure of the Corporation with the approval of the Management Board and the Group Base. Develop operating manuals of all employees of the Corporation. Design strategies to optimize the delivery of services of the Corporation and user attention.

Further, the petitioner indicated that "to perform the duties of this demanding position, the incumbent must have, at least a B.S. degree in Industrial Engineering, or related field, from an accredited university or its equivalent."

The petitioner also submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The LCA designation for the proffered position corresponds to the occupational classification of "Management Analysts" – SOC (ONET/OES Code) 13-1111, at a Level I (entry level) wage.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on 2013. The director outlined the specific evidence to be submitted. Specifically, the director noted that the description of duties submitted with the Form I-129 does not appear to be that of a management analyst and requested a more detailed description of the work to be performed by the beneficiary.

On 2014, the petitioner and its counsel responded by submitting additional evidence.[2] The petitioner also submitted a revised and expanded description of the duties of the proffered position entitled "Duties of the position of [m]anagement [a]nalyst as it pertains to [the petitioner]." The document describes the proffered position and provides a breakdown of percentage of time spent on each duty as well as hours required for the week, which is as follows:

Item	Specific Duty	% of Time	Level of Respon-sibility	Role	Period in which activity will be performed	Hr per week
1	Gather, define and write business requirements for establishment of a school	N/A	Strategic/ Operative	Responsible	One time and update when necessary	N/A
2	Elaborate the analysis, feasibility study and	30	Strategic/ Operative	Responsible	Weekly	7

[2] We note that in the letter dated 2014, submitted in response to the director's RFE, counsel claimed that the "statute [8 C.F.R. § 214.2(h)(4)(iii)(A)] does not require that the education must be in a specific specialty" for the position. Counsel appears to have overlooked or misinterpreted section 214(i)(1) of the Act, which clearly states that a specialty occupation requires in part the "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." (Emphasis added.)

	implementation of all projects and micro enterprises that the company may implement					
3	Plan and develop the different stages necessary for the establishment of a school of all academic levels	N/A	Strategic/ Operative	Responsible	One time and update as necessary	N/A
4	Conduct organizational studies and evaluations; design systems and procedures; conduct work simplification and measurement studies; and prepare operational procedures manuals to assist management in operating more effectively and efficiently	15	Strategic/ Operative	Responsible	Weekly	3
5	Work directly with management to understand business needs, issues and challenges	5	Strategic/ Operative	Consultant	Monthly	N/A
6	Write detailed business requirements to establish the school and other projects	N/A	Strategic/ Operative	Responsible	One time and update when necessary	N/A
7	Work directly with management to ensure business requirements are achievable	5	Operative	Consultant	Weekly	2
8	Assist in the elaboration of proposals for the procurement of public and private funds, and develop fundraising activities, with the support of the Treasurer of the Board of Directors	10	Operative	Consultant	Weekly	1
9	Prepare budgets for all individual projects and	3	Operative	Responsible	Monthly	N/A

	activities of the various ministries					
10	Assists in developing standards and criteria for successful implementation of projects	2	Administr -ative/ Operative	Consultant	Weekly	2
11	Assists in establishing standards for personnel, and evaluate the performance of employees and submit the accompanying report to the Board of Directors and the Base Group	5	Administr -ative/ Operative	Consultant	Monthly	N/A
12	Assists in developing annual budgets	N/A	Operative	Consultant	When required by manageme nt	N/A
13	Devise strategies to optimize the provision of services of the Corporation and user services, and develop solutions and/or alternatives	10	Strategic	Responsible	Weekly	2
14	Perform Business Analyst role for a new installations. Responsible for the maintenance of the locative office, its facilities and units	5	Operative	Responsible	Weekly	.5
15	Facilitate regular communication and meetings to ensure successful project	5	Strategic/ Operative	Responsible	Weekly	.5
16	Develops training materials and employee manuals, and be in charge of the selection process, recruitment induction of employees with the support of the Board of Directors and the Base Group	N/A	Administr -ative/ Operative	Responsible	One time and update when necessary	N/A
17	Coordinate management accounting, preparation of documents and software management	2	Administr -ative/ Manage-ment	Responsible	Weekly	1

18	Analyze financial data and coordinate management and control of funds, with the advice of the Treasurer of the Board of Directors, and present Financial Statements to the Board of Directors	3	Operative	Responsible	Weekly	1

The petitioner also stated that "[t]he minimum educational requirement for the position offered is a Bachelor's degree in Industrial Engineering, Business Administration, or any degree related to creation and administration of a business."

C. Analysis

When determining whether a position is a specialty occupation, we must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, USCIS looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

For H-1B approval, the petitioner must demonstrate a legitimate need for an employee exists and to substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition. It is incumbent upon the petitioner to demonstrate it has sufficient work to require the services of a person with at least a bachelor's degree in a specific specialty, or its equivalent, to perform duties at a level that requires the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty for the period specified in the petition. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

In the instant case, the petitioner stated on the Form I-129 that it is a non-profit organization engaged in research and education. In the support letter dated August 23, 2013, the petitioner further stated that it is dedicated to "basic research and education of community" and its "principal

objective is to bring transformation tools to everyday life situations in order to form, strengthen and support the family in an integral manner." The petitioner also stated that it provides a magazine to strengthen and support the available in print and online.[3] The petitioner also claimed that it is "taking the first steps to form a school," which requires the help of a management analyst.

In response to the RFE, the petitioner claims that it has "plans for several projects such as an Art School for children; Summer Camps; Community Mentoring Programs via the Internet; and of course the formation of an academic school." However, the petitioner or counsel do not provide any details regarding this project, for which the beneficiary is being hired. While the petitioner claims that it is "taking the first steps to form a school," the petitioner does not provide information regarding the steps taken such as the type of school, grade levels, academic curriculum, funding source...etc. More significantly, we find that the petitioner did not provide sufficient documents to establish the nature of its current operations. Specifically, the only documents that the petitioner submitted regarding its operations is a certificate of registry from the Department of State in Puerto Rico stating that a certificate of incorporation was filed, and a letter from the Internal Revenue Service that assigns an employer identification number. While it claims that it is a "research and education" not-profit, the record of proceeding does not contain any evidence to support its claims. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Further, we observe that in the above job description (submitted in response to the RFE), the petitioner expanded the beneficiary's duties, adding items such as: evaluating the performance of employees; and being in charge of the selection process and recruitment induction of employees.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's RFE did not simply clarify or provide more specificity to the original duties of the position, but rather added new generic duties to the job description.

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[3] The petitioner submitted an untranslated copy of a magazine in Spanish entitled However, because the petitioner failed to submit certified translations of the document, we cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

Furthermore, we find that the description of the duties of the proffered position fails to adequately convey the substantive work that the beneficiary will perform within the petitioner's business operations. For example, some of the duties do not appear to correspond to the nature of the petitioner's business as described in the record of proceeding. In the Form I-129, the petitioner does not indicate that it has any employees, but states that it has four volunteers. In addition, the petitioner did not provide its gross and net income. Rather, the petitioner stated that it is a non-profit, and did not provide information about its operating budget or source of funding. The director had requested an organizational chart in the RFE, but the petitioner did not provide one.

However, the petitioner indicates in its revised description of duties in the RFE that the beneficiary will "conduct organizational studies and evaluations, design systems and procedures, conduct work simplification and measurement studies, and prepare operational procedure manuals to assist management in operating more efficiently and effectively, which consist of 15% of her duties. Further, the beneficiary will also "assist[] in establishing standards for personnel, and evaluate the performance of employees and submit the accompanying report to the Board of Directors and the Base Group. As mentioned, the petitioner did not indicate that it had any employees, but only four volunteers. The petitioner did not provide sufficient information about its operations to substantiate its need for organizational studies and evaluations, or developing standards for personnel. It is reasonable to assume that the size of an employer's business has or could have an impact on the claimed duties of a particular position. *See EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). The size of a petitioner may be considered as a component of the nature of the petitioner's business, as the size impacts upon the actual duties of a particular position.

Overall, we find that the description of the duties of the proffered position fails to adequately convey the substantive work that the beneficiary will perform within the petitioner's business operations. Specifically, the description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's assertion that the proffered position qualifies as a specialty occupation. The abstract level of information provided about the proffered position and its constituent duties is exemplified by the petitioner's assertion that the beneficiary will "elaborate the analysis, feasibility study and implementation of all projects and micro enterprises that the company may implement" (30%), "devise strategies to optimize the provision of services of the Corporation and user services, and develop solutions and/or alternatives" (10%), "work directly with management to understand business needs, issues and challenges" (5%), and "work directly with management to ensure business requirements are achievable" (5%). The petitioner's statements – as so generally described – do not illuminate the substantive application of knowledge involved or any particular educational attainment associated with such application. Further, they fail to provide any particular details regarding the demands, level of responsibilities, and requirements necessary for the performance of these duties.

The petitioner further claims that the beneficiary will "[p]erform Business Analyst role for new installations," "[r]esponsible for the maintenance of the locative office, its facilities and units" (5%), "facilitate regular communication and meetings to ensure successful project implementation and integration" (5%). However, these statements do not provide any information as to the complexity of the job duties, the amount of supervision required, and the level of judgment and understanding

required to perform the duties. Furthermore, the phrases could cover a range of issues, and without additional information, do not provide any insights into the beneficiary's day-to-day work.

The petitioner has failed to provide sufficient details regarding the nature and scope of the beneficiary's employment or any substantive evidence regarding the actual work that the beneficiary would perform. Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The tasks as described fail to communicate (1) the actual work that the beneficiary would perform, (2) the complexity, uniqueness and/or specialization of the tasks, and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty. The petitioner's assertions with regard to the position's educational requirement are conclusory and unpersuasive, as they are not supported by the job descriptions or substantive evidence.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for entry into the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4. Thus, the petitioner has failed to establish that the proffered position is a specialty occupation under the applicable provisions.

III. BEYOND THE DIRECTOR'S DECISION

A. Requirements for the Proffered Position

Upon review of the record of proceeding, we note that the petitioner has provided inconsistent information regarding the academic requirements of the proffered position.

- Specifically, in the letter of support, the petitioner stated that "the incumbent must have, at least a B.S. degree in Industrial Engineering, or related field, from an accredited university or its equivalent."

- However, in response to the director's RFE, the petitioner stated that "[t]he minimum educational requirement for the position offered is a Bachelor's degree in Industrial Engineering, Business Administration, or any degree related to creation and administration of a business."

- In addition, the professional position evaluation report from [redacted] of the [redacted] stated that the position "must be filled by an individual with a minimum of a Bachelor's degree in Management, Industrial Engineering or a related subject."

No explanation for the variances was provided. Again, 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).

Moreover, it must be noted that within the record of proceeding, the petitioner has represented that the position requires a bachelor's degree in industrial engineering, business administration, and/or management.

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

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. *See* section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Again, the petitioner has represented that a bachelor's degree in a number of disciplines is acceptable, specifically, industrial engineering, business administration, and management. However, it must be noted that these include broad categories that cover numerous and various specialties.[4] Therefore, it is

[4] We note that the term "business" is defined as "1. The occupation, work, or trade in which one is engaged. . . . 2. Commercial, industrial, or professional dealings. 3. A commercial enterprise or establishment." WEBSTER'S II NEW COLLEGE DICTIONARY 153 (2008). A degree in business administration may include a range of disciplines, some of which may not directly relate to the duties of the proffered position. For instance, U.S. News and World Report publishes a guide for colleges. The entry for Harvard University indicates that its business school offers concentrations in a range of disciplines, including arts administration, e-commerce, health care administration, human resources management, not-for-profit management, organizational behavior, public administration, public policy, real estate, sports business, as well as many others. *See* U.S. News and World Report on the Internet at http://www.usnewsuniversitydirectory.com/graduate-schools/business/harvard-university_01110.aspx (last visited December 3, 2014).

not readily apparent that a degree in any and all of these fields is directly related to the duties and responsibilities of the particular position proffered in this matter.

Here and as indicated above, the petitioner, who bears the burden of proof in this proceeding, fails to establish either (1) that all of the disciplines are closely related fields, or (2) that all of the disciplines are directly related to the duties and responsibilities of the proffered position. Absent this evidence, it cannot be found that normally the minimum requirement for entry into the particular position proffered in this matter is a bachelor's or higher degree in a specific specialty, or its equivalent, under the petitioner's own standards.

As the evidence of record fails to establish how these dissimilar fields of study form either a body of highly specialized knowledge or a specific specialty, or its equivalent, the petitioner's assertion that the job duties of this particular position can be performed by an individual with a bachelor's degree in any of these fields suggests that the proffered position is not in fact a specialty occupation. Therefore, absent probative evidence of a direct relationship between the claimed degrees required and the duties and responsibilities of the position, it cannot be found that the proffered position requires, at best, anything more than a general bachelor's degree. As previously noted, 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. As such, even if the petitioner had overcome the ground for the director's denial of the petition (which it did not do), the instant petition could not be approved for this additional reason.

B. LCA does not correspond to the Petition

As mentioned, the petitioner indicated on its LCA that the proffered position corresponds to the occupational category "Management Analysts" - SOC (ONET/OES) code 13-1111 at Level I (entry).[5]

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

[5] The petitioner indicated that the prevailing wage for Management Analysts, SOC (ONET/OES Code) 13-1111, at Level I is $19.88 per hour. However, it appears that the prevailing wage at Level I is $15.82. For more information, *see* http://www.flcdatacenter.com/OesQuickResults.aspx?code=13-1111&area=41980&year=14&source=1 (last visited December 3, 2014).

[6] For additional information on wage levels, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), *available at* http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

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

The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is described as follows:

> **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.

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.

Throughout the record of proceeding, the petitioner and counsel claim that the proffered position involves complex, unique and/or specialized duties. Moreover, the petitioner claims that the petitioner will be relying on the beneficiary to provide experience and leadership. For example, in response to the RFE, the petitioner indicates that is it "expanding [its] corporation and adventuring in areas where we might not have much experience, and that the "the ideal person for the position is one that help us gather and organize[s] the information necessary and that will allow us to have all the tools necessary to go forward with our idea of developing a school." The petitioner further states that it "need[s] someone who will guide us at the initial stages of the project, but also someone who will continue spearheading the project as its manager." On appeal, counsel claims

[7] A point system is used to assess the complexity of the job and assign the wage level. Step 1 requires a "1" to represent the job's requirements. Step 2 addresses experience and must contain a "0" (for at or below the level of experience and SVP range), a "1" (low end of experience and SVP), a "2" (high end), or "3" (greater than range). Step 3 considers education required to perform the job duties, a "1" (more than the usual education by one category) or "2" (more than the usual education by more than one category). Step 4 accounts for Special Skills requirements that indicate a higher level of complexity or decision-making with a "1"or a "2" entered as appropriate. Finally, Step 5 addresses Supervisory Duties, with a "1" entered unless supervision is generally required by the occupation.

that the individual in the proffered position would be "performing specialized and complex duties in order to help the [p]etitioner grow, improve efficiency and establish projects, including the formation of an academic school." Counsel further asserts that the incumbent for the proffered position "will be given enormous responsibility of expanding the corporation and lead the corporation into new and exciting areas."

We must question the level of complexity, independent judgment and understanding required for the proffered position as the LCA is certified for a Level I entry-level position. This characterization of the position and the claimed duties and responsibilities as described in the record of proceeding conflict with the wage-rate element of the LCA selected by the petitioner, which, as reflected in the discussion above, is indicative of a comparatively low, entry-level position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results. Furthermore, a Level I designation is appropriate for a position such as a research fellow, a worker in training, or an internship.

This aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the petitioner's assertions regarding the demands, level of responsibilities and requirements of the proffered position. As previously mentioned, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As noted below, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(2) specifies that certification of an LCA does not constitute a determination that an occupation is a specialty occupation:

> Certification by the Department of Labor [DOL] of a labor condition application in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation. The director shall determine if the application involves a specialty occupation as defined in section 214(i)(1) of the Act. The director shall also determine whether the particular alien for whom H-1B classification is sought qualifies to perform services in the specialty occupation as prescribed in section 214(i)(2) of the Act.

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

> For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition*

> *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. Here, the petitioner has failed to submit a valid LCA that corresponds to the claimed duties and requirements of the proffered position, that is, specifically, that corresponds to the level of work, responsibilities and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work, responsibilities and requirements in accordance with the pertinent LCA regulations.

As such, a review of the enclosed LCA indicates that the information provided therein does not correspond to the level of work and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work and requirements, which if accepted as accurate would result in the beneficiary being paid a salary below that required by law. As a result, even if it were determined that the proffered position were a higher-level and more complex position as described and claimed elsewhere in the petition in support of the petitioner's assertions that this position qualifies as a specialty occupation, the petition could still not be approved for this additional reason.[8]

IV. CONCLUSION AND ORDER

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

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[8] Fundamentally, it appears that (1) the petitioner previously claimed to DOL that the proffered position is a Level I, entry-level position to obtain a lower prevailing wage; and (2) the petitioner is now claiming to USCIS that the position is a higher-level and more complex position in order to support its claim that the position qualifies as a specialty occupation. The petitioner cannot have it both ways. Either the position is a more senior and complex position (based on a comparison of the petitioner's job requirements to the standard occupational requirements) and thereby necessitates a higher required wage, or it is an entry-level position for which the lower wage offered to the beneficiary in this petition is acceptable. To permit otherwise would be directly contrary to the U.S. worker protection provisions contained in section 212(n)(1)(A) of the Act and its implementing regulations.

[9] As the identified grounds for denial are dispositive of the petitioner's eligibility, we need not address the additional issues in the record of proceeding including whether the petitioner has established that it qualifies for an exemption from the H-1B numerical cap.

While the petitioner claimed cap exemption as a non-profit research organization, the record of proceeding does not contain documentary evidence to establish eligibility for exemption. According to 8 CFR 214.2(h)(19)(iii)(C)(iv), a non-profit is a tax exempt organization under the Internal Revenue Code of 1986,

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.

section 501(c)(3), (c)(4) or (c)(6), 26 U.S.C. 501(c)(3), (c)(4) or (c)(6), and has been approved as a tax exemption organization for research or educational purposes by the Internal Revenue Service. However, the petitioner did not submit evidence to establish its non-profit status.