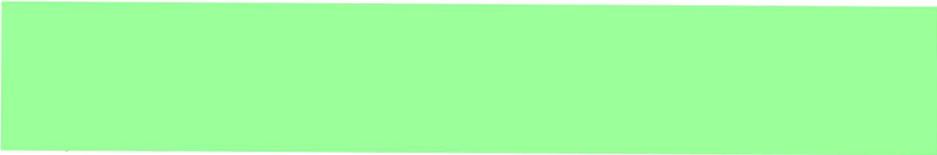




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JAN 02 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.

On the Form I-129 visa petition, the petitioner describes itself as a management consulting firm established in 1983. In order to employ the beneficiary in what it designates as a SAP specialist position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that the beneficiary is qualified to perform services in a specialty occupation. On appeal, counsel for the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements.

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

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

As a preliminary matter, the AAO observes that even if the petitioner were to overcome the grounds for the director's denial of the petition (which it has not), it could not be found eligible for the benefit sought as there are additional issues that preclude the approval of the H-1B petition.

More specifically, upon review of the record, the AAO concludes that the petitioner failed to properly file the Form G-28 (Notice of Entry of Attorney or Representative), Form I-129 (Petition for a Nonimmigrant Worker), and Labor Condition Application (LCA).¹ That is, the documents have not been signed by the petitioner's authorized official. Because the H-1B petition has not been properly filed, there is no valid proceeding upon which to base the director's denial.

More specifically, the Form G-28, Form I-129 petition, and the LCA do not bear the signature of the petitioner's authorized official. Significantly, someone other than the petitioner's authorized official attempted to sign the visa petition under penalty of perjury on behalf of the petitioning employer.

¹ As will be discussed, while [REDACTED] did not properly file the instant petition, all references to the "petitioner" in this decision refer to this entity.

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The AAO observes that the record contains a copy of a notarized document, submitted with the Form I-129 petition, entitled "Limited Power of Attorney," dated March 13, 2013. It is signed by [REDACTED], the petitioner's principal. The document states, in part, the following:

I, [REDACTED] being a Principal of [the petitioner] do hereby make, constitute and appoint [REDACTED] or [REDACTED] of [REDACTED] [counsel's address], my true and lawful attorneys-in-fact, to have powers to execute documents on my behalf, in place and stead relative to immigration-related matters involving [the petitioner], its related entities (collectively, "the Company") and its employees and prospective employees, and without limiting the generality of the foregoing, specifically authorize and empower her or him to sign, on my behalf, any document requiring my signature and to otherwise bind and commit me as an Authorized Signer to any form or letter relating to immigration matters for the Company.

However, as will be discussed, this document does not meet the signature requirements of any of the controlling U.S. Citizenship and Immigration Services (USCIS) regulations.

The regulation at 8 C.F.R. § 292.4(a) provides (emphasis added):

An appearance must be filed on the appropriate form as prescribed by DHS by the attorney or accredited representative appearing in each case. *The form must be properly completed and signed by the petitioner, applicant, or respondent to authorize representation in order for the appearance to be recognized by DHS. . . .* When an appearance is made by a person acting in a representative capacity, his or her personal appearance or signature will constitute a representation that under the provisions of this chapter he or she is authorized and qualified to appear as a representative as provided in 8 C.F.R. 103.2(a)(3) and 292.1. Further proof of authority to act in a representative capacity may be required.

In this case, the Form G-28 accompanying the Form I-129 was not signed by an employee or officer of the petitioning entity. Instead, the form was signed on behalf of the petitioning entity by another individual. The regulation at 8 C.F.R. § 103.2(a)(3) provides that where a notice of representation on Form G-28 is "not properly signed, the benefit request will be processed as if the notice had not been submitted."²

² Not only does the petitioner's signature on the Form G-28 authorize representation by an attorney or accredited representative in matters before USCIS, it serves as a consent to disclosure of information covered under the Privacy Act of 1974. The Immigration and Naturalization Service (legacy INS) first implemented the requirement that a petitioner or applicant sign the Form G-28 in the final rule "Changes in Processing Procedures for Certain Applications and Petitions for Immigration Benefits" 59 Fed. Reg. 1455 (Jan. 11, 1994). In response to several commenters who suggested that the attorney need be the only signatory on the Form G-28, the agency explained that other commenters had properly noted that capture of the petitioner's signature on the Form G-28 "would address potential Privacy Act concerns." *Id.* at 1455. The agency emphasized that the "petitioner must sign the Form G-28 to definitively indicate to the Service that he or she has authorized the person to represent him or her in the proceeding." *Id.*

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Further, the AAO observes that the signatures on the Form I-129 petition and accompanying documents do not match the signature of the petitioner's authorized official as it appears on the "Limited Power of Attorney." While the petition and LCA identify [REDACTED] as the petitioner's authorized official, the documents were not personally signed by Ms. [REDACTED].

The AAO notes that even if counsel had completed the Form I-129 and supporting documents on behalf of Ms. [REDACTED] in good faith pursuant to what was believed to be a valid "Limited Power of Attorney," the signed documents should have reflected that they were signed on behalf of the Ms. [REDACTED] instead of bearing a false signature. It is evident that someone other than the Ms. [REDACTED] signed the Form I-129 (pages 6, 7, and 12), in the blocks provided for the signature of the petitioner/authorized official of the employer, thereby seeking to file the petition on behalf of what is purported to be the actual United States employer. However, the regulations do not permit any individual who is not the petitioner to sign the Form I-129.

The regulation at 8 C.F.R. § 103.2(a)(2) provides:

Signature. An applicant or petitioner must sign his or her benefit request. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. By signing the benefit request, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the benefit request, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on an [sic] benefit request that is being filed with the USCIS is one that is either handwritten or, for benefit requests filed electronically as permitted by the instructions to the form, in electronic format.

There is no regulatory provision that waives the signature requirement for a petitioning U.S. employer or that permits a petitioning U.S. employer to designate an attorney or accredited representative to sign the petition on behalf of the U.S. employer. The requirement for a signature *under penalty of perjury* cannot be met by a "Limited Power of Attorney" authorized signature. Practically, the signature requirement reflects a genuine Form I-129 program concern regarding the validity of the temporary job offer contained in Form I-129 petition. To this end, the employer's signature serves as certification under penalty of perjury that the petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. To be valid, 28 U.S.C. § 1746 requires that declarations be "subscribed" by the declarant "as true under penalty of perjury." In pertinent part, 18 U.S.C. § 1621, which governs liability for perjury under federal law, mandates that: "Whoever in any declaration under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true is guilty of perjury."

³ The AAO notes that the signature of [REDACTED] varies substantially throughout the record. None of the signatures of [REDACTED] on the Form G-28, the Form I-129 petition, or the LCA match that of the signature provided on the document entitled "Limited Power of Attorney."

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The probative force of a declaration subscribed under penalty of perjury derives from the signature of the declarant; one may not sign a declaration "for" another. Without the petitioner's actual signature as declarant, the declaration is completely robbed of any evidentiary force. See *In re Rivera*, 342 B.R. 435, 459 (D. N.J. 2006); *Blumberg v. Gates*, No. CV 00-05607, 2003 WL 22002739 (C.D.Cal.) (not selected for publication).

This concern is illustrated by the instant case. Here, the record contains two different descriptions of the proffered position: one in the petitioner's March 12, 2013 support letter (apparently signed by an attorney on behalf of the petitioner), and another in a printout of a job posting for the proffered position, provided in response to the director's RFE. The descriptions contain discrepancies regarding facts that are material to the adjudication of the Form I-129 petition, i.e., the duties and responsibilities associated with the proffered position, and the petitioner's requirements for employment in the position. USCIS is not in a position to speculate as to which document represents the "true" description and requirements of the proffered position.

Further, an entirely separate line exists for the signature of the preparer declaring that the form is "based on all information of which [the preparer has] any knowledge." Thus, the Form I-129 petition acknowledges that a preparer who is not the petitioner cannot attest to the contents of the petition and supporting evidence. Rather, the preparer may only declare that the information provided is all the information of which he or she has knowledge. Moreover, the unsupported assertions of an attorney do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, an attorney's unsupported assertions on the petition have no evidentiary value even if they are alleged on behalf of the petitioner via a power of attorney.

The integrity of the immigration process depends on the actual employer signing the official immigration forms under penalty of perjury. Allowing an attorney to sign all petitions, notices of appearance (for the same attorney), appeals, and all DOL applications on behalf of the petitioner based on a broad assignment of authorization would leave the immigration system open to fraudulent filings. The AAO notes prior examples where attorneys have been convicted of various charges, including money laundering and immigration fraud, after signing immigration forms of which the alien or employer had no knowledge. *United States v. O'Connor*, 158 F.Supp.2d 697, 710 (E.D. Va. 2001); *United States v. Kooritzky*, Case No. 1:02CR00502 (E.D. Va. December 11, 2002).

As the underlying petition in this case was not properly filed, further action on the petition cannot be pursued. If the petitioner wishes to pursue H-1B classification for the beneficiary, it may file a new, properly executed Form I-129 accompanied by the required filing fee and supporting evidence for consideration by USCIS.

In the instant case, although the director reviewed the petition based on its merits, the AAO notes that the petition was improperly filed, and thus should have been rejected by the director at the time of filing. That is, pursuant to 8 C.F.R. § 103.2(a)(7), a petition which is not properly signed shall be rejected as improperly filed, and no receipt date assigned to the petition. The AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court.

Thus, while the California Service Center did not reject the petition, the AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Accordingly, the AAO finds that the instant petition must be denied because the petitioner failed to properly file the petition and LCA.

In addition, even if the petition had been properly filed (which it was not), the AAO notes an additional issue beyond the decision of the director that precludes its approval. Specifically, USCIS is required to follow long-standing legal standards and determine first, whether the proffered position is a specialty occupation, and second, whether an alien beneficiary is qualified for the position at the time the nonimmigrant visa petition is filed. *See Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation]"). In the instant matter, the director determined that the beneficiary is not qualified to perform duties in a specialty occupation position. However, as will be described below, the AAO finds that the petitioner has failed to establish that the proffered position qualifies as a specialty occupation.

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)(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:

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

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that

Congress contemplated when it created the H-1B visa category.

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

In the petition signed on March 30, 2013, the petitioner indicates that it is seeking the beneficiary's services as a SAP specialist on a full-time basis. In the March 12, 2013 letter of support, the petitioner states that "[a]s a SAP Specialist, [the beneficiary] will oversee and maintain the organization's SAP systems, including directing the installation, configuration, patching, upgrading and maintenance of the company's investments in proprietary SAP technologies." In addition, the petitioner claims that "[the beneficiary] will also be responsible for planning and coordinating the change management process required for the support of SAP systems necessary for business operations." The petitioner further reports that the beneficiary will be responsible for the following duties:

1. Lead the technology development and infrastructure activities related to the deployment of mission-critical SAP software;
2. Direct the strategy for the continuous evolution of [the petitioner's] SAP program;
3. Work with [the petitioner's] leaders to understand how to extract more value from the investment and translate that into implementable proposals;
4. Engage with Project Leadership to develop the strategy of [the petitioner's] SAP Center for Excellence; and
5. Direct current and future initiatives related to [the petitioner's] SAP program.

In addition, the petitioner states, "In order to effectively execute the analytical and development duties of the position, the SAP Specialist must have at least a U.S.-awarded bachelor's degree in Computer Science, Engineering, or its foreign equivalent." The petitioner further claims that "[a] demonstrated record of academic success and prior SAP experience are also required."

With the initial petition, the petitioner submitted a copy of the beneficiary's foreign diploma and transcripts, as well as a credential evaluation from [REDACTED]. The credential evaluation indicates that the beneficiary's foreign education is equivalent to "a bachelor's degree in metallurgical and materials engineering awarded by regionally accredited institutions in the United

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States."

The petitioner also submitted an LCA in support of the instant H-1B petition. The AAO notes that the LCA designation for the proffered position corresponds to the occupational classification of "Computer and Information Systems Managers" - SOC (ONET/OES Code) 11-3021, at a Level I (entry level) wage.

Upon review of the documentation, the director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on April 18, 2013. The director outlined the specific evidence to be submitted. On June 17, 2013, counsel responded to the director's RFE with a brief, along with (1) a copy of the petitioner's position announcement, and (2) a copy of the petitioner's four-page pamphlet.

The director reviewed the record of proceeding and determined that the petitioner failed to establish eligibility for the benefit sought. The director denied the petition on June 26, 2013. Counsel submitted an appeal of the denial of the H-1B petition, which included (1) counsel's brief, and (2) a letter from [REDACTED] Chief Financial Officer, at the petitioning company.

The AAO reviewed the record in its entirety and will make some findings that are material to this decision's application of the H-1B statutory and regulatory framework to the proffered position as described in the record of proceeding.⁴

Upon review of the record of proceeding, the AAO notes the petitioner stated that its minimum educational requirement for the proffered position is a bachelor's degree in "Computer Science, Engineering, or its foreign equivalent." 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," the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. 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

⁴ As previously mentioned, the AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 145.

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how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Again, the petitioner states that its minimum educational requirement for the proffered position is a bachelor's degree in "Computer Science, Engineering, or its foreign equivalent."⁵ The issue here is that the field of engineering is a broad category that covers numerous and various specialties, some of which are only related through the basic principles of science and mathematics, e.g., nuclear engineering and aerospace engineering. Therefore, besides a degree in electrical engineering, it is not readily apparent that a general degree in engineering or one of its other sub-specialties, such as chemical engineering or nuclear engineering, is closely related to computer science or that engineering or any and all engineering specialties are directly related to the duties and responsibilities of the particular position proffered in this matter.

On appeal, the petitioner provided a letter from its chief financial officer, [REDACTED] stating that the petitioner "typically hire[s] SAP Specialists who have degrees in Engineering because degree programs on Engineering more closely correspond with the specialized knowledge required for the position." Mr. [REDACTED] continues, "In recent years, SAP has become a fundamental component of Engineering degree programs, as it is absolutely essential to the management for large scale Engineering projects." In addition, Mr. [REDACTED] states that "**the coursework in an Engineering degree program is essential because it not only covers SAP and computer science related topics, but also requires students to apply this knowledge in the analysis and resolution of technical or business scenarios** (emphasis in the original)."

Upon review, the AAO notes that Mr. [REDACTED] has not provided evidence to establish a factual basis for his opinion that "SAP has become a fundamental component of Engineering degree programs." Mr. [REDACTED] asserts a general educational standard, without referencing any supporting authority or any empirical basis for the pronouncement. Likewise, his opinion does not relate his conclusion to specific, concrete aspects of engineering degree programs and he does not provide a substantive, analytical basis for his opinion and ultimate conclusion.

The petitioner, who bears the burden of proof in this proceeding, fails to provide sufficient evidence to establish that (1) computer science and engineering (including any and all engineering

⁵ The petitioner submitted a job posting in response to the director's RFE. The job posting states that the petitioner "seeks a Finance Specialist (SAP Project System) to join [its] [REDACTED] office. The Financial Specialist will oversee, maintain, and upgrade [the petitioner's] SAP Project System implementation, coordinating efforts across a multi-national team." The requirements for the position are a "[b]achelor's degree in Computer Science or Engineering (MBA preferred), with a strong record of academic achievement" and a "[m]inimum of 5 years of experience in implementing SAP Project System," in addition to a list of additional skills and abilities.

Notably, the petitioner's March 12, 2013 support letter stated that it seeks a "SAP Specialist," rather than a "Finance Specialist." The support letter does not indicate that the proffered position requires a minimum of a degree, with a preference for an MBA, and 5 years of experience. No explanation for the variances was provided. Upon review, it has not been established that the job posting is for the same position as the proffered position.

specialties) are closely related fields, or (2) a degree in engineering (including any and all engineering specialties) is directly related to the duties and responsibilities of the proffered position. Absent this evidence, it cannot be found that the particular position proffered in this matter has a normal minimum entry requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, under the petitioner's own standards. Accordingly, as the evidence of record fails to establish a standard, minimum requirement of at least a bachelor's degree *in a specific specialty*, or its equivalent, for entry into the particular position, it does not support the proffered position as being a specialty occupation and, in fact, supports the opposite conclusion.

Therefore, absent 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 anything more than a general bachelor's degree. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

In addition, upon review of the petitioner's description of the duties of the proffered position, the AAO notes that the petitioner did not provide any information with regard to the order of importance and/or frequency of occurrence with which the beneficiary will perform the functions and tasks. Thus, the petitioner failed to specify which tasks were major functions of the proffered position and it did not establish the frequency with which each of the duties would be performed (e.g., regularly, periodically or at irregular intervals). As a result, the petitioner did not establish the primary and essential functions of the proffered position.

Moreover, the AAO finds that the petitioner, in its March 12, 2013 support letter, describes the proposed duties in terms of generalized and generic functions that fail to convey sufficient substantive information to establish the relative complexity, uniqueness and/or specialization of the proffered position or its duties. 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 "[l]ead the technology development and infrastructure activities related to the deployment of mission-critical SAP software." This statement fails to provide any particular details regarding the demands, level of responsibilities and requirements necessary for the performance of this duty. Furthermore, the term "lead" could cover a range of activities and does not provide any insights into the beneficiary's day-to-day work.

In addition, the petitioner claims the beneficiary will "[d]irect the strategy for the continuous evolution of the [petitioner's] SAP program," as well as "[d]irect current and future initiatives related to [the petitioner's] SAP program." Notably, the word "direct" provides limited details regarding the beneficiary's actual duties, and the statements fails to convey the specific tasks that the beneficiary will perform in "direct[ing]" strategies and initiatives. Thus, as so generally described, the description does not illuminate the substantive application of knowledge involved or any particular educational attainment associated with such application.

This is also exemplified by the petitioner's claim that the beneficiary will "[e]ngage with Project Leadership to develop the strategy of the [REDACTED] and that the will "[w]ork with [REDACTED] leaders to understand how to extract more value from the investment." These statements fail to provide sufficient specifics regarding the beneficiary's role (i.e., engaging and working with project leadership/leaders) and it does 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 duty.

Thus, the overall responsibilities for the duties of the proffered position contain generalized functions without providing sufficient information regarding the particular work, and associated educational requirements, into which the duties would manifest themselves in their day-to-day performance within the petitioner's business operations. Furthermore, the petitioner did not provide sufficient documentation to substantiate the claimed job duties and responsibilities of the proffered position.

Such generalized information does not in itself establish a necessary correlation between any dimension of the proffered position and a need for a particular level of education, or educational equivalency, in a body of highly specialized knowledge in a specific specialty. The AAO also observes, therefore, that it is not evident that the proposed duties as described in this record of proceeding, and the position that they comprise, merit recognition of the proffered position as a specialty occupation. To the extent that they are described by the petitioner, the AAO finds, the proposed duties do not provide a sufficient factual basis for conveying the substantive matters that would engage the beneficiary in the actual performance of the proffered position for the entire three-year period requested, so as to persuasively support the claim that the position's actual work would require the theoretical and practical application of any particular educational level of highly specialized knowledge in a specific specialty directly related to the demands of the proffered position.

The petitioner has failed to provide sufficient details regarding the nature and scope of the beneficiary's employment or 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 credibly supported by the job descriptions or substantive evidence.

Furthermore, based upon a review of the record of proceeding, the AAO finds that there are discrepancies and inconsistencies in the record of the proceeding with regard to the proffered position. This is exemplified by the wage level chosen by the petitioner in the LCA for the proffered position.

As previously stated, the petitioner submitted an LCA in support of the instant petition that

(b)(6)

designated the proffered position to the corresponding occupational category of "Computer and Information Systems Managers" - SOC (ONET/OES Code) 11-3021. The wage level for the proffered position in the LCA corresponds to a Level I (entry). The prevailing wage source is listed in the LCA as the OES (Occupational Employment Statistics) OFLC (Office of Foreign Labor Certification) Online Data Center.⁶ The LCA was certified on March 19, 2013. The petitioner signed the LCA on March 30, 2013. The AAO notes that by completing and submitting the LCA, and by signing the LCA, the petitioner attested that the information contained in the LCA was true and accurate.

Wage levels should be determined only after selecting the most relevant Occupational Information Network (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.

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 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:

⁶ The Occupational Employment Statistics (OES) program produces employment and wage estimates for over 800 occupations. See Bureau of Labor Statistics, U.S. Department of Labor, on the Internet at <http://www.bls.gov/oes/>. The OES All Industries Database is available at the Office Foreign Labor Certification (OFLC) Data Center, which includes the Online Wage Library (OWL) for prevailing wage determinations and the disclosure databases for the temporary and permanent programs. The Online Wage Library is accessible at <http://www.flcdatacenter.com/>.

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.

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.

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.

As noted above, a Level I wage is appropriate for a position requiring only "a basic understanding of the occupation" for an employee who will "receive specific instructions on required tasks and results expected" at a level expected of a "worker in training" or an individual performing an "internship." Further, in accordance with the relevant DOL explanatory information on wage levels, a Level I wage indicates that the beneficiary is "only be expected to perform routine tasks that require limited, if any, exercise of judgment" and that he will be closely supervised and his "work closely monitored and reviewed for accuracy." However, on the March 12, 2013 letter of support, the petitioner states that the beneficiary will "oversee and maintain the organization's SAP systems." In addition, the petitioner claims that the beneficiary will "[l]ead the technology development and infrastructure activities." The petitioner also asserts that the beneficiary will "[d]irect the strategy" and "[d]irect current and future initiatives." According to the petitioner, the position requires "[a] demonstrated record of academic success and prior SAP experience are also required" for the proffered position. It must also be noted that the petitioner submitted a job posting that it claimed is relevant to the instant petition that states a requirement of a degree (with a preference for an MBA) and a minimum of five years of experience.

Furthermore, the petitioner and counsel repeatedly claim that the proffered position involves complex, unique and/or specialized duties. For instance, in response to the director's RFE, counsel references the "complex duties of the position" and claims that the proffered position involves "advanced mathematics and complex statistics." In addition, counsel claims that the proffered position requires "advanced mathematical modeling and complex statistical methods." Moreover, counsel reiterates this statement by claiming that it "[a]s is clear from the position's high level of autonomy and its specific, technical duties, SAP Specialists must be fluent in advanced mathematics and complex statistics, as well as possess formal training in applying their theoretic knowledge in the analysis and resolution of technical or business scenarios."

Thus, upon review of the assertions made by the petitioner and its counsel, the AAO must question the level of complexity, independent judgment and understanding actually 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 by the petitioner and counsel

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, the selected wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; that he will be expected to perform routine tasks that require limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results.

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 application. See section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A). The prevailing wage rate is defined as the average wage paid to similarly employed workers in a specific occupation in the area of intended employment.

The AAO notes that the prevailing wage of \$72,738 per year on the LCA corresponds to a Level I position for the occupational category of "Computer and Information Systems Managers" for [REDACTED]. Notably, if the proffered position were designated as a higher level position, the prevailing wage at that time would have been \$93,995 per year for a Level II position, \$115,232 per year for a Level III position, and \$136,490 per year for a Level IV position.

The petitioner was required to provide, at the time of filing the H-1B petition, an LCA certified for the correct wage level in order for it to be found to correspond to the petition. To permit otherwise would result in a petitioner paying a wage lower than that required by section 212(n)(1)(A) of the Act, by allowing that petitioner to simply submit an LCA for a different wage level at a lower prevailing wage than the one that it claims it is offering to the beneficiary. As such, the petitioner has failed to establish that it would pay an adequate salary for the beneficiary's work, as required under the Act, if the petition were granted.

The AAO also notes that 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. 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).

⁸ For additional information regarding the prevailing wage for this occupation in [REDACTED] see the All Industries Database for 7/2012 - 6/2013 for Computer and Information Systems Managers at the Foreign Labor Certification Data Center, Online Wage Library on the Internet at <http://www.flcdatabase.com/OesQuickResults.aspx?code=11-3021&area=16974&year=13&source=1> (last visited December 31, 2013).

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 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 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. Here, it appears that 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.

The statements regarding the claimed level of complexity, independent judgment and understanding required for the proffered position are materially inconsistent with the certification of the LCA for a Level I position. This conflict undermines the overall credibility of the petition. The AAO finds that, fully considered in the context of the entire record of proceedings, the petitioner failed to establish the nature of the proffered position and in what capacity the beneficiary will actually be employed.

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 satisfies 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 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.

Accordingly, as the petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

In the instant matter, the director found that the beneficiary would not be qualified to perform the duties of the proffered position. However, the AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree in a specific specialty, or its equivalent, also cannot be determined.

Nevertheless, the AAO notes that a degree in metallurgical and materials engineering alone is insufficient to qualify the beneficiary to perform the services of a specialty occupation, unless the academic courses pursued and knowledge gained is a realistic prerequisite to a particular occupation in the field. The petitioner must demonstrate that the beneficiary obtained knowledge of the particular occupation in which he or she will be employed. *See e.g., Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm'r 1968). However, the petitioner did not submit sufficient evidence regarding the nature of the proffered position to make an assessment of whether the beneficiary obtained knowledge equivalent to at least a bachelor's degree in a specific specialty required by the particular occupation in which he will be employed.

The AAO also notes that in support of its assertion that the beneficiary's degree in [REDACTED] [REDACTED] qualifies him to perform duties in the proffered position, the petitioner provided the above referenced letter from its chief financial officer, Mr. [REDACTED]. In the letter, Mr. [REDACTED] states that "degree programs in [REDACTED] require extensive use of [REDACTED] making it the ideal education for the [REDACTED] Specialist." However, as previously discussed in detail, Mr. [REDACTED] makes a general claim regarding engineering degree programs but did not provide a sufficiently substantive and analytical bases for his opinion. Furthermore, he did not provide probative evidence to support his assertion.

The record does not establish that the beneficiary possesses (1) a U.S. bachelor's or higher degree from an accredited college or university, (2) a foreign degree determined to be equivalent to a U.S. baccalaureate or higher degree required by the specialty occupation from an accredited college or university, or (3) a pertinent license. Thus, the only remaining avenue for the beneficiary to qualify for the proffered position is pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). Under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the petitioner must establish both (1) that the beneficiary's combined education, specialized training, and/or progressively responsible experience are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and (2)

that the beneficiary has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require one or more of the following to determine whether a beneficiary has achieved a level of knowledge, competence, and practice in the specialty occupation that is equal to that of an individual who has a baccalaureate or higher degree in the specialty:

- (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;⁹
- (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 this matter, the petitioner is seeking the beneficiary's services as a SAP specialist. As previously discussed, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Computer and Information Systems Managers." However, the petitioner fails to demonstrate how the beneficiary, by virtue of holding the equivalent of a U.S. bachelor's degree in [REDACTED] is qualified to perform the duties of the proffered position. Consequently, the petitioner has failed to satisfy any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1)-(4). The AAO will thus evaluate the beneficiary's credentials pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

By its very terms, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) is a matter strictly for USCIS application and

⁹ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.

determination. 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.

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 occupation¹⁰;
- (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.

The record contains the beneficiary's foreign academic credentials and an academic credentials evaluation. Upon review of the record, the petitioner has not provided corroborating evidence as outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Thus, the AAO cannot conclude that the beneficiary's training and/or work experience included the theoretical and practical application of a body of highly specialized knowledge in a field related to the proffered position; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree in the specific occupation, or its equivalent; or that the beneficiary has recognition of expertise in the industry.

¹⁰ *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. 8 C.F.R. § 214.2(h)(4)(ii). 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. *Id.*

As such, since evidence was not presented that the beneficiary has at least a bachelor's degree in a specific specialty, or its equivalent, directly related to the duties and responsibilities of the proffered position, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

For the reasons related in the preceding discussion, the AAO affirms the director's decision that the beneficiary is not qualified to perform the duties of a specialty occupation. Thus, the appeal must be dismissed and the petition denied for this reason.

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

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

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

ORDER: The appeal is dismissed.