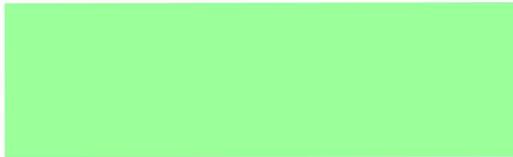
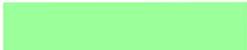


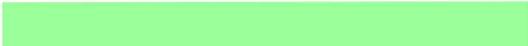


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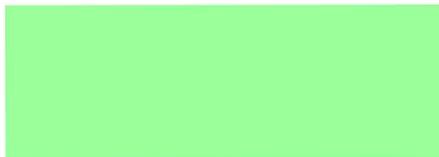


DATE: **JUL 25 2014** OFFICE: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:

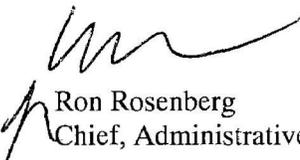


INSTRUCTIONS:

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

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

Thank you,


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.

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the Vermont Service Center on November 20, 2012. In the Form I-129 visa petition, the petitioner describes itself as a car wash business that was established in 1993. In order to employ the beneficiary in what it designates as a marketing development specialist 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 January 11, 2013, 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) counsel's response to the RFE; (4) the notice of decision; (5) the Form I-290B and supporting materials; (6) the AAO's RFE; and (7) counsel's response to the AAO's RFE. We reviewed the record in its entirety before issuing our decision.

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 appeal will be dismissed.¹

I. FACTUAL AND PROCEDURAL HISTORY

In this matter, the petitioner stated in the Form I-129 that it seeks the beneficiary's services as a marketing development specialist on a part-time basis (21 hours) for an hourly wage of \$46.00. In an undated letter filed with the Form I-129, the petitioner provided the following description of the proffered position:

- Continual development and adjusting marketing plan to enable a steady increase of the company's revenues, and this plan's implementation---15% of her weekly time.
- Collaborating with a graphic designer in order to rethink the graphic identity and branding of the company. This will involve creating a new logo and new colors for the company and company's premises. ---10% of her weekly time
- Promoting the company and its services offered (traditional activities as well as new projects such as 24 hours a day opening, month per month

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

subscription or cleaning at home/work service; updating car wash equipment to a state of the art equipment). ---10% of her weekly time

- Contacting potential clients using various methods: direct mails, advertisings, press release or emails. ---10% of her weekly time
- Developing a new price strategy, taking into account the company's goals as well as customer satisfaction, in order to integrate the new services in a coherent price scale. Analyzing competitors' pricing. Evaluating the financial aspects of product development, such as budgets and expenditures. --25% of her weekly time
- Initiating market research studies to define the clients' needs. ---5% of her weekly time
- Coordinating and participating in promotional activities. ---5% of her weekly time
- Developing professional cooperation with car dealers, rental agencies and other potential corporate clients, and conduct presentations on services. ---10% of her weekly time
- Collaborating with an online expert to promote the company online and enhance ranking on internet search engines. ---5% of her weekly time
- Conducting customers' satisfaction surveys and follow up[.] ---5% of her weekly time

The petitioner referred to an advisory opinion letter from [REDACTED] a Professor of Operations Management and Management Science from [REDACTED] to state that "it is standard for a company such as [the petitioner] to hire a [m]arketing [d]evelopment [s]pecialist and require that individual to have attained at least a Bachelor's Degree in Marketing or a related area." The petitioner also referred to the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* to state that "[f]or marketing, sales, and promotions management positions, employers often prefer a bachelor's or master's degree in business administration with an emphasis on marketing." The petitioner submitted a copy of the beneficiary's foreign diploma and academic transcript along with translations which indicate that the beneficiary has a diploma in marketing from Russia.

Further, the petitioner 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 category "Marketing Managers" – SOC (ONET/OES Code) 11-2021, 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 December 4, 2012. The director noted that the evidence submitted was insufficient to establish eligibility for the benefit sought. The director further outlined the specific evidence to be submitted.

On December 30, 2012, counsel responded to the RFE. The director reviewed the information provided by the petitioner and counsel. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The director denied the petition on January 11, 2013. Counsel submitted an appeal of the denial of the H-1B petition.

II. THE ISSUE ON APPEAL

As noted above, the director determined that the petitioner had not established that the position proffered here is a specialty occupation. Accordingly, the issue on appeal is whether the petitioner provided 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.

A. The Law

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

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

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

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

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), the 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. Analysis

We will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position.

We recognize the DOL's *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. As previously discussed, the petitioner indicated in the LCA that the proffered position falls under the occupational category "Marketing Managers." However, the director found in its decision dated January 11, 2013, that the duties of the proffered position are comparable to the duties of a market research analyst. On appeal, counsel agrees with the director that the proffered position "correlates to the position of [m]arket [r]esearch [a]nalyst and is comparable to its duties as defined in the [*Handbook*]." Since counsel agrees that the proffered position corresponds to the occupational category "Market Research Analysts," we will not further discuss the occupational category "Marketing Managers."

We reviewed the chapter of the *Handbook* entitled "Market Research Analysts," including the sections regarding the typical duties and requirements for this occupational category.² However, the *Handbook* does not indicate that "Market Research Analysts" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry.

The subchapter of the *Handbook* entitled "How to Become a Market Research Analyst" states the following about this occupational category:

Most market research analysts need at least a bachelor's degree. Top research positions often require a master's degree. Strong math and analytical skills are essential.

² The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online. We hereby incorporate into the record of proceeding the chapter of the *Handbook* regarding "Market Research Analysts."

Education

Market research analysts typically need a bachelor's degree in market research or a related field. Many have degrees in fields such as statistics, math, and computer science. Others have backgrounds in business administration, the social sciences, or communications.

Courses in statistics, research methods, and marketing are essential for these workers. Courses in communications and social sciences, such as economics, psychology, and sociology, are also important.

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Market Research Analysts, on the Internet at <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-4> (last visited July 9, 2014).

When reviewing the *Handbook*, we must note that the petitioner designated the proffered position under this occupational category at a Level I on the LCA.³ This designation is indicative of a comparatively low, entry-level position relative to others within the occupation and signifies that the beneficiary is only expected to possess a basic understanding of the occupation and will perform routine tasks that require limited, if any, exercise of judgment. In accordance with the relevant DOL explanatory information on wage levels, the beneficiary will be closely supervised and her work closely monitored and reviewed for accuracy. Furthermore, she will receive specific

³ 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.

instructions on required tasks and expected results. DOL guidance indicates that a Level I designation is appropriate for a research fellow, a worker in training, or an internship. This designation suggests that the beneficiary will not serve in a high-level or leadership position relative to others within the occupational category.

The *Handbook* does not state that a baccalaureate or higher degree in a specific specialty, or its equivalent is normally the minimum requirement for entry into the occupation. This passage of the *Handbook* reports that market research analysts have degrees and backgrounds in a wide-variety of disparate fields. The *Handbook* states that employees typically need a bachelor's degree in market research or a related field, but the *Handbook* continues by indicating that many market research analysts have degrees in fields such as statistics, math, or computer science. According to the *Handbook*, other market research analysts have a background in fields such as business administration, one of the social sciences, or communications. The *Handbook* notes that various courses are essential to this occupation, including statistics, research methods, and marketing. The *Handbook* states that courses in communications and social sciences (such as economics, psychology, and sociology) are also important.

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum requirement of a bachelor's of 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 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).

Here, although the *Handbook* indicates that an advanced degree is typically needed for these positions, it also indicates that baccalaureate degrees in various fields are acceptable for entry into the occupation. In addition to recognizing degrees in disparate fields and backgrounds (i.e., social science and computer science) as acceptable for entry into this occupation, the *Handbook* also states that "others have a background in business administration." Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Therefore, the *Handbook's* recognition that a general, non-specialty "background" in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not normally the minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that working as a market research analyst does not normally require at least a bachelor's degree in a specific specialty, or its equivalent, for entry into the occupation, it does not support the proffered position as qualifying as a specialty occupation.

As previously stated, USCIS does not simply rely on a position's title to determine whether a particular position qualifies as a specialty occupation. Rather, USCIS considers the duties of a proffered position, the nature of the petitioning entity's business operations, and all other relevant factors to make its determination. Again, 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.

On appeal, counsel refers to the Occupational Information Network (O*NET) Summary Report to state that "this position belongs to Job Zone Four: Considerable Preparation" and that the education part states that "[m]ost of these occupations require a four-year bachelor's degree." However, contrary to counsel's assertion, the O*NET Summary Report does not establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor's degree in a specific specialty, or its equivalent. As mentioned by counsel, in the subsection entitled "Education," O*NET states that "[m]ost of these occupations require a four-year bachelor's degree, but some do not." Further, the term "most" is not indicative that a particular position within the wide spectrum of marketing research analyst jobs normally requires at least a bachelor's degree.⁴ Moreover, O*NET does not state that a degree must be in a *specific specialty*. Thus, a designation of Job Zone Four does not demonstrate that at least a bachelor's degree in a *specific specialty* is normally the minimum requirement for entry, and does not, therefore, demonstrate that a position so designated qualifies as a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

Counsel indicates further that the O*NET reports that "71% of Respondents require a Bachelor's degree." Again, we note that 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. For a position to be a specialty occupation, there must be a close correlation between the required specialized studies and the position, thus, the mere requirement of a degree, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility."). A claim by the petitioner that the

⁴ For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of the positions require at least a bachelor's degree in a specific specialty, it could be said that "most" of the positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner (which as noted above is designated as a Level I entry position in the LCA). Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "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." Section 214(i)(1) of the Act.

duties of the position can be performed by an individual with only a general-purpose bachelor's degree (in any discipline or in no specific specialty) is tantamount to an admission that the proffered position is not in fact a specialty occupation. Again, 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 at 147.⁵

On appeal, counsel also referenced an unpublished decision in which we determined that the position of market research analysts in that matter may require master's degree and the degree need not be in a specific field. However, we find that counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Further on appeal, counsel submits an advisory opinion from [REDACTED] Professor of Marketing at [REDACTED]. As mentioned, the record also contains an advisory opinion from Mr. [REDACTED] of [REDACTED]. However, as discussed below, both letters are not persuasive in establishing the proffered position as a specialty occupation position.⁶

We note that the many portions of the letters contain identical language to each other. When advisory letters are worded the same (and include identical errors), it indicates that the words are not necessarily those of the writer and may cast some doubt on the validity of the letters. For example, both letters contain the following paragraph:

When evaluating the minimum degree requirement for a certain employment position, the nature of the specific responsibilities must be closely examined

⁵ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. See, e.g., *Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; cf. *Matter of Michael Hertz Assocs.*, 19 I & N Dec. at 560 (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

Id.

⁶ *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.*

along with the position title in order to ascertain the true nature of the academic requirements. After examining the responsibilities of this Marketing Development Specialist position in detail, it becomes apparent that a minimum of a Bachelor's Degree in Marketing or a related area, or the equivalent provides the student with the core competencies and skills needed for a Marketing Development Specialist position with the responsibilities listed above. This is because the nature of these specific duties is usually associated with the attainment of a Bachelor's Degree in this field. A student completing a Bachelor's degree in Marketing or a related area studies and obtains knowledge of the various theories and methods that are necessary for performing these daily tasks of a Marketing Development Specialist for [the petitioner][.] Courses required by a Marketing major such as those in Principles of Marketing, Consumer Behavior, Marketing Research, Business Management, Marketing Strategies, Advertising, and Sales and Marketing Management, directly correspond to and prepare the student for the specific responsibilities of the position. The student completing such a degree also is required to demonstrate, through rigorous testing and challenging case studies, knowledge of various theories and methods that are necessary to perform these tasks. Furthermore, this type of position is a typical job placement for students completing a Bachelor's Degree at my school. Employers with openings for Marketing Development Specialists and similar professional positions have recruited at our campus, always seeking graduates with the minimum of a Bachelor's degree in Marketing or a related area.

(Emphasis added to highlight similarities).

Further, both letters indicate that "the industry standard for a position such as Marketing Development Specialist for [the petitioner] is to be filled through recruiting a college graduate with the minimum of a Bachelor's Degree in Marketing or a related area, or the equivalent." The letters assert a general industry educational standard for organizations similar to the petitioner, without referencing any supporting authority or any empirical basis for the pronouncement. Likewise, they do not provide a substantive, analytical basis for their opinion and ultimate conclusion. Accordingly, the very fact that they attribute a degree requirement to such a generalized treatment of the proffered position undermines the credibility of their opinion. Importantly, their statements are not supported by copies or citations of research material that may have been used in developing their opinions.

Moreover, they do not cite specific instances in which their past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that they have published any work or conducted any research or studies pertinent to the educational requirements for such positions (or parallel positions) in the petitioner's industry for similar organizations, and no indication of recognition by professional organizations that they are authorities on those specific requirements. Mr. [REDACTED] claims to possess expertise in the field of market research, but he did not identify the specific elements of his knowledge and experience that he may have applied in reaching his conclusions here. Similarly, Mr. [REDACTED] claims that "his professional opinions have been widely

accepted in all areas of business administration, information technology, and systems engineering," but he does not explain how his expertise is relevant to evaluating educational requirements for the proffered position as a marketing development specialist.

The letters also do not demonstrate or assert in-depth knowledge of the petitioner's specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise. There is no evidence that Mr. [REDACTED] or Mr. [REDACTED] has visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. Their opinions do not relate their conclusion to specific, concrete aspects of this petitioner's business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue.

In addition, Mr. [REDACTED] claims that the petitioner "requires the services of a Marketing Development Specialist to perform various specialized duties that will help ensure the company's continued success as it expands." Mr. [REDACTED] also states that the services of the proffered position "will help ensure the company's continued growth and success." Both letters also indicate that requirement of a Bachelor's degree in Marketing or a related area or the equivalent "is necessary in that a college graduate obtains specific knowledge for the complex responsibilities of this position during a college program leading to such a degree." The letters further claim that "success of [the petitioner] as of similarly situated companies, is largely dependent on the ability and expertise of a Marketing Development Specialist or someone in a similar professional position, as the specialized duties of this individual directly and indirectly affect the company's operations, revenues and profits, and ultimately the overall success of the company."

However, it must be noted that there is no indication that the petitioner and counsel advised Mr. [REDACTED] and Mr. [REDACTED] that the petitioner characterized the proffered position as a low, entry-level position, for a beginning employee who has only a basic understanding of the occupation (as indicated by the wage-level on the LCA). The wage-rate indicates that the beneficiary 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. It appears that they would have found this information relevant for their opinion letter. Moreover, without this information, the petitioner has not demonstrated that both writers possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately compare parallel positions based upon actual job duties and responsibilities.

In summary, for the reasons discussed above, we conclude that the opinion letters rendered by Mr. [REDACTED] and Mr. [REDACTED] are not probative evidence to establish the proffered position as a specialty occupation. The conclusions lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which they reached such conclusions. Therefore, we decline to defer to Mr. [REDACTED] and Mr. [REDACTED]'s findings and ultimate conclusions, and further find that their opinion letters are not probative evidence towards satisfying any criterion of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

Next, we will review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook* (or other objective, authoritative source), reports a standard, industry-wide requirement for at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Further, the petitioner did not submit documentation from the industry's professional association indicating that it has made a degree a minimum entry requirement.

We acknowledge that the record of proceeding contains opinion letters from Mr. [REDACTED] and Mr. [REDACTED]. However, as previously discussed in detail, we find that the opinion letters do not merit probative weight towards satisfying any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) or establishing the proffered position as a specialty occupation.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, counsel submitted copies of job advertisements. However, upon review of the evidence, we find that the petitioner's reliance on the job announcements is misplaced.

For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the advertising organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular

scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

In the Form I-129 and supporting documentation, the petitioner stated that it is a car wash business established in 1993, with ten employees.⁷ The petitioner stated its gross annual income is \$300,000 and net income as \$13,500. The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 811192 – "Car Washes"⁸ The U.S. Department of Commerce, Census Bureau website describes this NAICS code as follows:

This industry comprises establishments primarily engaged in cleaning, washing, and/or waxing automotive vehicles such as passenger cars, trucks, and vans, and trailers.

See U.S. Dep't of Commerce, U.S Census Bureau, 2012 NAICS Definition, 811192 – Car Washes on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited July 9, 2014).

Upon review of the documents, we find that they do not establish that a requirement for a bachelor's degree in a specific specialty, or its equivalent, is common to the petitioner's industry in similar organizations for parallel positions to the proffered position.⁹

For example, the petitioner has submitted advertisements for organizations that do not appear to be similar to the petitioner. More specifically, the advertisements include positions with [REDACTED] (food and beverage production), [REDACTED] (alliance of premier pest management companies), and [REDACTED] (advertising and PR services). The petitioner did not state which aspects or traits (if any) it shares with the advertising organizations. Without further information, the advertisements appear to be for organizations that are not similar to the petitioner and the petitioner has not provided any probative evidence to suggest otherwise. The petitioner failed to supplement the record of proceeding to establish that the advertising organizations are similar to it.

Further, the petitioner has not established that the advertisements are for parallel positions. For example, the position with [REDACTED] requires "5+ to 7 years" of experience, and both

⁷ The petitioner provided its 2011 income tax return, which indicates that the salaries and wages paid is \$16,767 when the petitioner claims to have ten employees.

⁸ NAICS is used to classify business establishments according to type of economic activity, and each establishment is classified to an industry according to the primary business activity taking place there. See U.S. Dep't of Commerce, U.S. Census Bureau, NAICS, on the Internet at <http://www.census.gov/eos/www/naics/> (last visited July 9, 2014).

⁹ Moreover, the petitioner did not provide any independent evidence of how representative the job postings are of the particular advertising employers' recruiting history for the type of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the actual hiring practices of these employers.

█ and █ require "2+ to 5 years of experience." In particular, █ states that "[o]nly candidates with consumer packaged goods and product development experience will be considered." As previously discussed, the petitioner designated the proffered position on the LCA through the wage level as a Level I (entry level) position relative to others within the occupation. Based upon the information provided in the job postings, the advertised positions appear to be for more senior positions than the proffered position. More importantly, the petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

In addition, contrary to the purpose for which the advertisements were submitted, some job postings do not indicate that a bachelor's degree in a directly related specific specialty is required. For example, █ and █ require a bachelor's degree, but do not indicate a specific specialty. As discussed, the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a specific specialty that is directly related to the specialty occupation claimed in the petition.

As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, as the evidence does not establish that similar organizations in the same industry routinely require at least a bachelor's degree in a specific specialty, or its equivalent, for parallel positions, not every deficit of every job posting has been addressed.

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

In the instant case, the petitioner and counsel claim that the proffered position involves complex and/or unique duties. In support of the petition, the petitioner provided information regarding the proffered position and evidence regarding its business operations. However, upon review of the record, we find that the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of market research specialist.

In the record of proceeding, counsel relies on Mr. █ and Mr. █'s opinion letters to assert that the proffered position is so complex and unique. On appeal, counsel asserts that according to Mr. █ "the nature of these specific responsibilities and knowledge is so specialized and complex that knowledge required to perform these duties is usually associated with the attainment of a Bachelor's Degree in this field." We here incorporate our earlier discussion and analysis regarding the opinion

letters, and again note that the letters do not establish that the proffered position qualifies as a specialty occupation under any of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We find that the petitioner has not provided sufficient documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent. This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, the LCA indicates a wage level based upon the occupational classification "Marketing Managers" at a Level I (entry level) wage. The wage-level of the proffered position indicates that, relative to others within the occupation, 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. Without further evidence, it is not credible that the petitioner's proffered position is complex or unique as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage. For example, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."¹⁰

In summary, the description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. The petitioner has not demonstrated that this position, which the petitioner characterized in the LCA as an entry-level position relative to other positions in the occupation, is so complex or unique that it can be performed only by an individual with at least a baccalaureate degree in a specific specialty, or its equivalent.

In addition, the petitioner and counsel did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties that counsel claims are so complex or unique. While a few related courses may be beneficial, or even required, in performing certain duties of the position, the petitioner has not demonstrated how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position.

The petitioner indicates that the beneficiary's academic credentials and experience qualify her to serve in the proffered position. In the support letter, the petitioner claimed that the beneficiary's "education and experience will enable her to add to [the petitioner's] success as a premier entity." The petitioner further stated that the beneficiary's "academic courses in marketing, price formation, business communications and other knowledge acquired during her studies, are the very reason for

¹⁰ For additional information regarding the 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.

[its] company to require [the beneficiary]'s services for the position of [m]arketing [d]evelopment [s]pecialist." However, the test to establish a position as a specialty occupation is not the credentials and skills of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent). Upon review of the record of proceeding, we find that the petitioner has failed to establish the proffered position as satisfying the second prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. We usually review the petitioner's past recruiting and hiring practices, as well as any other information provided by the petitioner in support of the petition when reviewing this criterion.

To satisfy this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. In the instant case, the record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

While a petitioner may assert that a proffered position requires a specific degree that opinion alone without corroborating evidence cannot establish the position qualifies as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The petitioner stated in the Form I-129 petition that it has approximately 10 employees and that it was established in 1993 (approximately 20 years prior to the H-1B submission). Counsel indicated in response to the RFE that the "[p]resident performed the marketing duties until a year ago," "but by and large it was unsuccessful due to the President's lack of specialized and complex knowledge required to perform the duties in the pertinent specialty area." The petitioner did not provide information regarding the duties the president performed or his educational credentials. In other words, the petitioner and its counsel do not claim that the proffered position qualifies as a specialty occupation under this criterion of the regulations. Moreover, the record does not include any evidence to establish that the petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

The petitioner provided information regarding the proffered position and its business operations. While the evidence provides some insights into the petitioner's business activities, the documents do not establish that the nature of the specific duties of the proffered position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

In the instant case, we note that relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. We incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a Level I position (out of four assignable wage-levels) relative to others within the occupational category, and hence one not likely distinguishable by relatively specialized and complex duties. Without further evidence, the petitioner has not established that the proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a substantially higher prevailing wage. As previously noted, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems" and requires a significantly higher wage.

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

For the reasons related in the preceding discussion, the petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation.¹¹ The appeal will be dismissed and the petition denied for this reason.

¹¹ On appeal, counsel asserts that the petitioner previously petitioned for the beneficiary and the "**absolutely identical**" H-1B Application was approved with change of status on November 14, 2011- [REDACTED] (emphasis in the original). We note that this petition was revoked on February 10, 2014.

Further, it is noted that we are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990). Furthermore, our

III. BEYOND THE DECISION OF THE DIRECTOR

As the grounds discussed above are dispositive of the petitioner's eligibility for the benefit sought in this matter they conclusively require that the appeal be dismissed. However, here we will note additional deficiencies in the petition and supporting documentation in order to apprise the petitioner of further insufficiencies in the record that would also require dismissal of the appeal.

A. Corporate Status

Beyond the decision of the director, we note that the record of proceeding in the instant case does not establish that the petitioner was a corporation in good standing in the State of New Jersey at the time of filing. Further, the petitioner's "revoked status" corporate status raises serious questions about whether it exists as an importing employer, whether the petitioner qualifies as a United States employer, and whether it is authorized to conduct business. See section 214(c)(1) of the Act, 8 U.S.C. § 1184(c)(1); see also 8 C.F.R. §§ 214.2(h)(2)(i)(A), (4)(ii), (11)(ii).

In our RFE, the petitioner was reminded that the regulation at 8 C.F.R. § 214.2(h)(11)(ii) addresses the grounds for automatic revocation of the approval of a petition and states, in pertinent part, that the "approval of any petition is immediately and automatically revoked if the petitioner goes out of business." It logically flows that a petitioner must be doing and continue to do business for the director to grant the petition. If the petitioner were not in business and the director granted the petition, it would result in the absurd result of the approved petition immediately and automatically being revoked the instant it was approved. See 8 C.F.R. § 214.2(h)(11)(ii).

In response to the RFE, the petitioner claimed that it recently discovered that the State of New Jersey listed its status as "revoked" due to non-payment of annual fees. The petitioner stated that it has since paid the required fees and filed for a reinstatement. In support of its assertion, the petitioner submitted the following documents which include:

- A printout from New Jersey Division of Revenue, On-line Corporate Annual Report, Business Reinstatement and Agent Change Service dated June 9, 2014. It appears that the petitioner paid \$845 for an annual report filing from 2004 to 2014 and reinstatement fee.
- Application for Reinstatement of Corporate Charter.

authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved nonimmigrant petitions on behalf of a beneficiary, we would not be 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).

- The petitioner's bank statements from [REDACTED] It is noted that starting December 1, 2013 to May 31, 2014, the bank statement indicates that the petitioner's account is "debtor in possession account."¹²
- Form 941: Employer's Quarterly Federal Tax Returns. It is noted that 2014 1st quarter report indicates that there were six (6) people that received wages.
- The petitioner's 2012 tax return indicates gross income of \$244,969 and net income of \$-16,763. The petitioner did not submit more recent tax returns.

The evidence in the record indicates that as of November 20, 2012, the date of filing of this petition, the petitioner was in revoked status. We note that the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. See 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

Further, it appears that while the petitioner paid the fees and requested reinstatement, the petitioner did not establish that it is currently in good standing. As of July 8, 2014, the website for New Jersey Division of Revenue shows that the petitioner has filed for reinstatement is currently pending tax clearance, but it does not indicate that the petitioner has been reinstated.¹³ Moreover, the documents provided in response to our RFE raise questions about the petitioner's financial status. For example, the bank statements appear to indicate that the petitioner has filed for a bankruptcy protection, showing that it is a "debtor in possession." Moreover, the 2012 tax return, which is the most recent tax return in the record of proceeding, indicates that the net income is in the negative, specifically -\$16,763. Therefore, we find that the petitioner did not establish that it will continue to do business for the requested employment period.

Accordingly, the record contains insufficient evidence to establish that the petitioner's business was in good standing at the time of filing the instant petition and remains so.

B. LCA does not Correspond to the Petition

As mentioned, the petitioner indicated on its LCA that the proffered position corresponds to "Marketing Managers" – SOC (ONET/OES Code) 11-2021. However, on appeal, counsel for the

¹² Debtor in possession is defined as an individual or corporation that has filed for Chapter 11 bankruptcy protection and remains in control of property that a creditor has a lien against, or retains the power to operate a business. See Investopedia available at <http://www.investopedia.com/terms/d/debtorinpossession.asp> (last visited July 9, 2014).

¹³ For additional information regarding the status of the petitioning company, see New Jersey Division of Revenue on the Internet at [REDACTED] (last accessed July 9, 2014).

petitioner acknowledges that the duties of the proffered position correlate to the occupational category of "Market Research Analysts" – SOC (ONET/OES Code) 13-1161.

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 . . . 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 the Form I-129 petition is supported by an LCA that corresponds it. Here, the petitioner did not submit a certified LCA that corresponds to the duties of the proffered position. Thus, for this reason as well, the petition must be denied.

C. Beneficiary's Qualification

We do not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the proffered 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 whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent the determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree or its equivalent. Therefore, we need not and will not address the beneficiary's qualifications further, except to note that, in any event, the petitioner did not submit an evaluation of her foreign degree or sufficient evidence to establish that her degree is the equivalent of a U.S. bachelor's degree in a specific specialty. As such, since evidence was not presented that the beneficiary has at least a U.S. bachelor's degree in a specific specialty or its equivalent, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

IV. CONCLUSION

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 1025, 1043 (E.D. Cal.

2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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

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

ORDER: The appeal is dismissed.