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



U.S. Citizenship
and Immigration
Services

DATE: JUN 12 2014

OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

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

Thank you,

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 July 31, 2012. In the Form I-129 visa petition and supporting documentation, the petitioner describes itself as a full service restaurant established in 2001. In order to employ the beneficiary in what it designates as a database administrator 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 on May 28, 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, the petitioner asserts that the director's basis for denial of the petition was erroneous, and it contends that it satisfied all evidentiary requirements.

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

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

I. FACTUAL AND PROCEDURAL BACKGROUND

In this matter, the petitioner states on the Form I-129 that it seeks the beneficiary's services as a database administrator to work on a full-time basis at a rate of pay of \$1,010.80 per week (\$25.27 per hour).² In a support letter dated April 23, 2012 the petitioner states that the proffered position involves the following responsibilities:

- Customized logical and physical database design according to employer's requirement;
- Proper implementation of new database systems and applications;
- Ability to perform both Oracle and also operating system performance monitoring and the necessary adjustments;
- A good knowledge of the way Oracle enforces data integrity;
- Proper backup and recovery to ensure that the database can be restored in the event of either human or system failure;

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

² As will be discussed later in this decision, the rate of pay as stated by the petitioner on the Form I-129 (page 5) is lower than the prevailing wage in the area of intended employment.

- Implement security procedures to ensure data and access to the data are secure.

In addition, the petitioner included a document entitled "Job Description," which contains the following duties for the proffered position:

Communicate with management to get the requirements for database design; support management with information such as up-to-the-minute statistics for number and amount of orders, estimated food cost, hourly labor cost, gross margin etc;

Approximately 10 hours per week

Create database to support restaurant POS system; provide management tools to perform cash control and cash register tills balancing; using database security features to enforce security procedures to limit access to sensitive data;

Approximately 20 hours per week

Provide data for inventory control; data analysis to produce customers, sales achievement cost and other customized reports; backup data and perform database recovery when needed; troubleshoots with problems regarding the databases, applications and development tools; to support future development in web-based restaurant reservation system.

Approximately 10 hours per week

The petitioner did not state that the proffered position has any particular academic requirements (or any other requirements). The petitioner does not claim that the proffered position 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, or its equivalent, as a minimum for entry into the occupation, as required by the Act. See section 214(i)(1) of the Act.

The petitioner indicated that the beneficiary has a Master of Science degree in computer science from the [REDACTED] and three years of experience working for the petitioner in the proffered position. In support of the Form I-129, the petitioner provided a copy of the beneficiary's diploma and transcript from the [REDACTED] which indicate that the beneficiary was granted a degree in June 2009.

In addition, 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 classification "Database Administrator" - SOC (ONET/OES Code) 15-1141, at a Level I (entry level) wage. Notably, the case number for the LCA differs from the LCA case number provided on page 4 of the Form I-129. No explanation for the discrepancy was provided.

The petitioner submitted a Form W-2, Wage and Tax Statement, for 2011, issued by the petitioner

to the beneficiary. The petitioner also submitted two pay statements in the name of the beneficiary. The pay statements cover June 2012, and indicate that the beneficiary was paid at a rate of \$12.50 per hour.³ The petitioner additionally provided a copy of its 2010 federal tax return.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on October 29, 2012. The director outlined the evidence to be submitted.

On January 25, 2013, the petitioner responded to the director's RFE. In a letter dated January 12, 2013, the petitioner provided the following revised description of duties the proffered position:

50% (approximately 10hrs/wk): design, develop and maintain our company's database system, maintain database dictionaries and ensure system integration; ability to perform both Oracle and also operating system performance; Use the database system to track food cost management; check food cost weekly. Compare and adjust vendors accordingly. Management of wholesale companies, price, quantity and the food ordered & delivered.

25% (approximately 20hrs/wk): install, configure, upgrade and monitor the MySQL environment; provide security, monitor, tuning and troubleshooting; also responsible for designing and maintain our company's website; Including employee management system, salaries, hours worked and performance management.

25% (approximately 10hrs/wk): update existing software, monitor database activity for space or hardware issues and provide performance tuning assistance.

In addition to the letter, the petitioner provided (1) photos of food products; (2) four invoices; (3) a document entitled "Database Workflow"; (4) an excerpt from the Dictionary of Occupational Titles regarding the occupation "Data Base Administrator"; (5) an excerpt from the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* entitled "How to Become a Database Administrator"; and (6) an evaluation of the beneficiary's foreign education and related documentation.

The director reviewed the information provided in the initial H-1B petition and in response to the RFE. 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 a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty, or its equivalent, as a minimum for entry. The director denied the petition on May 28, 2013.

The petitioner subsequently submitted an appeal of the denial of the H-1B petition. The AAO

³ As discussed below, the record reflects that the beneficiary was employed with the petitioner as a database administrator pursuant to a prior H-1B visa approval for the period of October 1, 2009 to September 24, 2012. The petitioner has provided no explanation for the pay statements indicating that it paid the beneficiary a wage that was substantially less than the prevailing wage for database administrators in the relevant geographic area.

reviewed the record in its entirety and now issues this decision.

II. SPECIALTY OCCUPATION

The issue is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, and for the specific reasons described below, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes 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:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or

- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

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

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

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

Thus, a crucial aspect of this matter is whether the petitioner has adequately described the duties of the proffered position, such that USCIS may discern the nature of the position and whether the position indeed requires the theoretical and practical application of a body of highly specialized knowledge attained through at least a baccalaureate degree in a specific discipline, or its equivalent. The AAO finds that the petitioner has not done so.

More specifically, the petitioner has provided conflicting versions of the job duties associated with the proffered position. In the initial submission, in a letter dated April 23, 2012, the petitioner provided a list of the "major responsibilities" of the proffered position that includes, in general terms: (1) database design; (2) implementation of new database systems; (3) monitoring the performance of the database and making necessary adjustments; (4) database backup and recovery; (5) implementation of security procedures; and (6) maintaining a working knowledge of Oracle. The letter further indicates that the petitioner has several functioning databases and a point-of-sale system.

In a separate document entitled "Job Description," the petitioner lists the duties of the proffered position. Approximately 20 hours per week are to be spent creating a database and management tools to perform cash control and cash register balancing, and implementing security features to limit data access. Approximately 10 hours per week are to be spent communicating with management to get requirements for database design and providing data to management (including number of orders, estimated food costs, labor costs, and others). The remaining approximate 10 hours per week are to be spent providing similar data, such as inventory and sales; "data analysis to produce customers"; backing up data and troubleshooting database issues, and "support[ing] future development in web-based restaurant reservation system."

In the RFE, the director indicated that as the petitioner stated that it now has a functioning database system, the evidence did not support the petitioner's claimed duties as described. In response, the petitioner submitted a letter stating that its business operations involve producing and wholesaling a variety of Asian foods to four regular customers. The petitioner indicated that due to growth of the business, a database administrator is needed to: (1) develop and maintain its "ever increasing" database; (2) administrate the database and produce reports on regular business income and expenses; (3) develop and maintain the petitioner's website; and (4) provide technical advice to the management in business decisions. The petitioner also provided another breakdown of the beneficiary's time to be spent on various duties. The percentages of time to be spent on the various groups of duties do not correspond to the number of hours per week the beneficiary is to spend on each set of duties. Thus, the petitioner has not established how the beneficiary's time will be spent.

Further, this list of duties is inconsistent with the petitioner's original list. For example, in response to the RFE, the petitioner indicated that instead of simply providing data to management, the beneficiary would "compare and adjust vendors" according to the data, and provide "management of wholesale companies" including the "price, quantity and the food ordered and delivered." These crucial business decisions appear to extend beyond the duties of a database administrator, and the position as originally described. In addition, the petitioner claims in response to the RFE that the beneficiary is responsible for designing and maintaining the petitioner's website. While the initial duties mentioned "support[ing] future development" of a web-based reservation system, the petitioner did not previously indicate that the beneficiary would be responsible for the design and maintenance of the petitioner's entire website. The website responsibilities appear to extend far beyond the duties that were initially contemplated for the proffered position.

The petitioner also provided a document entitled "Database Workflow" for the proffered position. Among the duties listed are:

- Food cost data manage
- Check food cost every week. Compare price of each food company, if price went up, change to another one. Choose the best one can save a lot of money.
- Salary data manage
- Check how many hours each employee [worked] per week, get amount and pay for them.
- Employee manage
- Get total of dine in, delivery, pick up, online order. According the total amount, and then decided do we need hire or fire employee.

(Text as appears in the original document with bullet points added for clarity.) The document indicates that the beneficiary is managing food costs, making purchasing decisions, managing employees, making personnel decisions, and managing payroll.

On appeal the petitioner provides a copy of the job description "from when [the beneficiary's] H-1b [was] initially approved." It must be noted that this narrative is identical to the document entitled "Job Description" provided with the instant Form I-129 petition. Thus, the duties of the proffered position are the same now as they were in April of 2009, that is *before the petitioner had a database*.

Moreover, in the initial submission and in response to the RFE, the petitioner did not state that the proffered position has any particular requirements (including any academic requirements). On appeal, for the first time, the petitioner claimed that the position requires at least a bachelor's degree in science or engineering, or its equivalent.⁵ No explanation was provided for failing to previously state any requirements for the proffered position. USCIS regulations affirmatively require a petitioner to

⁵ Briefly, it must be noted that the fields of science and engineering are broad categories that cover numerous and various specialties. It is not readily apparent that a general degree in science or engineering is directly related to the duties and responsibilities of the particular position proffered in this matter.

establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. 103.2(b)(1).

The AAO reviewed the record of proceeding and the chapter of DOL's *Handbook* entitled "Database Administrators," including the sections regarding the typical duties for this occupational category.⁶ The subsection entitled "What Database Administrators Do" states, in part, the following about the duties of this occupational category:

Database administrators use specialized software to store and organize data, such as financial information and customer shipping records. They make sure that data are available to users and are secure from unauthorized access.

Duties

Database administrators typically do the following:

- Identify user needs to create and administer databases
- Ensure that the database operates efficiently and without error
- Make and test modifications to the database structure when needed
- Maintain the database and update permissions
- Merge old databases into new ones
- Backup and restore data to prevent data loss
- Ensure that organizational data is secure

The duties of the proffered position, as described by the petitioner in various places throughout the record, are inconsistent with the duties of a database administrator. That is, although the petitioner has indicated that the proffered position entails responsibility for its now-existing database, the petitioner has also indicated that the proffered position involves website development and maintenance, and numerous management responsibilities, including payroll management, purchasing, and personnel decisions.

The various descriptions of the proffered position provided by the petitioner, when considered together, do not adequately convey the substantive work that the beneficiary will perform within the petitioner's business operations. In establishing a position as qualifying as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in the context of the petitioner's business activities, demonstrate a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition.

⁶ DOL's *Handbook* is recognized as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. As previously mentioned, the petitioner asserts in the LCA and numerous times throughout the record that the proffered position falls under the occupational category "Database Administrators." For additional information regarding database administrator positions, see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Database Administrators, on the Internet at <http://www.bls.gov/ooh/computer-and-information-technology/database-administrators.htm#tab-2> (last visited June 9, 2014), a printout of which is hereby incorporated into the record of proceeding.

In addition, there are inconsistencies with regard to the petitioner's representations regarding its business operations. For instance, within the record, the petitioner describes itself as (1) a "Full service restaurant" on the Form I-129); (2) a fast food restaurant on its tax return; and (3) a business that was initially a full service Chinese restaurant, but is now involved in the production and wholesale of numerous types of "oriental food" including "Chinese bread, egg rolls, dumplings, wontons, frozen Dim Sum, frozen fish balls, and fresh seafood" as stated in response to the RFE. No explanation for the variance was provided.

To support the H-1B petition, the petitioner provided (1) four invoices;⁷ (2) an unsigned copy of its 2010 tax return; and (3) five photos of food products, including a photo of numerous boxes that are labeled "[REDACTED]"⁸ The petitioner did not submit further documentation regarding its claimed production of food for wholesale distribution.

The AAO reviewed the petitioner's website referenced in its June 16, 2013 letter: [http://\[REDACTED\]](http://[REDACTED]) (last visited on June 9, 2014). However the website makes no mention of the petitioner's claimed wholesale food business. On the Form I-129 the petitioner states that it employs 12 individuals; however, the petitioner did not provide an organizational chart that would clarify in what capacity these individuals are employed.

Upon review, the petitioner has not established the scope and nature of its business operations. Thus, without further information, there is insufficient context to analyze the duties of the proffered position with respect to the petitioner's business operations. In the instant case, 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, the proposed duties do not provide a sufficient factual basis for conveying the substantive matters that would engage the beneficiary in the performance of the proffered position for the entire period requested, so as to persuasively support the claim that the position qualifies as a specialty occupation. The job descriptions fails to communicate (1) the actual work that the beneficiary would perform on a day-to-day basis; (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 has not provided sufficient details regarding the demands, level of responsibilities and requirements necessary for the performance of the duties of the proffered position.

⁷ The dates and invoice totals are as follows:

<u>Dates</u>	<u>Invoice Totals</u>
• December 3, 2012	\$1,140.00
• December 4, 2012	\$2,095.00
• December 14, 2012	\$ 720.00
• January 4, 2013	\$1,530.00

⁸ There is no indication as to whether or not the photos depict products that are produced, procured, or sold by the petitioner.

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.

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. The appeal will be dismissed and the petition denied for this reason.

III. BEYOND THE DECISION OF THE DIRECTOR

Upon review, it is noted that there are additional issues not identified in the director's decision that preclude approval of this petition. Thus, the petition cannot be approved for these reasons as well. They are considered independent and alternative bases for denial of the petition.

A. Labor Condition Application

Each LCA has a unique identification number. On page 4 of the Form I-129, the petitioner reported that the corresponding LCA for the petition was LCA Case Number [REDACTED]. However, the petitioner did not provide the LCA referenced on the Form I-129 petition in its H-1B submission. Instead, the petitioner submitted an LCA with the Case Number [REDACTED]. Thus, the LCA submitted to support the petition contains a different identification number than the LCA referenced on the Form I-129 (page 4). No explanation was provided for the failure to provide the LCA that is referenced on the Form I-129. The petitioner did not submit a certified LCA that properly corresponds to the petition.

B. Wages

Additionally, the petitioner did not establish that it would pay an adequate salary for the beneficiary's work, as required under the applicable statutory and regulatory provisions. The LCA provided with the petition (Case Number [REDACTED]) indicates the occupational classification for the position is "Database Administrators" at a Level I (entry level) wage. The LCA was certified on July 19, 2012 and signed by the petitioner's manager on July 20, 2012.

Assuming that this LCA corresponds to the instant petition, which has not been established, the

record of proceeding contains discrepancies between what the petitioner claims about the level of responsibility inherent in the proffered position set against the contrary level of responsibility conveyed by the wage level indicated by the LCA submitted in support of petition.

Wage levels should be determined only after selecting the most relevant O*NET code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.⁹ 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.¹⁰ 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 "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels. A Level I wage rate is described by DOL 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.

See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy*

⁹ For additional information on wage levels, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

¹⁰ 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.

Guidance, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

In its April 23, 2012 letter, the petitioner indicated that the beneficiary's services are crucial to the success of the company. In a letter dated January 12, 2013, the petitioner stated that "[m]ost importantly, [the beneficiary] is expected to provide technical advice to the management in business decisions," and emphasized that his duties are "crucial to [the petitioner's] business operation and development." Further, the petitioner's submission in response to the RFE indicates that the petitioner relies on the beneficiary's work product to make important business decisions such as which vendors to use, and whether to hire or fire employees.

It appears that the extent to which the petitioner relies on the beneficiary's work is at odds with the wage level at which the LCA is certified. As noted above, the LCA is certified for a Level I entry-level position. A certification for a Level I position 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. Contrary to this description, it appears that the petitioner is relying heavily on the accuracy of the beneficiary's work product to make important decisions that affect the success of the company.

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 designated by the petitioner on the LCA corresponds to a Level I position for the occupational category of "Database Administrators" for Alexandria, Virginia.¹¹ Notably, if the proffered position had been designated at a higher level, the prevailing wage at that time would have been significantly higher.

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. Therefore, the petitioner

¹¹ For additional information regarding the prevailing wage for Database Administrators in Alexandria, Virginia, see the All Industries Database for 7/2012 - 6/2013 for Database Administrators at the Foreign Labor Certification Data Center, Online Wage Library on the Internet at <http://www.flcdatcenter.com/OesQuickResults.aspx?code=15-1141&area=47894&year=13&source=1> (last visited June 9, 2014).

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. Thus, for this reason, even if it were determined that the petitioner overcame the director's basis for denial of the petition (which it has not), the petition could not be approved.

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit an 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.

Moreover, even if the petitioner's statements regarding the responsibilities of the proffered position were consistent with a Level I wage, which they were not, the petitioner has not established that it would pay the beneficiary at least the prevailing wage for a Level I position. The prevailing wage for a database administrator in Alexandria, Virginia during the relevant period was \$26.55 per hour.¹² However, on the Form I-129 (page 5), the petitioner stated it would pay the beneficiary \$25.27 per hour. Further, the petitioner provided pay statements in the name of the beneficiary for June 2012, which state that the beneficiary was earning \$12.50 per hour. A salary of \$12.50 per hour is below the prevailing hourly wage for a Level I database administrator. The petitioner provided no explanation for discrepancy in the wage.

The petitioner claimed on the Form I-129 Supplement H (page 12) that it will abide by the terms of the LCA; however, the evidence of record indicates that the petitioner was neither paying the beneficiary the required wage during the prior approval period, nor does it intend to pay the beneficiary the prevailing wage during the instant requested period of H-1B validity. Therefore, the petitioner will not be in compliance with the terms of the LCA as indicated on page 3, section H. Accordingly, the petitioner's statement on the Form I-129 is inaccurate. An inaccurate statement anywhere on the Form I-129 or in the evidence submitted in connection with the petition mandates its denial. *See* 8 C.F.R. § 214.2(h)(10)(ii); *see also* 8 C.F.R. § 103.2(b)(1). Accordingly, the petition also cannot be approved for this reason.

C. Beneficiary's Qualifications

A 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 has not established that the proffered position requires a baccalaureate or higher degree in a specific specialty, or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications, and related issues.

¹² For additional information regarding the prevailing wage for Database Administrators in Alexandria, Virginia *see* the All Industries Database for 7/2012 - 6/2013 for Database Administrators at the Foreign Labor Certification Data Center, Online Wage Library on the Internet at <http://www.flcdatcenter.com/OesQuickResults.aspx?code=15-1141&area=47894&year=13&source=1> (last visited June 9, 2014).

IV. CONCLUSION AND ORDER

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

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