

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: **SEP 15 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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

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

ON BEHALF OF PETITIONER:
[REDACTED]

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 (hereinafter "director") denied the nonimmigrant visa petition. The petitioner appealed, and Administrative Appeals Office (AAO) dismissed that appeal. The matter is again before the AAO on a combined motion to reopen and motion to reconsider.

The motion will be granted. The matter will be reconsidered. However, upon reconsideration, the instant visa petition will remain denied.

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Form I-129 visa petition, the petitioner stated that its business is "import and distribution of furniture." In order to continue to employ the beneficiary in what it designates as a "Cost Accountant Manager" 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, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. As indicated above, the petitioner appealed, and we dismissed the appeal on February 18, 2014. Our decision dismissing the appeal was based upon a finding that the instant visa petition was an attempt to extend approval of a visa petition that had been revoked. We further stated that the decision of revocation had not been appealed. In the instant motion, counsel demonstrated that the decision of revocation had, in fact, been appealed. The petitioner moved to reopen and reconsider our decision on March 19, 2014. The petitioner's motion to reconsider is granted.

However, as will be explained below, we find that the petitioner has not overcome the original basis for denial. We base our decision upon our review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the service center's notice of intent to deny (NOID); (5) the petitioner's response to the NOID; (6) the director's denial letter; (7) counsel's submissions on appeal; and (8) the submissions in support of the instant motion.

II. SUBSTANTIVE LAW

The instant visa petition was originally denied based on the director's determination that the petitioner had not demonstrated that the proffered position qualifies as a specialty occupation. 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.

III. EVIDENCE

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a "Cost Account Manager" position,¹ and that it corresponds to Standard Occupational Classification (SOC) code and title 13-2011, Accountants and Auditors, from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

¹ It is noted that the petitioner and counsel refer to the proffered position as a "Cost Accountant Manager," "Cost Accounting Manager," and "Cost Account Manager" throughout the record of proceeding. We will refer to the proffered position as a "Cost Accountant Manager," the job title given to the proffered position on the Form I-129, to the extent possible in this decision. The differences may be significant, as one title may suggest management of accountants and another may suggest management of accounts. The issue of whether the proffered position is supervisory is further addressed below.

Counsel submitted (1) a letter, dated December 12, 2012, from [REDACTED] who identified himself in that letter as the petitioner's director; and (2) a document entitled, "Summary of Oral Contract," also signed by Mr. [REDACTED] as the petitioner's director.

Mr. [REDACTED] December 12, 2012 letter contains the following description of the duties of the proffered position:

The main duties assigned to [the beneficiary] are as follow [sic]:

- to conduct studies which provide detailed cost information not supplied by general accounting systems
- plan study and collects data to determine cost of business activity, such as furniture and fixture purchase, inventory, transportation, and labor,
- analyze data obtained and record results, using computer,
- analyze changes in product design according to the customers' order, means of transportation, service provided to determine effects on cost,
- analyze actual costs and prepare periodic report comparing standard costs to actual costs;
- conduct management according to the results of reports reflecting specific prices and facts affecting process and profitability of service as well as develop computer-based accounting system.

Mr. [REDACTED] also stated:

Due to the extensive knowledge of business and trade required of this position, it is essential that the person in question have at least a bachelor's degree in accounting or finance.

The position requires the analysis of foreign annual financial reports as well as oral and written communication with business representatives and financial Institutions from Asian countries such as Singapore, Malaysia, China, and Indonesia.

The Summary of Oral Contract contains a description of the duties of the proffered position that is substantially the same as the description found in Mr. [REDACTED] December 12, 2012 letter.

On February 15, 2013, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The director outlined the specific evidence to be submitted.

In response, counsel provided (1) a letter, dated May 1, 2013, from Mr. [REDACTED] (2) evidence pertinent to an approved H-1B visa petition filed by a different petitioner for a different beneficiary; (3) a

statement on the petitioner's letterhead pertinent to the petitioner's accounting system; (4) an organizational chart of the petitioner's operations; (5) copies of vacancy announcements placed by the petitioner; (6) copies of vacancy announcements placed by other companies; and (7) counsel's own letter, dated May 4, 2013.

In his May 1, 2013 letter, Mr. [REDACTED] stated that prior to employing the beneficiary, the petitioner had utilized the services of an accounting firm and that the proffered position requires a person with a bachelor's degree or the equivalent because its duties are very specialized. He further stated that the beneficiary uses MAS 90 accounting software which "requires the knowledge acquired in economics, and mathematics classes that are taken in a normal curriculum towards an Accounting Degree." He reiterated the previously provided list of duties of the proffered position.

The petitioner's organizational chart identifies 27 people the petitioner employs. It shows that it employs Mr. [REDACTED] previously identified as its director, as its CEO; that it employs [REDACTED] as its Operations Manager; and that it employs the beneficiary as its Cost Accountant Manager. The organizational chart shows that the beneficiary does not have any subordinates. It does not indicate that anyone holds the position of president in the petitioner's organization, and does not show that the petitioner employs a bookkeeping clerk or accounting clerk.

Two of the petitioner's own vacancy announcements also state that the person in the proffered position would supervise others and that the position requires a bachelor's degree in accounting and finance. The third of the petitioner's vacancy announcements reiterates the duties of the proffered position as previously stated in Mr. [REDACTED] letter, and asserts that the proffered position requires an unspecified bachelor's degree.

In her May 4, 2013 letter, counsel, apparently referring to the vacancy announcements placed by other firms, stated the following:

As evidence that the position in question is a specialty occupation and the need for a cost account manager is regularly require[d] by similarly sized businesses with similar annual incomes please find print outs for advertisements for cost account management position[s] in small to mid[-]size companies all requiring a minimum of a Bachelor's Degree in Accounting. Although it is not customary for companies to describe their firm size in job listings we had contacted the companies by phone and gained the necessary information. Please note that [REDACTED] is a distribution company with 16 employees, and [REDACTED] is a also [sic] a distribution company with 50 employees. We have included print outs from their company websites and all of their job listings for Account Management positions require at least a Bachelor's degree in accounting. Please note that a call to any of the hundred job listings we provided in similar [sic] in scope and size firms to the petitioner will confirm that it is common in the industry to have an in[-]house [C]ost Account Manager and that a degree is necessary for the job duties to be performed properly.

As to the visa petition filed by a different petitioner for a different beneficiary, counsel stated:

[P]lease find documentation from [REDACTED], which is in the business of distributing its products within the U.S. as is the petitioner. Please note that they too employ accountants with a degrees [sic] only and attached find a copy of the approval notice for the H1B account management position for one of their recent employees together with a copy of her diploma ion [sic] accounting and a description of her duties which is [sic] very similar to those of the Beneficiary in this case.

On May 24, 2013, the service center issued a NOID in this matter. That notice states:

[O]n June 2, 2011, an administrative site visit was performed at the address listed on the petition as the location where the beneficiary would work. Upon review of the work location address at [REDACTED] the site inspector discovered that the beneficiary was not being employed solely as a Cost Accountant Manager as indicated on the petition. Instead, the beneficiary indicated that she is employed as an Operations Manager and has been acting as the Operations Manager for the past 3 years. In addition, a review of the USCIS records revealed that the beneficiary has signed more than one petition on behalf of the company as the "director" of the company. As such, the evidence appeared to show that the beneficiary is no longer employed by the petitioner in the capacity specified in the petition; and that the statement of facts contained in the petition or on the application for a temporary labor certification was not true and correct, inaccurate, fraudulent, or misrepresented a material fact.

In response, counsel submitted: (1) documents showing that the petitioner employed Mr. [REDACTED] during 2011; (2) a statement dated September 4, 2012, signed by the beneficiary; (3) a statement dated March 9, 2013, signed by Mr. [REDACTED] and (4) counsel's own letter, dated June 18, 2013.

In her September 4, 2012 statement, the beneficiary acknowledged that she was interviewed at work on June 2, 2011, but denied that she ever stated that she worked as anything other than the petitioner's cost account manager.

In his March 9, 2013 letter, Mr. [REDACTED] stated that the petitioner employs Mr. [REDACTED] as its Operations Manager, and that the beneficiary has only worked as the petitioner's cost accounting manager.

In her own June 18, 2013 letter, counsel stated that the beneficiary did not indicate that she worked as the petitioner's operations manager and that, because she has a heavy accent, the officer conducting the administrative site visit may have misunderstood her. Counsel also stated that several of the petitioner's employees are permitted to sign in the director's stead when he is

unavailable, and that the beneficiary having signed visa petitions as the petitioner's director is not indicative of her acting outside the scope of the proffered position. Counsel further stated that the lack of detail in the NOID deprived the petitioner of the opportunity to contest the adverse evidence.

The evidence pertinent to Mr. [REDACTED] includes (1) an employment contract executed by the petitioner and Mr. [REDACTED] (2) 2011 and 2012 Form W-2 Wage and Tax Statements; (3) the petitioner's Employer's Contribution and Wage Reports for the first quarter of 2011 and the second quarter of 2012; (4) payroll statements for various irregular periods in 2011 and 2012; and (5) printouts of e-mail exchanges that included Mr. [REDACTED]

The employment contract is dated January 31, 2011, and indicates that the petitioner began to employ the beneficiary on that date. The W-2 forms, payroll statements, and wage reports submitted indicate that the petitioner employed Mr. [REDACTED] during 2011 and 2012. In one of the e-mails provided, Mr. [REDACTED] discusses the status of orders and related matters with a customer and identifies himself as the petitioner's "Warehouse/Operations Manager."

The director denied the petition on July 2, 2013, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation. More specifically, the director found that the petitioner failed to show what the beneficiary has and will be doing for the requested validity period and satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel contended that the petitioner was entitled to notice of derogatory evidence pursuant to 8 C.F.R. § 103.2(b)(16)(i) and implied that such required notice was not accorded.

Counsel provided various documents pertinent to the petitioner's business, four letters from other companies, and a brief. The authors of each of the four letters state that their companies have conducted business with the petitioner for some years. A letter from [REDACTED] on letterhead of [REDACTED] although it does not identify Mr. [REDACTED] position with that company, states, in addition, that Mr. [REDACTED] is the petitioner's "Operation Manager." A letter from [REDACTED] states, both that Mr. [REDACTED] is the petitioner's operations manager and that the beneficiary is the petitioner's cost manager. A third letter, from [REDACTED] states: "We have known [the beneficiary] since 2004 and she has been our partner in business who has negotiated pricing and cost analysis for [the petitioner's] transportation and logistics needs." The fourth letter from [REDACTED] states:

We have known [the beneficiary] since 2009 and she has been the person responsible for pricing negotiation and cost analysis and management of ocean freight so as to ensure the most effective means of shipping cost of their products from overseas. To our knowledge, [the beneficiary] dedicates all her time in all issues involved with cost analysis, statistics and reports regarding the most cost effectiveness means of operating the company which has contributed to the success of the company in this difficult economy.

In the brief, counsel asserted that the documents pertinent to the petitioner's business are the beneficiary's work product. Many of those documents contain no indication that they were prepared or viewed by the beneficiary. Others do bear the beneficiary's name.

Counsel also reiterated the assertion that the beneficiary had never stated that she worked in any position other than cost account manager, and asserted, in the alternative, that if the beneficiary had described her position as operations manager that would not be dispositive. Counsel stated that the petitioner employs another person as its operations manager.

Counsel also stated that the denial of the visa petition was largely based on statements allegedly made by the beneficiary, and not supported by statements of any other employees or by documentary evidence. Counsel stated that the "site visit [cannot] be considered an investigation since it consisted only of a brief conversation with the Beneficiary."

IV. ANALYSIS

We observe, pertinent to the notice issue raised by counsel, that the notice required in 8 C.F.R. § 103.2(b)(16)(i) pertains only to evidence of which the petitioner is unaware. There is no indication in the record that the petitioner would have been unaware of the visa petitions it filed and the contents thereof and, thus, notice of the contents of those documents was not required pursuant to 8 C.F.R. § 103.2(b)(16)(i).

Further, the petitioner was advised, in an NOID, that the beneficiary had revealed that she works as the petitioner's operations manager, which is not the position proffered in the instant case. The petitioner was also advised that the beneficiary had signed visa petitions for other beneficiaries on the petitioner's behalf, representing herself as the petitioner's director. The petitioner was accorded ample notice of the derogatory evidence.

Yet further, even if the petitioner was unaware of this information, and even if notice had not been provided, what remedy would appropriately cure the procedural defect urged by counsel, beyond the appeal process itself, is unclear. In any event, the issue of notice is now moot, as the petitioner has been informed of the adverse evidence, and providing an additional notice of the adverse evidence would serve no purpose. Further, counsel responded to that evidence on appeal. We find that any procedural error has thus been cured.

Further, we observe that the assertion that the beneficiary has performed duties other than those of the position proffered is, in fact, supported by documentary evidence. That is, the beneficiary signed visa petitions in which she represented herself to be the petitioner's director.

We are not persuaded by the assertion that the beneficiary's representation that she was the petitioner's director is only indicative of a "right of signature" in the event that the petitioner's actual director was unavailable. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the

visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record with independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* In this case, the petitioner has provided an explanation of the doubt cast on the evidence. An mere explanation or a general denial, however, are not the "independent objective evidence" contemplated by *Matter of Ho*, and are insufficient to reconcile the discrepancy of the beneficiary being represented on the visa petition as the petitioner's cost accountant manager, and representing herself, on other visa petitions, to be the petitioner's director.

Also, while counsel asserts that additional investigation could have been conducted, the officer conducting the interview was not obliged to confirm the beneficiary's admission with any other employee of the petitioner or to gather documentary evidence in its support. The admission of the beneficiary that she was working in some capacity other than the proffered position is sufficient to show that she would work in that other capacity, rather than the proffered position, if the instant visa petition were approved. Again, a mere explanation is not the independent objective evidence contemplated by *Matter of Ho*, and we find the explanations offered unpersuasive. Insufficient reason exists to doubt that the site visit was competently conducted and faithfully reported.

Again, the beneficiary's admission appears to conflict with the assertion, made in the visa petition, that she works as the petitioner's cost accountant manager. The petitioner's response is, essentially, a general denial. The beneficiary asserts that she never made the statement attributed to her. Counsel has offered the explanation that the officer may have misunderstood the beneficiary. Counsel also provided the letters from [REDACTED]. Those letters do not demonstrate that the writers have such in-depth knowledge of the petitioner's operations that they can identify the substantive duties of the beneficiary's position and, in any event, would be unable to overcome the beneficiary's own statement that she is the petitioner's operations manager.

Counsel is correct that a job title is not dispositive of whether a position qualifies as a specialty occupation. However, the visa petition states that the beneficiary would be employed as a "cost accountant manager," and the beneficiary described her position as operations manager. Those are distinctly different positions with distinctly different job duties. That the beneficiary characterized her job as an operations manager position suggests that the beneficiary would not perform the duties described by Mr. [REDACTED]. That the petitioner employs Mr. [REDACTED] and characterizes his position as operations manager is insufficient to reconcile the discrepancy between Mr. [REDACTED] list of duties and the beneficiary's assertion that she is the petitioner's operations manager. Because that discrepancy has not been reconciled, the petitioner has not established, by a preponderance of the evidence, the duties that the beneficiary would perform.

Further, although the job title "cost accountant manager," as stated on the visa petition, is claimed to be supervisory, and two of the petitioner's vacancy announcements provided indicate that the petitioner's cost account manager would supervise others, the organizational chart shows that the beneficiary has no subordinates and that the petitioner does not employ a bookkeeping clerk, an

accounting clerk, or anyone in any position that would typically report to a cost accountant manager, cost account manager, or managerial accountant. The evidence submitted by counsel conflicts with the assertion that the beneficiary has supervisory responsibilities.

On appeal, counsel asserted that the beneficiary will supervise employees of other companies that are held in common ownership, and provided organizational charts purporting to identify those employees. However, we do not find the organizational charts persuasive. The evidence the petitioner provided is contradictory and, consistent with *Matter of Ho*, the petitioner is obliged to reconcile discrepancies with independent objective evidence. Neither counsel's assertion nor the organizational charts submitted constitute independent objective evidence. The discrepancy pertinent to whether or not the proffered position is supervisory remains a reason to doubt that the duty description provided by Mr. [REDACTED] is an accurate description of the duties the beneficiary would actually perform for the petitioner.

The lack of any bookkeeping or accounting clerks suggests another reason to doubt the petitioner's assertion that the beneficiary would perform only the duties described in Mr. [REDACTED] description. The petitioner does not employ a bookkeeper or accounting clerk, which suggests that the beneficiary, if she worked in any capacity related to accounting, would record the petitioner's financial transactions, updating statements, and checking financial records for accuracy (all duties of a bookkeeping clerk and/or accounting clerk). Counsel asserted, on appeal, that the petitioner's bookkeeping is done by a foreign entity that is under common ownership with the petitioner, and provided an organizational chart to support that assertion. However, again, counsel's assertion and the organizational charts provided are not the independent, objective evidence contemplated by *Matter of Ho*, and we do not find the scant evidence in support of counsel's assertion persuasive. It appears more likely than not that the beneficiary is being hired to perform, at least in substantial part, the duties of a bookkeeper or accounting clerk. This is an additional reason to doubt that the duty description provided by Mr. [REDACTED] is an accurate description of the duties the beneficiary would actually perform for 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 is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for 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. 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 visa petition will remain denied for this reason.

V. ADDITIONAL ISSUES

The record suggests additional issues that were not addressed in the decision of denial but that, nonetheless, may also preclude approval of this visa petition.

The petitioner's registration with the Illinois Secretary of State indicates that the beneficiary is the petitioner's president. That the beneficiary is the petitioner's president suggests that the beneficiary may exercise such a degree of control over the petitioner that the petitioner and beneficiary do not have a true employer-employee relationship within the meaning of 8 C.F.R. § 214.2(h)(4)(ii), and the petitioner may not have standing to file the instant visa petition as the petitioner's employer. If this is so, then the petition should be denied for this additional reason.

The petitioner was not apprised of the fact that the website of the Illinois Secretary of State lists the beneficiary as its president and has not been accorded the opportunity to contest that information and the inferences that may be drawn from it. Although the identity of the petitioner's president is a matter known to the petitioner, and does not trigger any right to notice pursuant to 8 C.F.R. § 103.2(b)(16)(i), we choose, as a matter of discretion, not to rely on that evidence in today's decision. We observe, however, that if the visa petition were otherwise approvable, the petitioner would be obliged to address the issues of whether the beneficiary is the petitioner's president, as Illinois records currently reflect; whether the petitioner concealed that information in submissions to USCIS; and whether, if the beneficiary is the petitioner's president, the petitioner may be considered the beneficiary's intending employer within the meaning of section 101(a)(15)(H)(i)(b) of the Act.

Additionally, we observe that the petitioner has filed three H-1B visa petitions on behalf of the beneficiary.

The first, [REDACTED] was approved for employment from March 2, 2011 to March 1, 2012. Approval of that visa petition was revoked on February 15, 2013. The petitioner appealed that revocation to us. The appeal of that decision of revocation was dismissed.

The second visa petition, [REDACTED] was approved for employment from March 2, 2012 to March 1, 2013. Approval of that visa petition was revoked on May 23, 2013. The appeal of that decision of revocation was dismissed.

This instant petition is the third visa petition. On Page 2 of the instant Form I-129 visa petition, at Item 2.b, the petitioner indicated that the instant visa petition is a petition for continuation of previously approved employment without change with the same employer. At Item 4.c, the petitioner indicated that the petitioner is requesting extension of the beneficiary's stay.

An extension petition may be filed only if approval of the visa petition it seeks to extend remains valid. 8 C.F.R. § 214.2(h)(14). The instant extension visa petition was, in fact, filed prior to the revocation of the approval of the visa petition it seeks to extend. However, as stated in 8 CFR

103.2(b)(1), a petitioner must establish eligibility not only at the time of filing. The petitioner "must continue to be eligible through adjudication."

If approval of a visa petition has been revoked, it does not remain valid. *C.f. Matter of Al Wazzan*, 25 I&N Dec. 359, 367 (AAO 2010).

Approval of the visa petition that the petitioner is seeking to extend [REDACTED] has been revoked and the appeal taken from that decision of revocation has been dismissed. For that reason, the instant extension petition may not be approved. We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The previous visa petition ([REDACTED]) which the instant petition seeks to extend is no longer valid; therefore, the instant petition must be denied.

VI. CONCLUSION

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 motion is granted and the underlying petition remains denied.