

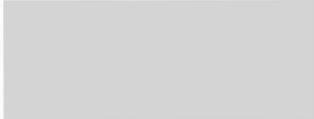


U.S. Citizenship
and Immigration
Services

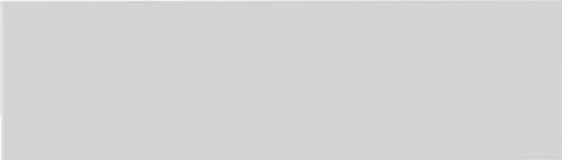
(b)(6)



DATE: **APR 03 2015** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary:

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

ON BEHALF OF PETITIONER:


INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a 4-employee "International Trade, Wholesale, and Export" firm established in [REDACTED]. In order to employ the beneficiary in what it designates as a "Logistics Manager" position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserts that the director's basis for denial was erroneous and contends that the petitioner satisfied all evidentiary requirements.

As will be discussed below, we have determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

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 director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a Logistics Manager position, and that it corresponds to Standard Occupational Classification (SOC) code and title 11-3071, Transportation, Storage, and Distribution Managers, from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level III (experienced).

With the visa petition, the petitioner submitted evidence that the beneficiary received a bachelor's degree in computer science from [REDACTED] in Korea. The petitioner also submitted evidence pertinent to the beneficiary's employment experience. An evaluation in the record states that the beneficiary's education and employment experience, considered together, are equivalent to a U.S. bachelor's degree in management with a concentration in logistics.

The petitioner also submitted, *inter alia*, (1) a letter, dated March 15, 2014, from [REDACTED] signing as the petitioner's president, and (2) an organizational chart of the petitioner's operations.

Mr. [REDACTED] letter states that Mr. [REDACTED] himself has been performing the duties of the proffered position. Mr. [REDACTED] provided the following narrative description of the duties of the proffered position:

In the position of Logistics Manager, the Beneficiary will plan, analyze, direct and coordinate domestic and international logistical systems involving purchasing, distributing, warehousing, customer service and forecasting, planning and coordination of logistics management.

The Logistics Manager will be responsible for planning and coordinating the Company's logistics management by creating strategic plans for carrier contract negotiations, shipment order handling, transportation network modeling, cargo and freight planning, transportation analysis, and order execution and monitoring. In this capacity, the Beneficiary will exercise judgment as he coordinates and executes the Company's business plans involving domestic and international logistics and supply chain systems, consistent with and appropriate to the accomplishment of its long-range objectives for increased competitiveness and profitability within the wholesale clothing market. In addition to personnel management, wholesale/export operations and research, the Beneficiary will also oversee the financial aspects of logistics management of the Company's wholesale export distribution operations.

Mr. [REDACTED] also provided the following bulleted description of the duties of the proffered position:

- Direct, manage and coordinate sourcing, purchasing, logistics, warehousing, transportation, customer service and distribution activities of products to retailers in South Korea.
- Manage all aspects of logistics systems and direct daily operations.
- Lead and direct strategic planning for logistics and customer services.
- Streamline processes and flow of goods from point of order to delivery and handle reverse logistics and return processing.
- Oversee the inventory management process, define strategies for appropriate inventory levels, eliminate obsolete and off-specification products and reduce aging matters.
- Develop methods and procedures for sourcing, purchasing, delivering, scheduling products from suppliers and vendors to achieve customer demand and minimize cost impacts to the Company[.]
- Develop and maintain delivery transportation system on domestic and international freight that ensure [sic] business needs are met.
- Analyze supply chain operations of suppliers and create policies and procedures for logistics activities.
- Conduct research and identify foreign and domestic suppliers and vendors and confer with foreign suppliers and vendors to determine product requirement, cost effectiveness, and customer demand for new and existing products.
- Manage customer service activities including order entry, customer satisfaction, interface with sales, regulatory and quality ensuring that the Company's customer

service creates competitive advantage in marketplace including resolving critical customer complaints.

- Create, manage and achieve the overall budgets for logistics and customer service activities.
- Perform statistical analysis of customer sales records and inventory levels, and develop and lead sales and operations planning process including updated forecast that leads to a sales plan, production plan, inventory plan, customer lead time (backlog) plan, new product plan, strategic initiative plan and resulting financial plan which enables effective supply chain management.
- Ensure Company is in compliance with laws and regulations regarding international freight system, including international shipping export custom regulations, fees, payment and taxes.
- Resolve any legal and regulatory issues pertaining to domestic and international transportation/distribution.
- Maintain receiving, warehousing and distribution operations by initiating, coordinating and enforcing program operational and personnel policies and procedures.
- Safeguard warehouse operations and contents by establishing and monitoring security procedures.
- Monitor, organize and encourage teamwork within the workforce to ensure set productivity targets are met.
- Recruit, hire, train and supervise personnel and participate in personnel development through talent acquisition and performance management, providing opportunity for promotion.

As to the educational requirement of the proffered position, Mr. [REDACTED] stated:

Our company's need for a Logistics Manager with a minimum of a Bachelor's or higher degree in Logistics, Supply Chain Management or a closely related field is due to the need for someone with in-depth knowledge, both theoretical and applied, in logistical engineering and supply chain management processes

Mr. [REDACTED] detailed the beneficiary's previous employment experience and stated that since December of 2011, the beneficiary had worked as the petitioner's General Manager. He stated:

As the General Manager, Mr. [REDACTED] has been responsible for the day-to-day management of sales and database administration operations, including analyzing, overseeing and maintaining the ordering process, export activities, sales, warehousing, inventory and distribution processes. In addition, he has been overseeing the performance of statistical analysis of sales records and inventory levels. He has been analyzing and reviewing all sales, inventory and distribution reports/records produced by his subordinates for accuracy of information and compliance with established company procedures. He has been responsible for

examining purchasing/sales and inventory records, reviewing the present existing business operations and creating efficient business integration. He has been reviewing, analyzing and determine [sic] reasons for discrepancies between inventory and stock control records and recommending remedial actions to resolve discrepancies.

[The beneficiary] has been providing much needed management oversight of our purchasing/sales, database administration, distribution and management supervision and has been monitoring the company for efficiency. He has been analyzing, developing and implementing business operations and management systems and procedures to increase distribution efficiency between the U.S. and Korea and to reduce costs, and improve the coordination of sourcing, purchasing, sales, warehousing and export activities.

The petitioner's organizational chart indicates that [REDACTED] is the petitioner's "President/Logistics Mgr.—Will be President/General Manager," and that he supervises and will continue to supervise the beneficiary. It indicates that the beneficiary is the petitioner's "General Manager – Will be Logistics Manager." It indicates that the beneficiary supervises and will continue to supervise [REDACTED] the petitioner's "Manager, Sales and Database Administration." It indicates that the petitioner also employs [REDACTED] as its "Purchasing/Sales Professional," whom [REDACTED] supervises and will continue to supervise. It further indicates that the petitioner proposes to hire a Database Administrator and a Shipping/Warehouse Inventory Specialist, whom [REDACTED] would supervise.

On May 2, 2014, 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 including a more detailed description of the duties of the proffered position. The service center also provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements.

In response, the petitioner submitted, *inter alia*: (1) a letter, dated July 13, 2014, from [REDACTED] and (2) counsel's own letter, dated July 24, 2014.

In his July 13, 2014 letter, [REDACTED] stated he has been working as the petitioner's logistics manager¹ and that the evidence provided establishes that logistics manager positions require a minimum of a bachelor's degree in a specific specialty or its equivalent. He provided a revised description of the duties of the proffered position, which reads as follows:

20% (8 hrs/wk) – Direct, manage and coordinate sourcing, purchasing, logistics, warehousing, transportation, customer service and distribution activities of products to retailers in South Korea.

¹ The record does not contain evidence pertinent to the educational qualifications of [REDACTED] for the performance of the duties of the proffered position.

- Develop methods and procedures for sourcing, purchasing, delivering, scheduling products from suppliers and vendors to achieve customer demand and minimize cost impacts to the Company.
- Manage all aspects of logistics system and direct daily operations.
- Lead and direct strategic planning for logistics and customer service.

[Explanatory material omitted.]

- 10% (4 hrs/wk) - Conduct research and identify foreign and domestic suppliers and vendors and confer with foreign suppliers and vendors to determine product requirement, cost effectiveness, and customer demand for new and existing products.

[Explanatory material omitted.]

- 10% (4 hrs/wk) - Streamline processes and flow of goods from point of order to delivery and handle reverse logistics and return processing.

[Explanatory material omitted.]

- 10% (4 hrs/wk) - Oversee the inventory management process, define strategies for appropriate inventory levels, eliminate obsolete and off-specialization products and reduce aging matters.

[Explanatory material omitted.]

- 10% (4 hrs/wk) - Develop and maintain delivery transportation system on domestic and international freight that ensures business needs are met.

[Explanatory material omitted.]

- 10% (4 hrs/wk) - Analyze supply chain operations of suppliers and create policies and procedures for logistics activities.

[Explanatory material omitted.]

- 10% (4 hrs/wk) - Create, manage and achieve the overall budgets for logistics activities.
- Monitor, organize and encourage teamwork within the workforce to ensure set productivity targets are met.
 - Recruit, hire, train and supervise personnel and participate in personnel development through talent acquisition and performance management, providing opportunity for promotion.

[Explanatory material omitted.]

10% (4 hrs/wk) – Maintain receiving, warehousing and distribution operations by initiating, coordinating and enforcing program operational and personnel policies and procedures.

- Safeguard warehouse operations and contents by establishing and monitoring security procedures.

[Explanatory material omitted.]

10% (4 hrs/wk) – Ensure Company is in compliance with laws and regulations regarding international freight system, including international shipping export custom regulations, fees, payment and taxes.

- Resolve any legal and regulatory issues pertaining to domestic and international transportation/distribution.

The director denied the petition on August 7, 2014, finding that the petitioner did not demonstrate that the proffered position qualifies as a position in a specialty occupation. On appeal, the petitioner asserts that the evidence submitted is sufficient to demonstrate, by a preponderance of the evidence, that logistician positions require a minimum of a bachelor's degree in a specific specialty or its equivalent.

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.

A. 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), 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. Discussion

Preliminarily, we find that the petitioner has provided inconsistent descriptions of the duties of the proffered position, particularly as it relates to the petitioner's sales operations. In the petitioner's March 15, 2014 letter, the petitioner stated that the beneficiary would, *inter alia*, "[m]anage customer service activities including order entry, customer satisfaction, interface with sales," "[p]erform statistical analysis of customer sales records," and "develop and lead sales and operations planning process including updated forecast that leads to a sales plan." However, in response to the director's RFE, the petitioner omitted these particular duties from the duties of the proffered position. Instead, the petitioner appears to have delegated these sales duties to the beneficiary's subordinates. The petitioner did not submit an explanation, corroborated by competent evidence, for this apparent revision of the proffered duties.

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.* At 591-592. Moreover, the petitioner cannot materially change a position's job responsibilities after submitting a visa petition. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits approval of the visa petition. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978); *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

We observe that the duties of the proffered position, as well as the omitted sales duties, substantially overlap with or are identical to the duties the beneficiary was performing as the petitioner's General Manager. Specifically, the petitioner stated in its March 15, 2014 letter that "[a]s the General Manager, [the beneficiary] has been responsible for the day-to-day management of sales and database administration operations, including analyzing, overseeing and maintaining the ordering process, export activities, sales, warehousing, inventory and distribution processes." The petitioner further stated that the beneficiary "has been overseeing the performance of statistical analysis of sales records and inventory levels. He has been analyzing and reviewing all sales, inventory and distribution reports/records produced by his subordinates . . . [and] examining purchasing/sales inventory records." The petitioner stated that the beneficiary "has been providing much needed management oversight of our purchasing/sales, database administration, distribution and management supervision." We also observe that the petitioner's organizational chart indicates that the beneficiary's position in the company's hierarchy will not change, despite the change of his position from General Manager to Logistics Manager.² The petitioner has not sufficiently distinguished the duties of the proffered position from the duties the beneficiary performed as its General Manager.

Under these circumstances, we find that the petitioner has not sufficiently demonstrated the substantive nature of the duties the beneficiary would perform. 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. As 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), it cannot be found that the proffered position qualifies as a specialty occupation.

Further, we find that, even if the petitioner's job description is presumed to be reliable, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of sourcing, purchasing, logistics, warehousing, transportation and delivery, customer service, distribution, institutional security, inventory management, personnel management, budget management, and business administration in

² The beneficiary was previously supervised by the petitioner's president, and the beneficiary supervised [REDACTED] who supervised [REDACTED]. In the proffered position, the beneficiary would continue to be supervised by the petitioner's president, and would continue to supervise [REDACTED] who would continue to supervise [REDACTED].

general, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we turn now to the application of each supplemental, alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

To determine whether the proffered position qualifies as a specialty occupation position, we turn first to the criteria 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 will now address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). We recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³ We reviewed the information in the *Handbook* regarding the occupational category "Transportation, Storage, and Distribution Managers" and note that this occupation is one for which the *Handbook* does not provide detailed data. The *Handbook* states the following about these occupations:

Data for Occupations Not Covered in Detail

Although employment for hundreds of occupations are covered in detail in the *Occupational Outlook Handbook*, this page presents summary data on additional occupations for which employment projections are prepared but detailed occupational information is not developed. For each occupation, the Occupational Information Network (O*NET) code, the occupational definition, 2012 employment, the May 2012 median annual wage, the projected employment change and growth rate from 2012 to 2022, and education and training categories are presented.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Data for Occupations Not Covered in Detail," <http://www.bls.gov/ooh/about/data-for-occupations-not-covered-in-detail.htm> (last visited March 25, 2015).

Thus, the narrative of the *Handbook* reports that there are some occupations for which only summary data is prepared but detailed occupational profiles are not developed. For example, the full-text of the *Handbook* regarding "Transportation, Storage and Distribution Managers" states the following:⁴

³ All of our references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>.

⁴ The *Handbook* only includes summary data for a range of occupations, including for example, postmasters and mail superintendents; agents and business managers of artists, performers, and athletes; farm and home management advisors; audio visual and multimedia collections specialists; clergy; merchandise displayers

Transportation, Storage, and Distribution Managers

(O*NET 11-3071.00, 11-3071.01, 11-3071.02, and 11-3071.03)

Plan, direct, or coordinate transportation, storage, or distribution activities in accordance with organizational policies and applicable government laws or regulations. Includes logistics managers.

- 2012 employment: **105,200**
- May 2012 median annual wage: **\$81,830**
- Projected employment change, 2012-22:
 - Number of new jobs: **5,100**
 - Growth rate: **5 percent (slower than average)**
- Education and training:
 - Typical entry-level education: **High school diploma or equivalent**
 - Work experience in a related occupation: **5 years or more**
 - Typical on-the-job-training: **None**

Id. (last visited March 25, 2015).

We observe that the *Handbook* does not indicate that transportation, storage and distribution manager positions comprise an occupational group for which normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. The *Handbook* summary data provides "education and training categories" for occupations. The occupational category "Transportation, Storage, and Distribution Managers" falls into the group of occupations for which a high school diploma or equivalent is the typical entry-level education. Accordingly, the *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty is normally the minimum requirement for entry into this occupational category.

When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the petitioner to provide persuasive evidence that the proffered position more likely than not satisfies this or one of the other three criteria, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from

and window trimmers; radio operators; first-line supervisors of police and detectives; crossing guards; travel guides; agricultural inspectors, as well as others.

other objection, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation.

In response to the RFE, the petitioner refers to the O*NET to state that "Transportation, Storage, and Distribution Managers" is a combined occupational category, which includes "Logistics Managers" listed as SOC (ONET/OES Code) 11-3071.03. The petitioner further indicates that according to O*NET, "Logistics Managers [are] listed as 11-3071.03 requiring a Bachelor's degree or Master's degree, with only 4% permitting anything less than a Bachelor's degree." The petitioner also states that "Transportation Managers are listed as 11-3071.01 with a general requirement of a Bachelor's degree or higher and with 9% allowing less than a Bachelor's degree, and Storage/Distribution Managers are listed as 11-3071.02 will with a majority requirement of a Bachelor's degree but with 29% allowing less than a Bachelor's degree." The petitioner asserts that "[t]his reflects that Logistics Managers are the most complex among these occupations and carry higher educational requirements than Transportation and Storage/Distribution Managers."

We note that the LCA in the record of proceeding indicates that the proffered position corresponds to the occupational classification of "Transportation, Storage, and Distribution Managers"-SOC (ONET/OES Code)11-3071.⁵ However, assuming *arguendo* that the proffered position corresponds to "Logistics Managers," the O*NET does not indicate that a bachelor's degree in a specific specialty or its equivalent is a requirement for entry into the particular position. As previously noted, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a baccalaureate or higher degree in a specific specialty or its equivalent that is directly related to the proposed position. Since there must be a close correlation between the required specialized studies and the position, the 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.

⁵ 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 to it. Here, while the petitioner claims that the proffered position corresponds to "Logistics Managers," it did not submit a certified LCA that corresponds to the correct occupational category.

In addition, the petitioner submitted several articles discussing logistics manager positions. However, the petitioner's reliance upon these articles is misplaced. For instance, the article "How to Become a Logistics Management Specialist" makes explicit that the jobs it is discussing are jobs with the military, government agencies, or government contractors. Thus, this article is not directly relevant to the proffered position in the instant case; however, even if it were relevant, that the article states that government agencies and the military require a high school diploma for such positions, and private sector government contractors may prefer a bachelor's degree. We observe that a high school diploma is not equivalent to a bachelor's degree in a specific specialty, and that a preference for a bachelor's degree is not a minimum requirement.

The article "Job Requirements for a Logistics Manager" states that "many logistics managers have a bachelor's degree," but it does not specify that a degree in a specific specialty is required. Moreover, this article states that a degree in business administration may be a sufficient educational qualification for a logistics manager position. We note that an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent, and does not qualify a position as a specialty occupation position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007); *cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

In response to the RFE, the petitioner submitted an advisory opinion dated June 30, 2014 from Dr. [REDACTED] associate dean at [REDACTED]. However, as discussed below, the letter from Dr. [REDACTED] is not persuasive in establishing the proffered position as a specialty occupation position.⁶

Dr. [REDACTED] provides a summary of his qualifications, including his educational credentials and professional experience. Based upon a complete review of Dr. [REDACTED] evaluation, however, he has failed to provide sufficient information regarding the basis of his expertise on this particular issue.

The letter does not cite specific instances in which his past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that he has 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 he is an authority on those specific

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.*

requirements.⁷ He claims to have had the opportunity over the years to become familiar with the qualifications required to attain the position of logistics manager, but he did not identify the specific elements of his knowledge and experience that he may have applied in reaching his conclusions here.

Based upon a complete review of Dr. [REDACTED] letter and curriculum vitae, we find that he has failed to provide sufficient information regarding the basis of his claimed expertise on this particular issue. The documentation does not establish his expertise pertinent to the hiring practices of organizations seeking to fill positions similar to the proffered position in the instant case. Without further clarification, it is unclear how his education, training, skills or experience would translate to expertise or specialized knowledge regarding the current recruiting and hiring practices of an enterprise engaged in "international trade, wholesale, and export" (as designated by the petitioner in the Form I-129) or similar organizations for logistics manager positions (or parallel positions).

With regard to the opinion letter itself, Dr. [REDACTED] does not reference or discuss any studies, surveys, industry publications, authoritative publications, or other sources of empirical information which he may have consulted in the course of whatever evaluative process he may have followed. It is noted that Dr. [REDACTED] provided a brief description of the petitioner's business and a job description for the proffered position. Upon review of Dr. [REDACTED] opinion letter, there is no indication that he possesses any knowledge of the petitioner's proffered position beyond this information. He simply lists the tasks in bullet-point fashion, verbatim from the petitioner's support letter, and claims that the appropriate knowledge required for these job duties would be a bachelor's degree in above mentioned areas. He does 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 Dr. [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. His opinion does not relate his 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.

Dr. [REDACTED] states that "in the matter of the employment position of Logistics Manager offered by [the petitioner], it is my professional and experienced opinion that the described job duties are of a professional nature and require preparation at the Bachelor's Degree level in Supply Chain Management, Logistics, or a related area at a minimum." However, Dr. [REDACTED] does not provide a substantive, analytical basis for his opinion and ultimate conclusion. His opinion does not relate his conclusion to specific, concrete aspects of this petitioner's business operations to demonstrate a

⁷ Dr. [REDACTED] claims that he has published journal articles and presented talks in different areas of business, management, and information science. He further indicates his publications have been widely cited. However, according to his curriculum vitae, his most recent publications appear to be unrelated to the instant case. For example, in 2010, he co-authored an article regarding "[REDACTED]"

" These topics do not appear to relate to the petitioner's industry or the proffered position.

sound factual basis for the conclusion about the educational requirements for the particular position here at issue. Moreover, he did not support his conclusions by providing copies or citations of any research material used. He has not provided sufficient facts that would support the assertion that the proffered position requires at least a bachelor's degree in a specific specialty (or its equivalent).

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

We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we find that the petitioner has not satisfied 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 for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

In determining whether there is 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent.

Also, there are no submissions from professional associations in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to

have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

The record does contain the July 1, 2014 letter from [REDACTED]

[REDACTED] It states that based on the duties attributed to the proffered position and the requirements of parallel positions in the petitioner's industry, the proffered position would require a bachelor's degree in logistics, supply chain management, or a closely related field. Based upon a complete review of Mr. [REDACTED] letter, we note he has failed to provide sufficient information regarding the basis of his claimed expertise on this particular issue. While he claims to have over 9 years of experience in this industry, there is no indication that he has published any work or conducted any research or studies pertinent to the educational requirements for logistics manager positions (or parallel positions) in the petitioner's industry for similar organizations, and no indication of recognition by professional organizations that he is an authority on those specific requirements.

Moreover, Mr. [REDACTED] relied on the petitioner's job description upon which he based his conclusion. However, we noted inconsistencies in the job descriptions provided by the petitioner and concluded that the petitioner has not sufficiently demonstrated the substantive nature of the duties the beneficiary would perform. Further, there is no indication that Mr. [REDACTED] contains any knowledge of the proffered position as it would be performed in the context of the petitioner's operations beyond the duty description upon which he based his opinion. He does not demonstrate in-depth knowledge of the specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise. For instance, there is no evidence that Mr. [REDACTED] 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.

Mr. [REDACTED] asserts a general industry educational standard for logistics manager positions without referencing any supporting authority or any empirical basis for the pronouncement. He states that he "reviewed the duties and the degree requirement for parallel positions among similarly situated companies in [the petitioner's] industry," but does not identify sources of his review. Likewise, he does not provide a substantive, analytical basis for his opinion and ultimate conclusion. He does not relate his conclusion to specific, concrete aspects of the 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 summary, and for each and all of the reasons discussed above, we conclude that the opinion letter rendered by Mr. [REDACTED] is not probative evidence to establish the proffered position qualifies as a specialty occupation. The conclusions reached by Mr. [REDACTED] are not supported by independent, objective evidence demonstrating the manner in which he reached such conclusions. There is an inadequate factual foundation established to support the opinion. As such, Mr. [REDACTED] findings will not be accorded any deference, and his opinion letter is not probative evidence towards satisfying any criterion of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In support of the petitioner's assertion that the proffered position is a specialty occupation, the petitioner submitted three job postings. However, upon review of the evidence, we find that the petitioner's reliance on the job announcements is misplaced.

One of those vacancy announcements was placed by a women's apparel retailer that claims to operate 599 stores. Another vacancy announcement was an unidentified chemical company that produces "stryenes/monomers, high quality resins, and specialty polymers." The other job posting did not provide information about the advertising employer. The petitioner did not supplement the record with further information and we are unable to determine if the advertising employer is similar to the petitioner.

Further, although each of those vacancy announcements contains some description of the duties for the position announced, none of the positions are described in sufficient detail to demonstrate that they are parallel to the proffered position. Additionally, contrary to the purpose for which the advertisements were submitted, the postings do not establish that at least a bachelor's degree in a specific specialty, or its equivalent, is required for the positions. For example, the posting from the women's apparel retailer indicates a Bachelor's degree in related field required but does not state that a specific specialty is required,

Finally, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from three announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.⁸

Thus, the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to positions that are (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

The evidence of record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties that comprise the proffered position entail such complexity or uniqueness as to constitute a position so complex or

⁸ USCIS "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). As just discussed, the petitioner has failed to establish the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the petitioner still fails to demonstrate what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

In the record of proceeding, the petitioner relies on Dr. [REDACTED] letter to assert that the proffered position is so complex or unique. However, we incorporate our earlier discussion and analysis regarding the opinion letter, and again note that the letter does 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).

In response to the RFE, the petitioner asserts that until now the president of its business has been performing the duties of the logistics manager. The petitioner further claims that since its business operations are "rapidly increasing and expanding and becoming more complex," it made a decision to separate the positions so that the "[p]resident carries the duties of [g]eneral [m]anager focusing on overall business expansion and new business opportunities, while employing a professional as a full-time [l]ogistics [m]anager to handle our complex international trade." However, the petitioner did not provide evidence to substantiate its business operations and its complexity. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Moreover, the petitioner failed to demonstrate how the duties that collectively constitute the proffered position require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner 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 of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate 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 particular position here.

The petitioner indicates that the beneficiary is well qualified for the proffered position. 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).

We will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.⁹

The petitioner's president stated, in his July 13, 2014 letter, that the petitioner has never placed vacancy announcements for the proffered position. In both of his letters, the petitioner's president stated that he has been performing the duties of the proffered position. The record contains no evidence of his educational qualifications for the position. The record contains no evidence that the petitioner has ever previously employed anyone else in the proffered position. The record contains insufficient evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, we will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

We have reviewed the petitioner's information regarding the proffered position. The petitioner claims that the nature of the specific duties of the position in the context of its business 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. We reviewed the petitioner's statements regarding the proffered position and its business operations. However, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position.

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. Therefore, the petitioner did not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

⁹ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position 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 employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and 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 has not established 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.

IV. ADDITIONAL ISSUES

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 qualifies as 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. Therefore, we need not address the beneficiary's qualifications further, except to note that, the combined evaluation of the beneficiary's education and work experience submitted by the petitioner is insufficient to establish that the beneficiary possesses the equivalent of a U.S. bachelor's degree in any specific specialty.

Briefly, the petitioner submitted an evaluation of the beneficiary's credentials, and the claimed equivalency was based in part on the beneficiary's prior work experience. However, the record does not establish that the evaluator has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience.¹⁰ See 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and (D)(1). As such, since evidence was not presented that the beneficiary has at least a U.S. bachelor's degree in any specific specialty, or its equivalent, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

V. CONCLUSION AND ORDER

An application or petition that fails to comply with the technical requirements of the law may be denied by us even if the service center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 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).

¹⁰ The record contains a letter dated September 19, 2012 from Dr. [REDACTED] Dean of School of Business at the [REDACTED]. We note that this letter was not produced as a contemporaneous document but rather predates Dr. [REDACTED] evaluation dated March 25, 2014 by more than a year. Further, Dr. [REDACTED] states that Dr. [REDACTED] is "authorized and qualified to grant 'life experience' credits through the [REDACTED] IDEAL "Innovative Degree Excellence in Accelerated Learning") degree completion program offered through the School of Continuing and Professional Studies." Notably, Dr. [REDACTED] is authorized to grant "life experience" credits, not "college-level credit," and not "college-level credit in the [pertinent] specialty as specified in 8 C.F.R. §214.2(h)(4)(iii)(D)(1). The petitioner did not provide further information to establish what constitutes "life experience" credits and that "life experience" evaluated for credit in the IDEAL program is substantially the same as "training and/or work experience which must be the basis of college-credit awarded by a person whom a petitioner holds out as qualifying as an 8 C.F.R. §214.2(h)(4)(iii)(D)(1) official.

Moreover, when we deny a petition on multiple alternative grounds, a petitioner can succeed on a challenge only if it shows that we abused our discretion with respect to all of the enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1037, *aff'd*, 345 F.3d 683; *see also BDPCS, Inc. v. Fed. Communications Comm'n*, 351 F.3d 1177, 1183 (D.C. Cir. 2003) ("When an agency offers multiple grounds for a decision, we will affirm the agency so long as any one of the grounds is valid, unless it is demonstrated that the agency would not have acted on that basis if the alternative grounds were unavailable.").

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. 128. Here, that burden has not been met.

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