

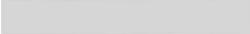


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 06 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:

SELF-REPRESENTED

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

I. PROCEDURAL BACKGROUND

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the California Service Center. In the Form I-129 visa petition, the petitioner describes itself as an enterprise engaged in providing legal services that was established in [REDACTED].¹ In order to employ the beneficiary in what it designates as an interpreter/translator 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, concluding that the petitioner did not establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that it satisfied all evidentiary requirements.

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

For the reasons that will be discussed below, we agree with the director that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.²

II. THE PETITION WAS NOT PROPERLY FILED

Upon a preliminary review, we have identified additional grounds that preclude the approval of the H-1B petition that were not identified by the director. Consequently, even if the petitioner overcame the basis for the director's denial of the petition (which it has not), it could not be found eligible for the benefit sought.

A. The Petitioner's Obligations

The regulation at 8 C.F.R. § 103.2(a)(1) states, in pertinent part, the following:

¹ On the Form I-129, the petitioner indicated that it has two employees, no gross annual income, and no net annual income.

² We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary, and such instructions are incorporated into the regulations requiring its submission.

The instructions for Form I-129 state that the petition must be properly signed. The instructions further indicate that a petition that is not properly signed will be rejected. Moreover, according to the instructions, a petitioner that does not completely fill out the form will not establish eligibility for the benefit sought and the petition may be denied.

The regulation at 8 C.F.R. § 103.2(a)(2), which concerns the requirement of a signature on petitions, states the following:

An applicant or petitioner must sign his or her benefit request. . . . By signing the benefit request, the applicant or petitioner . . . certifies under penalty of perjury that the benefit request, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on a benefit request that is being filed with the USCIS [U.S. Citizenship and Immigration Services] is one that is either handwritten or, for benefit requests filed electronically as permitted by the instructions to the form, in electronic format.

Pursuant to 8 C.F.R. § 103.2(a)(7)(i) and (iii), a petition which is not properly signed shall be rejected as improperly filed, and will not retain a filing date.

The regulation at 8 C.F.R. § 103.2(b)(1) provides, in pertinent part, the following:

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. Each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions.

The petitioner bears the burden of establishing eligibility for the benefit sought. A petitioner must establish that it is eligible for the requested benefit at the time of filing the petition. All required petition forms must be properly completed and filed with any initial evidence required by applicable regulations and the form instructions. *See* 8 C.F.R. § 103.2(b)(1).

In the instant case, the petitioner did not properly complete, sign and file the petition (specifically page 12). Notably, page 12 contains a signature block that reads, in pertinent part, as follows:

As an authorized official of the employer, I certify that the employer will be liable for the reasonable costs of return transportation of the alien abroad if the beneficiary is dismissed from employment by the employer before the end of the period of authorized stay.

Accordingly, the petitioner has not attested that it will comply with § 214(c)(5) of the Act, which states the following:

In the case of an alien who is provided nonimmigrant status under section 101(a)(15)(H)(i)(b) or 101(a)(15)(H)(ii)(b) and who is dismissed from employment by the employer before the end of the period of authorized admission, the employer shall be liable for the reasonable costs of return transportation of the alien abroad.

The regulation at 8 CFR § 214.2(h)(4)(iii)(E) further states, in pertinent part, the following:

The employer will be liable for the reasonable costs of return transportation of the alien abroad if the alien is dismissed from employment by the employer before the end of the period of authorized admission pursuant to section 214(c)(5) of the Act. . . . Within the context of this paragraph, the term "abroad" refers to the alien's last place of foreign residence. This provision applies to any employer whose offer of employment became the basis for an alien obtaining or continuing H-1B status.

Here, the petitioner has not demonstrated that it will meet its obligations with regard to the return transportation costs if the beneficiary is dismissed.

B. Multiple Employers

We further observe that the filing is for multiple employers. When a beneficiary is scheduled to perform work for multiple employers, each employer must submit a separate Form I-129 petition for the portion of the beneficiary's time to be spent performing duties for that employer. Here, the submission contains an employment contract indicating that the beneficiary will be employed by a for-profit corporation and a non-profit corporation (with distinct Federal Employer Identification Numbers), as well as a Labor Condition Application for each business entity. A United States employer seeking to classify a beneficiary an H-1B nonimmigrant worker must file a petition on Form I-129, as provided in the form instructions. 8 C.F.R. § 214.2(h)(2)(i)(A). If the beneficiary will perform services for more than one employer, each employer must file a separate petition with U.S. Citizenship and Immigration Services (USCIS) as provide in the form instructions. 8 C.F.R. § 214.2(h)(2)(i)(C).

C. Conclusion

The instant petition has not been properly filed. Pursuant to 8 C.F.R. § 103.2(a)(7)(i), a petition which is not properly completed shall be rejected as improperly filed, and no receipt date can be assigned to an improperly filed petition. *See also*, 8 C.F.R. § 103.2(b)(1). While the Service Center did not reject the petition, we are not controlled by service center decisions. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 at 3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001). The integrity of the immigration process depends on the employer properly signing and submitting the official immigration forms. We conduct appellate review on a *de novo* basis, and it was in the exercise of this function that we identified these

additional grounds for dismissing the appeal. *See Soltane v. DOJ*, 381 F.3d 145. Thus, for the reasons discussed, the petition may not be approved.

III. SPECIALTY OCCUPATION

A. The Legal Framework

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

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

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

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

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

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

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

knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

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

B. The Proffered Position

In support of the Form I-129, the petitioner submitted an undated document entitled "Position Description For Interpreter/Translator/Caseworker," which describes the proffered position as follows:

JOB DUTIES:

Responsible for listening to, understanding and translating spoken or written statements from one language to another. Reproduce statements in another language for unique listening or reading audience. Must perform accurate interpretation and translation of immigration, civil rights, employment and labor, contract and criminal

matters. Will conduct intake interviews, obtain documents, translate as necessary any such documents into English and provide both simultaneous and consecutive interpretation of administrative and judicial proceedings. May also be called upon to interpret for federal and local enforcement agencies, non-profit agencies or private attorneys on confidential matters.

QUALIFICATIONS:

Must have at least 5 years working experience in related position or a Bachelor's Degree from a college or technical school that is equivalent to United States standards. Must be familiar with computers work processing software and basic office equipment. Must adhere to the highest federal ethical standards and subject to the interpreter Code of Ethics. Must be fluent in English as well as in one or more of the following languages: Tagalog, Bengalese, Senegalese, Cantonese, Mandarin, Korean, Japanese, Russian, or Thai both written and spoken. Must have clean criminal records and a valid CNMI driver's license. Must be able to work flexible hours and possess ability to work independently in consultation with attorney.

With the petition, the petitioner submitted a job vacancy announcement it placed on the Commonwealth of the Northern Mariana (CNMI) Department of Labor website for the position. The announcement indicates that the position requires at least five years of working experience in a related position or a bachelor's degree from a college or technical school that is equivalent to United States standards.

Thereafter, the director requested additional evidence to establish that the proffered position qualifies as a specialty occupation. In response to the RFE, the petitioner provided another document entitled "Position Description for Interpreter/Translator/Caseworker," which provided the following description of the proffered position:

JOB DUTIES:

Responsible for listening to, understanding and translating spoken or written statements from one language to another. Reproduce statements in another language for unique listening or reading audience. Must perform accurate interpretation and translation of immigration, civil rights, employment and labor, contract and criminal matters. Will conduct intake interviews, obtain documents, translate as necessary any such documents into English and provide both simultaneous and consecutive interpretation of administrative and judicial proceedings. May also be called upon to interpret for federal and local enforcement agencies, non-profit agencies or private attorneys on confidential matters.

Incumbent must be able to effectively interview each client to determine the specific facts pertaining to the complaint, grievance or other legal matter for which the client seeks the firm's services. Incumbent must possess extensive knowledge regarding many complex federal and local laws such as immigration, labor, employment,

business, corporate, discrimination, criminal and civil matters in order to determine whether a client's facts fit within any such laws.

Incumbent must work closely with firm's attorneys to determine what legal strategy best fits the client's needs and continue to report and collaborate with the attorney throughout the case preparation, investigation and resolution whether in litigation, employment, corporate, victims' assistance, immigration or criminal matters.

Incumbent must be able to translate many required legal forms and support documents from English to the client's language and from the client's language to English.

Throughout the handling of the client's case from in-take to final resolution, incumbent must be able to communicate with client legal procedures and outcomes regarding the respective client's case. The skill level needed is high given the reality that often clients are not familiar with the legal system that is very different from that of their country of origin.

Incumbent must be able to manage time and work to meet deadlines as required by each particular client and the laws and regulations which are applicable to the determined resolution of the respective client's case.

QUALIFICATIONS:

Must have at least 5 years working experience in related position or a Bachelor's Degree from a college or technical school that is equivalent to United States standards. Must be familiar with computers work processing software and basic office equipment. Must adhere to the highest federal ethical standards and subject to the interpreter Code of Ethics. Must be fluent in English as well as in one or more of the following languages: Tagalog, Bengalese, Senegalese, Cantonese, Mandarin, Korean, Japanese, Russian, or Thai both written and spoken. Must have clean criminal records and a valid CNMI driver's license. Must be able to work flexible hours and possess ability to work independently in consultation with attorney.

The previously provided job vacancy announcement was also resubmitted in response to the RFE. Thus, the petitioner reiterated again and again that the proffered position requires "at least 5 years working experience in related position or a Bachelor's Degree from a college or technical school that is equivalent to United States standards."

C. Analysis

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, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

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

Here, the petitioner has repeatedly reported to USCIS that the proffered position requires at "least 5 years of experience in related position or a Bachelor's Degree from a college or technical school that is equivalent to United States standards." Thus, the petitioner reports that the duties of the proffered position can be performed (1) by an individual who possesses less than a bachelor's degree, specifically, by an individual with five or more years of experience;³ and (2) that the performance of the tasks does not require a bachelor's degree (or higher) in specific specialty directly related to the duties of the position, but, rather, a general-purpose degree or a degree in any discipline is sufficient.⁴ The petitioner's statements, therefore, indicate that the proffered position does not

³ A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm'r 1977). The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) states the following with regard to a service evaluation:

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty

⁴ USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 147. Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting

require at least a bachelor's or higher degree in the specific specialty or equivalent as a minimum for entry as required by the applicable statutory and regulatory provisions.

IV. PRIOR PETITIONS

On appeal, the petitioner asserts that it submitted a large volume of evidence in support of the instant petition. We note, however, it is not the volume of documentation that establishes eligibility for the benefit sought, but rather the relevance, probative value, and credibility of the documentation – both individually and within the context of the totality of the evidence.

The petitioner further claims that an H-1B petition filed on behalf of the beneficiary by the Office of Insular Affairs (OIA) was previously approved. The director's decision does not indicate whether the prior petition filed by the OIA was reviewed. However, we are not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). If the previous nonimmigrant petition was approved based on the same description of duties and assertions that are contained in the current record, it would constitute material and gross error on the part of the director. It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990). Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved a nonimmigrant petition on behalf of the beneficiary, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

For the reasons related in the preceding discussion, the petitioner has not established that it has satisfied the applicable statutory and regulatory provisions and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. Therefore, the appeal will be dismissed and the petition denied.

V. THE BENEFICIARY'S QUALIFICATIONS

of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

Id.

The beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner has not established that the proffered position requires a baccalaureate or higher degree in a specific specialty, or its equivalent. Therefore, we need not and will not address the beneficiary's qualifications.

VI. CONCLUSION AND ORDER

An application or petition that does not 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.⁵ See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of 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. 127, 128 (BIA 2013). Here, that burden has not been met.

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

⁵ As the appeal will be dismissed for the reasons discussed above, we need not and will not discuss the additional issues that we observe in the record of proceeding.