



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: APR 17 2015 OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

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

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

ON BEHALF OF PETITIONER:

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.

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a one-employee "legal service" established in [REDACTED]. In order to employ the beneficiary in what it designates as a full-time "law clerk" position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the evidence of record did not establish that the proffered position qualifies as a specialty occupation. The petitioner now files this appeal, asserting that the director's decision was erroneous.

As will be discussed below, we have determined that the director did not err in her decision to deny the petition. Beyond the director's decision, we have identified an additional ground of ineligibility, i.e., that the submitted Labor Condition Application (LCA) does not correspond to the petition. For these reasons, 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 director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's letter denying the petition; and (5) the petitioner's appeal and submissions on appeal.

I. FACTUAL AND PROCEDURAL HISTORY

As noted above, the petitioner describes itself on the Form I-129 as a one-employee "legal service" firm established in [REDACTED].¹ In a letter dated March 30, 2014 submitted with the petition, the petitioner described itself as a "law firm . . . dedicated to providing high quality, affordable and personalized legal services for clients, especially for those from Chinese community." The petitioner asserted that it is seeking to employ the beneficiary as a law clerk to perform duties including the following:

As our firm's core competence and concentration are litigations, the Law Clerk position the beneficiary is to perform, including but not limited to, legal research in different areas of the law (50% of the time), preparation of memorandum of laws to summarize the result of legal research for attorneys (30% of the time). The balance of the time is allocated to perform miscellaneous tasks, such as assisting attorneys to

¹ The petitioner provided a North American Industry Classification System (NAICS) Code of "541110, Offices of Lawyers." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "541110, Offices of Lawyers," <http://www.census.gov/eos/www/naics/> (last visited April 8, 2015).

schedule depositions, gathering evidence in civil and criminal cases to prepare document, helping lawyers institute title search and draft documents, such as deeds, leases in real estate transactions, meeting with clients, working as an interpreter of English and Mandarin to assist clients, and performing various general office works in preparations for trials.²

[Errors in the original.]

As to the educational requirements of the proffered position, the petitioner stated: "the Position requires a minimum educational requirement of Masters of Law degree, one-year of cumulative legal experience, bilingual English and Mandarin Chinese language skills, all of which renders the Position a specialty occupation."

The LCA submitted to support the visa petition states that the proffered position corresponds to Standard Occupational Classification (SOC) code and occupation title "23-1012.00, Judicial Law Clerks" from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

The petitioner also submitted, *inter alia*, an undated document in which it expressed its intent to hire a law clerk to perform the following duties: demonstrating advanced legal research skills, ability to conduct legal research, drafting legal documents, preparing immigration forms and correspondences, organizing and maintaining client files, other administrative tasks, and to communicate with clients in both English and Chinese (Mandarin).³ This document states that the minimum entry requirements for the proffered position include: one-year related working experience; a Master's degree in law from an ABA certified law school; an otherwise unspecified bachelor's degree from China; and fluency in English and Mandarin.

The petitioner submitted its "Offer Letter" to the beneficiary dated March 15, 2014, in which the petitioner summarizes the duties of the proffered position as to "help [the attorney] organize clients' file, draft motions, fill out immigration petition forms, do legal research, write memo to clients, file documents at court [*sic*]."

The director issued an RFE requesting, *inter alia*, evidence that the proffered position qualifies as a specialty occupation. In response, the petitioner submitted, *inter alia*, an undated letter in which the petitioner provided another explanation of the duties of the proffered position, the minimum entry requirements, as well as the beneficiary's qualifications. More specifically, the petitioner stated that the beneficiary will spend 70% of her time on "international transactions and litigations," and 30%

² It is not clear which "attorneys" and "lawyers" (in the plural) the petitioner is referring to, as the petitioning firm has only one employee. The petitioner specifically stated in this letter that it is "a solo practitioner."

³ The petitioner did not explain the nature of this document, such as whether this document was ever published or distributed outside of the instant petition.

of her time on "Investment Immigration." The petitioner then listed the following job duties along with percentages of time spent on each duty:

1. 30%: Prepare Eb-5 Investment immigration petition which include organizing capital verification report, article of corporation, audited financial statements, foreign tax returns, source of income certification, profit distribution agreement, foreign currency exchange and transfer report, and all the related documents, tracking the application status and informing Client the result of application under the Attorney's supervision.
2. 20%: Conduct Legal research and Draft Legal Memos, which include conducting legal research on [REDACTED] & Chinese legal Research System, finding relevant court cases, code or regulation; verifying points of Chinese law and U.S. Law cited by attorneys in legal document by utilizing 'Shepardizing' case . . .[.] drafting Research Memos based on legal research.
3. 15%: Legal writing which include preparing various motions, pleadings, legal opinions, attorney letters for our US and international clients.
4. 15%: Review and file Pleadings, Petitions and Motions which include reviewing and submitting Pleading, Petitions and Motions timely with by local, state and federal courts, utilizing both private and public service processors.
5. 10%: Trial Preparation which include organizing client's files, investigating facts and preparing exhibits, and determining legal issues and proper legal remedies.
6. 10%: Trial which include assisting Attorney [REDACTED] for his cases in Virginia State Courts, Federal District Court, and Immigration Court, helping Attorney [REDACTED] with his jury selection, opening and closing arguments, questioning witness, cross-examination, presenting evidence, drafting court orders.

[Errors in the original.]

With respect to the minimum entry requirements for the proffered position, the petitioner stated that it "requires the law clerk [to have] licenses to practice law in both China and the United States." The petitioner explained that "[i]n order to obtain a lawyer's license in the United States, a person must either have a Juris Doctor degree or have a foreign law degree plus Master of Law Degree (LLM) from a US Law school. In addition, that person must pass the bar examination in the United States." The petitioner further explained that the beneficiary received her LLM from [REDACTED] and "will take the New York Bar Exam in July 2014." The petitioner stated: "If [the beneficiary] passes the New York Bar Exam, she will be licensed to practice law in the United States."⁴ The petitioner explained that the beneficiary is licensed to practice law in China. The

⁴ The statement is technically inaccurate. Simply passing the bar examination, in and of itself, does not automatically render an individual "admitted to the bar." According to the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* subchapter on "How to Become a Lawyer," to practice law in any state, a person must be admitted to the bar under rules established by the jurisdiction's highest court. Although the admission requirements vary by individual states and jurisdictions, most states require that

petitioner reaffirmed that it requires its law clerk to have "China and the United States legal trainings and possesses lawyer's licenses in both nations [*sic*]."

The director denied the petition, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation. In denying the petition, the director observed that the petitioner had expanded upon the job duties of the proffered position in response to the RFE. The director also observed that the job duties appear comparable to those of a paralegal.

The petitioner now files this appeal. On appeal, the petitioner disagrees with the director's comparison of the proffered position to a paralegal position, and emphasizes the "complicated and specialized" nature of the proffered position. In particular, the petitioner states that "the proposed job responsibilities of [the beneficiary] involves . . . providing comprehensive legal advice to Chinese-based clients, as well as explaining to them different implications under the U.S. legal framework." The petitioner also states that "a significant portion of [the beneficiary's] job responsibility involves . . . advising Chinese clients about Chinese and U.S. law." The petitioner explains that the "law clerk position is offered in the expectation that [the beneficiary] will pass the State Bar of New York It is the understanding between [the beneficiary] and the [petitioner] that, as soon as [the beneficiary] passed and be admitted to the State Bar of New York, she will undertake significant higher responsibility as an attorney with the [petitioner] [*sic*]."

II. SPECIALTY OCCUPATION

A. The Law

To meet its burden of proof in establishing the proffered position as a specialty occupation, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

applicants pass the bar examination(s) and be found by an admitting board to have the character to represent and advise others. *Id.* at <http://www.bls.gov/ooh/legal/lawyers.htm#tab-4> (last visited April 8, 2015).

An occupation which requires [(1)] 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 requires [(2)] 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, the 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.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not rely simply upon a proffered position's title. The specific duties of the 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 beneficiary, and determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F. 3d at 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. Preliminary Findings

As a preliminary matter, we find that the SOC code and title of "23-1012.00, Judicial Law Clerks" is not appropriate for the proffered position. We make this finding based upon the nature of the petitioner as a private law firm. As is self-evident from the title of the occupational classification, a "Judicial Law Clerk" is a position within the judiciary branch of government. According to the Occupational Information Network (O*NET) OnLine Summary Report for the occupation "23-1012.00, Judicial Law Clerks," the primary duty of a "Judicial Law Clerk" is to "[a]ssist judges in court or by conducting research or preparing legal documents (emphasis added)." *Id.* at <http://www.onetonline.org/link/summary/23-1012.00> (last visited April 8, 2015). There is no evidence in the record to establish that the "23-1012.00, Judicial Law Clerks" occupational classification can reasonably be expanded to include positions within private law firms such as the petitioner.

As a second preliminary matter, we find that the petitioner has provided inconsistent descriptions of the proffered position and its constituent duties. For instance, the petitioner initially stated that the beneficiary would spend 50% of her time performing legal research, 30% of her time on preparing memorandums of law, and the remaining 20% of her time on miscellaneous tasks. In response to the RFE, the petitioner stated that the beneficiary would spend only 20% of her time conducting legal research and drafting legal memorandums, and 30% of her time preparing EB-5 immigration

petitions. As noted by the director, it appears that the petitioner expanded upon the duties of the proffered position in response to the RFE.⁵

On appeal, the petitioner did not explain its differing descriptions of the proffered position. Instead, on appeal the petitioner expanded upon the responsibilities of the proffered position even further. More specifically, the petitioner now states that the duties of the proffered position include the practice of law, i.e., "providing comprehensive legal advice" and "advising Chinese clients about Chinese and U.S. law." The petitioner has not provided any explanation reconciling its significantly differing descriptions of the proffered position and its constituent duties.⁶

In response to an RFE or on appeal, a petitioner cannot materially change a position's associated job responsibilities, level of authority, or other salient aspects of the proffered position. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

⁵ We agree with the director that the job duties of the proffered position, particularly as described in response to the RFE, are generally consistent with the duties of paralegals. The O*NET Summary Report for the occupation "23-2011.00, Paralegals and Legal Assistants," lists duties including the following: prepare affidavits or other documents, such as legal correspondence; prepare legal documents, including briefs, pleadings, appeals, wills, contracts, and real estate closing statements; file pleadings with court clerk; gather and analyze research data, such as statutes, decisions, and legal articles, codes, and documents; and investigate facts and law of cases. *Id.* at <http://www.onetonline.org/link/summary/23-2011.00> (last visited April 8, 2015).

⁶ Moreover, the petitioner has not credibly explained how the beneficiary could legally engage in the practice of law without being licensed to practice law in the United States. *See* Integration of the State Bar, Pt. 6 sec.4 Par.15 (providing that "No non-lawyer shall engage in the practice of law in the Commonwealth of Virginia," and generally defining "practice of law" as "furnish[ing] to another advice or service under circumstances which imply [] possession and use of legal knowledge or skill" where an attorney-client relation exists).

Although the petitioner states that "as soon as [the beneficiary] passe[s] and [is] admitted to the State Bar of New York, she will undertake significant higher responsibility as an attorney with the [petitioner]," the petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1). That is, the petitioner's descriptions of the duties of the proffered position must reflect the actual duties the beneficiary will engage in, not speculative duties which are contingent upon the beneficiary passing of the bar exam and being licensed to practice law. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

In light of the varying, unreconciled descriptions of the proffered position, we cannot determine the substantive nature of the position. A crucial aspect of this matter is whether the petitioner has adequately and consistently described the duties of the proffered position, such that USCIS may discern the nature of the position and whether the position indeed requires the theoretical and practical application of a body of highly specialized knowledge, 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. The petitioner has not done so here.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. *Id.*

As a third preliminary matter, we find that the petitioner has provided inconsistent statements regarding the minimum educational requirements for the proffered position. The petitioner initially stated that the proffered position requires an LLM from an ABA certified law school. Subsequently, the petitioner imposed the additional requirement of having "licenses to practice law in both China and the United States." The petitioner has not reconciled these discrepancies, i.e., whether the position can be satisfied by an LLM or whether it requires an actual license to practice law in the United States. The petitioner's inconsistent statements further undermine the petitioner's credibility with regard to the actual nature of the proffered position and its requirements.

Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Id.* 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. *Id.*

Finally, it is noted that the petitioner relies on *Young China Daily v. Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989), asserting that the director erroneously focused on the size of the petitioner in reviewing the petition and reaching her decision. However, we note that *Young China Daily* does not directly address the issues present in this case, i.e., the inconsistencies and deficiencies with regard to the actual nature of the proffered position and its requirements. Moreover, while we concur that USCIS should not limit its review to the size of a petitioner and must consider the actual responsibilities of the proffered position, we also note that it is reasonable to assume that the size of an employer's business has or could have an impact on the claimed duties of a particular position. See *EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v. Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). Thus, the size of a petitioner may be considered as a component of the nature of the petitioner's business, as the size impacts upon the actual duties of a particular position.

C. Discussion of Specialty Occupation

As discussed above, we cannot determine the substantive nature of the proffered position. The failure to establish the substantive nature of the work to be performed by the beneficiary consequently precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Accordingly, as the petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

III. THE LCA

Beyond the decision of the director, the petition must also be denied due to the failure to provide a certified LCA that corresponds to the petition. Specifically, the LCA submitted with the petition was certified for a position falling under the occupational classification of SOC (O*NET/OES) Code "23-1012, Judicial Law Clerks." As determined *supra*, however, this occupational classification is not appropriate for the proffered position within the scope of the petitioner's operations as a private law firm.

While the Department of Labor (DOL) is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the U.S. Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of 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 or whether the individual is a fashion model of distinguished merit and ability, 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 an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has not submitted a valid

LCA that has been certified for the proper occupational classification, and the petition must be denied for this additional reason.

IV. CONCLUSION

The evidence of record does not establish that the proffered position qualifies as a specialty occupation. Beyond the director's decision, the evidence of record does not establish that the LCA corresponds to the petition. Accordingly, 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.⁷

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. *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).

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.").

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.

⁷ As these issues preclude approval of the petition, we will not address any of the additional deficiencies we have identified on appeal with regards to the beneficiary's qualifications for the proffered position.