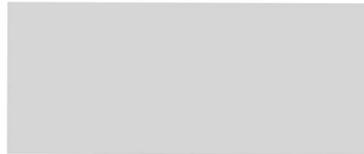




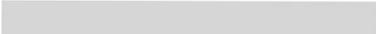
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 20 2015**

PETITION RECEIPT #: 

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a six-employee "Retail Pharmacy" established in [REDACTED]. The petitioner seeks to continue the employment of the beneficiary as a "Compounding Chemist" from September 30, 2013 to September 30, 2016. Accordingly, the petitioner endeavors to extend the beneficiary's classification as an H-1B 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 evidence of record does not demonstrate that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding includes the following: (1) the Form I-129 and supporting documentation; (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 Form I-290B and supporting documentation.

Upon review of the entire record of proceeding, we find that the evidence of record does not overcome the Director's ground for denying this petition. Beyond the Director's decision, we find that the petition was submitted without a corresponding Labor Condition Application. Accordingly, the appeal will be dismissed, and the petition will be denied.

I. FACTUAL AND PROCEDURAL HISTORY

As noted above, the petitioner describes itself as a six-employee "Retail Pharmacy" on the Form I-129 visa petition. The petitioner seeks to extend the beneficiary's employment as a "Compounding Chemist."

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a "Compounding Chemist," and that it corresponds to Standard Occupational Classification (SOC) code and title "19-2031.00, Chemists" from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

On the LCA, the petitioner provided a North American Industry Classification System (NAICS) Code of "446110, Pharmacies and Drug Stores," relating to "establishments known as pharmacies and drug stores engaged in retailing prescription or nonprescription drugs and medicines."¹

¹ U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "446110 Pharmacies and Drug Stores," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited April 8, 2015).

In support of the petition, the petitioner submitted a letter, dated May 23, 2013, listing the following duties of the proffered position:

- Mix and weight ingredients according to the doctor's office instructions;
- Enter prescription in the computer using [REDACTED] system;
- Maintain inventory of Bulk Powders on daily basis and file invoice for the control and regular medication following New York State Laws;
- Compound Topical Preparation, including compliance packaging for prescription medication for patient convenience following proper formulation as per pharmacist's instructions.
- Interview, hire and train employees.
- Review Medicare part D to make sure the eligibility of patients for medications and ordering of medications as per insurance requirements.

[Verbatim]

With the visa petition, the petitioner submitted evidence that the beneficiary received a Bachelor of Pharmacy degree from [REDACTED] India, and a U.S. Master of Professional Studies (Human Relations Clinical Counseling) from [REDACTED]. The petitioner also submitted a one-page evaluation from [REDACTED] which concludes, without any further pertinent information or explanation, that "based on copies of the original documents," the beneficiary has the equivalent to a "Bachelor's Degree in Pharmacy from a regionally accredited institution in the United States."

The Director issued an RFE instructing the petitioner to submit additional documentation establishing that the proffered position qualifies as a specialty occupation. In the RFE, the Director observed that the job duties described for the proffered position pertained to a Pharmacy Technician.

In response to the RFE, the petitioner submitted a letter, dated December 2, 2013, reaffirming that the proffered position is "analogous to that of a Chemist," or more specifically, a "Medicinal/Pharmaceutical Chemist." The petitioner then referred to the Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* and *Dictionary of Occupational Titles (DOT)* for descriptions of the duties and minimum educational requirements for Chemist positions. In particular, the petitioner acknowledges the *Handbook's* statement that the minimum educational requirement for a "Chemist" position is a bachelor's degree in chemistry or a related discipline.

In the same letter, the petitioner provided a revised description of the duties of the proffered position, along with the corresponding percentages of time and educational requirements for each duty, as follows:²

² We have omitted the column in which the petitioner listed "How education relates – Courses taken."

Duties	Percentage of Time	Education required
Mix and weight ingredients	10%	Bachelor of Pharmacy
Compound topical preparation including compliance packaging for prescription medication for patient's convenience following proper formulation as per pharmacist's instruction.	20%	Bachelor of Pharmacy
Provide guidance to the pharmacy technicians in preparing admixtures and compounding medications;	20%	Bachelor of Pharmacy
Ability to fill prescriptions and prepare official drugs and standard medications;	10%	Bachelor of Pharmacy
Ability to recognize physical, chemical and therapeutic incompatibilities;	5%	Bachelor of Pharmacy
Able to maintain awareness regarding advances in medicine, health insurance changes in government regulation and also skilled in maintaining computerized record management systems;	5%	Bachelor of Pharmacy
Solubilising Solid Samples into vehicles to check compatibility as per specifications. Examples: Prevacid and Omeprazole oral suspension Baclofen oral Suspension Butt paste (zinc oxide, lidocaine, nystatin) for rash	10%	Bachelor of Pharmacy
Weighing out solid, semisolid samples (marketed product) accurately measure volume of liquid(s) used in compounding.	5%	Bachelor of Pharmacy
Calibration and maintenance of instrument(s) such as: weighing balance. Apparatus such as mortar-pestle, measuring cylinder, spatula	5%	Bachelor of Pharmacy
Approval or rejection of final compound on the basis of in-process stability, appearance and ingredient compatibility	2%	Bachelor in Pharmaceutical Science
General literature research for specifications on stability and compatibility. Method of compound preparation such as Allegation, Geometric dilution, Aliquot method etc. (e.g. Pediatric dosage form handbook, Facts and comparison, USP, etc)	2%	Bachelor in Pharmaceutical Science
Counseling the patients about medications safety, side effects and uses of medications	2%	Bachelor in Pharmaceutical Science
Counseling different culture people of the medications, dosages drug to drug interactions and safety precautions among Asians, Hispanics, African blacks	2%	Masters of Human Relations
Counseling the patients the importance of alcohol/drug abuse	2%	Masters of Human Relations

The petitioner also submitted a letter from [REDACTED] attesting to its employment of a Compounding Chemist and the minimum educational requirements for such a position.

The Director denied the petition, concluding that the evidence of record does not demonstrate that the proffered position qualifies as a specialty occupation. In particular, the Director found the duties of the proffered position to be more comparable to the duties of a Pharmacy Technician.

The petitioner filed an appeal, supplemented by a brief and one vacancy announcement.

On appeal, the petitioner reiterated that the proffered position is "analogous to the position of a Medicinal/Pharmaceutical Chemist **not** a pharmacy technician." Again referring to the *Handbook*, the petitioner emphasized that the duties of Chemists include the "search for and use [of] new knowledge about chemicals . . . [which leads] to the discovery and development of new . . . drugs." Referring to the *DOT*, the petitioner also emphasizes that a "Chemist conducts research, analysis, synthesis, and experimentation on substances, for such purposes as product and process development and application, quantitative and qualitative analysis, and improvement of analytical methodologies."

The petitioner explained pharmaceutical compounding as "the preparation of a customized medication to solve a problem or meet a specific patient need, under the guidance of a licensed pharmacist." The petitioner stated that a compounding chemist "customizes a patient's medication prescription for the specific needs of the patient," including performing the duties of adjusting the dose of a patient's medication, flavoring medication, obtaining certain medications that are no longer in production, and combining several medications into a single dose for a patient's convenience. The petitioner listed two differences between the duties of a compounding chemist and a pharmacy technician: (1) that a compounding chemist is able to compound medicine while a pharmacy technician may not; and (2) that a compounding chemist may not dispense medicine while a pharmacy technician may. The petitioner provided yet another revised description of the duties of the proffered position, along with revised percentages of time for each duty.

II. SPECIALTY OCCUPATION

A. The Law

The principle issue in this matter is whether the Director correctly determined that the petitioner failed to establish that the proffered position is a specialty occupation. 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:

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), 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 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. Duties of the Proffered Position

As a preliminary matter, we find that the petitioner has provided significantly different descriptions of the proffered position.

Initially, the petitioner described the duties of the proffered position as consisting of: mixing and weighing ingredients; entering prescriptions into the computer; maintaining inventory and filing invoices; compounding topical preparations per "proper formulation as per pharmacist's instructions"; interviewing, hiring and training employees; and reviewing Medicare and insurance information for patients. No other duties were initially mentioned.

In response to the RFE, the petitioner revised the position description to include previously unlisted duties such as: recognizing physical, chemical and therapeutic incompatibilities; literature research on stability and compatibility; and providing various forms of patient counseling.

On appeal, the petitioner provided additional descriptions of the position's duties that do not correspond to previously provided descriptions and percentages. For instance, on appeal the petitioner asserted that a compounding chemist may not dispense medication, but previously listed in response to the RFE that the duty of "[a]bility to fill prescriptions and prepare official drugs and standard medications" comprises 10% of the proffered position's duties. Not only are the petitioner's assertions on appeal inconsistent with previous assertions, but they are inherently inconsistent as well. For example, the petitioner asserted in its appeal brief that the beneficiary will spend 5% of his time "explaining patients for the intended use, self administration and precautions of the compounding dosage form [*sic*]." Later on in the same appeal brief, the petitioner asserted that the duties of a compounding chemist (such as the beneficiary) do not include "counseling [for] compounded medication." The petitioner has not provided an explanation, corroborated by competent objective evidence, reconciling all its different descriptions of the proffered position and its constituent duties.

These inconsistencies raise significant doubt as to the substantive nature of the proffered position, as well to the petitioner's overall credibility. 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.*

Moreover, when responding to a request for evidence and/or on appeal, the petitioner cannot materially change the proffered position's associated job responsibilities. 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). The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). Therefore, any further analysis of the proffered position will be based primarily on the job description as initially provided by the petitioner.

C. The Director's Decision

Based on the duties of the proffered position as initially described by the petitioner, we find that the petitioner has not overcome the Director's findings and grounds for denial. That is, we agree with the Director that the proffered position is more likely than not a Pharmacy Technician position, and is not appropriately classified as a Chemist position.

We recognize the *Handbook*³ as an authoritative source regarding the wide variety of occupations that it addresses. According to the *Handbook*, the duties of Pharmacy Technicians consist of the following:

³ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online.

- Take the information needed to fill a prescription from customers or health professionals;
- Measure amounts of medication for prescriptions;
- Package and label prescriptions;
- Organize inventory and alert pharmacists to any shortages of medications or supplies;
- Accept payment for prescriptions and process insurance claims;
- Enter customer or patient information, including any prescriptions taken, into a computer system;
- Answer phone calls from customers; and
- Arrange for customers to speak with pharmacists if customers have questions about medications or health matters.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Pharmacy Technicians," <http://www.bls.gov/ooh/healthcare/pharmacy-technicians.htm#tab-2> (last visited April 8, 2015). The above duties, as listed in the *Handbook*, are consistent with the duties of the proffered position as initially described by the petitioner.

Significantly, the *Handbook* also states that "[i]n most states, [pharmacy] technicians can compound or mix some medications." *Id.* Thus, the *Handbook*, which we regard as an authoritative source regarding the wide variety of occupations that it addresses, undermines the petitioner's assertion that a compounding chemist (such as the beneficiary) may compound medicine while a pharmacy technician may not. The petitioner has not cited to any authoritative source or otherwise provided any evidence to corroborate its assertion that the proffered position is more similar to a compounding chemist, rather than a pharmacy technician, by virtue of its compounding duties, and has not corroborated its assertion that pharmacy technicians may not compound medications. 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)).

The *Handbook* further supports the conclusion that the proffered position is better classified as a Pharmacy Technician rather than a Chemist, in that the *Handbook* describes the work environment for Pharmacy Technicians as "primarily in pharmacies." *Id.* at <http://www.bls.gov/ooh/healthcare/pharmacy-technicians.htm#tab-3> (last visited April 8, 2015). The petitioner here is a retail pharmacy. Overall, we find that the *Handbook's* descriptions of Pharmacy Technician positions accurately summarize the duties of the proffered position within the context of the petitioner's overall operations as a retail pharmacy.

Despite the petitioner's assertions, the evidence of record does not support the proffered position's classification as a "Chemist" or "Medicinal/Pharmaceutical Chemist." For instance, the *Handbook* summarizes the primary duties of Chemists and Materials Scientists as to "study substances at the atomic and molecular levels and the ways in which substances react with each other" for the purpose of "develop[ing] new and improved products and to test the quality of manufactured goods." U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15

ed., "Chemists and Material Scientists," <http://www.bls.gov/ooh/life-physical-and-social-science/chemists-and-materials-scientists.htm#tab-2> (last visited April 8, 2015). Specific to Medicinal Chemists, the *Handbook* states that they "research and develop chemical compounds that can be used as pharmaceutical drugs. They work on teams with other scientists and engineers to create and test new drug products. They also help develop new and improved manufacturing processes to produce new drugs on a large scale effectively." *Id.* Likewise, the petitioner emphasizes the duties of Chemists as involving the research, discovery, and development of new drugs. However, no such duties relating to the research and development of new drugs were described for the proffered position.⁴

On appeal, the petitioner asserts that a Compounding Chemist "customizes a patient's medication prescription for the specific needs of the patient," including performing duties of adjusting the dose of a patient's medication, flavoring medication, obtaining certain medications that are no longer in production, and combining several medications into a single dose for a patient's convenience. The petitioner further asserts that Pharmacy Technicians may not perform such compounding duties. However, the petitioner has cited to no authoritative source nor provided any objective evidence to support such claims. Again, 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. at 165.

Additionally, the *Handbook* describes the typical work environment for Chemists and Materials Scientists as "laboratories and offices, where they conduct experiments and analyze their results. In addition to laboratories, materials scientists work with engineers and processing specialists in industrial manufacturing facilities." U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Chemists and Material Scientists," <http://www.bls.gov/ooh/life-physical-and-social-science/chemists-and-materials-scientists.htm#tab-3> (last visited April 8, 2015). Here, the record of proceeding lacks evidence that the petitioner could reasonably be considered a laboratory or office in which the beneficiary can conduct experiments and analyze results, or an industrial manufacturing facility.

Accordingly, we cannot find that the proffered position can appropriately be classified under the SOC code and title of "19-2031.00, Chemists." We find that the proffered position is more likely than not a "Pharmacy Technician" position, and any further discussion of the proffered position will proceed under this finding.

⁴ In fact, the petitioner specifically limited the scope of the proffered duties as to mix and weigh ingredients "according to the doctor's office instructions" and to compound topical preparations "following proper formulation as per pharmacist's instructions." These limited mixing and compounding duties, according to pre-authorized formulations performed under the pharmacist's supervision, do not appear consistent with the duties of Medicinal Chemists which seek to discover and develop new drugs.

D. Discussion of Criteria

We will now address whether the position proffered qualifies as a specialty occupation under the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

Of the educational requirements for "Pharmacy Technician" positions, the *Handbook* states: "Becoming a pharmacy technician usually requires earning a high school diploma or the equivalent." *Id.* at <http://www.bls.gov/ooh/healthcare/pharmacy-technicians.htm#tab-4> (last visited April 8, 2015). The *Handbook* does not support the proposition that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The petitioner has not provided evidence from any authoritative source to establish otherwise. As such, 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, in a specific specialty, or the equivalent, therefore, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we will review the record regarding 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 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Here and as already discussed, the evidence of record does not establish that the proffered position is one for which the *Handbook*, or other authoritative sources, reports an industry-wide requirement of at least a bachelor's degree in a specific specialty, or its equivalent. We incorporate by reference our previous discussion on the matter.

The petitioner submitted one vacancy announcement for a Senior Compounding Chemist position posted by [REDACTED] in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. However, we find this vacancy announcement insufficient to establish eligibility under the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The petitioner provided no evidence to establish that it is

similar to [REDACTED] and to establish that the posted position – which notably is a senior level position - is parallel to the proffered position. Further, the petitioner failed to demonstrate what statistically valid inferences, if any, can be drawn from a single vacancy announcement with regard to the educational requirements for entry into parallel positions in similar organizations common to the petitioner's industry.⁵

The petitioner provided a letter from [REDACTED] stating that "[i]n the [sic] recent years pharmacies have been utilizing the services of Compounding Chemists" and that "the job duties of Compounding Chemist required the knowledge and skills of a person who has attained no less than a Bachelor's degree in Pharmacy or a related field [sic]." However, this letter fails to explain the factual basis for these assertions. As such, these are conclusory statements that bear no evidentiary weight.

The record of proceeding contains insufficient evidence pertinent to this particular criterion. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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 unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty. The evidence of record does not establish that this position is significantly different from other Pharmacy Technician positions, which the *Handbook* indicates is not normally performed by persons with at least a bachelor's degree in a specific specialty, or its equivalent.

The evidence also fails 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. We note that the petitioner listed a bachelor's degree in Pharmacy – but not a bachelor's degree in Chemistry - as the required degree to perform most of the proffered duties, even though the petitioner also attempted to classify the position under the "Chemist" occupational classification, for which the *Handbook* states typically requires a bachelor's degree in Chemistry. We further note that regarding the specific duty of compounding topical preparations, which the petitioner asserts distinguishes the proffered position from a Pharmacy Technician position, the petitioner listed the required courses as "Pharmaceutical Engineering" and "Pharmaceutical

⁵ See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (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").

Technology and Bio pharmaceu [sic]." The petitioner did not, however, list any chemistry courses as necessary to perform this particular compounding duty.

As the evidence fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 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.

Here, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices. Although the petitioner repeatedly claims that the duties of the proffered position can only be employed by a degreed individual, this assertion, without more, is insufficient to establish eligibility under this criterion. 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. at 165.

While a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, 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 the 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* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

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.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position have not been shown to be of a nature so specialized and complex that they require knowledge usually associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent. The petitioner has submitted inadequate probative evidence to satisfy the criterion of the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons above, the evidence of record fails to satisfy any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and it cannot be found that the proffered position qualifies for classification as a specialty occupation.

III. NON-CORRESPONDING LCA

As was also noted above, the LCA provided was certified for employment of a position described at SOC Code and Title "19-2031.00, Chemists" in O*NET. However, we have found that the proffered position is not such a position, but is more likely than not a "Pharmacy Technician" position. These positions are described in O*NET at SOC Code and Title "29-2052.00, Pharmacy Technicians."

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) stipulates the following:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

While the DOL is the agency that certifies LCAs before they are submitted to USCIS, the DOL regulations note that it is within the discretion of the U.S. Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) to determine 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:

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. . . .

[Italics added]

The instant petition was submitted without a corresponding LCA. The petition must be denied for this additional reason.

IV. BENEFICIARY QUALIFICATIONS

A beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the evidence does not establish that the proffered position qualifies for classification as a specialty occupation. Therefore, we need not and will not further examine the issue of the beneficiary's qualifications, except to note that the

submitted evaluation is insufficient to establish that the beneficiary's foreign degree is equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university. Specifically, the evaluation does not specify what original documents were examined or otherwise explain the factual basis for its conclusion. Moreover, the evaluation states only that the beneficiary has a bachelor's degree from a "regionally accredited *institution* in the United States (emphasis added)," not that the beneficiary has a bachelor's degree from a "regionally accredited *college or university* in the United States," as required by the plain language of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). The petitioner also provided no evidence that the evaluation was from a "reliable credentials evaluation services" as required by the plain language of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(3).

V. CONCLUSION AND ORDER

As set forth above, we agree with the Director's finding that the evidence of record does not demonstrate that the proffered position qualifies for classification as a specialty occupation. Beyond the Director's decision, we find that the petition was submitted without a corresponding LCA. 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.

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) (noting that the AAO conducts appellate review on a *de novo* basis).

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.