



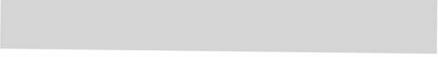
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 28 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:

NO REPRESENTATIVE OF RECORD

INSTRUCTIONS:

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, California Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

I. BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes its business as a "corporation" established in [REDACTED]. In order to employ the beneficiary in what it designates as a "designer" 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 found the initial evidence insufficient to establish eligibility for the benefit sought, and issued a Request for Evidence (RFE). Thereafter, the petitioner responded to the director's RFE. The director reviewed the information and denied the petition finding that the petitioner did not establish eligibility for the benefit sought. 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 the following: (1) the Form I-129 and supporting documentation; (2) the director's RFE; (3) the petitioner's response to the RFE; (4) the director's letter denying the petition; and (5) the Notice of Appeal or Motion, Form I-290B, and supporting documentation.

We note that the director denied the petition finding that the record of proceeding does not establish that the proffered position qualifies as a specialty occupation and that the beneficiary qualifies for the position. Upon review of the record of proceeding in its entirety, we found an additional issue, beyond the decision of the director, that precludes the approval of the petition.¹

II. ADDITIONAL ISSUE THAT PRECLUDES APPROVAL OF THE PETITION- MASTER'S CAP

A. Law

In general, H-1B visas are numerically capped by statute. Pursuant to section 214(g)(1)(A) of the Act, the total number of H-1B visas issued per fiscal year may not exceed 65,000 (hereinafter referred to as the "H-1B Cap"). In addition, the maximum number of H-1B visas that may be issued per fiscal year pursuant to the H-1B cap exemption at section 214(g)(5)(C) of the Act may not exceed 20,000 (hereinafter referred to as the "U.S. Master's Degree or Higher Cap"). The petition was filed for an employment period to commence October 1, 2014. As the 2015 fiscal year ("FY15") extends from October 1, 2014 through September 30, 2015, the instant petition is subject to the FY15 H-1B Cap, unless exempt.

On April 7, 2014, U.S. Citizenship and Immigration Services (USCIS) issued a notice that it had received sufficient numbers of H-1B petitions to reach both the H-1B Cap and the U.S. Master's

¹ We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Degree or Higher Cap for FY15 as of that date. Therefore, April 7, 2014 is the FY15 "final receipt date," as described at 8 C.F.R. § 214.2(h)(8)(ii)(B), for acceptance of both cap subject and limited cap exempt H-1B petitions. The petitioner filed the instant visa petition requesting a U.S. Master's Degree or Higher Cap exemption on April 1, 2014.

Section 214(g)(5) of the Act states, in pertinent part:

The numerical limitations . . . shall not apply to any nonimmigrant alien issued a visa or otherwise provided [H-1B status] who-

(A) is employed (or has received an offer of employment) at an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)), or a related or affiliated nonprofit entity.

(B) is employed (or has received an offer of employment) at a nonprofit research organization or a governmental research organization; or

(C) has earned a master's or higher degree from a United States institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)), until the number of aliens who are exempted from such numerical limitation during such year exceeds 20,000.

Section 101(a) of the Higher Education Act of 1965,² 20 U.S.C. § 1001(a), defines an institution of higher education as follows:

(a) Institution of higher education

For purposes of this chapter, other than subchapter IV, the term "institution of higher education" means an educational institution in any State that-

(1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who meet the requirements of section 1091(d) of this title;

(2) is legally authorized within such State to provide a program of education beyond secondary education;

(3) provides an educational program for which the institution awards

² Higher Education Act of 1965, § 101(a), Pub. L. 89-32, 79 Stat. 120 (1965).

a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;

(4) is a public or other nonprofit institution; and

(5) is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

Notably, 8 C.F.R. § 214.2(h)(8)(ii)(B) states, in part:

Petitions indicating that they are exempt from the numerical limitation but that are determined by USCIS after the final receipt date to be subject to the numerical limit will be denied and filing fees will not be returned and refunded.

B. Evidence

In the Form I-129 H-1B Data Collection Supplement, Part C, the petitioner marked the item "1b" to indicate that it was applying for the "U.S. Master's Degree or Higher" cap exemption. In the same section, at item "2," the petitioner further stated that the beneficiary received a master's degree from [REDACTED]³ In support, the petitioner submitted a copy of the beneficiary's diploma which indicates that she received a master of science from [REDACTED] in August 2000.

C. Analysis

Upon review of the record of proceeding, we find that the petitioner has not established that this petition is eligible for the U.S. master's degree cap exemption. Under section 214(g)(5)(C) of the Act, general H-1B cap does not apply to a nonimmigrant alien that holds a master's degree or higher from a United States institution of higher education as defined in section 101(a) of the Higher Education Act (HEA) of 1965. The fourth criterion of 101(a) defines the United States institution of higher education as a public or other nonprofit institution. The petitioner claims an exemption

³ [REDACTED] changed its name to [REDACTED] in 2002. For more information, see [REDACTED].

based on the beneficiary's degree from [REDACTED]; however, [REDACTED] is a private, for profit institution.⁴

The evidence of the record does not demonstrate that the beneficiary holds a master's degree or higher from a United States institution of higher education as defined in section 101(a) of the Higher Education Act (HEA) of 1965, and therefore does not establish that this petition is exempt from the numerical cap. As previously noted, 8 C.F.R. 214.2(h)(8)(ii)(B) states that the petitions indicating that they are exempt from the numerical limitation but are determined by USCIS after the final receipt date to be subject to the numerical limit will be denied. Since the petitioner has not established that the beneficiary is exempt from the H-1B cap and the numerical limit has been reached, this petition will be denied.

Further, since this issue precludes approval of the petition, we need not discuss the petitioner's assertions regarding the specialty occupation and the beneficiary's qualifications; however, we will briefly address the issues that form the basis for the director's denial.

III. SPECIALTY OCCUPATION

A. Law

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 satisfy this burden and establish the proffered position as a specialty occupation, the petitioner must establish that the employment that it is offering to the beneficiary meets the following 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:

⁴ According to the National Center for Education Statistics, which is located within the U.S. Department of Education and the Institute of Education Sciences and is the primarily federal entity for collecting and analyzing data related to education in the United States, [REDACTED] is a private, for-profit institution. For more information about [REDACTED], see [REDACTED] (last visited April 21, 2015).

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, 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 simply rely on a 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. Proffered Position

In this matter, the petitioner stated in the Form I-129 that it seeks the beneficiary's services as a "designer." The petitioner described the proposed duties as "[d]esigner: develop designs for use on commercial products." In support of the Form I-129, the petitioner submitted an "Employment Offer" which states, in part:

Your duty will be to continue creating high quality marketable designs in your unique style for [the petitioner]. Your designs will be featured on various products. Under directorial oversight[,] you will work with local service providers and manufacturers to realize mass production of your designs.

In response to the RFE, the petitioner stated the following regarding the duties:

The beneficiary will utilize her existing U[.]S[.] copyrighted designs and also create new original designs for the company, and work with existing domestic manufactures to produce them. The beneficiary will select these manufacturers under the directorial approval and oversight, based on their ability to provide the desired quality and service needed.

* * *

Just like any other designer, who works with various types of fabrics, the designer will have to go and sample fabrics in warehouses or stores and will meet with service providers and manufacturers. Some manufacturers work with large equipment and machinery, which cannot come to the designer's office. The designer may have to go to where the equipment is located and its operator to discuss initial operation.

* * *

The correct description is 27-1021.00 Commercial and Industrial Designer(s)[.] Develop and design manufactured products for home décor and interior design. Combine artistic talent with marketing and materials to create the most functional and appealing product designs.

* * *

Duties will include turning her copyrighted designs into products by instructing U[.]S[.] manufacturers how to assemble or make products with directorial approval and oversight. Design new products. Select domestic manufacturers to work on manufacturing her designs and ship them off to the customers. All of her duties will be performed under directorial approval. Also creating new designs on an ongoing basis.

The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for use with a job prospect within the "Commercial and Industrial Designers" occupational classification, SOC (O*NET/OES) Code 27-1021.

Further, the petitioner asserts that according to the Foreign Labor Certification Center, the occupational category of "Commercial and Industrial Designers" require at least a baccalaureate or higher degree.

C. Analysis

When determining whether a position is a specialty occupation, we must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain 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 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."

For H-1B approval, the petitioner must demonstrate a legitimate need for an employee exists and to substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition. It is incumbent upon the petitioner to demonstrate it has sufficient work to require the services of a person with at least a bachelor's degree in a specific specialty, or its equivalent, to perform duties at a level that requires the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty for the period specified in the petition. 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)). USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or 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 the instant case, the petitioner stated on the Form I-129 that it is a "corporation" established in 2006. The petitioner further indicated that its North American Classification Industry System (NAICS) code is 313300; however, 31300 is not a valid code.

The petitioner provided its address as [REDACTED], but indicated that the beneficiary will be employed at [REDACTED]. In response to the RFE, the petitioner stated that it is "in its first stages of operations," and that it "had been inactive due to the previously unfavorable economic conditions." The petitioner further stated that there "is currently no business activity at that location" but "is awaiting the approval of the designer." The corporate tax return from 2012 indicates gross sale as zero and other income of \$3,000 as a loan from the shareholder.

In response to the RFE, the petitioner stated the following:

Main tool to be used for marketing will be the internet for interior design products. Products will be manufactured upon pre-paid orders by customers and made by US domestic manufacturers, and service providers who will be selected by the designer under directorial oversight and approval.

Upon review, we find that the petitioner did not provide sufficient information regarding its business to establish the nature of its operations. The petitioner stated that it was established in 2006. While the petitioner claimed that "it had been inactive due to the previously unfavorable economic conditions," there is no indication that it was ever active. The petitioner did not provide information about which industry it is in or what product or services they provide. Specifically, while the petitioner claims that "products will be manufactured upon pre-paid orders and made by U[.]S[.] domestic manufacturers," the petitioner does not provide any information regarding its product, funding source, possible customers or manufacturers. 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)). Further, USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or 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).

Furthermore, we find that the description of the duties of the proffered position fails to adequately convey the substantive work that the beneficiary will perform within the petitioner's business operations. Specifically, the description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's assertion that the proffered position qualifies as a specialty occupation. The abstract level of information provided about the proffered position and its constituent duties is exemplified by the petitioner's assertion that the beneficiary will "utilize her existing U[.]S[.] copyrighted designs and also create new original designs for the company, and work with existing domestic manufacturers to produce them." In support, the petitioner provided a copy of two certificates of registration. The certificates indicate that the beneficiary has copyrights to "2-D artwork." No further description about the designs is provided or how the designs will be used for the petitioner's product. In response to the RFE which requested more detailed description of the work to be performed by the beneficiary, the petitioner asserted that the "correct description is 27-1021.00 Commercial and Industrial Designer(s)," "[d]evelop and design manufactured products for home décor and interior design," and "[c]ombine artistic talent with marketing and materials to create the most functional and appealing product design," and "[s]elect domestic manufacturers to work on manufacturing her designs and ship them off to the customers." However, these statements do not provide any information as to the complexity of the job duties, the amount of supervision required, and the level of judgment and understanding required to perform the duties. Furthermore, the phrases could cover a range of issues, and without additional information, do not provide any insights into the beneficiary's day-to-day work. The petitioner's statements – as so generally described – do not illuminate the substantive application of knowledge involved or any particular educational attainment associated with such application. Further, they fail to provide any particular details regarding the demands, level of responsibilities, and requirements necessary for the performance of these duties.

The petitioner has failed to provide sufficient details regarding the nature and scope of the beneficiary's employment or any substantive evidence regarding the actual work that the beneficiary would perform. Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The tasks as described fail to communicate (1) the actual work that the beneficiary would perform, (2) the complexity, uniqueness and/or specialization of the tasks, and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty. The petitioner's assertions with regard to the position's educational requirement are conclusory and unpersuasive, as they are not supported by the job descriptions or substantive evidence.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any

criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for entry into 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. Thus, the petitioner has failed to establish that the proffered position is a specialty occupation under the applicable provisions.

In addition, the petitioner claimed that "according to the Foreign Labor Certification Data Center, Commercial and Industrial Designers require at least a baccalaureate or higher degree." However, requiring a bachelor's degree alone without stating a specific specialty is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To demonstrate that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. 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 139, 147 (1st Cir. 2007).⁵

IV. BENEFICIARY'S QUALIFICATIONS

⁵ 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 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 director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. However, 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 proffered position does not require a baccalaureate or higher degree in a specific specialty, or its equivalent. Therefore, we need not and will not address the beneficiary's qualifications further.

V. CONCLUSION

An application or petition that fails to comply with the technical requirements of the law may be denied by us even if the service center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1037 (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 we conduct 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 our 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.