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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

DATE: **AUG 07 2015**

PETITION RECEIPT #: [REDACTED]

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

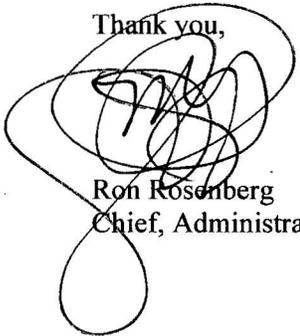
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

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](http://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 on appeal. The appeal will be dismissed.

## I. PROCEDURAL BACKGROUND

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the Vermont Service Center. In the Form I-129 visa petition, the petitioner describes itself as a company, established in [REDACTED] that sells, designs and installs custom closet, kitchen and bath systems. In order to employ the beneficiary in what it designates as an "Architect – Design" 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 reviewed the record of proceeding and determined that the petitioner did not establish eligibility for the benefit sought. Specifically, the Director stated that the petitioner had not established that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory. The Director denied the petition.

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

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

## II. 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.

### A. Legal Framework

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

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

equivalent) as a minimum for entry into the occupation in the United States.

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

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

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

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

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

In ascertaining the intent of a petitioner, USCIS looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the 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." An alien applying for classification as an H-1B nonimmigrant worker must possess "full state licensure to practice in the occupation, if such licensure is required to practice in the occupation." Section 214(i)(2)(A) of the Act, 8 U.S.C. § 1184(i)(2)(A).

#### B. Proffered Position

In the Form I-129, the petitioner states that it wishes to employ the beneficiary for a three-year period as an "Architect – Design" (as reported by the petitioner on page 4 of the form). In the support letter, the petitioner reiterates that the beneficiary will serve as an "Architect – Design" and provides the following job description for the proffered position:

[The petitioner] offers [the beneficiary] temporary employment in the position of

Architect . . . . She will prepare scale drawings and develop 3 dimension images with 20x20 software to develop each client's project; [and] prepare information regarding design, structure specifications, materials, color, estimated costs, and installation time. She will present project proposals to clients and revise as per clients' desires and architectural requirements. She will work with the engineers at the manufacturing plant in Brazil with respect to the projects she is handling.

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In order to perform the duties of this position, the incumbent must have a minimum of [a] baccalaureate degree in architecture.

In the letter of support, the petitioner repeatedly referred to the position as an architect position and claimed that the beneficiary would provide "architectural services to [the petitioner's] clients."

In the Labor Condition Application (LCA) submitted in support of the petition, the petitioner again designated the job title as "Architect – Design" and reported that that the position falls under the occupational category "Architects, Except Landscape and Naval" SOC code 17-1011. The petitioner also submitted a summary of its agreement with the beneficiary, which states that the beneficiary is being offered an "Architect – Design" position.

Thereafter, the Director issued an RFE noting that the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that all states require a license for architect positions. In response to the RFE, the petitioner and counsel provided varying statements about the position. For example, in the August 13, 2014 letter, counsel stated that the "job position is clearly that of an architect." According to counsel, "[b]y definition, [the] job offered, Architect/Commercial Manager is a specialty occupation." Counsel further stated that "[the petitioner] states that it normally requires a degree in architecture for its architects working in the position of Sales Associate." Thus, within the letter, counsel indicated that the proffered position is (1) an architect, (2) an architect/commercial manager, and (3) a sales associate. Moreover, in the petitioner's August 6, 2014 letter, the petitioner states that the job offered is an architect. The petitioner continues by stating, "Though [the petitioner] would consider [the beneficiary] to be an architect, the title of the position that [she] would have at [the petitioning company] is Sales Associate." The petitioner further claims that it "requires its salespersons to have a degree in architecture to conduct business."

The petitioner also submitted an opinion letter from [redacted] President of [redacted] regarding the proffered position. [redacted] provides a list of the duties of the proffered position. Notably, several of the job duties submitted by [redacted] are repeated (that is, the tasks numbered 3-7 are identical to those numbered 12-15). Further, the list of duties has been expanded and differs from the job description provided by the petitioner to USCIS. No explanation was provided as to the reason the job duties submitted by [redacted] do not correspond to the job description provided by the petitioner to USCIS, or [redacted] basis for asserting that the beneficiary will perform these additional tasks. [redacted] repeatedly refers to the proffered position as an architect position.

The RFE response includes a letter from counsel to [REDACTED] Managing Investigator at the [REDACTED] requesting that he provide an opinion letter with regard to the proffered position. In the letter, counsel states, "Neither [the petitioner] nor [the beneficiary] would represent that she is an architect or architectural, or use another business or professional title that uses a form of the word 'architect'."

The petitioner also submitted [REDACTED] response to counsel, who states that in order to qualify for an exemption to the state licensure requirement, an individual may not use the title architect or offer architectural services. He continues by stating that an individual should refrain from using the title on design work, business cards, or having his/her design work described as architectural.

On appeal, the petitioner submitted an opinion letter from [REDACTED] regarding the proffered position. [REDACTED] repeatedly refers to the position as an architect position, stating for example that he is aware of the job description of the architect position, as well as the role of the architect position within the petitioner's organizational structure. [REDACTED] also provides his opinion of the requirements necessary for the petitioner's "architect position."

### C. Analysis

On appeal, the petitioner reiterates that the proffered position is an architect position and confirms that it designated the beneficiary's job title as "Architect – Design" on the Form I-129, LCA and in the letter of support submitted to USCIS. According to the petitioner, due to the Texas laws regarding the use of the term "architect" in the job title of individual who does not hold an architectural license, it changed the job title to "Sales Associate" when responding to the Director's RFE. The petitioner claims that a license is not required for the proffered position because the beneficiary will not use the term "architect" in the job title, in her design work, on her business cards, or have her design work described as architectural.

The Texas statute provides an exemption from the licensing requirement for an individual who *inter alia* "does not represent [he/she] is an architect or architect designer, or use another business or professional title that uses a form of the word 'architect.'" Title 6 Texas Occupational Code Section 1051.606. The petitioner, however, submitted the instant petition and supporting evidence for a position it designated as having the job title "Architect – Design" and it represented to USCIS that the beneficiary will provide "architectural services to [the petitioner's] clients."<sup>2</sup> The petitioner also submitted a summary of agreement reporting that the beneficiary was being offered the position "Architect – Design." The petitioner certified that the information provided on the H-1B petition and the evidence submitted in support was true and correct/accurate. Moreover, the petitioner has submitted several opinion letters in which the writers refer to the proffered position as an architect and further indicate that the beneficiary will perform architectural services – presumably based

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<sup>2</sup> It appears that this information was not provided to [REDACTED] and would have been relevant for him to properly assess the licensure requirements for the position.

upon information provided by the petitioner.<sup>3</sup> Upon review of the record, we conclude that the petitioner has not met its burden of proof to demonstrate that the beneficiary is exempt from the state licensing requirement.

In response to the RFE, the petitioner attempted to change the proffered position's title in an effort to make a deficient petition conform to USCIS requirements.<sup>4</sup> The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary or materially change a position's title. 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). If such 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. 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). An inaccurate statement anywhere on the Form I-129 or in the evidence submitted in connection with the petition mandates its denial. *See* 8 C.F.R. § 214.2(h)(10)(ii); *see also* 8 C.F.R. § 103.2(b)(1).

As the petitioner has attempted to make a material change to the beneficiary's employment, we find that the evidence of record is insufficient to establish the substantive nature of the work to be performed by the beneficiary. 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 evidence of record does not satisfy any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

For the reasons discussed, the petitioner has established eligibility for the benefit sought.<sup>5</sup> The

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<sup>3</sup> Likewise, it appears that this information was not provided to [REDACTED] and would have also been relevant for him to properly assess the licensure requirements for the position.

<sup>4</sup> Within the record, the beneficiary's purported job title is: (1) architect – design; (2) architect/commercial manager; (3) architect/salesperson; (4) architect; and (5) sales associate.

<sup>5</sup> Since the identified grounds for denial are dispositive of the petitioner's appeal, we need not address other grounds of ineligibility we observe in the record of proceeding. Nevertheless, we will briefly note that the petitioner stated on the LCA that the beneficiary's worksite locations are in [REDACTED] Texas and [REDACTED] Florida. A petition that requires services to be performed in more than one location must include an itinerary

appeal will be dismissed and the petition denied.<sup>6</sup>

### III. CONCLUSION AND ORDER

An application or petition that does not comply with the technical requirements of the law may be denied by us even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

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with the dates and locations of the services and must be filed with USCIS as provided in the form instructions. 8 C.F.R. § 214.2(h)(2)(i)(B). Here, given the indications in the record that the beneficiary would work at multiple locations at some point during the requested period of employment and as the petitioner did not provide this initial required evidence when it filed the Form I-129 in this matter, the petition must also be denied on this additional basis.

We briefly note and summarize this issue in the hope and intention that, if the petitioner seeks again to employ the beneficiary or another individual as an H-1B employee in the proffered position, it will submit sufficient independent objective evidence to address and overcome the additional ground(s) in any future filing.

<sup>6</sup> The dismissal of the instant appeal does not prohibit the petitioner from submitting a new H-1B petition, with the appropriate fee(s) and a valid LCA, in accordance with the applicable statutory and regulatory provisions, for USCIS to consider.