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



U.S. Citizenship
and Immigration
Services



DATE: FEB 13 2015 OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

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

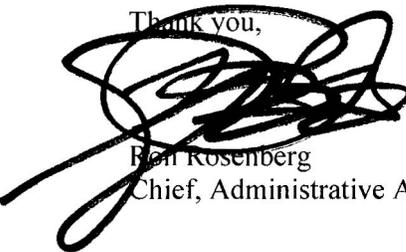
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
 Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:
[REDACTED]

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

I. FACTUAL AND PROCEDURAL HISTORY

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the Vermont Service Center. On the Form I-129, the petitioner stated that it was established in [REDACTED]. In order to continuously employ the beneficiary in what it designates as a financial manager position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner did not establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. Thereafter, the petitioner filed a combined motion to reopen and reconsider. The director granted the motion but denied the petition. On appeal, the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that it satisfied all evidentiary requirements.

The record of proceeding contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's RFE; (3) the petitioner's response to the RFE; (4) the director's decision on the petition; (5) the Form I-290B (Notice of Appeal or Motion) and supporting documents for combined motion; (6) the director's decision on the combined motion; (7) the Form I-290B and supporting documents for an appeal; (8) our RFE; and (9) the petitioner's response to the RFE. We reviewed the record in its entirety before issuing our decision.²

¹ Although specifically required by the Form I-129, the petitioner did not provide its type of business and its net annual income. Instead, these entries were left blank or marked "N/A" by the petitioner.

We note that the petitioner designated its business operations under the North American Industry Classification System (NAICS) code 445120. This NAICS code is designated for "Convenience Stores." The U.S. Department of Commerce, Census Bureau website describes this NAICS code by stating the following:

This industry comprises establishments known as convenience stores or food marts (except those with fuel pumps) primarily engaged in retailing a limited line of goods that generally includes milk, bread, soda, and snacks.

See U.S. Dep't of Commerce, U.S. Census Bureau, 2007 NAICS Definition, 445120-Convenience Stores, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last viewed February 10, 2015). According to the U.S. Census Bureau, the NAICS is used to classify business establishments according to type of economic activity and each establishment is classified to an industry according to the primary business activity taking place there. *Id.*

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

For the reasons that will be discussed below, we agree with the director's decision. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

II. STANDARD OF PROOF

As a preliminary matter, it is noted that in the exercise of its administrative review in this matter, as in all matters that come within its purview, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010), unless the law specifically provides that a different standard applies. In pertinent part, that decision states the following:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

* * *

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case.

* * *

Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director 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.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The "preponderance of the evidence" standard does not relieve the petitioner from satisfying the basic evidentiary requirements set by regulation. The standard of proof should not be confused with the burden of proof. Specifically, the petitioner bears the burden of establishing eligibility for the benefit sought. A petitioner must establish that it is eligible for the requested benefit at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). As will be discussed, in the instant case, that burden has not been met.

III. PRELIMINARY ISSUES

When determining whether a position qualifies as 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, U.S. Citizenship and Immigration Services (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.

In the instant case, we find that there are a number of inconsistencies in the record of proceeding that call into question the accuracy of the petitioner's statements with regard to the proffered position. For instance, we note that the beneficiary had been employed by the petitioner in the United States for approximately three years when the instant petition was submitted. Yet, in the record, the petitioner at times mistakenly referenced the beneficiary in the masculine pronoun case and by the wrong name.³ Further, the petitioner reported on the Form I-129 petition that the beneficiary does not have a social security number (stating "none" for this entry) – a response that contradicts other documents in the record. Moreover, in the initial submission, the petitioner described the proposed duties as "financial management and accounting duties" *without any further information or details* as to the beneficiary's work. Additionally, on the Form I-129 petition, the petitioner stated that the dates of intended employment would be from 09/30/2012 to 09/30/2012 (one day). The record provides no explanation for these irregularities. Thus, we must question the accuracy of the information and whether it is correctly attributed to this particular position and beneficiary.

In response to the RFE, the petitioner provided additional information regarding the beneficiary's duties. The description, however, lacks the specificity and detail necessary to support the petitioner's assertion that the proffered position qualifies as a specialty occupation. Specifically, the petitioner stated:

In the position of Financial Manager, [the beneficiary] has been responsible for managing, overseeing, and coordinating all financial matters including accounting, reporting, budgeting and sales reports for both locations.

* * *

³ For instance, the petitioner refers to the beneficiary as [redacted] and requests permission for him to work at its company. No explanation was provided.

[The beneficiary] is responsible for preparing and providing analysis of all financial reports of the company. She then is responsible for ensuring that management is aware of the results of the reports to ensure that the company is moving in a positive direction. I have attached our reports to this letter to show the complexity of the work she performs for our company. Additionally, she manages all accounting for the business. She prepares all accounting reports and very intensely analyzes the reports on a monthly basis.

The abstract level of information provided about the proffered position and its constituent duties is exemplified by the petitioner's assertion that the beneficiary "is responsible for ensuring that management is aware of the results of the reports to ensure that the company is moving in a positive direction." The petitioner's statement – as so generally described – does not illuminate the substantive application of knowledge involved or any particular educational attainment associated with such application. Further, it fails to provide any particular details regarding the demands, level of responsibilities and requirements necessary for the performance of this duty. The petitioner further claims that the beneficiary "manages all accounting for the business" and "prepares all accounting reports and very intensely analyzes the reports on a monthly basis."⁵ However, these statements do not provide sufficient 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 tasks. Furthermore, the phrases could cover a range of issues, and without additional information, do not provide insight into the beneficiary's day-to-day work.

While this type of general description may be appropriate when defining the range of duties that may be performed within an occupational category, it is insufficient to be relied upon by the petitioner when discussing the duties attached to specific employment for H-1B approval as it fails to adequately convey the substantive work that the beneficiary will perform within the petitioner's business activities. More specifically, in establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in the context of the petitioner's business operations, demonstrate a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition. Therefore, it is not evident that the proposed duties as described, and the position that they comprise, merit recognition of the proffered position as a specialty occupation.

Moreover, the petitioner stated that the petition was filed as "[c]ontinuation of previously approved employment without change" and purported that the beneficiary had been employed in the position for approximately three years; however, the descriptions provide general duties of the occupation rather than specific information regarding the beneficiary's actual daily duties. The petitioner did not provide any information with regard to the order of importance and/or frequency of occurrence with which the beneficiary had been and would be performing the functions and tasks. The petitioner did

⁵ We note that the petitioner submitted corporate tax returns quarterly report, which were prepared by [REDACTED] at [REDACTED] rather than the beneficiary. This appears to contradict the petitioner's statement that the beneficiary "manages all accounting for the business."

not specify which tasks were major functions of the proffered position, and it did not establish the frequency with which each of the duties had been and would be performed (e.g., regularly, periodically or at irregular intervals). As a result, the petitioner did not establish the primary and essential functions of the proffered position.

Moreover, it is reasonable to assume that the size of an employer's business has or could have an impact on the duties of a particular position. See *EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). Thus, the size of a petitioner may be considered as a component of the nature of the petitioner's business, as the size impacts upon the duties of a particular position. In matters where a petitioner's operations are relatively small, we review the record for evidence that its operations, are, nevertheless, of sufficient complexity to indicate that it would employ the beneficiary in an H-1B position. Additionally, when a petitioner employs relatively few people, it may be necessary for the petitioner to establish how the beneficiary will be relieved from performing non-qualifying duties. In response to the RFE, the petitioner stated that it has other employees and claimed that "[t]here is no need for [the beneficiary] to ever to be performing 'non-qualifying' functions."⁷ However, the petitioner did not provide information regarding the other positions (e.g., job titles, a description of the duties and responsibilities of the other employees, organizational chart) such that we can ascertain how the beneficiary would be relieved from performing non-qualifying duties.

IV. SPECIALTY OCCUPATION

The issue is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position.

A. The 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 meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

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

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

⁷ In the letter dated February 20, 2013 (submitted in response to the RFE), the petitioner initially stated that it employs thirteen individuals, but later in the same letter reported that it employs twelve individuals. No explanation was provided for the variance.

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

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

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

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

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

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

B. Analysis

In the instant case, the petitioner provided inconsistent statements regarding educational requirements for the proffered position. In the initial submission, the petitioner did not state that the proffered position has any particular requirements. Thereafter, in response to the RFE, the petitioner repeatedly claimed the position requires a "four-year college degree."⁸ Further, in the letter provided in support of the combined motion, the petitioner stated that its "business needs a Financial Manager, and specifically, one with at least a four-year finance/accounting degree (or the U.S. equivalent)." On appeal, counsel states that the position requires "the minimum of a bachelor's degree in business, or its equivalent" and claims that the petitioner had "thoroughly described its open position and why it requires a person with at least a college-level education in business administration, and specifically, accounting and finance, in order to fulfill the listed duties." While the petitioner has provided varying accounts of the requirements for the position, we note that 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).

The petitioner has not provided sufficient details regarding the nature and scope of the beneficiary's employment or substantive evidence regarding the actual work that the beneficiary would perform. The record lacks a meaningful job description and the evidence is not sufficiently concrete and informative to demonstrate that the proffered position qualifies as a specialty occupation. The tasks

⁸ In response to the RFE, the petitioner repeatedly stated that a four-year college degree (without any further specification) was sufficient for the proffered position. In the same letter, the petitioner stated once that the minimum requirement for the proffered position was "a four year bachelor's degree in business or a related field."

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 educational requirements of the position are conclusory and unpersuasive, as they are not supported by the job description or substantive evidence.⁹ However, assuming, *arguendo*, that the proffered position is a financial manager position, we will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

We recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹⁰ In the Labor Condition Application (LCA), the petitioner states that the proffered position corresponds to the occupational classification "Financial Managers" - SOC (ONET/OES) code 11-3031, at a Level I (entry level) wage.

We reviewed the chapter of the *Handbook* on "Financial Managers" including the sections regarding the typical duties and requirements for this occupational category.¹² However, the *Handbook* does not indicate that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry.

The subsection of the *Handbook* entitled "How to Become a Financial Manager" states the following:

Financial managers typically have a bachelor's degree and 5 years or more of experience in another business or financial occupation, such as loan officer, accountant, auditor, securities sales agent, or financial analyst.

Education

A bachelor's degree in finance, accounting, economics, or business administration is often the minimum education needed for financial managers. However, many employers now seek candidates with a master's degree, preferably in business

⁹ Further the petitioner repeatedly states that a four-year degree is sufficient for the proffered position. These statements do not indicate that the position requires at least a bachelor's degree in a specific specialty, or its equivalent, as required by section 214(i)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1184(i)(1)(B).

¹⁰ All of our references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>. We hereby incorporate into the record of proceeding the chapter of the *Handbook* regarding "Financial Managers."

¹² For additional information regarding the occupational category "Financial Managers," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Financial Managers, on the Internet at <http://www.bls.gov/ooh/management/financial-managers.htm#tab-1> (last visited February 10, 2015).

administration, finance, or economics. These academic programs help students develop analytical skills and learn financial analysis methods and software.

Licenses, Certifications, and Registrations

Professional certification is not required, but some financial managers still get it to demonstrate a level of competence. The CFA Institute confers the Chartered Financial Analyst (CFA) certification to investment professionals who possess at least a bachelor's degree, have 4 years of work experience, and pass three exams. The Association for Financial Professionals confers the Certified Treasury Professional credential to those who pass an exam and have a minimum of 2 years of relevant experience.

Work Experience in a Related Occupation

Financial managers usually have experience in another business or financial occupation, such as loan officer, accountant or auditor, securities sales agent, or financial analyst.

In some cases, companies provide formal management training programs to help prepare highly motivated and skilled financial workers to become financial managers.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Financial Managers, on the Internet at <http://www.bls.gov/ooh/management/financial-managers.htm#tab-4> (last visited February 10, 2015).

When reviewing the *Handbook*, we must note that the petitioner designated the proffered position under this occupational category at a Level I on the LCA.¹³ This designation is indicative of a comparatively low, entry-level position relative to others within the occupation and signifies that the beneficiary is only expected to possess a basic understanding of the occupation and will perform routine tasks that require limited, if any, exercise of judgment. In accordance with the relevant

¹³ The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels. A Level I wage rate is described by DOL as follows:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

DOL explanatory information on wage levels, the beneficiary will be closely supervised and her work closely monitored and reviewed for accuracy. Furthermore, she will receive specific instructions on required tasks and expected results. DOL guidance indicates that a Level I designation is appropriate for a research fellow, a worker in training, or an internship.

In the instant case, the petitioner does not require professional credentials for this particular position. Nevertheless, we observe that the narrative of the *Handbook* indicates that some financial managers obtain professional certification to demonstrate a level of competence. The *Handbook* continues by outlining the requirements for CFA certification and further indicates that the Certified Treasury Professional credential is granted to those who pass an exam and have a minimum of two years of relevant experience. Thus, the *Handbook* indicates that a bachelor's degree in a directly related field (or its equivalent) is not required for financial managers to obtain the Certified Treasury Professional credential.

According to the *Handbook*, financial managers usually have experience in another business or financial occupation. It further reports that in some cases, companies provide formal management training programs to help prepare highly motivated and skilled financial workers to become financial managers. These statements suggest that at least a baccalaureate or higher degree in a specific specialty (or its equivalent) is not normally the minimum requirement for entry into the occupation, but that financial workers can gain entry into the occupation through their companies' training programs.

The *Handbook* also states that a bachelor's degree in finance, accounting, economics, or business administration is often the minimum education needed for financial managers. We note that this statement does not indicate that a baccalaureate (or higher degree) in a specific specialty is normally the minimum requirement for entry. 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 specific specialty, 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, such as a degree in business administration, 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.¹⁴ See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007)

¹⁴ 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.

(describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Accordingly, the recognition of a bachelor's degree in business administration, without specification of a particular academic concentration within that general field, as sufficient for entry into a position is tantamount to an admission that the position is not in fact a specialty occupation.

Thus, the *Handbook* does not support the claim that the occupational category is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent. Even if it did, the record lacks sufficient evidence to support a finding that the particular position proffered here (an entry-level position in comparison to others within the occupation), would normally have such a minimum, specialty degree requirement or its equivalent.

We will now address the advisory opinion letter from [REDACTED] of [REDACTED]. The letter is dated April 19, 2013 and was submitted by the petition with the combined motion. In the letter, [REDACTED] claims that a bachelor's degree in finance is the minimum requirement for the proffered position. We reviewed the opinion letter in its entirety. However, as discussed below, the letter from [REDACTED] is not persuasive to establish the proffered position qualifies as a specialty occupation.

[REDACTED] provided his resume, listing his educational credentials, professional experience, and publications. Based upon a complete, we find that he has failed to provide sufficient information regarding the basis of his expertise on this particular issue. While the documentation contains information about his credentials, he has not established his expertise pertinent to the hiring practices of organizations seeking to fill positions similar to the proffered position in the instant case. Without further clarification, it is unclear how his education, training, skills or experience would translate to any particular knowledge of the current recruiting and hiring practices of convenience stores (as designated by the petitioner with the NAICS code) or similar organizations for financial manager positions.

[REDACTED] provided a short bullet point list of the job duties (which are virtually verbatim from the petitioner's RFE response). There is no indication that [REDACTED] possesses any knowledge of the petitioner's proffered position beyond this brief description. He does not discuss the duties of the proffered position in any substantive detail. Further, while he provided a brief description of the petitioner's business ("two retail operations"), he does not demonstrate or assert in-depth knowledge of the specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise. For instance, there is no evidence that [REDACTED] has visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job.

[REDACTED] asserts a general industry educational standard for financial manager positions without referencing any supporting authority or any empirical basis for the pronouncement. Likewise, he does not provide a substantive, analytical basis for his opinion and ultimate conclusion. His opinion does not relate his conclusion to specific, concrete aspects of the petitioner's business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the

particular position here at issue. Accordingly, the very fact that he attributes a degree requirement to such a generalized treatment of the proffered position undermines the credibility of his opinion.

In the opinion letter, [REDACTED] does not cite specific instances in which his past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that he has published any work or conducted any research or studies pertinent to the educational requirements for such positions (or parallel positions) in the petitioner's industry for similar organizations, and no indication of recognition by professional organizations that he is an authority on those specific requirements.

Furthermore, there is no indication that the petitioner and counsel advised [REDACTED] that the petitioner characterized the proffered position as a low, entry-level financial manager position, for a beginning employee who has only a basic understanding of the occupation (as indicated by the wage-level on the LCA) relative to other positions within the occupational category. It appears that [REDACTED] would have found this information relevant for his opinion letter. Moreover, without this information, the petitioner has not demonstrated that [REDACTED] possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately determine parallel positions based upon job duties and responsibilities.

In summary, and for each and all of the reasons discussed above, we conclude that the opinion letter rendered by [REDACTED] is not probative evidence to establish the proffered position qualifies as a specialty occupation. The conclusions reached by [REDACTED] lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which he reached such conclusions. There is an inadequate factual foundation established to support the opinion and we find that the opinion is not in accord with other information in the record. As such, neither [REDACTED] findings nor his ultimate conclusions are worthy of any deference, and his opinion letter is not probative evidence towards satisfying any criterion of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). As a reasonable exercise of our discretion we discount the advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, we hereby incorporate the above discussion and analysis regarding the opinion letter into each of the bases in this decision for dismissing the appeal.

In the instant case, the duties and requirements of the position as described in the record of proceeding do not indicate that this particular position proffered by the petitioner is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, 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 such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports a standard, 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)).

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook* (or other objective, authoritative source), reports a standard, industry-wide requirement of at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the petitioner did not submit any letters or affidavits from similar firms or individuals in the petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals." Thus, based upon a complete review of the record of proceeding, we find that the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that the proffered position is "so complex or unique" that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

Throughout the record of proceeding, the petitioner emphasizes that it owns and operates two retail locations with "very high sales and revenues." The petitioner submitted various documents, including information regarding the proffered position and its business operations. For example, the evidence included the following:

- Federal income tax documents for 2010-2012 for a location at [REDACTED]
- Quarterly payroll tax reports for 4th Q 2011 to 1Q 2013. Notably, virtually all of the employees' have the last name [REDACTED]
- Quarterly federal tax return for 1Q 2013 for [REDACTED]
- Income statement ending on October 31, 2012.
- Various financial reports for [REDACTED], and [REDACTED]

¹⁶ The evidence in the record does not establish the petitioner's relationship to these companies. Further, the documents offer inconsistent information about names of the retail stores and their locations. For example, the bank statement from [REDACTED] indicates that the petitioner is "doing business as" [REDACTED] at [REDACTED]. However, another unidentified bank statement lists the petitioner "doing business as" [REDACTED] at [REDACTED], but the checks attached to the statements indicate that [REDACTED] is located at [REDACTED]

- Daily financial reports for [REDACTED] and other unidentified stores.
- Bank statements.

While the petitioner submitted various financial documents, it did not explain how the evidence relates to the beneficiary's day-to-day responsibilities and how the nature of processing such documents demonstrates that its particular position is so complex or unique that it can only be performed only by an individual with a baccalaureate (or higher degree) in a specific specialty, or its equivalent. In response to the RFE, the petitioner claims that the beneficiary "is responsible for preparing and providing analysis of all financial reports of the company" and asserts that the reports show the complexity of the work the beneficiary performs for the company. However, there is no evidence to demonstrate the beneficiary's specific role (if any) in the preparation of the reports. Further, the reports do not indicate the purpose for which they were prepared. The petitioner also did not provide any information as to the financial analysis methods and software used (if any) by the preparer. Accordingly, without further information, the evidence regarding the reports is of limited probative value.

We note, it is not the volume of documentation that establishes eligibility for the benefit sought, but rather the relevance, probative value, and credibility of the documentation – both individually and within the context of the totality of the evidence. Further, as noted, that the tax documents indicate that a third-party vendor, [REDACTED] is used by the petitioner for its accounting and tax services.

Although the petitioner claims that it has plans to expand its business operations, it did not provide probative documentation to support the claim (e.g., a business plan; documentation substantiating the expansion of physical facilities; plans to hire staff; evidence substantiating that the petitioner intends to establish branch, subsidiary or affiliate offices; probative evidence substantiating investments or new revenue sources; or other documentation regarding development/expansion plans).¹⁷ 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, a petition cannot be approved to meet potential business expansions or the expectation of new customers or contracts.¹⁸

[REDACTED] Further, the 2012 corporate tax return indicates that that the petitioner is trading as [REDACTED] at [REDACTED]. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence.

¹⁷ The petitioner's claim that it intends to expand its business operations in the future is insufficient to demonstrate that the proffered position qualifies as a specialty occupation. As previously noted, a petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. See 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

¹⁸ The agency made clear long ago that speculative employment is not permitted in the H-1B program. See, e.g., 63 Fed. Reg. 30419, 30419 - 30420 (June 4, 1998).

Upon review, we find that the petitioner has not developed or established complexity or uniqueness as attributes of the proffered position that would require the services of a person with at least a bachelor's degree in a specific specialty, or its equivalent.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, the LCA indicates a wage level based upon the occupational classification "Financial Managers" at a Level I (entry level) wage. This designation is indicative of a comparatively low, entry-level position relative to others within the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that she would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she would receive specific instructions on required tasks and expected results. Without further evidence, it is not credible that the duties of the petitioner's proffered position are complex or unique as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage. For instance, a Level IV position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."¹⁹

The petitioner claims that the beneficiary is well qualified for the position, and references her qualifications. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. Upon review of the record of proceeding, we find that the evidence does not establish the proffered position as satisfying the second prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. To this end, we usually review the petitioner's past recruiting and hiring practices, as well as information regarding employees who currently or in the past served in the position. In addition, the petitioner may submit any other documentation it considers relevant to this criterion of the regulations.

To merit approval of the petition under this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. Upon review of the record of proceeding, the petitioner has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

While a petitioner may assert that a proffered position requires a specific degree, that statement alone without corroborating evidence cannot establish the position as a specialty occupation. Were

¹⁹ For additional information on wage levels, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

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 petitioner 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 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if 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* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

The petitioner stated in the Form I-129 petition that it has 13 employees and that it was established in [REDACTED]. The petitioner did not any probative evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. The petitioner did not provide probative evidence demonstrating that it has a history of requiring the degree or degree equivalency in its prior recruiting and hiring for the position.

Upon review of the record, the petitioner has not provided sufficient evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

The petitioner provided information regarding the proffered position and its business operations, including the documentation previously outlined. While the evidence provides some insights into the petitioner's business activities, the documents do not establish that the nature of the specific duties of the proffered position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

On appeal, the petitioner asserts that it is "a very profitable and busy retail operation with two locations and future plans for expansion." With regard to the petitioner's expansion plans, it must be noted that the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). The H-1B classification is not intended for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. *See, e.g.*, 63 Fed. Reg. 30419, 30419 - 30420 (June 4, 1998).

Further, we reiterate our earlier comments and findings with regard to the implication of the petitioner's designation of the proffered position in the LCA as a Level I (the lowest of four assignable levels). That is, the proffered position's Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category, and hence one not likely distinguishable by relatively specialized and complex duties. As noted earlier, DOL indicates that a Level I designation is appropriate for "beginning level employees who have only a basic understanding of the occupation." Without further evidence, it is not credible that the petitioner's proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage. For instance, as previously mentioned, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."

Upon review of the record of proceeding, we find that the petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. We, therefore, conclude that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

V. BENEFICIARY'S QUALIFICATION

We do not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the proffered position qualifies as a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. Therefore, we need not address the beneficiary's qualifications further, except to note that, the combined evaluation of the beneficiary's

education and work experience submitted by the petitioner is insufficient to establish that the beneficiary possesses the equivalent of a U.S. bachelor's degree in any specific specialty.

Briefly, the petitioner submitted an evaluation of the beneficiary's credentials, and the claimed equivalency was based in part on the beneficiary's prior work experience. However, the record does not establish that the evaluator has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. See 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and (D)(1). For instance, there is no independent evidence in the record from the appropriate officials, such as deans or provosts, to establish that the evaluator has the authority to grant college-level credit in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).²⁰

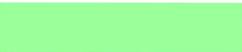
Further, the only description of the beneficiary's prior work is provided by the evaluator in the evaluation, rather than from the beneficiary's prior employer or other source. The job is described in terms of a few functions. However, the description does not convey the substantive nature of the work that the beneficiary performed and it contains insufficient information regarding the beneficiary's work history and duties (e.g., complexity of the job duties; the level of judgment; the amount and level of supervision; the level of understanding required to perform the job duties). Additionally, it does not indicate whether the beneficiary was employed on a full-time or part-time basis. It also does not provide information regarding the requirements (if any) for the prior position.

The evaluation does not present an adequate factual foundation for the evaluator to determine that the beneficiary has the education, specialized training, and/or progressively responsible experience that are equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that she has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. See 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). Thus, the evaluation fails to establish that the beneficiary's education, training and/or work experience are the equivalent of a bachelor's degree in a specific specialty based upon the information provided. In light of the lack of a sufficient factual foundation discussed above, the evaluation is insufficient even if they had been rendered by an official qualified under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). As such, the petitioner has not presented evidence that the beneficiary has at least a U.S. bachelor's degree in any specific specialty, or its equivalent.

VI. CONCLUSION AND ORDER

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, 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).

²⁰ The evaluator states that he simply possesses "advisory authority" to grant college-level credit in the Department of Decision Sciences and Information Systems, College of Business Administration, at [REDACTED]



Moreover, when we deny a petition on multiple alternative grounds, a petitioner 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. 128. Here, that burden has not been met.

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