



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: MAR 20 2015 OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

On the Form I-129 visa petition, the petitioner describes itself as a 5-employee Internet Telecom Services business established in [REDACTED]. In order to employ the beneficiary in what it designates as a full-time "Graphic Designer" at a salary of \$50,000 per year, the petitioner seeks to classify him 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, concluding that the evidence of record does not demonstrate that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's letter denying the petition; and (5) the Form I-290B, a brief, and supporting documentation.

We find that, upon review of the entire record of proceeding, the evidence of record does not overcome the director's ground for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

I. FACTUAL AND PROCEDURAL HISTORY

As indicated above, the petitioner seeks to employ the beneficiary in a position that it describes as a "Graphic Designer" on a full-time basis. The Labor Condition Application (LCA) that the petitioner submitted in support of the petition was certified for use with a job prospect within the "Graphic Designers" occupational classification, SOC (O*NET/OES) Code 27-1024, and a Level II prevailing wage rate. The LCA also reflects that, as mentioned above, the petitioner assigned "Graphic Designer" as the position's job title.

In a letter dated March 26, 2014, the petitioner's CEO indicated that the beneficiary's specific duties were as follows:

- Development and graphic layout designing for media related mobile applications, websites, logos, illustrations, and marketing materials of company (25% of work);
- Organize and manage graphic User experience and graphic User interface (UX/UI) improvement for company products (20% of work);
- Plan graphic media design projects to improve UX/UI design of company products (20% of work);
- Plan and lead developing media graphics and layouts for the applications on

- [REDACTED] and iOs (10% of work);
- Lead architecting graphic media design and information data for company application (10% of work);
 - Review graphic media designs of other graphic designers and engineers and suggest improvements (10% of work);
 - Conduct research for market trend, images, photos, and graphics and report to CEO or Director of Mobile Department (3% of work); and
 - Co-work with marketing team for efficient marketing strategy and marketing material design (2% of work).

The petitioner's CEO went on to state the following regarding the position:

The position of Graphic Designer requires highly developed skills and specialized knowledge in computer and Internet media design technologies. The individual must have extensive knowledge in designing interfaces and media applications for user experience, mastery of Photoshop, Illustrator, After Effects, CODA, Adobe Edge, and other design software, and a deep understanding of typography, colors, materials, textures, and finishes with an exceptional eye for detail. The person also must have a thorough understanding of iOS/[REDACTED] whole device media design, [REDACTED] tablet design, and HTML5 Action script. This experience can only be gained through a bachelor's program or equivalent; thus we require a bachelor's degree or higher, or equivalent, in graphic design, fine arts degree in media design, or a related field.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on May 23, 2014. The petitioner was asked to submit evidence to establish that the proffered position requires an individual with a bachelor's degree in a specific field of study in order to perform the duties of the position. The petitioner was also asked to submit evidence to establish that the beneficiary was qualified to perform the duties of the proffered position. In addition, the petitioner was asked to establish that the beneficiary was in valid nonimmigrant status at the time the petition was filed. Finally, the petitioner was asked for documentation to confirm the petitioner's official name and address. The director outlined some of the types of specific evidence that could be submitted.

In response to the director's RFE, the petitioner asserted that a bachelor's degree or its equivalent is normally the minimum requirement for entry into the position. In support, the petitioner submitted information about the Graphic Designers from the *Occupational Outlook Handbook*. In addition, the petitioner submitted two expert opinion evaluations to establish that the proffered position is a specialty occupation. The petitioner also submitted additional information regarding the beneficiary's education and experience and evidence of the beneficiary's status at the time of the H-1B submission. Finally, the petitioner submitted documentation pertaining to its existence.

The director reviewed the documentation and found it insufficient to establish eligibility for the benefit sought. The director denied the petition on July 25, 2014.

II. SPECIALTY OCCUPATION

We will now address the director's determination that the proffered position is not a specialty occupation. Based upon a complete review of the record of proceeding, we find that the evidence of record fails to establish that the position as described constitutes a specialty occupation.

A. Law

To meet the petitioner's burden of proof with regard to the proffered position's classification as an H-1B specialty occupation, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the 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:

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), 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.

B. Analysis

In the petitioner's March 26, 2014 letter, its CEO stated that the company is "quickly becoming one of the leaders in the industry. It has already won awards for its superior community-based voice broadcasting service, and its revenues reflect its rapid gains." The petitioner went on to state that in order to remain competitive, and to expand the services offered, it needs to expand its workforce. For this reason, the petitioner's CEO asserts that it needs a graphic designer.

However, the evidence of record fails to establish how a continuously employed, full-time graphic designer would be utilized by the petitioner. In that regard, we have reviewed the information in the record regarding the petitioner's IT services business. Upon review of this information, we find that the record of proceeding lacks documentation regarding the petitioner's business activities and the actual work that the beneficiary will perform to sufficiently substantiate the claim that the petitioner has H-1B caliber work for the beneficiary for the period of employment requested in the petition. That is, the record does not include sufficient work product or other documentary evidence to confirm that the petitioner has ongoing projects to which the beneficiary will be assigned. Thus, the petitioner has not provided the underlying documentation necessary to corroborate that the beneficiary would perform the claimed duties set out in the petitioner's letter of support. 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)).

As observed above, USCIS in this matter must review the actual duties the beneficiary will be expected to perform to ascertain whether those duties require at least a baccalaureate degree in a specific specialty, or its equivalent, as required for classification as a specialty occupation. To accomplish that task in this matter, USCIS must analyze the actual duties in conjunction with the specific project(s) to which the beneficiary will be assigned. To allow otherwise, results in generic descriptions of duties that, while they may appear (in some instances) to comprise the duties of a specialty occupation, are not related to any actual services the beneficiary is expected to provide.

The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). The agency made clear long ago that speculative employment is not permitted in the H-1B program. For example, a 1998 proposed rule documented this position as follows:

Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or 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. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. See section 214(i)

of the Immigration and Nationality Act (the "Act"). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

63 Fed. Reg. 30419, 30419 - 30420 (June 4, 1998).

Without additional information describing the specific duties the petitioner requires the beneficiary to perform, as those duties relate to specific projects, USCIS is unable to discern the nature of the position and whether the position indeed qualifies as a specialty occupation. Without a meaningful job description within the context of non-speculative employment, the petitioner may not establish any of the alternate criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The duties as described by the petitioner do not establish that the work proposed for the beneficiary actually exists. 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).

We also find that the record fails to establish relative complexity, specialization and/or uniqueness as distinguishing aspects of either the proposed duties or the position that they are said to comprise. As evident in the job description quoted above, the record of proceeding presents the duties comprising the proffered position in terms of relatively abstract and generalized functions. More specifically, they lack sufficient detail and concrete explanation to establish the substantive nature of the work and associated applications of specialized knowledge that their actual performance would require within the context of the petitioner's particular business operations. Take for example the following duty description:

Organize and manage graphic User experience and graphic User interface (UX/UI) improvement for company products

The evidence of record contains neither substantive explanation nor documentation showing the range and volume of company products that the beneficiary would have to organize and manage. Likewise, the record does not clarify the substantive work and associated applications of specialized knowledge that would be involved in the referenced duty. Also, the petitioner does not provide substantive information with regard to the particular work, methodologies, and applications of knowledge that would be required for the percentage-assigned duties, such as "Plan and lead developing media graphics and layouts for the applications on [REDACTED] and iOS-10%."

The record'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 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.

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

Irrespective of the above finding, we will analyze the evidence of record to determine whether the proffered position as described would qualify as a specialty occupation. To that end and to make our determination as to whether the employment described above qualifies as a specialty occupation, we turn to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We will first consider the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is satisfied by the petitioner establishing that a baccalaureate or higher degree, or its equivalent, in a specific specialty is the normal minimum requirement for entry into the particular position that is the subject of the petition.

In support of the assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted two letters. In a June 2, 2014 letter from [REDACTED] Ph.D., Professor of Computer Science, [REDACTED] of the [REDACTED], Dr. [REDACTED] outlined the duties of the proffered position, which are identical to the duties of the proffered position as outlined in the petitioner's March 26, 2014 to the USCIS, and made the following assertions:

A Google search for graphic design positions indicates that companies looking to hire for this title generally require either a BA or BFA degree in graphic design or digital media. As an expert in the field of graphic design, I can state that over the last few years the customer demand for increasingly sophisticated design, put a burden on design firms to hire individuals who had mastered the skills necessary to do data research and possess the analytic ability to develop strong conceptual frameworks for interactive products. Designers are now required to work with media across platforms including web, desktop, mobile, tablets and video. Designers are asked to develop different types of visualizations, including straight narrative, visualizations for interactive data exploration as well as visual analytics.

It is therefore clearly my opinion that the position of Graphic Designer is unquestionably a specialty position, and requires the services of someone with at least a Bachelor's Degree in Digital Media or a related field.

In a June 2, 2014 letter submitted by [REDACTED] Associate Professor of Graphic Design, [REDACTED], Professor [REDACTED] outlined the duties of the proffered position, which are identical to the duties of the proffered position as outlined in the petitioner's March 26, 2014 to the USCIS, and made the following assertions:

The demanding tasks of the position of Graphic Designer are high-level duties, requiring conceptual skills, theoretical knowledge, communication skills and advanced technical skills in interactive design, publication layout, multimedia design and product development. In addition, a Graphic Designer must demonstrate initiative, leadership abilities, and strengths in collaboration and teamwork. These responsibility could not be effectively executed without the academic knowledge and technical expertise acquired in a bachelor's degree program.

It is therefore clearly my opinion that the position of Graphic Designer is unquestionably a specialty position, and requires the services of someone with at least a Bachelor's Degree in Digital Media or a related field.

We reviewed the letters in their entirety. However, as discussed below, the letters from Professor [REDACTED] and Professor [REDACTED] are not persuasive in establishing that the proffered position qualifies as a specialty occupation position.

Upon review of the opinion letters, we find that the opinions provided by Professor [REDACTED] and Professor [REDACTED] regarding graphic designers as an occupational group are written in the abstract and thus carry little probative value. There is no indication that either professor possesses any particular knowledge of the petitioner's proffered position and its business operations. Neither professor demonstrates or asserts in-depth knowledge of the petitioner's business or *how the duties of the position would actually be performed in the context of the petitioner's business enterprise*. There is no evidence that Professor [REDACTED] and Professor [REDACTED] have 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. Neither professor has provided sufficient facts that would support the contention that the proffered position requires at least a bachelor's degree in a specific specialty, or its equivalent.

We, in our discretion, may 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).

As noted above, we find that the record of proceeding lacks documentation regarding the petitioner's business activities and the actual work that the beneficiary will perform to sufficiently substantiate the claim that the petitioner has H-1B caliber work for the beneficiary for the period of employment requested in the petition. That is, the record does not include sufficient work product or other documentary evidence to confirm that the petitioner has ongoing projects to which the beneficiary will be assigned. Thus, the petitioner has not provided the underlying documentation necessary to corroborate that the beneficiary would perform the claimed duties set out in the petitioner's letter of support and in the letters provided by Professors [REDACTED] and [REDACTED]. Thus, the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

In response to the RFE, counsel specifically stated that "we will not address criteria 2 & 3." In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The record does not establish that the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which calls for the petitioner to establish that the degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the proffered position is so complex or unique that it can be performed only by an individual with a degree, has been met. Nor has the petitioner established that it normally requires at least a bachelor's degree in a specific specialty or its equivalent for the proffered position, it does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, we find that the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered position's 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 the specific specialty or its equivalent.

We find that, to the extent that they are described in the record of proceeding, the duties that the petitioner ascribed to the proffered position do not establish the relative specialization and complexity required to satisfy this particular criterion. Rather, we find that, while the duties as described indicate generic functions associated with graphic designer in general, they do not provide evidence that demonstrates that, in the context of this particular proffered position, the substantive nature or performance requirements of those functions are so specialized and complex as to require the application of a body of highly specialized knowledge that is usually associated with attainment of at least a bachelor's degree in a specific specialty.

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. We therefore conclude that the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For all of these reasons, the evidence in the record of proceeding does not establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the evidence of record does not satisfy at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed, and the petition will be denied.

III. ADDITIONAL GROUND OF INELIGIBILITY

Beyond the decision of the director, there is an aspect of this petition that would come into play if the petitioner were able to establish the proffered position as a specialty occupation. While the beneficiary's qualifications are not relevant unless a specialty occupation were established, we note that, according to the petitioner's assertions in the record of proceeding, as a specialty occupation position the proffered position would require "a bachelor's degree or higher, or equivalent, in graphic design, fine arts degree in media design, or a related field." We see that the Educational Evaluation Report prepared by [REDACTED] and submitted with the H-1B petition states that the beneficiary holds a foreign degree equivalent to a U.S. bachelor's degree in Business Administration in Finance. However, on appeal, the evaluations submitted by Professor [REDACTED] and Professor [REDACTED] assert that the beneficiary has the academic equivalent of a Bachelor of Science in Communications. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The current record of proceeding, therefore, does not establish that the beneficiary is qualified to perform the duties of the proffered position. For this additional reason, the petition will be denied.²

IV. CONCLUSION AND ORDER

For the reasons discussed above, we conclude that the evidence of record does not establish that the proffered position qualifies for classification as a specialty occupation. Beyond the decision of the director, we find that the record of evidence does not establish that the beneficiary is qualified to perform the duties of the proffered position.

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 at 145 (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 our enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The petition will be denied and the appeal dismissed for the above stated reasons,³ with each

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

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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.

³ As these matters preclude approval of the petition, we will not address any of the additional issues we have observed on appeal.