



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF A-W- LLC

DATE: AUG. 23, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a staffing agency, seeks to temporarily employ the Beneficiary as a “staff accountant” under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director, Vermont Service Center, denied the petition. The Director concluded that the Petitioner did not establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred in finding that the proffered position is not a specialty occupation.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

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) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

- (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.

8 C.F.R. § 214.2(h)(4)(iii)(A). U.S. Citizenship and Immigration Services (USCIS) has consistently interpreted 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 proposed 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”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

## II. PROFFERED POSITION

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as a “staff accountant” on a part-time basis. In the initial letter of support, the Petitioner provided the following description of duties for the proffered position, along with approximate percentage of time the Beneficiary will spend on each duty:

- A. Work with the External Auditor on any issues related to the payment or reporting of taxes. (10%)
- B. Prepare the analysis and supporting documentation for the monthly Profit and Loss and Balance Sheet review. (10%)
- C. Prepare financial statements and account analysis. (10%)
- D. Coordinate and prepare the Quarterly and Year End Fluctuation Letters and Analysis. (10%)
- E. Coordinate the development of Gross Sales, Allowances, Net Sales and Departmental expense data for the “mid-month” income statement update. (10%)
- F. Prepare and/or review adjusting journal entries. (10%)

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- G. Maintain Chart of Accounts; review the various journals before posting; prepare bank reconciliations. (10%)
- H. Review and issue the monthly “Budget to Actual” cost performance reports[.] (10%)
- I. Review and issue the monthly “Forecast to Actual” cost reports[.] (10%)
- J. Provide support to the mid-month income statement update[.] (10%)

In response to the Director’s request for evidence (RFE), the Petitioner provided a revised job description for the proffered position, as follows:

- A. Monitor and process employees time record and report weekly production or work output for leased employees to customer/facilities. (15%)
- B. Bill the customers for the hours worked by the leased employees based on the weekly production report. (15%)
- C. Monitor and follow-up collections to maintain the targeted cash flow, and receivable and payable turnover. (10%)
- D. Process employees’ payroll. File and remit the corresponding employer and employee taxes as prescribed under the Federal, State and Local tax codes. (15%)
- E. Prepare the analysis and supporting documentation for the monthly Profit and Loss and Balance Sheet review. (15%)
- F. Prepare financial statements and account analysis. (5%)
- G. Perform bank reconciliations, and review float items; outstanding checks and other bank charges, perform adjusting entries. (10%)
- H. Review and prepare a monthly “Budget to Actual” cost performance report[.]. (10%)
- I. Recommend financial action plan base on reports to adhere and attain the company’s Budget Plan. (5%)

According to the Petitioner, the position requires a bachelor’s degree in accounting, finance or any related field.

### III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position satisfies any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, qualifies as a specialty occupation.<sup>1</sup> Specifically, the record (1) provides inconsistent information regarding the position<sup>2</sup>; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.<sup>3</sup>

#### A. First Criterion

We now turn 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. To inform this inquiry, we recognize the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>4</sup>

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Accountants and Auditors" corresponding to Standard Occupational Classification (SOC) code 13-2011 at a Level I wage.<sup>5</sup>

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<sup>1</sup> Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

<sup>2</sup> The purpose of an RFE is to provide a petitioner with an opportunity to clarify whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to an RFE, the Petitioner cannot materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. Rather, the Petitioner must establish that the position offered to the Beneficiary when the petition was filed merits classification for the benefit sought. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). If significant changes are made, the Petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. Here, in response to the RFE, the Petitioner changed the percentage of time the Beneficiary will spend on the duties and expanded the Beneficiary's job duties, adding such items as: (1) monitor and process employees time record and report weekly production or work output for leased employees to customer/facilities; and (2) bill the customers for the hours worked by the leased employees based on the weekly production report.

<sup>3</sup> The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position. While we may not discuss every document submitted, we have reviewed and considered each one.

<sup>4</sup> All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

<sup>5</sup> We will consider the Petitioner's classification of the proffered position at a Level I wage (the lowest of four assignable wage levels) in our analysis of the position. The "Prevailing Wage Determination Policy Guidance" issued by the DOL provides a description of the wage levels. A Level I wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. This wage rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that she will be closely supervised and her work closely monitored and reviewed for accuracy; and (3) that she will receive specific

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Thus, we reviewed the *Handbook's* subchapter entitled "How to Become an Accountant or Auditor," which states, in pertinent part: "Most accountants and auditors need at least a bachelor's degree in accounting or a related field."<sup>6</sup> The *Handbook* further states: "Certification within a specific field of accounting improves job prospects." In addition, the *Handbook* reports: "In some cases, those with associate's degrees, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, get junior accounting positions and advance to accountant positions by showing their accounting skills on the job."

The *Handbook* reports that certification may be advantageous or even required for some accountant positions. However, we note that there is no indication that the Petitioner requires the Beneficiary to have obtained the designation CPA, Certified Management Accountant (CMA) or any other professional designation to serve in the proffered position.

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 into this occupation. Rather, the occupation accommodates other paths for entry, including less than a bachelor's degree in a specific specialty. The *Handbook* reports that most accountants and auditors need at least a bachelor's degree in accounting or a related field. However, the *Handbook* further states that individuals who have an associate's degree can obtain junior accounting positions and advance to accountant positions. Furthermore, the *Handbook* reports that bookkeepers and accounting clerks meeting education and experience requirements set by their employers can also advance to accountant positions by demonstrating their accounting skills on the job. The *Handbook* does not indicate that this education and experience must be the equivalent to at least a bachelor's degree in a specific specialty. The *Handbook* does not indicate that normally the minimum requirement for positions falling under this occupational category is at least a bachelor's degree in a specific specialty, or its equivalent.

On appeal, the Petitioner submits an article from [REDACTED] which discusses the differences between accountants and bookkeepers. However, the article does not address the educational requirements for accountant positions.

Thus, the Petitioner has not provided documentation from a probative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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instructions on required tasks and expected results. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://flcdatacenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf). A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner's job opportunity. *Id.* A Level I wage should be considered for research fellows, workers in training, or internships. *Id.*

<sup>6</sup> For additional information regarding the occupational category "Accountants and Auditors," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., Accountants and Auditors, available at <http://www.bls.gov/ooh/business-and-financial/print/accountants-and-auditors.htm> (last visited Aug. 18, 2016).

## B. Second Criterion

The second criterion presents two, alternative prongs: “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[.]” 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong contemplates the common industry practice, while the alternative prong narrows its focus to the Petitioner’s specific position.

### 1. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the “degree requirement” (i.e., a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms “routinely employ and recruit only degreed individuals.” See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or another authoritative source, reports a requirement for at least a bachelor’s degree in a specific specialty, or its equivalent. We incorporate by reference our 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.”

In support of this criterion, the Petitioner submitted copies of job announcements placed by other employers. However, upon review of the documents, we find that the Petitioner’s reliance on the job announcements is misplaced. First, we note that although the Petitioner provided advertisements from staffing agencies, they are not the hiring employers. For instance, one of the advertisements indicates that the staff accountant position is for a financial services firm. Another posting indicates that the position is for a media company. The Petitioner did not supplement the record of proceeding to establish that the hiring organizations are similar to it.

When determining whether the Petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the Petitioner to claim that

an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

Moreover, some of the advertisements do not appear to be for parallel positions. For example, one of the positions appears to be for more senior positions than the proffered position. Moreover, one of the postings does not include the duties and responsibilities for the advertised positions. Thus, it is not possible to determine important aspects of the jobs, such as the day-to-day responsibilities, complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Therefore, the Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

In addition, one of the postings does not indicate that at least a bachelor's degree in a directly related specific specialty (or its equivalent) is required.<sup>7</sup> The job postings suggest, at best, that although a bachelor's degree is sometimes required for accountant positions, a bachelor's degree in a *specific specialty* (or its equivalent) is not.<sup>8</sup>

As the documentation does not establish that the Petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary.<sup>9</sup> That is, not every deficit of every job posting has been addressed. Thus, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

## 2. Second Prong

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 its particular position is so complex or unique that it can be

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<sup>7</sup> As discussed, the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but a bachelor's degree in a specific specialty that is directly related to the duties of the position. See section 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In addition, 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. *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Furthermore, a *preference* for a degree in a field is not necessarily an indication of a minimum *requirement*.

<sup>8</sup> It must be noted that even if all of the job postings indicated that a requirement of a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the Petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that “[r]andom selection is the key to [the] process [of probability sampling]” and that “random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error”).

<sup>9</sup> The Petitioner did not provide any independent evidence of how representative the job postings are of the particular advertising employers' recruiting history for the type of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the actual hiring practices of these employers.

performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

We reviewed the Petitioner's statements regarding the proffered position; however, in the appeal brief, the Petitioner does not assert that it satisfies this prong of the second criterion. Further, the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. Thus, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

#### C. Third Criterion

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.

The Petitioner stated in the Form I-129 that it was established in 2014 (approximately one year prior to the filing of the H-1B petition) and that it has four employees. Upon review of the record, we find that the Petitioner did not submit information regarding employees who currently or previously held the position. The record does not establish that the Petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, directly related to the duties of the position. Therefore, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

#### D. Fourth Criterion

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.

In the appeal brief, the Petitioner does not assert that it satisfies this criterion. Nor has the Petitioner demonstrated relative specialization and complexity as an aspect of the proffered position.

The Petitioner has not sufficiently demonstrated how the position as described requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent. For instance, the Petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the tasks. While a few related courses may be beneficial in performing certain duties of the position, the Petitioner has not demonstrated how an established curriculum of such courses is required. The evidence in the record does not refute the *Handbook's* information to the effect that a bachelor's degree in a specific specialty, or its equivalent, is not required for entry into the occupation in the United States. Without more, the record lacks sufficiently detailed information to distinguish the level of judgment and understanding necessary to perform the duties as specialized and complex.

We also incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the position in the LCA as a Level I position (the lowest of four assignable wage-levels) relative to others within the same occupational category.<sup>10</sup>

The Petitioner claims that the Beneficiary is well qualified for the position, and references his 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. The Petitioner has not demonstrated in the record that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation.

#### IV. EXTENSION OF H-1B STATUS

The Petitioner also has not demonstrated that the Beneficiary is eligible for an extension of his H-1B status beyond the six-year limitation found in section 214(g)(4) of the Act, 8 U.S.C. § 1184(g)(4).<sup>11</sup> More specifically, the Petitioner has not demonstrated eligibility under Section 106(a) of the American Competitiveness in the Twenty-First Century Act (AC21), as amended by the Twenty-First Century Department of Justice Appropriations Authorization Act.

Section 106 of AC21, as amended, reads:

(a) EXEMPTION FROM LIMITATION. -- The limitation contained in section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. § 1184(g)(4)) with respect to the duration of authorized stay shall not apply to any nonimmigrant alien previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of such Act (8 U.S.C. § 1101(a)(15)(H)(i)(b)), if 365 days or more have elapsed since the filing of any of the following:

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<sup>10</sup> The Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I, entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty, or its equivalent. That is, a position's wage-level designation may be a relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

<sup>11</sup> The Petitioner attested on the Form I-129, Petition for a Nonimmigrant Worker, that the Beneficiary has held H-1B status from October 1, 2008, to September 19, 2014 (which equals 5 years, 11 months, and 18 days).

(b)(6)

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(1) Any application for labor certification under section 212(a)(5)(A) of such Act (8 U.S.C. § 1182(a)(5)(A)), in a case in which certification is required or used by the alien to obtain status under section 203(b) of such Act (8 U.S.C. § 1153(b)).

(2) A petition described in section 204(b) of such Act (8 U.S.C. § 1154(b)) to accord the alien a status under section 203(b) of such Act.

(b) EXTENSION OF H-1B WORKER STATUS-- The [Secretary of Homeland Security] shall extend the stay of an alien who qualifies for an exemption under subsection (a) in one-year increments until such time as a final decision is made—

(1) to deny the application described in subsection (a)(1), or, in a case in which such application is granted, to deny a petition described in subsection (a)(2) filed on behalf of the alien pursuant to such grant[.]

Pub. L. No. 106-313, § 106(a) and (b), 114 Stat. 1251, 1253-54 (2000); Pub. L. No. 107-273, § 11030A, 116 Stat. 1836, 1836-37 (2002).

In this matter, the Petitioner asserts that the Beneficiary is eligible for an extension of status under section 106(a) of AC21 through a labor certification filed on his behalf by another employer, [REDACTED] (ETA Case Number: [REDACTED]). The Petitioner stated in its RFE response that this labor certification application “is presently under ‘Request for Review.’” In support of its RFE response, the Petitioner submitted a copy of the DOL’s denial notice, dated May 21, 2015, of the said labor certification application, specifically advising the employer that a request for review of the denial may be made to the Board of Alien Labor Certification Appeals (BALCA), or alternatively, to the DOL. The Petitioner also submitted a copy of its attorney’s brief addressed to DOL, dated June 18, 2015, requesting reconsideration of their denial of the labor certification.

However, the Petitioner did not submit credible, objective evidence that it had properly filed a request for review to the DOL or BALCA. A copy of its attorney’s brief – without evidence that this brief has actually and properly been filed – is insufficient to establish that the labor certification is still pending. The evidence of record thus reflects that the labor certification application filed on behalf of the Beneficiary was denied on May 21, 2015, and is not currently pending appeal or motion before the appropriate governmental body. The Petitioner therefore has not demonstrated that the Beneficiary is not entitled to an extension of status pursuant to section 106(a) (or any other provision) of AC21.

As the Beneficiary will reach the statutory six-year limitation on H-1B status imposed by section 214(g)(4) of the Act prior to the end of the validity period requested (from March 17, 2015, to March 16, 2016) and is not entitled to an extension of status under AC21, the petition may not be approved for this additional reason.

## V. CONCLUSION

We may deny an application or petition that does not comply with the technical requirements of the law even if the Director does not identify all of the grounds for denial in the initial decision. *See Spencer Enters., Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of the enumerated grounds. *See Spencer Enters., Inc. v. United States*, 229 F. Supp. 2d at 1037; *see also BDPCS, Inc. v. FCC*, 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. The burden is on the Petitioner to show 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.

Cite as *Matter of A-W- LLC*, ID# 17941 (AAO Aug. 23, 2016)