



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

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

MATTER OF T-H-W-

DATE: JAN. 7, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a business selling tile, marble, stone, and granite at wholesale and retail, seeks to continue to employ the Beneficiary as a "Sales Engineer" under the H-1B nonimmigrant classification. See Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.<sup>1</sup>

### I. ISSUES

The Director denied the petition, finding that the evidence of record did not establish (1) that the proffered position qualifies for treatment as a specialty occupation in accordance with the applicable statutory and regulatory provisions, and (2) that the Petitioner paid all applicable fees when it filed the visa petition.

### II. WITHDRAWAL OF ONE BASIS FOR DENIAL OF THE VISA PETITION

As was noted above, one of the bases for the decision of denial was the Director's finding that the Petitioner had not paid all of the fees required when it filed the instant petition. Based upon our review of the entire record of proceedings, including the Petitioner's submissions on appeal, we find that the Petitioner has overcome that basis of the Director's denial. We therefore withdraw that basis of the Director's decision.

### III. SPECIALTY OCCUPATION

The remaining issue is whether the evidence of record establishes that the Petitioner would employ the Beneficiary in a specialty occupation position.

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<sup>1</sup> We conduct appellate review on a *de novo* basis. *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015); see also 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

A. Legal Framework

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

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

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

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

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

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. See *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); see also *COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-*

F-, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. See *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

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

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

#### B. The Proffered Position

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a “Sales Engineer” position and that it corresponds to Standard Occupational Classification (SOC) code and title “41-9031, Sales Engineers,” from the Occupational Information Network (O\*NET). The LCA further states that the proffered position is a Level IV position.

In a letter dated August 4, 2014, submitted with the visa petition, the Petitioner provided the following description of the duties of the proffered position, verbatim:

As a Sales Engineer, [the Beneficiary's] main duties are to manage the store, where marble, granite, stone and quartz custom made kitchen countertops are made and installed, among other things that are sold there. He uses his expertise in making sales and supervises 8 persons who are salespersons, office personnel, cashiers and warehouse employees. He is also in charge of the area of projects and wholesales. He supervises and manages all sales efforts and makes specialized sales for custom made countertops and other products. He is also in charge of purchasing stones, such as marble, granite and quartz. [The Beneficiary] has the ability to read blueprints and prepares estimates based on these and knows about manufacturing special pieces of marble, granite and quartz. He elaborates different alternatives for pieces sold and countertops, combining elements to obtain innovative finishing and products. He is also in charge of the quality control of products received; inspects and selects products according to the needs of the clients and the different projects that are being worked on. He controls and supervises the installation process of countertops and materials and verifies proper installation according to specification, materials and verifies proper installation according to specifications, materials and products needed in each case.

Elsewhere in the same letter, the Petitioner stated: “[The Beneficiary is] in charge of the delicate manufacturing process involved in creating custom kitchen and bathroom counters, dealing with the programming and ‘fine tuning’ of the computerized sophisticated tools used to carry out the manufacturing, cutting and design process used to make products sold by [the Petitioner].” The Petitioner stated, “[The proffered position] requires the very specific and specialized knowledge of being able to plan and implement the automatization process in the manufacture of custom made counter tops,” and “a good knowledge of the use of automatic machines and equipment as well as [computerized numeric control] machines.” The Petitioner stated that, in the proffered position, the Beneficiary “must understand the programming of the equipment and have knowledge of the density, resistance and thickness of the different materials used,” “[supervise] the manufacturing of special pieces and [make] sure that they are processed on time and shaped to the requirements of the clients,” and be “in charge of quality control of the raw materials once they are received from suppliers.”

C. Analysis

*A baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position*

We will first discuss the record of proceedings in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), 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.

As noted above, the Petitioner claims that the proffered position corresponds to SOC code and title 41-9031, Sales Engineers, from O\*NET. We recognize the *Handbook*, cited by the Petitioner, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>2</sup> The *Handbook* states the following with regard to the duties of sales engineers:

**What Sales Engineers Do**

Sales engineers sell complex scientific and technological products or services to businesses. They must have extensive knowledge of the products' parts and functions and must understand the scientific processes that make these products work.

**Duties**

Sales engineers typically do the following:

- Prepare and deliver technical presentations explaining products or services to existing and prospective customers
- Confer with customers and engineers to assess equipment needs and to determine system requirements
- Collaborate with sales teams to understand customer requirements and provide sales support
- Secure and renew orders and arrange delivery
- Plan and modify products to meet customer needs
- Help clients solve problems with installed equipment
- Recommend improved materials or machinery to customers, showing how changes will lower costs or increase production
- Help in researching and developing new products

Sales engineers specialize in technologically and scientifically advanced products. They use their technical skills to explain the benefits of their products or services to potential customers and to show how their products or services are better than their

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<sup>2</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2016-17 edition available online.

competitors'. Some sales engineers work for the companies that design and build technical products. Others work for independent sales firms.

Many of the duties of sales engineers are similar to those of other salespersons. They must interest the client in buying their products or services, negotiate a price, and complete the sale. To do this, sales engineers give technical presentations during which they explain the technical aspects of the product and how it will solve a specific customer problem.

Some sales engineers, however, team with salespersons who concentrate on marketing and selling the product, which lets the sales engineer concentrate on the technical aspects of the job. By working as part of a sales team, each member is able to focus on his or her strengths and expertise. For more information on other sales occupations, see the profile on wholesale and manufacturing sales representatives.

In addition to giving technical presentations, sales engineers are increasingly doing other tasks related to sales, such as market research. They also may ask for technical requirements from customers and modify and adjust products to meet customers' specific needs. Some sales engineers work with research and development (R&D) departments to help identify and develop new products.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Sales Engineers," <http://www.bls.gov/ooh/sales/sales-engineers.htm#tab-2> (last visited Dec. 30, 2016).

The duties of the proffered position bear very little resemblance to the duties of a sales engineer. The proffered position does not entail selling complex machinery or engineering services to clients, which is the fundamental duty of a sales engineer.

However, the *Handbook* states the following about the duties of top executives, in pertinent part:

### **What Top Executives Do**

Top executives devise strategies and policies to ensure that an organization meets its goals. They plan, direct, and coordinate operational activities of companies and organizations.

### **Duties**

Top executives typically do the following:

- Establish and carry out departmental or organizational goals, policies, and procedures

- Direct and oversee an organization's financial and budgetary activities
- Manage general activities related to making products and providing services
- Consult with other executives, staff, and board members about general operations
- Negotiate or approve contracts and agreements
- Appoint department heads and managers
- Analyze financial statements, sales reports, and other performance indicators
- Identify places to cut costs and to improve performance, policies, and programs

The responsibilities of top executives largely depend on an organization's size. For example, an owner or manager of a small organization, such as an independent retail store, often is responsible for purchasing, hiring, training, quality control, and day-to-day supervisory duties. In large organizations, however, top executives typically focus more on formulating policies and strategic planning, while general and operations managers direct day-to-day operations.

The following are examples of types of top executives working in the private sector:

**Chief executive officers (CEOs)**, who are also known by titles such as *executive director*, *managing director*, or *president*, provide overall direction for companies and organizations. CEOs manage company operations, formulate and implement policies, and ensure goals are met. They collaborate with and direct the work of other top executives and typically report to a board of directors.

**Chief operating officers (COOs)** oversee other executives who direct the activities of various departments, such as human resources and sales. They also carry out the organization's guidelines on a day-to-day basis.

**General and operations managers** oversee operations that are too diverse and general to be classified into one area of management or administration. Responsibilities may include formulating policies, managing daily operations, and planning the use of materials and human resources. They make staff schedules, assign work, and ensure that projects are completed. In some organizations, the tasks of chief executive officers may overlap with those of general and operations managers.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Top Executives," <http://www.bls.gov/ooh/management/top-executives.htm#tab-2> (last visited Jan. 6, 2016).

The duties of the proffered position correspond very closely to the duties the *Handbook* attributes to Top Executive positions, and more specifically to General and Operations Managers as described in the same chapter. In the proffered position, the Beneficiary would manage the Petitioner's store, supervise the Petitioner's sales personnel, be in charge of purchasing raw materials, perform quality control on the materials received, and supervise the installation of countertops and the Petitioner's other products. He would also be in charge of the manufacturing process and the machines required for the process. In short, he appears to be in charge of the Petitioner's entire operation. The duties of the proffered position are entirely consistent with a general and operations manager position as described in the *Handbook*, as it involves overseeing "operations that are too diverse and general to be classified into one area of management or administration."

Further, we observe that the record contains the Petitioner's appeal brief to the Board of Alien Certification Appeals in a matter involving a denied ETA Form 9089, Application for Permanent Employment Certification. The Petitioner's brief in that matter indicates that the Petitioner has offered the Beneficiary a permanent position as its "General and Operations Manager."<sup>3</sup> Also, the Beneficiary's resume submitted with the instant appeal indicates that the Beneficiary has been working as the Petitioner's "Project and Operations Manager" from "2004-present." We recognize that the position proffered in the instant matter is temporary while the other offered position is permanent. However, the record contains insufficient indication that the duties of the proffered position differ from the duties of that permanent General and Operations Manager position in any way. We find that the description of the duties of the proffered position and the other evidence in the record demonstrate that the proffered position is a general and operations manager position as described in O\*NET.

The *Handbook* states the following with respect to the educational requirements of top executive positions, including general and operations manager, positions:

Many top executives have a bachelor's or master's degree in business administration or in an area related to their field of work. Top executives in the public sector often have a degree in business administration, public administration, law, or the liberal arts. Top executives of large corporations often have a master's degree in business administration (MBA).

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Top Executives," <http://www.bls.gov/ooh/management/top-executives.htm#tab-4> (last visited Jan. 6, 2016).

The *Handbook* does not indicate that a bachelor's degree in a specific specialty, or the equivalent, is normally required for entry into a top executive position. Instead, the *Handbook* states that these positions generally impose no specific degree requirement on individuals seeking employment. The

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<sup>3</sup> The matter under appeal appears to be the DOL's findings pertinent to some of the requirements the Petitioner posited for the position proffered in that other case.

statement that “many” top executives, which category includes general and operations managers, have college degrees is not synonymous with the “normal[] minimum requirement” standard imposed by this criterion. To the contrary, such a statement does not even necessarily indicate that a majority of top executives possess a degree. Moreover, the *Handbook* does not state that those positions which may require a bachelor’s degree or the equivalent require that the degree be in a specific specialty.

When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the Petitioner to provide persuasive evidence that the proffered position more likely than not satisfies this or one of the other three criteria, notwithstanding the absence of the *Handbook*’s support on the issue. In such cases, it is the Petitioner’s responsibility to provide probative evidence (e.g., documentation from other objective, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation.

The *Handbook* does not support the claim that the occupational category of general and operations manager is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent, and the Petitioner has not submitted sufficient evidence from another source which would support a finding that the particular position in question qualifies as a specialty occupation. The duties and requirements of the position as described in the record of proceedings 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).

*The requirement of a baccalaureate or higher degree in a specific specialty,  
or its equivalent, is common to the industry in parallel  
positions among similar organizations*

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: (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 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)).

Here and as already discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative source) reports an industry-wide requirement for 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 a professional organization of general and operations managers 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" for such positions.

The Petitioner did, as was noted above, make reference to online vacancy announcements posted by other companies. The Petitioner did not, however provide the announcements themselves, and they do not appear to be currently available on the Internet. Those vacancy announcements are unavailable to us and will not, therefore, be considered.

The evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to parallel positions with organizations that are in the Petitioner's industry and otherwise similar to the Petitioner. The Petitioner has not, therefore, satisfied the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

*The particular position is so complex or unique that it can be performed only by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent*

The evidence of record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." A review of the record of proceedings indicates that the Petitioner has not credibly demonstrated that the duties the Beneficiary will be responsible for or perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's 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 duties of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the Petitioner has not demonstrated how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here. Even when considering the Petitioner's descriptions of the proffered position's duties, the evidence of record does not establish why a few related courses or industry experience alone is insufficient preparation for the proffered position.

The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently

detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

As the Petitioner did not demonstrate how the proffered position is so complex or unique that it requires at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the Petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

*The employer normally requires a baccalaureate or higher degree in a specific specialty, or its equivalent, for the position*

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 a petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

The Petitioner has not expressly asserted eligibility nor submitted evidence under this criterion. Whether the Petitioner has previously employed anyone other than the Beneficiary in the proffered position is unknown to us. While a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, it is unclear how an employer would be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position, without providing some evidence pertinent to those who have previously held the position. We cannot conclude that the Petitioner has satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).<sup>4</sup>

*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 in a specific specialty, or its equivalent*

Finally, we will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the evidence of record establishes that the nature of the specific duties is so specialized

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<sup>4</sup> While a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were 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 employer 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 387. In other words, if a petitioner's degree requirement is only symbolic and 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* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

and complex that 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 instant case, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. Upon review of the totality of the record, the Petitioner has not established that the nature of the specific duties is 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.

For the reasons discussed above, the evidence of record does not satisfy the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The Petitioner has not 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 additional reason.

#### IV. ADDITIONAL BASIS

The record suggests an additional issue that was not addressed in the decision of denial but that, nonetheless, also precludes approval of this visa petition.

##### A. Legal Framework

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) stipulates the following:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

While the U.S. Department of Labor (DOL) is the agency that certifies LCAs before they are submitted to U.S. Citizenship and Immigration Services (USCIS), the DOL regulations note that it is within the discretion of the U.S. Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) to determine whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part:

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification . . . .*

[Italics added]

B. Analysis

As was noted above, the LCA submitted to support the visa petition is certified for a sales engineer position. However, for the reasons explained above, we have found that the proffered position is not a sales engineer position. Therefore, we also find that the LCA submitted does not correspond to the instant visa petition. The appeal will be dismissed for this additional reason.

V. CONCLUSION

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

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

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

**ORDER:** The appeal is dismissed.

Cite as *Matter of T-H-W-*, ID# 15331 (AAO Jan. 7, 2016)