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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: DEC 3 1 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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: SELF-REPRESENTED

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

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner states it is a "physical therapy, occupational therapy, hand therapy and speech therapy" business established in 2005 which has ten personnel. In order to employ the beneficiary in what it designates as an "Electronic Engineer" position, 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, finding that the proffered position is not a specialty occupation. On appeal, the petitioner contends that the director's findings were erroneous and submits a brief in support of this contention.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the director's RFE; (4) the director's decision denying the petition; and (5) the petitioner's Form I-290B and supporting documents. The AAO reviewed the record in its entirety before issuing its decision.

The primary issue for consideration is whether the particular position proffered here qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements:

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

> *Specialty occupation* means an occupation which requires [(1)] 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 requires [(2)] 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, the 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.

In a letter of support dated March 29, 2013, the petitioner claimed that it operates a rehabilitation facility that is equipped with "comprehensive, modern and advanced equipment and modalities to address personalized patient needs." It also claimed that it is currently transitioning toward the "use of specialized technology to improve patient treatment and monitoring," and that it is "in the process of developing technological tools to allow therapists to customize plans and schedules and to remotely monitor patients to ensure their exercises are on track." More specifically, the petitioner claimed that it is creating a tool "which would assist therapists and make treatment plans more engaging and effective for patients." As a result, the petitioner asserted that it requires the services of the beneficiary as an electronic engineer to assist in the development of technological software and programs to assist therapists in the treatment of their patients.

The petitioner described the duties of the proffered position as follows:

- Designing and developing software programs used to assist therapists in effectively treating patients, monitoring proper adherence with exercise programs and measuring improvement in patient mobility;
- Designing, developing, configuring and testing computer hardware and operating system software designed to remotely monitor patient adherence with exercise treatments;
- Designing and developing mobile applications and handheld devices designed to assist patients with adherence with therapist's recommended treatment plans by creating a step-by-step interactive reenactment of therapist's exercise plan;
- Improving, upgrading and expanding [the petitioner's] current electronic billing, scheduling and patient documentation system; and
- Designing and developing equipment used to assist therapists and patients in the execution of treatment plans focused on the rehabilitation of various injuries.

The petitioner further stated that it requires the incumbent for the position to hold a Bachelor of Science degree in Electronic Engineering and one year of work experience. The petitioner claimed that the beneficiary was qualified by virtue of his foreign bachelor's degree in electronic engineering and his foreign master's degree in tele-communication engineering.

In addition, the petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition corresponding to the occupational classification "Electrical Engineers" - SOC (ONET/OES Code) 17-2071, at a Level II wage. The petitioner indicated on the LCA that the job title is "Electronic Engineer."

The director found the initial evidence insufficient to establish eligibility and issued an RFE on May 1, 2013. The director stated that the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* does not indicate that a bachelor's degree in a specific specialty is required for entry into the occupation of electronics engineer and, thus, it cannot be found that the proffered position is a specialty occupation based on the information provided by the *Handbook*. The director therefore requested additional documentation in support of the petitioner's contention that the proffered position is a specialty occupation, as well as information regarding the petitioner's business operations.

On May 13, 2013, the petitioner responded to the director's RFE and submitted the following: (1) an excerpt from the *Handbook*, describing the occupations of electrical and electronics engineers; (2) a copy of the O*NET Summary Report for: 17-2072.00 – Electronics Engineers, Except Computer; and (3) copies of four job advertisements for electronics engineers posted on the Internet. The petitioner also submitted an undated letter in which it contended that, contrary to the director's conclusion in the RFE, the proffered position is in fact a specialty occupation. The petitioner also claimed that the occupation of "Electronics Engineer," as described by the *Handbook*, requires a bachelor's degree and that according to O*NET, a bachelor's degree is normally required to perform the duties of an electronics engineer.

Regarding the duties of the proffered position, the petitioner stated that the beneficiary "will be responsible [for] managing and maintaining the electronics, software and computer systems [for the petitioner]." Additionally, the petitioner provided the following updated description of duties for the beneficiary:

- Design and develop software, hardware and VOIP used to assist therapists in effectively treating patients, monitoring proper adherence with exercise programs and measuring improvement in patient mobility. Specifically, the beneficiary will design a program which will have time schedules with certain therapy tasks which will call/notify patients at designated times to remind them of their home exercise program with the option of reviewing the prescribed exercises by mobile phone, television or computer. Patients will be able to record their performance and send them to the therapist for further evaluation or comment. (60% of the beneficiary's time will be spent on this duty);
- Improving, upgrading and expanding [the petitioner's] current electronic billing, scheduling and patient documentation system (20% of the beneficiary's time will be spent on this duty); and

- Designing and developing equipment used to assist therapists and patients in the execution of treatment plans focused on the rehabilitation of physical injuries/conditions (20% of the beneficiary's time will be spent on this duty).

The petitioner continued by stating that it needed an individual who will be able to "take the electronic concepts posed and to produce it from scratch" and "determine issues relating to current electronic systems and apply the best resolutions for more effective and efficient use." The petitioner again stressed the importance of a background in electronics engineering in order to perform the duties of the proffered position.

On May 20, 2013, the director denied the petition, finding that the proffered position is not a specialty occupation. The director noted that the petitioner had not established that the proffered position qualified as a specialty occupation under any of the four alternate criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), specifically finding that the *Handbook* does not support the occupations of electrical and electronics engineer as requiring a degree in a specific specialty. On appeal, the petitioner asserts that the director's findings are erroneous. Specifically, the petitioner contends the following:

> There is no factual or legal basis for the Director to conclude that the offered position as an Electronic Engineer is not a "specialty occupation." The required duties of the position offered by the Petitioner require and demand the skill and knowledge of an Electronic Engineer. One cannot be employed as an Electronic Engineer unless he or she has attained a bachelor's degree in that field. The proffered position is clearly a "specialty occupation[";] as such the Petitioner requests this appeal be sustained and the Petition be approved.

When determining whether a position is a specialty occupation, the AAO must look in part at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, USCIS looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

Thus, a crucial aspect of this matter is whether the petitioner has sufficiently described the duties of the proffered position, such that USCIS may discern the nature of the position and whether this particular position indeed requires the theoretical and practical application of a body of highly specialized knowledge and at least a baccalaureate degree in a specific discipline or its equivalent. The AAO finds that the petitioner has not met its burden of proof in this regard.

For instance, the abstract level of information provided about the proffered position and its constituent duties is exemplified by the petitioner's assertion that the beneficiary will "develop a program" to assist therapists in treating patients. The phrase "develop a program" could cover a range of activities, and without further information, does not provide any insight into the beneficiary's day-to-day work. Further, although the petitioner indicated in response to the RFE that the beneficiary will design and develop software, hardware, and VOIP to assist therapists in treating patients, this statement does not delineate with sufficient specificity the actual work the beneficiary will perform. In addition, the petitioner has failed to differentiate between seemingly repetitive or at least overlapping duties. For example, the petitioner has indicated that the beneficiary will "design and develop a program"; "design and develop software, hardware, and VOIP"; and "design and develop equipment." The petitioner, however, did not identify any specific tasks related to these duties that would clarify why the same generically stated duties appear to be listed multiple times in different sections of the description of the proffered position. The petitioner's description of the proffered position fails to illuminate the substantive application of knowledge involved in the proposed duties or any particular educational attainment associated with such application.

Furthermore, the petitioner claims in the LCA that the proffered position falls under the occupational category "electrical engineers." The petitioner asserts in its response to the RFE and on appeal that the duties of the proffered position are akin to those of an electronics engineer as set forth in the *Handbook*. The occupations of electrical and electronics engineers are described in the *Handbook* under the heading entitled "Electrical and Electronics Engineers" as follows:

> Electrical engineers design, develop, test, and supervise the manufacturing of electrical equipment such as electric motors, radar and navigation systems, communications systems, or power generation equipment. Electrical engineers also design the electrical systems of automobiles and aircraft.
>
> Electronics engineers design and develop electronic equipment such as broadcast and communications systems, from portable music players to global positioning systems (GPS). Many also work in areas closely related to computer hardware.
>
> **Duties**
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> Electrical engineers typically do the following:
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> - Design new ways to use electrical power to develop or improve products
> - Do detailed calculations to compute manufacturing, construction, and installation standards and specifications
> - Direct manufacturing, installing, and testing to ensure that the product as built meets specifications and codes
> - Investigate complaints from customers or the public, evaluate problems, and recommend solutions

- Work with project managers on production efforts to ensure projects are completed satisfactorily, on time, and within budget

Electronics engineers typically do the following:

- Design electronic components, software, products, or systems for commercial, industrial, medical, military, or scientific applications
- Analyze electrical system requirements, capacity, cost, and customer needs and then develop a system plan
- Develop maintenance and testing procedures for electronic components and equipment
- Evaluate systems and recommend repair or design modifications
- Inspect electronic equipment, instruments, and systems to make sure they meet safety standards and applicable regulations
- Plan and develop applications and modifications for electronic properties used in parts and systems to improve technical performance

Electronics engineers who work for the federal government research, develop, and evaluate electronic devices used in diverse technologies, such as aviation, computing, transportation, and manufacturing. They work on federal electronic devices and systems, including satellites, flight systems, radar and sonar systems, and communications systems.

The work of electrical engineers and electronics engineers is often similar. Both use engineering and design software and equipment to do engineering tasks. Both types of engineers must also work with other engineers to discuss existing products and possibilities for engineering projects.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook,* 2012-13 ed., "Electrical and Electronics Engineers," http://www.bls.gov/ooh/architecture-and-engineering/electrical-and-electronics-engineers.htm#tab-2 (last visited Dec. 30, 2013).

In the instant case, the petitioner has stated that it is a rehabilitation facility providing physical, occupational, hand, and speech therapy. It asserts that, in this capacity, it provides personalized patient rehabilitation and seeks to improve this personalized treatment by implementing programs, tools, and/or equipment to assist therapists in monitoring patient compliance with at-home treatments. It claims to require the services of an electronics engineer to design and develop these programs, tools, and equipment.

As set forth above, the duties of an electrical engineer, according to the *Handbook*, consist primarily of "design[ing], develop[ing], test[ing], and supervis[ing] the manufacturing of electrical equipment such as electric motors, radar and navigation systems, communications systems, or power

generation equipment." Further, the *Handbook* indicates that electrical engineers also design the electrical systems of automobiles and aircraft. The vague and generalized description of duties for the proffered position in this matter does not identify the design or development of any such equipment.

The *Handbook* further indicates that electronics engineers "design and develop electronic equipment such as broadcast and communications systems, from portable music players to global positioning systems (GPS). Many also work in areas closely related to computer hardware." While the petitioner briefly mentions the word "hardware" in its description of the tasks associated with the proffered position, it fails to specifically articulate what in fact the beneficiary will do on a day–to-day basis. The record contains no documentation that identifies the proposed projects upon which the beneficiary will work and the specific kind of hardware he would design and develop. There is insufficient evidence that the petitioner has the capacity or capability to employ an electronics engineer that would design and develop tools or programs akin to those an electronics engineer would design and develop. Nor has the petitioner submitted promotional or informational materials that describe the proposed programs, tools, and equipment it claims the beneficiary will create.

As noted earlier, in its March 29, 2013 letter of support, the petitioner claimed that it is currently transitioning toward the "use of specialized technology to improve patient treatment and monitoring," and that it is "in the process of developing technological tools to allow therapists to customize plans and schedules and to remotely monitor patients to ensure their exercises are on track." More specifically, the petitioner claimed that it is creating a tool "which would assist therapists and make treatment plans more engaging and effective for patients." As a result, the petitioner asserted that it requires the services of the beneficiary as an electronic engineer to assist in the development of technological software and programs to assist therapists in the treatment of their patients.

However, there is insufficient evidence in the record to support these claims. The petitioner claims to operate a 2000+ square foot rehabilitation facility that provides physical therapy, occupational therapy, hand therapy and speech therapy. According to its brochure, which was included in support of the petition, the petitioner employs highly skilled and trained therapists who focus on the "evaluation and treatment of injuries, including work related injuries." Moreover, the petitioner claims that its therapists are educated in the latest techniques and have available the most modern modalities as prescribed by physicians, including treadmills, bicycle ergometers, and the [redacted] a third-party system comprised of a traction unit for the cervical and lumbar spine which includes light therapy and targeted decompression.[1] There is insufficient evidence in the record to establish that the beneficiary would be engaged in the design and development of similar equipment.

[1] An Internet search conducted by the AAO reveals that the [redacted] is owned and marketed by [redacted] *See* http:/[redacted] (last visited Dec. 30, 2013). There is no evidence that the beneficiary was involved in the creation of this system nor does the record demonstrate that the petitioner is contemplating the creation of its own similar system.

Although the petitioner claims that the beneficiary will be developing a "tool" for therapists to use to make treatment plans more engaging, the petitioner fails to disclose any details regarding the nature of this tool or the process through which it would be created. There is no explanation as to how such proposed technological tools will be incorporated into the current treatment plans utilized by the petitioner's therapists. Rather, it appears that the petitioner, as claimed in its brochure, will continue to utilize the services of therapists to provide traditional therapy with the assistance of the standard modalities and equipment identified above.

In the absence of any corroborating evidence to demonstrate that the petitioner is engaged in the business of designing and developing electrical or electronic equipment, the record does not establish that the petitioner will more likely than not employ the beneficiary as an electrical or electronics engineer. Without evidence of the petitioner's business operations and proposed plans to design and develop its own tools and processes, the record, as currently constituted, precludes a determination that the duties of the proffered position will likely be those of an electrical or electronics engineer. Based on the lack of documentary evidence, the AAO has determined that the petitioner has failed to distinguish the proffered position from a position that does not qualify as a specialty occupation. Thus, there is no basis upon which it can be determined that the petitioner has demonstrated a need for an electrical or electronics engineer and that the beneficiary will be performing the claimed duties of an electrical or electronics engineer on a full-time basis. 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)). Furthermore, 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 (BIA 1988).

The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." Furthermore, there must be sufficient, corroborating evidence in the record that demonstrates not only non-speculative employment for the beneficiary, but also enough details and specificity to establish that the work the beneficiary will perform for the petitioner will more likely than not be in a specialty occupation.[2] Again, going on record without supporting documentary evidence is not

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[2] The agency made clear long ago that speculative employment is not permitted in the H-1B program. 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

sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

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) and 103.2(b)(12). The petitioner'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 failed to present sufficient, credible evidence of the specific job duties the beneficiary will perform, it has therefore failed to demonstrate that the particular position proffered here is properly classified as an "Electronic Engineer." Absent such evidence to properly classify the job into an occupational category, it cannot be found whether such an occupation would more likely than not require a bachelor's or higher degree in a specific specialty, or its equivalent, as a minimum for entry. *See* INA § 214(i)(1). Consequently, and as just discussed, the petitioner also has not shown through submission of documentary evidence, that it meets any of the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Rather, while the petitioner claims that it requires an "Electronic Engineer" and that it requires a Bachelor of Science degree in Electronic Engineering and one year of work experience, it has not credibly shown that it requires an electronics engineer. Thus, the petitioner has not met its burden of proof in this regard, and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

Beyond the decision of the director, even if the proffered position were established as being that of an electronics engineer, the petition must also be denied due to the petitioner's failure to provide a certified LCA that corresponds to the petition. The AAO has determined that, if credibly supported

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> 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). While a petitioner is certainly permitted to change its intent with regard to non-speculative employment, e.g., a change in duties or job location, it must nonetheless document such a material change in intent through an amended or new petition in accordance with 8 C.F.R. § 214.2(h)(2)(i)(E).

by corroborating evidence, the beneficiary's duties as described would entail some of the duties of an electronics engineer, which coincides with the petitioner's job title and its repeated claims that the proffered position is an electronics engineer position as described in the *Handbook* and O*NET. As noted above, however, the LCA submitted with the petition was certified for SOC (O*NET/OES) Code 17-2071 or "Electrical Engineers," at a Level II wage. The job as titled and as described by the petitioner is an "Electronics Engineer" which is classified under SOC (O*NET/OES) Code 17-2072. As such, the petitioner was required to provide at the time of filing an LCA certified for SOC (O*NET/OES) Code 17-2072, not SOC (O*NET/OES) Code 17-2071, in order for it to be found to correspond to the petition.

To permit otherwise may result in a petitioner paying a wage lower than that required by section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A), by allowing that petitioner to simply submit an LCA for a different occupation and at a lower prevailing wage than the one being petitioned for. The LCA serves as the critical mechanism for enforcing section 212(n)(1) of the Act, 8 U.S.C. § 1182(n)(1). *See* 65 Fed. Reg. 80110, 80110-80111 (indicating that the wage protections in the Act seek "to protect U.S. workers' wages and eliminate any economic incentive or advantage in hiring temporary foreign workers" and that this "process of protecting U.S. workers begins with [the filing of an LCA] with [DOL]."). According to section 212(n)(1) of the Act, an employer must attest that it will pay a holder of an H-1B visa the higher of the prevailing wage in the "area of employment" or the amount paid to other employees with similar experience and qualifications who are performing the same services. *See Patel v. Boghra*, 369 Fed.Appx. 722, 723 (7th Cir. 2010).

In this matter, this would result in an LCA certified for a Level II prevailing wage of $81,141 per year for an electrical engineer when a certified LCA should have been submitted for an electronics engineer position with a Level II prevailing wage of $87,131 per year. As such, the attested wage of $85,000 per year on the Form I-129 would fall below that required by law at that time for the proffered position of electronics engineer.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining 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 (emphasis added):

> 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.

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a valid

LCA that has been certified for the proper occupational classification, and the petition must be denied for this additional reason.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient documentation to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree in a specific specialty, or its equivalent, also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications.

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

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd.* 345 F.3d 683.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate 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. The petition is denied.