U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35228168

Date: DEC. 13, 2024

Appeal of California Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (H-1B)

The Petitioner seeks to temporarily employ the Beneficiary 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 file a petition with U.S. Citizenship and Immigration Services (USCIS) 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 California Service Center Director denied the Form I-129, Petition for a Nonimmigrant Worker (petition), concluding the record did not establish that the offered position qualified as a specialty occupation. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

Section 101(a)(15)(H)(i)(b) of the Act defines an H-1B nonimmigrant as a foreign national "who is coming temporarily to the United States to perform *services . . . in a specialty occupation* described in section 214(i)(1) . . . ." (emphasis added). Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), defines the term "specialty occupation" as an occupation that requires "theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(l) of the Act, but adds a non-exhaustive list of fields of endeavor.

In addition, 8 C.F.R. § 214.2(h)(4)(iii)(A) provides that the offered position must meet one of four criteria to qualify as a specialty occupation position. 8 C.F.R. § 214.2(h)(4)(iii)(A) must be read with the statutory and regulatory definitions of a specialty occupation under section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). We construe the term "degree" 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"). Lastly, 8 C.F.R. § 214.2(h)(4)(i)(A)(*1*) states that an H-1B classification may be granted to a foreign national who "*will perform services in a specialty occupation . . .* " (emphasis added).

Accordingly, to determine whether the Beneficiary will be employed in a specialty occupation, we look to the record to ascertain the services the Beneficiary will perform and whether such services require the theoretical and practical application of a body of highly specialized knowledge attained through at least a bachelor's degree or higher in a specific specialty or its equivalent.

By regulation, the Director is charged with determining whether the petition involves a specialty occupation as defined in section 214(i)(1) of the Act. 8 C.F.R. § 214.2(h)(4)(i)(B)(*2*). The Director may request additional evidence in the course of making this determination. 8 C.F.R. § 103.2(b)(8). In addition, a petitioner must establish eligibility at the time of filing the petition and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1).

II. ANALYSIS

A. Background

The Petitioner filed the petition on the Beneficiary's behalf seeking a determination that its direct support professional position is a specialty occupation under section 214(i)(1) of the Act. If successful, the Beneficiary could be admitted to the United States and undertake the offered position in H-1B classification at multiple locations within New York state. The Petitioner describes itself as a nonprofit entity related to or affiliated with an institution of higher education. Its operations include psychiatric, behavioral, and developmental disorders offering programs and services for children and adolescents with varying diagnoses. The Petitioner described the direct support professional's job duties to encompass functioning as a member of the behavioral treatment and support team providing educational support and behavioral intervention to their clients.

The Director reviewed the initial filing and issued a request for evidence (RFE). The Director determined that the initial evidence reflected a disparate range of baccalaureate degree fields that were not related to one another, nor did the Petitioner explain a sufficient nexus between those fields and the offered position's duties. The Director surmised the record did not establish how each field was directly related to the duties and responsibilities of the position, and as a result it did not demonstrate that the position was a specialty occupation. The Director further noted that the Petitioner's acceptance of a degree in education without further specialization undermined their claims that the position qualified as a specialty occupation.

Within the RFE, the Director informed the Petitioner that it had not shown its position was a specialty occupation as described in the statute and applicable regulations. In response, the Petitioner submitted expanded job duties, an opinion position analysis evaluation, a copy of Fed. R. Evid. 703, a copy of the "Rehabilitation Counselor" entry in the DOL's *Occupational Outlook Handbook* (*Handbook*), job postings advertising purportedly similar roles with other U.S. employers, a listing of fields of study that can be categorized as human services, the Beneficiary's educational documentation and

credentials, and a representative sample of educational documents from other direct support professionals at the Petitioner's organization.

As stated above, the Director denied the petitioner based on their determination that the record did not establish the Petitioner's offered job qualified as a specialty occupation under section 101(a)(15)(H)(i)(b) of the Act, and we agree with that assessment.

B. Disparate Acceptable Degree Fields

We conclude that the Petitioner's acceptance of a bachelor's degree from the wide variety of fields it specified precludes it from satisfying both the statutory and regulatory definition of a specialty occupation. The record of proceeding reflects that the Petitioner would accept a bachelor's degree in psychology, sociology, social work, education, or "a closely related human services field" for entry into the offered job. The Director correctly found this range of degrees too wide and denied the petition with the Petitioner's stated prerequisites as one dispositive basis.

The Petitioner's grouping of psychology, sociology, social work, education, or "a closely related human services field" is not adequately supported in the record with evidence highlighting its composition as collectively forming a singular specialty from a body of highly specialized knowledge. The Petitioner provided a list of closely related human services fields populated with diverse fields like anthropology, criminal justice, nutrition, and divinity/religion/theology, all of which also broadly provide the skills required to perform the duties of the offered job.

The Petitioner's vague and general duties in combination with its mass grouping of degree fields constitutes a range so broad that it cannot compose a "specialty" required to perform the duties of a "specialty occupation." When the desired skills could be gained from any number of seemingly unrelated degrees, spanning from sciences such as anthropology to humanities-adjacent fields such as divinity, religion, and theology, the only conclusion can be that these skills are basic or elementary, and not specialized. In fact, numerous unrelated specialties would fall within the Petitioner's minimum educational requirements with their desired range of skills. Such a position would not be considered specialized. *See Caremax v. Holder*, 40 F.Supp.3d 1182, 1187–88 (N.D. Cal. 2014) ("A position that requires applicants to have any bachelor's degree, or a bachelor's degree in a large subset of fields, can hardly be considered specialized.").

The record as it is presently composed does not establish how the Petitioner's range of skills sourced from the diverse grouping of psychology, sociology, social work, education, or "a closely related human services field" from the list it provided, form a body of highly specialized knowledge or a specific specialty.

On appeal, the Petitioner contends that "degrees from multiple fields can qualify for H-1B status without undermining the 'specific' specialty component." The Petitioner cites to *Raj & Co. vs. USCIS*, 85 F.Supp.3d 1241 (W.D. Wash 2015) and *Residential Finance Corporation v. USCIS*, 839 F.Supp.2d 985 (S.D. Ohio 2012) to conclude that its wide range of degrees can constitute a specialty required to perform the duties of a specialty occupation. We agree insofar that we interpret the statutory term "the" and the regulatory term "a" to mean a singular specialty. But we do not so narrowly interpret

the statute and regulation such that multiple closely related fields of study would not constitute a specialty to perform the duties of a related specialty occupation.

But, contrary to the Petitioner's assertion, the issue here is not that the Petitioner would accept degrees in various fields. The issue is that the Petitioner's stated spectrum of acceptable degrees is too broad to support a finding that the offered position requires a bachelor's degree in a specific specialty, or the equivalent. In general, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act provided the specialties are closely related such that they constitute a common specialty required to perform a position's duties.

If they constitute a common specialty, then the required "body of highly specialized knowledge" would essentially be the same. If the required degree fields do not constitute a common specialty, a minimum entry requirement of a degree in disparate fields would not meet the statutory requirement that the degree be "in the specific specialty (or its equivalent)." A minimum entry requirement that did include disparate fields of study, such as philosophy and engineering for example, would require a petitioner to establish how each field is directly related to all the duties and responsibilities of the particular position. Section 214(i)(1)(B) of the Act (emphasis added).

The cases the Petitioner cites support the requirement of a *singular specialty*. The court in *Residential Finance* following this rationale found for the Plaintiff only after determining that the Plaintiff had established its minimum requirements capture the necessity of a baccalaureate degree in a specialized course of study in a field related to the offered job's duties as a minimum. *Residential Finance Corporation*, 839 F.Supp.2d at 996. In other words, the court in *Residential Finance* did not state that a petitioner can cobble together any mass grouping of degree fields and characterize them a specialty, as the Petitioner seems to imply. To the contrary, the plaintiff in *Residential Finance* prevailed because the court determined that the plaintiff's grouping of degree fields was a specialty. In other words, the court found that the plaintiff had *satisfied* the "specific specialty" requirement.

The foundational principle leading to the holding in *Residential Finance* is also present in *Raj & Co.* In *Raj & Co.*, the court stated that a specialty occupation requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent. The court confirmed that this issue is well-settled in case law and with the agency's reasonable interpretation of the regulatory framework. In the decision, the court noted that "permitting an occupation to qualify simply by requiring a generalized bachelor degree would run contrary to congressional intent to provide a visa program for specialized, as opposed to merely educated, workers." And in *Relx v. Baran*, 397 F.Supp.3d 41 (D.D.C. 2019), the court determined that a specialty occupation existed only after determining that the occupation required a specialized course of study the plaintiff had earned. *Relx*, 397 F.Supp.3d at 55.

The Petitioner also cites to *Next Generation Tech., Inc. v. Johnson*, 382 F.Supp.3d 252 (S.D.N.Y. 2017) as relevant here and relies on it to support a conclusion concerning the meaning of what is "normally" the minimum requirement for the position. We question the applicability of *Next Generation Tech., Inc.* in this case, as the court in *Next Generation Tech., Inc.* analyzed our reading of the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) concerning the entry requirements for positions located within the different and separate occupational category of

"Computer Programmers," rather than the "Rehabilitation Counselors" category designated by the Petitioner in the LCA relating to this case.

And the court in *Next Generation Tech., Inc.* relied in part on a USCIS policy memorandum specific to "Computer Programmers" indicating generally preferential treatment toward computer programmers, and "especially" toward companies in that particular petitioner's industry. Moreover, *Next Generation Tech., Inc.* is inapplicable because the Petitioner's mass grouping of psychology, sociology, social work, education, or any "closely related human services field" contained on its list of related human services fields is not sufficiently narrow to conclude that the Petitioner's requirement comprises a "specialty" required to perform the duties of the specialty occupation.

Or in other words, when a petitioner would accept a bachelor's degree from a wide variety of seemingly unconnected fields—like the range of fields the Petitioner presents here—it cannot establish that the fields constitute a "specialty" if it does not explain how each acceptable and specific field of study is directly related to the other specified fields, as well as to the duties and responsibilities of the particular position.

C. The Petitioner's Assertions on Appeal

The record contains the DOL's Occupational Information Network (O*NET) and *Handbook* entry for "Rehabilitation Counselors," an opinion position analysis with supporting evidence, the Beneficiary's educational documentation, job postings for purportedly parallel positions with reportedly similar employers, a copy of Fed. R. of Evid. 703, education documents for other habilitation specialists currently employed by the Petitioner, and a listing of fields of study that can be categorized as human services.[1] The Petitioner collectively relies on this material to support it assertion that its offered position requires a bachelor's degree in a specific field of study comprising a body of specialized knowledge or a specialty required to perform the duties of the position. But, as we discuss below, the supplemental regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*)–(*4*) cannot be satisfied without the express requirement of a baccalaureate or higher degree providing the theoretical and practical application of a body of highly specialized knowledge.

The *Handbook* reports that "rehabilitation counselors typically need a master's degree in rehabilitation counseling or a related field" while "some employers hire workers with a bachelor's degree in rehabilitation and disability studies . . . ." *See* Bureau of Labor Statistics, DOL, *Handbook*, Rehabilitation Counselors, https://www.bls.gov/ooh/community-and-social-service/rehabilitation-counselors.htm (Aug. 29, 2024). The Petitioner states that it requires a bachelor's degree, but in a diverse grouping of fields (psychology, sociology, social work, education, or "a closely related human services field" from a list of related human services fields).

The Petitioner does not adequately describe in the record how its grouping constitutes a specialty akin to the rehabilitation, rehabilitation counseling, or disability studies fields listed in the *Handbook*. Nevertheless, we understand that the *Handbook* is only one source that can be used to assist in demonstrating whether a particular occupation may be a specialty occupation. The Petitioner may present other sources to establish that a specific degree is normally the minimum requirement for entry

[1] While we may not discuss every document submitted, we have reviewed and considered each one.

into the position or may establish that its particular position requires a bachelor's level, or other, degree in a specific discipline or fields of disciplines constituting a specialty or theoretical or practical body of specialized knowledge required to perform the duties of the position. The Petitioner has not submitted sufficient evidence regarding its particular position to satisfy the requirements necessary to establish the position is a specialty occupation.

Although we acknowledge the Petitioner's claims relating to recent developments pertaining to the concept of *Chevron* deference, the factors the organization discusses is more relevant to proceedings in federal courts than it is here.

The Petitioner also submitted several job postings before the Director for purportedly parallel positions from reportedly similar employers. It further asserted that this evidence supports its contention that requirements like those it has established for its offered position are widely held across its industry. The Petitioner asserts on appeal that the fact the organizations posting the jobs "offer behavioral health services and/or long-term and short-term rehabilitative care" is sufficient to demonstrate the organizations' similarity to the Petitioner.

But we do not agree. The job postings the Petitioner submitted do not adequately demonstrate that the employers who posted these positions are "similar" to the Petitioner. The advertisements the Petitioner submitted were posted by a wide range of employers. The record does not adequately describe how these diverse organizations, sharing only a service they offer, are similar to one another let alone to the Petitioner.

For example, while the Petitioner and Rutgers University Behavioral Health Care may both seek the services of individuals performing similar duties, the Petitioner as a community services organization is dissimilar to a health care system affiliated with a large university managed health system, which is of different size, scope, mission, and may have different priorities. The evidence in the record does not provide any context that would permit a comparison of the Petitioner to the organizations whose job postings it submitted to evaluate their contended similarity. And, even if the organizations were similar, we would not conclude that the job postings demonstrate the offered job is a specialty occupation because the minimum educational requirements contained in the advertisements are varied and ranging such that they didn't constitute a specialty required to perform the duties of the job.

While the other companies in the job postings might view a wide range of fields as a sufficient qualification for U.S. worker candidates to perform work for their organizations, such a qualification does not necessarily satisfy the statutory or regulatory requirements of the H-1B program. Inherent with employing foreign nationals are additional burdens a U.S. employer must satisfy when compared to their self-imposed requirements of U.S. workers. Part of that burden in the H-1B context is to demonstrate the position meets the requirements of a specialty occupation as defined in the Act, and additional regulatory requirements described at 8 C.F.R. § 214.2(h). Stated differently, simply because organizations seeking job applicants for a similar job might find a wide range of degrees as acceptable, those entities are not operating under the burden to demonstrate what the Petitioner in this petition is must show.

Further, the education documentation for other direct support professionals the Petitioner currently employs does not persuasively support the specialty occupation nature of the position in this petition.

At most, the documents indicate the Petitioner's preference for its employees to have a baccalaureate level of education in a disparate group of degree fields. It does not demonstrate the Petitioner's requirement of a bachelor's degree in a specific specialty, or its equivalent, related to the performance of the position's job duties. Additionally, the Petitioner did not demonstrate the total number of people it has employed in the offered position. Consequently, we cannot determine how representative the Petitioner's claim is as represented in the list it provided before the Director of its normal recruiting and hiring practices when they indicated on the petition that the organization employs at least 500 personnel. Without further information, the submission of the educational credentials of those on the provided list is not persuasive in establishing that the Petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the position.

The record must establish that a petitioner's stated degree requirement is not a matter of preference for high-caliber candidates but is necessitated instead by performance requirements of the position. *See Defensor v. Meissner*, 201 F.3d 384, 387–88 (5th Cir. 2000). Were we limited solely to reviewing a petitioner's claimed self-imposed requirements, an organization could bring any individual with a bachelor's degree to the United States to perform any occupation so long as the petitioning entity created a token degree requirement. *Id.* Here, the evidence in the record simply supports the Petitioner's preference for its employees to have a baccalaureate level of education.

The record contains an opinion letter to contend that the range of fields the Petitioner requires for the direct support professional position is not disparate, and that the fields constitute a specialty closely related together and with the duties of the position. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). But an opinion statement has less weight where there is cause to question or doubt the opinion, or if it is not in accord with other information in the record. The submission of opinion letters is not presumptive evidence in any event. *Id.; see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA, 2008).[2]

The Petitioner's reliance on Dr. [redacted] opinion letter to support its argument that the range of fields of study it accepts is closely related appears to be misplaced. Dr. [redacted] evaluation does not provide a strong enough basis for us to understand how the wide range of degrees the Petitioner would accept are related to one another to form a body of specialized knowledge. Nor does the evaluation explain how that body of specialized knowledge relates to the offered position's duties. Dr. [redacted] formulated

[2] We note that one element of the *V-K-* decision was overruled within *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015); however, this does not affect the portion of *V-K-* we cite to here. The *Z-Z-O-* decision clearly limited its adverse treatment of the *V-K-* decision to the issue of "an Immigration Judge's predictive findings of what may or may not occur in the future . . ." *Z-Z-O-*, 26 I&N Dec. at 590, which was related to the standard of review when evaluating an Immigration Judge's findings relating to an asylum applicant's reasonable fear claims. The *Z-Z-O-* decision made no mention of the evidentiary weight of expert testimony. The limit to the overruling nature of *Z-Z-O-* is illustrated within a footnote in which the BIA stated that other than the standard of review for predictive factual findings, it did not address and would not disturb other conclusions in the *V-K-* decision. *Z-Z-O-*, 26 I&N Dec. at 593 n.3. Consequently, the portion of the *V-K-* decision cited above remains effective. OR for shorter version *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). We note that one element of the *V-K-* decision was overruled within *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015). The limit to the overruling nature of *Z-Z-O-* is illustrated within a footnote in which the BIA stated that other than the standard of review for predictive factual findings, it did not address and would not disturb other conclusions in the *V-K-* decision. *Z-Z-O-*, 26 I&N Dec. at 593 n.3. Consequently, the portion of the *V-K-* decision cited above remains effective.

his opinion based on his educational background, experience as a former university professor, and industry experience. In the past he has taught courses in counseling, psychology, and special education at [redacted] and currently operates his own counseling, consulting, and clinical supervision business. He has also noted his other professional experience and certifications. He states that he has reviewed "the support letter and the detailed job description" the Petitioner provided. Dr. [redacted] lists the offered job's duties, the job's academic prerequisites, and attempts to establish the suitability of each required field of study to a selected portion of the offered job's overall duties, concluding that the offered position fits within the statute and regulations as a "specialty occupation."

We have questions about the sufficiency of Dr. [redacted] opinion because his conclusions do not adequately align with other information in the record. For example, Dr. [redacted] references his research and published work as authority for his opinion. But he does not specifically identify what research in the record supports his opinion to bolster his conclusions. The evaluation is mainly based on unspecified research authority not present or described in the record of proceeding. Dr. [redacted] opinion mainly restates the offered direct support professional job duties and concludes that the duties require performance by individuals with at least a baccalaureate level of education in diverse fields like psychology, sociology, social work, education, or a closely related human services field. But the opinion does not evaluate how the fields are related to one another and to the duties of the job such that they could constitute a specialty required to perform the duties of the position. Moreover, Dr. [redacted] opinion appears to be incomplete because even though he mentioned that the Petitioner would accept degrees in "a related human services field," he does not offer additional insight to explain that factor.

And finally, we reiterate that the Petitioner provided vague and general job duties—especially the version it offered when it initially filed the petition—and the opinion letter author quotes from those vague job functions to make their assessment. In the same manner that overly generalized duties for the offered position are insufficient to demonstrate eligibility, equally deficient are opinions based on these vague functions. *See Parzenn Partners, LLC v. Baran*, No. 19-CV-11515-ADB, 2020 WL 5803143, at *9–10 (D. Mass. Sept. 29, 2020).

Although we held in *Chawathe* that the standard of proof in immigration proceedings is the preponderance of the evidence, the burden of proof is always on the petitioner. A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); *see also* the definition of burden of proof from *Black's Law Dictionary* (12th ed. 2024) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). A petitioner must satisfy the burden of production. As the term suggests, this burden requires a filing party to produce evidence in the form of documents, testimony, etc. that adheres the governing statutory, regulatory, and policy provisions sufficient to have the issue decided on the merits. When, as here, a petitioner has not met the burden of persuasion by a preponderance of the evidence because its evidence is not material, relevant, or probative, then it follows that the petitioning organization has not demonstrated eligibility for the benefit that it seeks. So, the evaluation is not probative and we will not ascribe it with any significant evidentiary weight.

We therefore cannot conclude that the offered position's minimum requirement for entry into the job is anything more than a general bachelor's degree. The Petitioner has not satisfied the statutory

definition of a "specialty occupation" at section 214(i)(1)(B) of the Act nor the regulatory definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(ii).

Without the express requirement of a baccalaureate or higher degree providing the theoretical and practical application of a body of highly specialized knowledge, or the equivalent, the supplemental regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*)–(*4*) cannot be satisfied. The supplemental regulatory criteria are read together within the related regulations and the statute as a whole. As such, where the regulations refer to the term "degree," we interpret that term to mean a baccalaureate or higher degree in a specific specialty related to the offered position. *See Royal Siam*, 484 F.3d at 147. The word "degree" is mentioned in each prong of the supplemental regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*)–(*4*).

And where, as here, a baccalaureate or higher degree in a specific specialty is not required as a minimum requirement of entry, it follows that each prong under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*)–(*4*) remains unsatisfied. So, we will not consider the Petitioner's arguments and the evidence it submits in support of its contention that it satisfies the supplemental regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*)–(*4*).

We conclude that the offered position here is not a specialty occupation because the Petitioner's stated range of acceptable degree fields is too broad to constitute a single specialty required to accomplish the duties of the offered position. The record of proceeding does not establish that the offered position requires both: (1) the theoretical and practical application of a body of highly specialized knowledge; and (2) the attainment of a bachelor's degree in the specific specialty.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.