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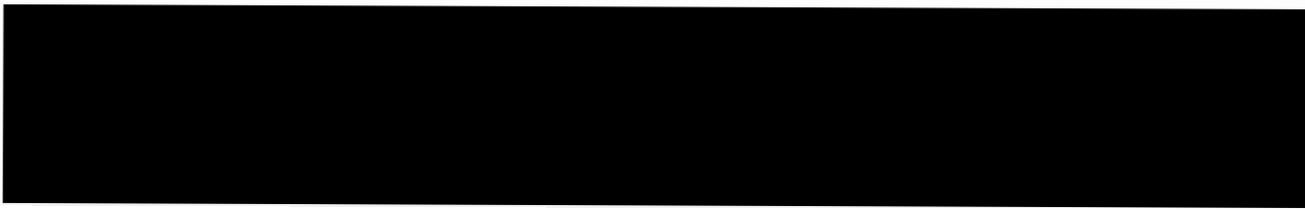
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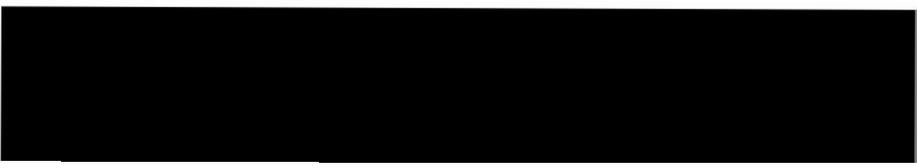


FILE: WAC 07 142 53421 Office: CALIFORNIA SERVICE CENTER Date: **MAR 03 2008**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner provides laundry and linen services and claims to employ ten personnel. It seeks to employ the beneficiary as its chief executive officer. Accordingly, it endeavors to classify the beneficiary 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).

On May 9, 2007, the director denied the petition determining that the record did not establish that the beneficiary is qualified to perform services in a specialty occupation. On appeal, counsel for the petitioner asserts that the director erred when not accepting the two evaluations submitted to show the beneficiary's qualifications to perform the services of a specialty occupation. The issue in this matter is whether the petitioner has established that the beneficiary is qualified to perform services in a specialty occupation.

The record contains: (1) the Form I-129 filed April 3, 2007 and supporting documentation; (2) the director's April 24, 2007 request for further evidence (RFE); (3) the petitioner's response to the director's RFE; (4) the director's May 9, 2007 denial decision; and (5) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before rendering this decision.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that

specialty in the state of intended employment; or

- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

At the time of filing the petition, the petitioner indicated that it wished to hire the beneficiary as its chief executive officer. The petitioner does not provide a description of the duties of the position. The record includes only a copy of the beneficiary's resume, two evaluations relating to the beneficiary's qualifications, and two letters relating to the beneficiary's previous employment.

The record does not evidence that the beneficiary holds a United States baccalaureate or higher degree in a specific field of study relating to a specialty occupation, as required to establish that the beneficiary is qualified pursuant to the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(1). Neither does the record provide evidence establishing that the beneficiary holds a foreign diploma that is equivalent to a United States baccalaureate or higher degree as required by 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). The position of chief executive officer does not require a license, certification, or registration to practice the occupation; thus the petitioner may not establish the beneficiary's qualifications under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(3). Rather, the petitioner claims that the beneficiary's work experience is equivalent to a business administration degree with a major in management and thus qualifies to perform the duties of a specialty occupation pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

When determining a beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the AAO relies upon the five criteria specified at 8 C.F.R. § 214.2(h)(4)(iii)(D). A beneficiary who does not have a degree in the specific specialty may still qualify for an H-1B nonimmigrant visa based on:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The record does not contain evidence that the beneficiary is qualified for an H-1B nonimmigrant visa based on the requirements at 8 C.F.R. §§ 214.2(h)(4)(iii)(D) (2), (3), or (4). Instead counsel appears to claim that the beneficiary is qualified to perform the services of a specialty occupation based on either the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) or 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

The record includes a February 22, 2006 confirmation regarding the beneficiary signed by [REDACTED] who indicates: "[the beneficiary] is well known to me as an honest man. He workd [sic] for many years in a steam laundry that served hotels, hospitols [sic] and large factories, and he has a good experience [sic] in the laundry business." The record contains a second confirmation dated March 3, 2006 authored by [REDACTED] CEO of [REDACTED] that confirms that the beneficiary worked in his company for 15 years and as the general manager for 14 years. The letter does not list the beneficiary's duties or responsibilities and does not detail the type of business, its number of employees, or level of revenue.

The record also includes the beneficiary's resume. The beneficiary indicates he acted as the plant manager and director of plant operations for [REDACTED] a commercial laundry with over 120 workers that serviced hotels, hospitals, restaurants, and nursing homes for a period of nine months. The beneficiary indicates further that he was promoted to general manager after the nine-month period and stayed in the position until the present time. The beneficiary states that he oversaw five departments including sales, marketing, service, production, and accounting and ensured that the department managers were given the right directions. The beneficiary claims he introduced new services, opened new markets, increased revenues, and reported to the chief executive officer and the board. The beneficiary also added "business management courses" at the Tel Aviv open university on the resume.

The record also contains two evaluations prepared for the petitioner regarding the beneficiary's qualifications to perform the duties of a specialty occupation. The evaluation initially submitted is dated June 1, 2006 and is authored by [REDACTED] an Associate Professor in the Department of Management, College of Business at the University of Nevada, Las Vegas. Professor Hames repeats the government regulations pertaining to the criteria for a specialty occupation and then offers his opinion that the beneficiary's "experience is the equivalent of a baccalaureate degree in business administration, with a management major, and the responsibilities to be assumed by the CEO of [the petitioner] satisfy the aforementioned requirements of a specialty occupation." [REDACTED] indicates that the beneficiary served as the general manager for a "comparable industrial laundry in Israel for approximately fifteen years:"

[The beneficiary] successfully administered a portfolio of business contracts; modified marketing and sales plans and successfully implemented the revised plans; improved accounting practices to more efficiently manage the Company's working capital; improved labor and public relations policies designed to enhance the company's image and relations with stakeholders; evaluated the performance of employees and the overall business; and

created and directed a customer service and quality assurance department to ensure customer satisfaction and generate new business for the company.

█ lists university-level management courses taken by typical management majors and concludes, without analysis, that the beneficiary's experience is equivalent to a baccalaureate degree in business administration with a management major. █ also describes the duties to be performed by the beneficiary in the proffered position and concludes that the chief executive officers performing these duties are required to possess at least a baccalaureate degree in business administration or its equivalent.

The record contains a second evaluation submitted in response to the director's RFE prepared for a credentials evaluation service, █. The April 29, 2007 letter and evaluation is authored by █, Associate Dean at the School of Business Administration, University of Miami. Dr. Foley indicates he is called upon to grant course waivers based upon work and professional experience and that he is authorized to grant credits for degree purposes for University of Miami students who have completed internships. In addition, █ notes that he has served on the executive Masters' of Business Administration admissions committee and in a small percentage of cases individuals who have substantial work experience and proficiency in various functional fields of business are admitted to the program even though they do not have a bachelor's degree. █ also indicates he has examined the beneficiary's work history based upon the beneficiary's job descriptions. █ opines: "[the beneficiary's] recent positions have been professional in nature, involving increasingly higher levels of responsibility." █ recognizes that the beneficiary was initially employed as a plant manager before being promoted to the position of general manager. █ further opines: "[the beneficiary's] recent positions have required a broad understanding of various functional fields of business such as finance, accounting, management and marketing, as well as areas of law relating to business." █ concludes, without analysis, that a "baccalaureate degree is a common prerequisite for the recent positions held by [the beneficiary]."

On May 9, 2007, the director determined that the evaluations submitted were not prepared on behalf of a university, but rather were prepared on behalf of a credentials evaluation service and that a petitioner may not rely on a credentials evaluation service to evaluate a beneficiary's work experience. A credentials evaluation service may evaluate only a beneficiary's educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). The director, upon review of the record regarding the beneficiary's past employment, found the record insufficient to conclude that the beneficiary's work experience is equivalent to a U.S. baccalaureate or higher degree in a specific discipline or that the beneficiary's expertise in the specialty had been presented. The director concluded that the petitioner had not established the beneficiary's eligibility to perform the duties of a specialty occupation.

On appeal, counsel for the petitioner re-submits the two evaluations previously submitted and asserts that both █ and █ are recognized authorities, that both are employed at accredited universities, and that both have authority to grant college-level credit for training and/or work experience, and that the University of Miami has a program for granting such credit based on an individual's training and/or work experience. Counsel also contends that the credentials evaluation service, █, is a reputable service and that the evaluations submitted should be accepted without question as they do not contain obvious errors.

Counsel's assertions are not persuasive. Neither of these equivalency evaluations may be considered under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), which requires that an evaluation of education and work experience be from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. Although ██████████ claims authority to grant course waivers and college-level credit for work experience, his claim is not substantiated by independent evidence of his authority to grant college-level credit, such as a letter from a dean or provost verifying this authority. In addition, the record does not contain substantiating evidence that the University of Miami has a program for granting college-level credit based on an individual's training or work experience in the specialty. The AAO acknowledges ██████████ statement that he is authorized to grant credits for degree purposes for University of Miami students who have completed internships, but the beneficiary is not a student who is completing an internship. Moreover, although ██████████ suggests that the University of Miami has an executive master's of business administration program that accepts a small percentage of individuals without a bachelor's degree into the program, the evidence of record does not detail the admissions criteria of the program or provide substantiating evidence of the program at the University of Miami. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The record is insufficient to establish the beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

Turning to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the AAO acknowledges counsel's assertions that the two evaluations establish the beneficiary's qualifications under this criterion. The AAO disagrees. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), Citizenship and Immigration Services (CIS) must make the determination as to whether the beneficiary has acquired the equivalent of a degree through a combination of education, specialized training, and/or work experience in areas related to the specialty. To meet this first prong of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), CIS must consider whether the beneficiary's work experience is sufficient to establish that he is qualified to perform the duties of the specialty occupation. In this matter it is not.

When evaluating a beneficiary's qualifications under the fifth criterion, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. In addition to documenting that the length of the beneficiary's training and/or work experience is the equivalent of four years of college-level training, the petitioner must also establish that the beneficiary's training and/or work experience has included the theoretical and practical application of the specialized knowledge required by the specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The only information in the record regarding the beneficiary's work experience is the beneficiary's resume describing his duties and responsibilities. The two letters submitted, one by the beneficiary's foreign employer and another by an individual whose relationship to the beneficiary is undefined, do not detail the beneficiary's duties and responsibilities while employed at AGP ██████████ do not detail the foreign employer's type of business, do not provide information regarding the foreign employer's number of employees or level of revenue. The AAO acknowledges that Professor ██████████ provides a general description of the beneficiary's responsibilities for his foreign employer; however, ██████████ does not identify his source for this information.

Regarding the beneficiary's resume, the beneficiary provides a general description of his duties and

responsibilities as the general manager for [REDACTED] but does not provide a comprehensive description of his daily duties or other evidence that his position required specialized knowledge acquired through a four-year university course of study in a specific discipline. The record does not contain evidence that the beneficiary's approximately 14 years of work experience included the theoretical and practical application of the specialized knowledge required by the specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The record is void of such information.

The AAO does not find the information in the record sufficient to establish that the beneficiary's work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation or that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The record does not contain evidence that the beneficiary's peers, supervisors, or subordinates at [REDACTED] held degrees or specialized knowledge associated with a business degree. The AAO also finds that the lack of independent information regarding the beneficiary's actual daily duties does not demonstrate that the beneficiary's work experience included the theoretical and practical application of the specialized knowledge required of an individual who through study has attained a bachelor's degree in business or management. Although the beneficiary's resume suggests that the beneficiary supervised a number of employees, introduced new services, and increased the business' revenue, the resume is not an independent form of evidence and more importantly does not describe definitive tasks that are the equivalent to university-level courses. The evidence in the record does not address how the beneficiary's work experience with peers, supervisors, or subordinates comprised an atmosphere conducive to obtaining knowledge that consequentially progressed to the equivalent of a bachelor's degree or its equivalent in a specific discipline.

The record does not establish that the beneficiary has attained the equivalent of a bachelor's degree in business administration with a management major based on specialized training, and work experience. The petitioner has not established the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). For this reason, the AAO determines that the petitioner has not established that the beneficiary is qualified to perform the duties of the specialty occupation.

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) requires that the petitioner document recognition of the beneficiary's expertise in the specialty, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation. Counsel relies on and contends that the two opinion letters submitted by [REDACTED] and [REDACTED] are opinions from recognized authorities in the field of business administration and constitute recognition of the beneficiary's expertise in the specialty occupation of business administration with a major in management.

Recognized authority means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinion, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the

conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(i)(C)(ii).

As referenced above, the record contains an evaluation authored by [REDACTED] and an evaluation authored by [REDACTED]. [REDACTED] indicates he has over 20 years of experience teaching human resource management, employment law, labor-management relations and alternative dispute resolution and has published a number of research articles on these subjects. [REDACTED] indicates he has been preparing work experience evaluations as an associate of [REDACTED], International Education Consultants since 1988 and that the Immigration and Naturalization Service (INS) [now CIS] has accepted his work experience evaluations. Although [REDACTED] and [REDACTED] list their educational credentials and Dr. [REDACTED] indicates the INS previously accepted his work experience evaluations, neither evaluator adequately explains how his conclusions were reached and neither provides a basis for his conclusions supported by copies or citations of research material used.

[REDACTED] provides a general description of the beneficiary's foreign work experience but does not identify his source for the information. [REDACTED] lists university-level management courses taken by typical management majors and concludes, without analysis, that the beneficiary's experience is equivalent to a baccalaureate degree in business administration with a management major. Similarly, [REDACTED] concludes that the nine months that the beneficiary spent as a plant manager along with his general managerial experience gained over 14 years, involved increasingly higher levels of responsibilities from 1991 to March 2006. [REDACTED] does not indicate his source for this information. [REDACTED] further concludes that the beneficiary's foreign work experience required understanding various functional fields of business.

Neither evaluator explains how he reached his conclusion that the beneficiary's 14 years of work experience in one position included the same or similar types of knowledge obtained through four years of university-level study in the field of business administration or management. Neither evaluator provides an analysis of the beneficiary's experience and how the briefly described experience equates to particular courses of study at the university level. The evaluators do not provide examples of how the beneficiary's length of time in a particular position contributes or is otherwise equal to college-level courses. Moreover, the record does not contain evidence that the evaluators interviewed the beneficiary, the beneficiary's foreign employer, researched the foreign employer's business, or otherwise investigated the beneficiary's foreign work experience. The evaluators do not expound upon their expertise, if any, regarding private businesses in Israel and whether Israeli businesses of similar size, level of income, and type of business require advanced training for their chief executive officers or whether the specific duties, as detailed by the foreign employer, require the theoretical and practical application of specialized knowledge equivalent to a U.S. bachelor's degree in business administration with a management major.

The AAO does not accept the professors' conclusions as an analysis of the beneficiary's work experience and whether the work experience could be the equivalent of specialized knowledge gained through a four-year course of study in a specific discipline at the university level. The petitioner has not provided expert opinions that contain evidence substantiating any conclusions regarding the beneficiary's expertise in the specialty occupation. Where an opinion is in any way questionable, the AAO may discount it or give it less weight. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). For this additional reason, the petition will be denied.

The petitioner has not submitted argument or documentation on appeal sufficient to overcome the director's decision on this issue. The petitioner has not established that the beneficiary has the requisite qualifications to perform the duties of a specialty occupation. For this reason, the petition will not be approved.

Beyond the decision of the director, the petitioner has not established that the proffered position is a specialty occupation. The record does not contain a comprehensive description of the beneficiary's proposed duties. The record does not include evidence that the chief executive officer of a commercial laundry and linen service requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in a specific specialty. To determine whether a particular job qualifies as a specialty occupation, CIS does not 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. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). 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 this matter, as the petitioner has not provided a detailed description of the duties of the proffered position, the AAO is unable to conclude that the position is a specialty occupation.

Specifically, the AAO finds that the petitioner has not established that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position as required by 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). Without providing a description of the specific duties included in the proffered position that are directly related to the petitioner's business, the AAO is unable to determine the tasks to be performed by the beneficiary on a day-to-day basis and, therefore, whether the proffered position's duties are of sufficient complexity to require the minimum of a baccalaureate degree or its equivalent in a directly related academic specialty. The AAO observes that the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports: "[t]he formal education and experience of top executives vary as widely as the nature of their responsibilities" and "[m]any top executive positions are filled from within the organization by promoting experienced, lower-level managers when an opening occurs." As the record in the instant matter offers no meaningful description of the duties of the proffered position, there is no basis to conclude that the proffered position is a specialty occupation. Accordingly, the petitioner has failed to establish the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

To establish the proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner must prove that a specific degree requirement is common to its industry in parallel positions among similar organizations or, alternately, that the proffered position is so complex or unique that it can be performed only by an individual with a degree. A review of the evidence of record finds it insufficient to identify the proffered position with an industry-wide educational standard, or distinguishable, by its unique nature or complexity, from similar but non-degree-requiring positions. Without a meaningful job description, the petitioner may not establish the position's duties as parallel to any degreed positions within similar organizations in its industry or distinguish the position as more complex or unique than similar, but non-degreed, employment, as required by alternate prongs of the second criterion.

As the petitioner is a new business, the record also fails to establish a history of recruiting and hiring degreed candidates for the proffered position. To determine whether the petitioner has fulfilled the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(3), the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. The AAO also observes that if CIS were limited solely to reviewing a petitioner's self-imposed requirements, than any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. The petitioner has not provided evidence to establish the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(3).

The AAO now turns to the fourth criterion and whether the petitioner has established that the duties of the proffered position are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in a specific discipline. Again, the record in this matter does not include sufficient information regarding the duties of the proffered position and how those duties relate to the petitioner's business to demonstrate that the tasks associated with the proffered position require the application of specialized or complex knowledge associated with the attainment of a baccalaureate or higher degree. The AAO has considered [REDACTED] statements regarding the proffered position and his conclusion that the proffered position is a specialty occupation; however, the AAO notes once again that [REDACTED] does not identify the source of his information regarding the duties of the proffered position. Moreover, [REDACTED] does not explain but merely concludes that the job in question is specialized and complex. Providing conclusory statements without analysis and detail is insufficient to establish a position as a specialty occupation. In this matter, the petitioner has also failed to establish the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4).

For this additional reason, the petition will be denied.

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 Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's denial of the petition.

ORDER: The appeal is dismissed. The petition is denied.