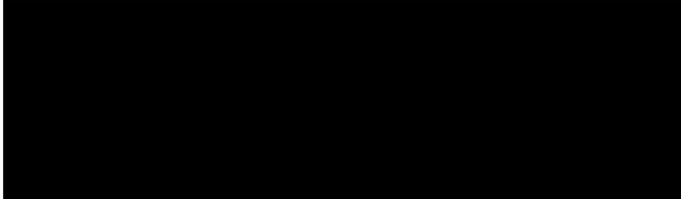


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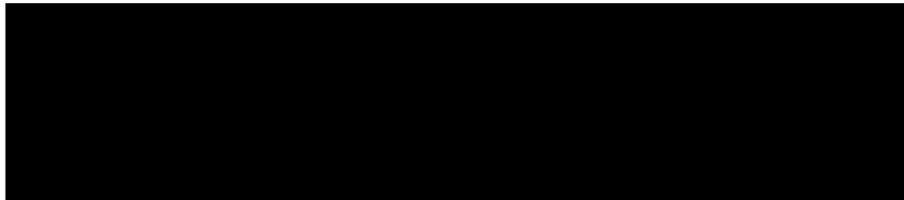
FILE: SRC 05 206 50385 Office: TEXAS SERVICE CENTER Date:

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:



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.

*for Michael T. Kelly*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas 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 markets and distributes automobiles wholesale, has 240 employees, and a gross annual income over ten million dollars. It seeks to employ the beneficiary as a sales manager. Accordingly, the petitioner 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 November 17, 2005, the director denied the petition determining that the record did not establish that the proffered position is a specialty occupation. On appeal, counsel for the petitioner asserts that the director improperly reviewed the evidence submitted and that the position of "sales manager" is a specialty occupation requiring a bachelor's degree. The issue in this matter is whether the petitioner has established that the proffered position is a specialty occupation.

The record contains: (1) the July 19, 2005 Form I-129 and supporting documentation; (2) the director's August 12, 2005 request for evidence (RFE); (3) counsel's October 7, 2005 response to the director's RFE with documentation; (4) the director's November 17, 2005 denial decision; and, (5) the Form I-290B and counsel's brief and an opinion letter submitted in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

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

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

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

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

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

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

Citizenship and Immigration Services (CIS) interprets the term "degree" in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

On the Form I-129, the petitioner stated that the proffered position is that of a "sales manager." The petitioner provided a lengthy job description of the proffered position in an attachment to its May 11, 2005 letter appended to the petition. The petitioner indicated the job functions of the proffered position included:

- Serve as liaison between [the petitioner] and the DaimlerChrysler and DaimlerChrysler Services accounts – direct responsibility for the daily operation and administration of DaimlerChrysler and DaimlerChrysler Services sales accounts with [the petitioner].
- Assure accurate preparation of setting vehicles for sale – announcements, titles, coding, catalogs and individual vehicle file audit.
- Daily interaction with outside sales coordinators and inspectors to assist with inventory issues and to maintain a teamwork relationship.
- Monitor outside marshalling facility – intake, check-in, transport of vehicle to site location upon inspections.
- Ensure that all vehicle sales activities directly conform to the corporate contracts. Sales are bi-weekly and can range from 400 to 1200 vehicles.
- Review and verify the preparation of all vehicle titles, contracts, sales reports – including production of sales block summary, dealer handouts, expense reports, sale recap and after-sale audit.
- Carry out and monitor all vehicle arbitrations, repairs, rejects and reimbursement paperwork.
- Establish and maintain positive customer relations to assure that all problems are resolved in an accurate and efficient manner.
- Maintain constant interaction and communication with Factory Representative, Sales Manager, Recon Manager and Operations Manager in order to negotiate resolutions to problems that arise.
- Ensure timely and accurate process of daily inventory transmissions and sales transmissions to DaimlerChrysler and DaimlerChrysler Services.
- Work with account representative to attain prompt payment of all vehicle accounts receivables.

- Review weekly reports concerning inventory status of aged units, reject units, repurchased units, vehicle flow, model summary and vehicles in transit to resolve any subsequent issues.
- Communicate with other auto auctions to ensure timely receipt of vehicles and vehicle documentation.
- Provide scheduled sales line-up to Marketing, Operations Manager, Recon Manager for proper marketing and routing of vehicles.
- Keep apprised of facts and maintain accurate knowledge of current and ongoing issues related to all account requirements, as well as federal, state and local legislation.
- Keep upgraded with respect to corporate policies and computer systems and programs.
- Ensure that all sales records and vehicle files are maintained and revised systematically.
- Correspond regularly with the Posting – apply all charged repairs to each vehicle; Check-in – inventory all vehicles; ECR – inspect vehicles for options, repairs and frame damage; and Recon departments, coordinate, paint and body work, detail on a daily basis to maintain information flow and retain good working relationship.
- Work with Internet department to meet Internet sales objectives.
- Report weekly on department status to corporate superiors.
- Monitor, direct and supervise the department employees responsible for paper flow to affect [sic] an accurate and timely work process.
- Attend department and corporate meetings. Report required information to superiors and subordinates.
- Provide initial and ongoing training, instruction and upgrading for departmental employees.
- Review performance of employees as well as conduct regular performance appraisals.
- Order supplies and materials for Recon building administration.

The petitioner also included a summary report for sales managers issued by the Department of Labor's *O\*NET Online (O\*NET)*.

On August 12, 2005, the director observed that additional evidence is required to establish that the position of sales manager is a specialty occupation. The director requested that the petitioner use the Department of Labor's *Occupational Outlook Handbook (Handbook)* as one of its sources to establish a degree requirement for the position.

In an October 7, 2005 response, counsel noted that the auto industry is a niche market that requires specialized knowledge in trade. Counsel emphasized that the petitioner must establish only one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to establish the proffered position as a specialty occupation. Counsel asserted that the petitioner required a minimum of a bachelor's degree for the position, that a minimum of a bachelor's degree is common to the industry in similar positions as shown by the submitted evidence, and that the initial description of the job duties demonstrates that the position of sales manager requires a highly educated individual with experience in the automotive industry. Counsel provided excerpts from the *Handbook* and the Department of Labor's *Dictionary of Occupational Titles (DOT)* regarding the position of sales manager.

On November 17, 2005, the director denied the petition determining that the SVP (Specific Vocational Preparation) numbers and job codes used by *O\*NET* and *DOT* did not identify educational levels, but rather were the result of a combination of work experience, training, and education. The director determined that the information obtained from *O\*NET* and *DOT* was insufficient to establish that a position is a specialty occupation. The director further determined that the information in the *Handbook* concerning sales managers indicated that a wide range of educational backgrounds is suitable for the position of sales manager and did not indicate that a bachelor's degree is required. The director concluded that the petitioner had not established that a bachelor's degree in a specific field is required for the position of a sales manager.

On appeal, counsel for the petitioner contends that the director relied solely on an improper interpretation of the *Handbook*, misapplied the SVP system used by the *DOT* and *O\*NET*, and ignored the evidence submitted by the petitioner establishing the position of sales manager as a specialty occupation requiring a bachelor's degree. Counsel asserts that the director failed to consider the excerpts from the *DOT* and *O\*NET*, the employer's letter in support of the petition, the job description of the sales manager position, and the beneficiary's education and training.

Counsel cites *Unico American Corp. v. Watson*, 1991 WL 11002594 (C.D. CAL) to support the assertion that deference should be given to the employer's view and that all of the evidence submitted should be considered rather than relying on standardized government classification systems. Counsel claims that a proper interpretation of the *Handbook's* analysis of sales manager positions would conclude that a wide range of fields of study is suitable for a sales manager position and that a preference for degrees in business administration does exist. Counsel asserts that SVP numbers are determined by training that may be acquired in school, work, military, institutional or vocational environments and that an SVP rating of 8 implies that a bachelor's degree plus additional education/experience is a requirement for a position that has such an SVP rating.

Counsel also submits an opinion letter authored by Z [REDACTED] PH.D., Associate Professor of Management Science at the University of Maryland's Robert H. Smith School of Business, wherein [REDACTED] opines that the proffered position as described for the petitioner's sales manager position would be considered a professional position and would normally be filled by a graduate with the minimum of a bachelor's degree with a major or concentration in automotive marketing or a related area. [REDACTED] further opines: "[s]uch a requirement is necessary in that it is impossible to perform the [duties of the proffered position] without knowledge obtained from undergraduate-level or graduate-level coursework in different areas of Automotive Marketing and related subjects." [REDACTED] concludes that only a student completing a bachelor's or master's degree with a concentration in automotive marketing or a related area obtains knowledge of the various theories and methods necessary for performing the daily tasks of a sales manager for the company and that the courses required by such a major prepare the student for and directly correspond to the duties of the described position. [REDACTED] notes that a student completing a bachelor's or master's degree with a major or concentration in automotive marketing or a related area is required to demonstrate through rigorous testing and challenging case studies, knowledge of various theories and methods that are necessary to perform these tasks. [REDACTED] comments on the *Handbook's* report that a wide range of educational backgrounds is suitable for entry into sales managerial jobs but employers prefer those with experience in related occupations plus a broad liberal arts background. [REDACTED] states that it is his opinion, after examining the job duties of the proffered position, that the degree requirement for such a position would be a bachelor's or master's degree

with a major in or concentration in automotive marketing or a related area which would provide the technical and business expertise to properly function in such a position. ████████ asserts that it is the standard for a company such as the petitioner to require a sales manager to have attained at least a bachelor's degree and that this is the industry standard for such a position.

The AAO does not find the evidence of record persuasive in establishing the proffered position as a specialty occupation. The AAO observes that the director's decision failed to specifically address each criterion when determining whether the petitioner had established that the proffered position is a specialty occupation. Nevertheless, the record is insufficient to establish any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations as one method to determine whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. The *Handbook* discusses the occupation of "sales manager" under the heading "advertising, marketing, promotions, public relations, and sales managers." The *Handbook* reports:

*Sales managers* direct the firm's sales program. They assign sales territories, set goals, and establish training programs for the sales representatives. . . . Sales managers advise the sales representatives on ways to improve their sales performance. In large, multiproduct firms, they oversee regional and local sales managers and their staffs. Sales managers maintain contact with dealers and distributors. They analyze sales statistics gathered by their staffs to determine sales potential and inventory requirements and to monitor customers' preferences. Such information is vital in the development of products and the maximization of profits.

Upon review of the petitioner's lengthy description of the proffered position, the AAO finds that the position contains some elements pertinent to the *Handbook's* general statements regarding the occupation of a sales manager. These include duties such as: "[s]erv[ing] as liaison between [the petitioner] and the DaimlerChrysler and DaimlerChrysler Services accounts;" "[d]aily interaction with outside sale coordinators and inspectors;" "[e]stablish[ing] and maintain[ing] positive customer relations;" "[m]aintain[ing] constant interaction and communication with Factory representative, Sales manager, Recon manager and Operations manager;" "[r]eview[ing] weekly reports concerning inventory status of aged units, reject units, repurchased units, vehicle flow, model summary and vehicles in transit;" and "[w]ork[ing] with Internet department to meet Internet sales objectives." These duties are similar to the *Handbook's* report that sales managers maintain contact with dealers and distributors and monitor customers' preferences.

Many of the duties of the proffered position involve supervisory coordination of paperwork relating to the sale of automobiles. Examples include: "[a]ssur[ing] accurate preparation of setting vehicles for sale;" "[e]nsur[ing] that all vehicle sales activities directly conform to the corporate contracts;" "[r]eview[ing] and verify[ing] the preparation of all vehicle titles, contracts, sales reports;" "[w]ork[ing] with account representative to attain prompt payment of all vehicle accounts receivables;" "[e]nsur[ing] that all sales records and vehicle files are maintained and revised systematically;" "[c]orrespond[ing] regularly with the Posting – apply all charged repairs to each vehicle; Check-in – inventory all vehicles; ECR – inspect vehicles for options, repairs and frame damage; and Recon departments, coordinate, paint and body work, detail on a daily basis to maintain information flow and retain good working relationship;" "[m]onitor[ing], direct[ing]

and supervise[ing] the department employees responsible for paper flow to affect [sic] an accurate and timely work process;" and "[o]rder[ing] supplies and materials for Recon building administration." Such duties indicate that the proffered position has an administrative-services-manager dimension.

Upon review of the *Handbook's* discussion of the educational requirements associated with the above positions, the AAO finds that neither sales manager nor administrative services manager positions normally require the attainment of a baccalaureate degree or higher in a specific field of study. The *Handbook* reports that sales supervisors usually acquire knowledge through work experience and that the educational backgrounds for this position vary widely. The *Handbook* reports that educational requirements for administrative services managers also vary widely. As the *Handbook* indicates that entry into such positions does not normally require at least a bachelor's degree, or the equivalent, in a specific specialty, the proffered position does not satisfy the specialty-occupation criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The director correctly interpreted the *Handbook's* discussion regarding the educational requirements for a sales manager. Counsel seems to acknowledge that a wide range of fields of study is suitable to perform the duties of a sales manager position. Counsel's reference to a preference for degrees in business administration for the position of sales manager is insufficient to establish that the position is a specialty occupation. Not only is the preference for a degree insufficient to establish that a degree is required to perform the position, but a degree in business administration without a concentration in a specific business discipline (such as accounting, finance, or marketing) is a degree in a field of general study, not in a specific specialty.

The AAO acknowledges counsel's reference to *O\*NET* and *DOT* and the SVP level of 8 for a sales manager position. Counsel acknowledges that SVP numbers are determined by training that may be acquired in school, work, military, institutional or vocational environments. Counsel then suggests that an SVP rating of 8 corresponds to a bachelor's degree plus additional education/experience. The AAO disagrees with counsel's suggestion and observes that counsel has not provided evidence to substantiate that an SVP rating of 8 requires a bachelor's degree plus additional education and experience. The *O\*NET* and *DOT* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The SVP rating referenced by counsel is meant to indicate only the total number of years of vocational preparation required for a particular occupation. Neither the *O\*NET* nor the *DOT* describe how those years are to be divided among training, formal education, and experience, and neither specify the particular type of degree, if any, that the proffered position would require.

The AAO has also reviewed the opinion letter authored by [REDACTED] PH.D., Associate Professor of Management Science at the University of Maryland's Robert H. Smith School of Business. [REDACTED] opines that only an individual completing a bachelor's or master's degree with a concentration in automotive marketing or a related area would have the knowledge of various theories and methods necessary to perform the daily tasks of a sales manager for the petitioner. [REDACTED] finds that a student completing the courses required by a degree in automotive marketing would be prepared to perform the tasks of the proffered position. [REDACTED] states that it is his opinion, after examining the job duties of the proffered position, that the degree requirement for such a position would be a bachelor's or master's degree with a major in or concentration in automotive marketing or a related area which would provide the technical and business expertise to properly function in such a position.

The AAO agrees that an individual who has completed a degree with a major in automotive marketing would be prepared to perform the duties of the proffered position. However, the AAO does not find that *only* an individual with such a degree would be able to perform the duties of the proffered position. A beneficiary's background and educational experience do not make a position a specialty occupation. Rather it is whether the duties of the position require the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree (or its equivalent) in the specific specialty as a minimum for entry into the occupation. The record's description of duties does not include duties that can be performed only by those individuals with a bachelor's or higher degree. The petitioner has not explained why the duties of the proffered position would require the attainment of a baccalaureate or higher degree, and has not otherwise demonstrated that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the proffered position.

██████████ does not provide evidence to support his conclusory statement that it is the industry standard for a company such as the petitioner to require a sales manager to have attained at least a bachelor's degree and that this is the industry standard. The record does not contain documentary evidence to support his conclusion.

██████████ does not relate any of the specific duties of the proffered position to particular courses of study.

██████████ does not explain how, or otherwise demonstrate that, the duties of the position are so complex or specialized that only an individual with a bachelor's degree can perform them; and ██████████ fails to articulate what specific duties of the position are duties that require a bachelor's or higher degree in automotive marketing, rather than experience in the industry. Conclusory opinions without factual information substantiating how the opinion was reached lack probative value. Moreover, the record is insufficient to establish ██████████'s authority to speak to the national hiring practices of U.S. employers. The *Handbook*, which offers an overview of national hiring practices, draws on personal interviews with individuals employed in the occupation or from websites, published training materials and interviews with the organizations granting degrees, certification, or licenses in the field, to reach its conclusions regarding the nation's employment practices. ██████████ opinion is insufficient to elevate the proffered position above the wide range of sales manager positions for which the *Handbook* indicates no requirement for at least a bachelor's degree in a specific specialty. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of whether the petitioner may qualify the proffered position under the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that is: whether a degree requirement is the norm within the petitioner's industry (prong 1), or the position is so complex or unique that it may be performed only by an individual with a degree (prong 2). A review of the evidence of record finds it insufficient to establish that the proposed duties comprise a position that is identifiable with an industry-wide educational standard, or distinguishable, by its unique nature or complexity, from a similar but non-degree-requiring position.

The petitioner has not submitted attestations from the industry to substantiate that similar organizations require a baccalaureate or higher degree in a specific field of study to perform parallel positions. As observed

above, [REDACTED] opinion that there is an industry-wide standard for a sales manager in the automotive sales industry to have at least a bachelor's degree has not been substantiated by documentary evidence and fails to provide an adequate foundation for his conclusions. Going on the 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 190 (Reg. Comm. 1972)). The record is insufficient to establish that a degree requirement is common to the industry in parallel positions among similar organizations. The petitioner has not established the first alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has also failed to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires that the proffered position be of such complexity or uniqueness that it can be distinguished from similar but non-degree-requiring positions within the same industry. The AAO acknowledges counsel's assertion that the auto industry is a niche market that requires specialized knowledge in the trade. However, without documentary evidence to support the claim of the necessity for at least a bachelor's degree in a specific specialty, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, the record does not contain evidence detailing what duties of the sales manager position require the attainment of a baccalaureate or higher degree. The record lacks evidence or analysis establishing that particular duties of the proffered position differ from the routine duties of a skilled automotive trader and administrative services manager. The evidence of record, including the opinion letter of [REDACTED], does not analyze or illuminate the position in terms of relative complexity or uniqueness. Consequently, on the basis of the record, it is not evident that the proffered position is more complex than or unique from the range of sales manager positions that do not require at least a bachelor's degree in a specific specialty.

Thus, the petitioner has not provided evidence to establish either of the alternative criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record also fails to demonstrate that the petitioner has a history of exclusively 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)(4)(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. Although the petitioner states that it has been in the business since 1945 and has over 240 employees, the petitioner has not provided evidence of its past recruiting and hiring practices for this position. Again, 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. at 165. The AAO acknowledges counsel's contention that deference should be given to employer's view, per an unpublished decision that she cites. However, if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate degrees or higher degrees. The record does not establish that the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO now turns to 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, so as to establish the proffered position as a specialty occupation under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner provides a list of duties but fails to describe them with sufficient specificity to demonstrate the substantive content of the work that the beneficiary would perform. The petitioner has not explained or illustrated why particular duties of the proffered position would involve work that requires the application of knowledge so specialized and complex as to be associated with the attainment of a baccalaureate or higher degree in a specific specialty. The record suggests that the petitioner is relying on the beneficiary's education in a specific discipline to establish that the proffered position is a specialty occupation. However, the position itself must comprise duties that are sufficiently specialized and complex to be designated a specialty occupation. Although performance of the position requires related knowledge, the record does not establish a usual association between such knowledge and at least a bachelor's degree in a specific specialty. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4).

The petition will be denied and the appeal dismissed for the above stated reason. 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.

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