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FILE: EAC 06 183 52361 Office: VERMONT SERVICE CENTER Date: DEC 20 2007

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

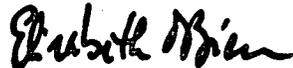
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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, 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 provides custom remodeling services, including door and window replacement. The petitioner avers that it employs 28 full-time workers and 14 part-time workers and had \$14 million in gross annual sales when the petition was filed. It seeks to employ the beneficiary as a network administrator. 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 December 19, 2006, 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 the director mischaracterized the evidence, abused her discretion and the resulting decision is in error.

The issue in this matter is whether the petitioner has established that the beneficiary is qualified to perform the duties of a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

The record of proceeding before the AAO contains: (1) the Form I-129 filed May 26, 2005 and supporting documentation; (2) the director's September 25, 2006 request for additional evidence (RFE); (3) counsel for the petitioner's December 11, 2006 response to the director's request and supporting documentation; (4) the director's December 19, 2006 denial letter; and (5) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

In an April 26, 2006 letter submitted in support of the petition, the petitioner indicated the beneficiary would manage its entire computer network and perform critical duties for its organization. The petitioner stated that the beneficiary would perform the following job duties:

Oversee entire computer network for organization, including local area network (LAN), Internet system, and communications systems; maintain network software and hardware, including accounting software; manage customer, [sic] call center, and internet data to ensure optimum customer service can be provided to all customers; monitor network to ensure network availability to all system users, perform necessary maintenance to ensure network availability; plan, coordinate, and implement network security measures, and supervise any additional network support or client server specialists, as needed.

The petitioner provided among other items, a May 23, 2006 evaluation of the beneficiary's academic and work experience prepared by [REDACTED] a copy of the beneficiary's transcript for the 2004 and 2005 fall semesters at Pikes Peak Community College; four letters from the beneficiary's prior employers; and a copy of the beneficiary's curriculum vitae.

Upon review of the beneficiary's transcript, the Silvergate evaluator assessed the beneficiary's academic experience as one year of bachelor's level coursework in computer science. The evaluator noted: that the beneficiary had worked from October 1994 through March 1999 as a network manager/IT for the Government and Security Ministry of Costa Rica; that the beneficiary had worked as a freelance network consultant/developer and graphic designer for various companies from 1998 through 2003; that the beneficiary had worked from May 2000 through November 2000 as a web designer, IT and Network Manager and Communication Manager; that the beneficiary had worked from August 2003 through December 2003 as a network developer. The evaluator concluded that the beneficiary's "nine-plus years of employment reflect experience and training in positions of progressively increasing responsibility. His achievement further illustrates his application of relevant and specialized skills and training by superiors and peers that demonstrate the equivalent of university level training in Computer Information Systems and related areas." The evaluator concluded that through the beneficiary's one year of community college coursework and nine

years of work experience; the beneficiary had attained the equivalent of a bachelor's degree in computer information systems from an accredited institution of higher education in the United States. The evaluator claimed that in his position as an associate professor in the Department of Decision and Information Technologies at the [REDACTED] School of Business of the University of Maryland, he had authority to grant college level credit for experience, training, and/or courses taken at other U.S. or international universities.

The initial record also contains four letters written by various entities confirming the beneficiary's employment:

A senior producer at The Channel of Hope, a television station in Hanover, Germany, indicated that the beneficiary had worked from May 15 to November 15 2000: designing, maintaining and developing the computer network for 40 volunteer student interns; connecting and controlling the T1 Internet line to the web server, student lab, and manager's offices; developing a web site; supporting a web site designed by a student; encoding programs for the channel's live web streaming; designing three logos and three dimensional animations; backing up programs, training and supervising students; assisting students assigned to the translation booth; and working as a cameraman.

In an April 18, 2006 letter, the owner/president of a foreign company indicated that the beneficiary had worked as an independent contractor from February 1998 to July 1998 and from January 1999 to February 2000 managing and maintaining the company's computers, creating editable logos for use on letterheads, etc., and training employees on different types of software.

In an April 18, 2006 letter, the chief executive officer of a Costa Rican company indicated that the beneficiary worked on its internal network in May and June of 1998 and was on call during the year 2001 and 2002. The chief executive officer indicated that network development consisted of configuring more than 10 computers with three different operating systems, cable drops in seven rooms, sharing documents between administrators, configuring and sharing printers along the network, installing network cards, installing and configuring a video security and monitoring program, sharing security program using TCP-IP, and backing up the systems and Internet sharing throughout the network.

In a May 16, 2006 letter, the co-owner of a post-production company indicated that the beneficiary had worked between the months of January and May of 2000 and from February 2001 to August 2003 in the TV department as an editor, cameraman, and network manager. The co-owner also indicated that the beneficiary had designed the network between the computers of editing and sound of the TV department, had created the three dimensional animations for the intros and closings of several programs, and had re-created some pre-existent two dimensional graphics like logos, text, and sequences of graphics. The co-owner indicated further that the beneficiary continued to work as an independent contractor designing graphics and giving system analysis to create or fix some of its customers' PC or Mac based network problems via Internet and remote access.

The petitioner also provided a copy of the beneficiary's curriculum vitae wherein the beneficiary indicated he installed a computer network for student dormitories, provided translation for courses in television and production, designed and developed websites, developed and maintained a computer network, installed and maintained computers at sub-stations in Costa Rica, instructed employees in computer software use, provided network developing services, performed network consulting services, and was a television director.

In response to the director's September 25, 2006 RFE, counsel for the petitioner submitted the beneficiary's affidavit describing his ten years of work experience and a second evaluation of the beneficiary's academic and work experience prepared by [REDACTED]. The beneficiary's affidavit provided additional detail regarding the beneficiary's work experience. The December 5, 2006 evaluation noted the beneficiary's one year of academic coursework and paraphrased the initial description of the beneficiary's work experience. The evaluator, based on the beneficiary's one year of college and ten years of work experience, opined that the beneficiary had achieved the equivalent of a bachelor's degree in computer science from an accredited institution of higher learning in the United States. The evaluator noted that in his position as an associate professor of Microbiology/Immunology and Genetics at Dartmouth Medical School, he had authority to grant college-level credit for experience, training, and/or courses taken at other U.S. or international universities.

On December 19, 2006, the director denied the petition determining that the evidence submitted with the initial filing and in response to the director's request for further evidence failed to establish that the beneficiary qualified for the position offered. The director acknowledged the two evaluations submitted on the beneficiary's behalf, noting that the substance of the evaluation is a reiteration of the beneficiary's duties as noted in his resume and the beneficiary's employers' letters. The director found that neither evaluator provided actual assessments of the beneficiary's work history nor analyzed the positions held and how the beneficiary's work experience corresponded with coursework completed in a baccalaureate program at a United States university. The director also noted the letters from the beneficiary's prior employers but found that the letters only attested to the time the beneficiary had worked and provided a few details regarding the beneficiary's duties while working at the organizations. The director determined that the documentation submitted did not demonstrate the beneficiary's standing or recognition in the field of the profession in comparison with other degreed professionals. The director concluded that the petitioner had not demonstrated that the beneficiary's prior work experience included the theoretical and practical application of specialized knowledge required at the professional level of the occupation and as a result the petitioner had not demonstrated that the beneficiary attained either a baccalaureate degree or the equivalent in the field of computer science or a related field.

On appeal, counsel for the petitioner asserts that the authors of the evaluations submitted did review the beneficiary's "progressively responsible qualifying work experience in computer science" and "employment commensurate with university-level training." Counsel contends that the director's disregard of this "evidence" and failure to apply the regulations constitutes an abuse of discretion. Counsel claims that Citizenship and Immigration Services (CIS) failed to make a careful and individualized determination in this matter violating the petitioner's right to due process. Counsel asserts the petitioner has established: (1) the beneficiary's formal education equals one year of college toward a baccalaureate degree; (2) the beneficiary held progressively responsible positions for 10 years; and (3) the beneficiary received recognition for his expertise in his field from two separate university professors. Counsel notes that the beneficiary also

completed two additional years of formal education; but that the foreign university no longer exists and the beneficiary has been unable to substantiate his attendance at the institution. Counsel indicates that the beneficiary is continuing his attempt to obtain evidence of his additional formal education.

The record does not evidence that the beneficiary holds a United States baccalaureate or higher degree in education or any other field, 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's attendance in the 2004 and 2005 fall semesters at Pikes Peak Community College 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 AAO notes that the beneficiary's transcript and the two evaluations submitted are sufficient to establish that the beneficiary has obtained one-year of formal tertiary education. The petitioner has not provided evidence that a license or other credential is necessary to perform the duties of 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). Thus, the evidence in this matter must establish that the beneficiary's one-year of education at Pikes Peak Community College coupled with the beneficiary's work experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation and that the beneficiary has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty pursuant to 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 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.

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 petitioner must also 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<sup>1</sup> 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.

The record contains two evaluations: one by Dr. [REDACTED] for Silvergate dated May 23, 2006 and the second by Dr. [REDACTED] for Express Evaluations dated December 5, 2006. 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 both evaluators claim authority to grant college-level credit, neither individual provides documentary evidence substantiating their authority, such as a letter from a dean or provost. Neither does the record contain evidence that the professors' universities have programs for granting college-level credit for training and/or experience. 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 petitioner has not established that the beneficiary is eligible to perform the services of a specialty occupation pursuant to the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The record does not contain any 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).

Turning to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the AAO acknowledges counsel's assertion on appeal 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), 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

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<sup>1</sup> *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).

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 coupled with his one-year of formal education is sufficient to establish that he is qualified to perform the duties of the specialty occupation. In this matter it is not.

The AAO first reviews the beneficiary's prior work experience listed on his curriculum vitae, in his affidavit, and in the four letters submitted from prior employers/organizations. The letters show that the beneficiary worked intermittently for employers and as a consultant. His duties for the various organizations varied from that of a cameraman, translator, and graphic designer to an individual who set up computer networks, developed websites, trained individuals on software, and maintained computers. This work experience suggests that the beneficiary is a skilled technician but is insufficient to establish that the beneficiary performed duties that correspond to coursework involving theoretical concepts and required practical application of a body of specialized knowledge at a university level. The beneficiary's curriculum vitae and affidavit as those documents relate to work involving computers also are indicative of an individual who has a basic knowledge and good understanding of the technical aspects of computers but do not reveal duties that incorporate specialized knowledge attained through specific courses in a four-year course of study at the university level.

In addition, the employers' letters fail to discuss how the beneficiary's work experience with his 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 the field. The letters do not describe the beneficiary's supervisory or managerial responsibilities, if any, or provide statements regarding the credentials of the beneficiary's peers, supervisors, or subordinates. Neither do the letters reveal that the beneficiary gained greater experience or responsibility as the beneficiary moved from his claimed government position as a "technical expert"<sup>2</sup> to an independent consultant who acted as a translator, cameraman, graphic designer, and also performed duties relating to setting up computer systems and training others on software use. The AAO acknowledges counsel's assertion that the evaluators of the beneficiary's work history, based on these same letters provided opinions contrary to the above determination. However, reciting a description of duties provided in employers' letters and in the beneficiary's resume and then concluding, without analysis, that the beneficiary gained "progressively responsible qualifying work experience in computer science" and "employment commensurate with university-level training," is insufficient. The evaluators must explain how becoming a translator/cameraman and providing design graphics is progressive experience from managing the administration of a network, the beneficiary's initially claimed job position. The evaluators must describe the incremental steps leading from managing the administration of a network to setting up computer networks, developing websites, training individuals on software, and maintaining computer systems and provide an understanding of how the later work experience constitutes progressively responsible work experience and how the employment is

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<sup>2</sup> The beneficiary indicates that he worked for the Ministry of Public Security, a government agency in Costa Rica as a network manager from October 1994 to March 1999; however, the record does not contain documentation from the Ministry of Public Security validating the beneficiary's work history, including details of his duties, his title, his supervisory or managerial responsibilities, and statements regarding the credentials of his peers, supervisors, or subordinates. 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.

commensurate with university-level training.

As the director found, when 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 provided expert opinions that contain evidence substantiating any conclusions regarding the beneficiary's expertise in the specialty occupation. In this matter, the record does not contain an analysis of the beneficiary's experience and how the described experience equates to particular courses of study at the university level; does not provide examples of how the beneficiary's length of time in a particular position contributed to or is otherwise equal to college-level courses; does not contain evidence that the evaluators interviewed the beneficiary, the beneficiary's foreign employers, researched the foreign employers' businesses, or otherwise investigated the beneficiary's foreign work experience. The writers do not expound upon their expertise, if any, regarding employment with the Costa Rican Ministry of Public Security or the various entities for which the beneficiary provided consulting services, or whether any of those positions require the theoretical and practical application of specialized knowledge equivalent to a U.S. bachelor's degree in computer science or a related field.

The record lacks evidence that demonstrates that the beneficiary has attained the equivalent of a bachelor's degree in computer science through a combination of his education, 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 appears to rely on the two evaluation letters submitted by Dr. [REDACTED] and Dr. [REDACTED] as letters from recognized authorities. In addition to the lack of analysis and investigation of the beneficiary's foreign work experience as noted above, the petitioner has not provided evidence how Dr. [REDACTED] work in Microbiology, Immunology, and Genetics is work in the computer science field. Nor does either evaluator provide substantive evidence: that they qualify as experts; that their opinions have been accepted as authoritative and by whom; of how their conclusions were reached; and, of the basis for their conclusions supported by copies or citations of research material validating those conclusions. The petitioner has not established that either evaluator is a recognized authority pursuant to 8 C.F.R. § 214.2(h)(4)(i)(C)(ii).

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 brief description of the beneficiary's duties in the proffered position is insufficient to establish that the proffered position is a specialty occupation. The proposed position parallels that of network and computer systems administrators, and computer support specialists as those occupations

are defined in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. As described in the *Handbook*, network or computer systems administrators design, install, and support an organization's LAN (local-area network), WAN (wide-area network), network segment, Internet, or intranet system; maintain network hardware and software, analyze problems, and monitor the network to ensure its availability to system users; and gather data to identify customer needs and then use that information to identify, interpret, and evaluate system and network requirements; ensure that the design of an organization's computer site allows all of the components, including computers, the network, and software, to fit together and work properly; and monitor and adjust performance of existing networks and continually survey the current computer site to determine future network needs. According to the *Handbook*, computer support specialists provide technical assistance, support, and advice to customers and other users; the occupational group includes technical support specialists and help-desk technicians that interpret problems and provide technical support for hardware, software, and systems. They also write training manuals; train computer users how to properly use new computer hardware and software; and oversee the daily performance of their company's computer systems and evaluate software programs for usefulness.

The petitioner's brief overview of the proposed duties of the proffered position falls within the *Handbook's* description of a network administrator and a computer support specialist. The *Handbook* indicates that for administrator positions many employers seek applicants with bachelor's degrees, though not necessarily in a computer-related field. For a computer support specialist position some employers prefer some formal college education, others require a bachelor's degree in computer science or information systems, while others require only a computer-related associate degree. The *Handbook* also indicates that many employers are "becoming more flexible about requiring a college degree for support positions because of the explosive demand for specialists" and that "certification and practical experience demonstrating these skills will be essential for applicants without a degree." Based on the *Handbook's* statements, a baccalaureate or higher degree or its equivalent in a specific specialty is not the normal minimum requirement for entry into the particular position. Consequently, the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

No evidence in the record establishes the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a specific degree requirement is common to the industry in parallel positions among similar organizations or shows that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As discussed in this decision, the proposed position parallels that of network and computer systems administrators and computer support specialists, which are occupations that do not require a bachelor's degree in a specific specialty. Similarly, the record does not contain evidence that establishes the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which is that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Once again, the duties of the proposed position parallel the duties of a network and computer systems administrator and a computer support specialist, occupations that do not require a bachelor's degree in a specific specialty. The petitioner's general description does not provide substantive evidence that the individual in the proffered position will be required

to perform specialized and complex duties that are usually associated with the attainment of a baccalaureate degree in a specific discipline.

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 petitioner has not established that the proffered position is a specialty occupation. For this additional reason, the petition will be denied.

The AAO acknowledges counsel's claim that CIS did not properly review the evidence and as a result the petitioner was denied due process. The AAO finds that the director in this matter reviewed the pertinent evidence and correctly determined that the petitioner had not established that the beneficiary is qualified to perform the duties of a specialty occupation. The AAO also finds that the petitioner has not shown that any violation of the regulations resulted in "substantial prejudice" to them. *See De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004) (holding that an alien "must make an initial showing of substantial prejudice" to prevail on a due process challenge). The petitioner has fallen far short of meeting this standard. A review of the record and the adverse decision indicates that the director properly applied the statute and regulations to the petitioner's case. The petitioner's primary complaint is that the director denied the petition. As previously discussed, the petitioner has not met its burden of proof and the denial was the proper result under the regulation. Accordingly, the petitioner's due process claim is without merit.

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.