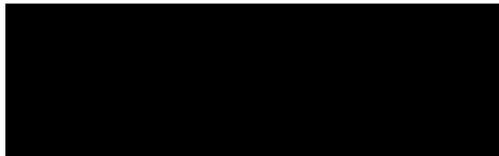


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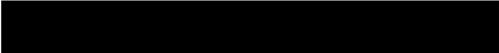


**U.S. Citizenship
and Immigration
Services**



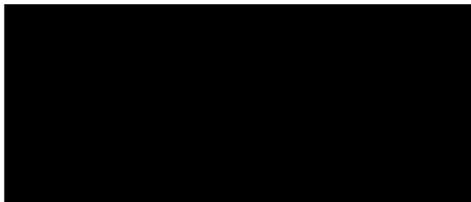
02

FILE: WAC 05 218 51265 Office: CALIFORNIA SERVICE CENTER Date: **MAY 16 2007**

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.

Robert P. Wiemann
Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a residential care facility, established in 2004 with seven employees and a gross annual income of \$80,040. It seeks to employ the beneficiary as a social worker. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition determining that the position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) the August 2, 2005 Form I-129 with supporting documentation; (2) the director's October 18, 2005 request for further evidence (RFE); (3) counsel's November 14, 2005 response to the director's RFE and supporting documentation; (4) the director's January 13, 2006 denial letter; and (4) the Form I-290B and documents in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the petitioner has established that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

As the director observed, 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 neither 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 an attachment to the Form I-129 petition, the petitioner set forth the proposed duties of the social worker position as:

1. Providing our residents and families with the psychosocial support needed to cope with chronic, acute, or terminal illnesses, such as Alzheimer's disease, Multiple Sclerosis or Parkinson's disease.
2. Counsel clients and assist in their acclimation to the assisted living environment, as the process is very difficult for many of our clients who have recently lost personal independence. This will include individual and group discussions aimed at addressing personal issues with assisted living and family concerns and problems.
3. Advise family caregivers, counsel residents and help plan for resident's needs after arriving in the facility. This duty will involve discussing issues and concerns with the clients and formulating a proper adjustment to their environment which will hopefully optimize the client's environment.
4. Work together with the administrator to evaluate the development of the residents.
5. The social worker in the role of a client advocate will have to do record-keeping, phoning and follow-up with doctors, families and other service providers. These administrative duties are an inherent and necessary facet of a social worker's daily work routine.
6. The goal of the proposed social worker position [is] to better improve the lives of our clientele through open communication channels and responsible corrective action.

The petitioner also provided a copy of its California State License licensing it to operate and maintain a residential facility for six elderly non-ambulatory residents ages 60 and over.

The director, in the RFE issued October 18, 2004, only requested evidence pertaining to the beneficiary's qualifications to perform the duties of a specialty occupation. In response, the petitioner provided a November 4, 2005 statement of evaluation indicating that the beneficiary had achieved the equivalent of a bachelor's degree in social work at an accredited institution in the United States based on the beneficiary's studies in Germany resulting in the award of the degree of Certified Social Worker/Social Educator in 2003. The petitioner also provided copies of the results of the beneficiary's intermediate exam on March 31, 2001 covering eleven subjects and the results of the beneficiary's final exam on September 23, 2003 covering several subjects as well as a rating of the beneficiary's thesis.

On January 13, 2006, the director denied the petition, determining that the duties of the proffered position corresponded to the duties of a social and human service assistant as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The director observed that the *Handbook* reported that the training for a social and human service assistant usually did not require a bachelor's degree. The director also determined that the record did not contain evidence: that a degree in a specific field of study is common to the nursing facility industry in parallel positions among similar organizations; or that the proffered position involved duties that were either unique or complex so that only an individual with a degree in a specific specialty could perform them; or that the petitioner had established that it only hired individuals with degrees for the position (as the petitioner had not previously hired anyone for the position); or that the nature of the duties is so specialized or complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree or higher.

On appeal, counsel for the petitioner asserts that the director incorrectly categorized the position to be held by the beneficiary. Counsel contends that the description of duties provided shows that the proffered position is for that of a social worker, not a social and human service assistant. Counsel acknowledges that the duties of a social worker and the duties of a social and human service assistant overlap in some areas but asserts that an overlap of duties does not imply that the distinct positions are equivalent positions. Counsel notes that social and human service assistants work with social workers but states that, in this matter, it is the beneficiary who is the social worker working with her immediate supervisor, the facility manager, not a supervisory social worker.

Counsel contends that the petitioner seeks the services of a social worker to perform duties normally attributed to a social worker and who meets the requirements to hold such a position. Counsel notes that as the director did not request additional detail regarding the duties of the position, the petitioner was not given the opportunity to submit a more detailed description and thus submits it on appeal. The petitioner expanded upon the proposed duties of the position as follows:

1. Serve as consultant to both residents and families on social work issues, involving access to community resources, and to understand psycho-social and family dynamics issues. Give the support needed to cope with chronic, acute, or terminal illnesses, such as Alzheimer's disease, multiple sclerosis, or Parkinson's disease.

2. Counsel clients and assist in their acclimation to the assisted living environment, as the process is very difficult for many of the clients who have recently lost personal independence. This will include individual and group discussions aimed at addressing personal issues with assisted living, family concerns and health.
3. Maintain continuity of care among team members and others by communicating changes in client condition or service plans as required; following-through on service plans. Work in association with the administrator to evaluate the development of the residents.
4. Conduct workshops and in-service training to caretakers on various therapeutic methods, lead therapeutic groups. Develop and present new therapeutic treatments/programs to the facility management.
5. Monthly reviews to the management regarding effectiveness and efficiency of the services offered.
6. Identify client's service needs by gathering and completing intake information packets. Working with the clients and the caregivers to develop service plans as well as referral schedules based on client's needs.
7. Supervision of the team to enable them to professionally deal with changing social issues in the field of gerontology. The social worker must be able to handle responsibility, work independently and maintain good working relationships with clients and coworkers.
8. The social worker spends majority of the time in an office or residential facility for record-keeping, and follow-up with doctors, families and other service providers. Travel locally to meet with the resident's family members or service providers may be required. These administrative duties are an inherent and necessary facet of the social worker's daily work routine.
9. The goal of the proposed social worker position is to better improve the lives of our clientele through open communication channels and responsive corrective action.

Counsel also submits seven job announcements for the positions of: (1) a social worker for an eldercare facility that requires a master's degree in social work and is licensed in New Jersey; (2) a social worker for an adult day health care center that requires a bachelor's degree in sociology, gerontology, psychology or social work and who is a licensed social worker; (3) a social worker for a long-term care facility that requires a bachelor's degree in social work and state licensing if in a state that requires licensing; (4) a hospice social worker for an organization in the health industry that requires a master's degree in social work; (5) a licensed social worker for long-term care residents, sub-acute patients and outpatients that requires a licensed social worker with a bachelor's degree in behavioral health or a related field; (6) a social worker for a nursing home looking for a licensed social worker with a bachelor's degree in an unspecified discipline; and (7) a social worker for a dialysis facility that requires a master's degree from an accredited school of social work and current state licensure or eligibility for licensure if applicable.

Counsel asserts that the petitioner is not imposing a degree requirement to attain specialty occupation classification for the position but that the position itself due to the complexity and specialized knowledge needed to perform the duties requires a bachelor's degree.

The AAO turns first to the duties of the proffered position and the statutory and regulatory requirements of a specialty occupation.

The AAO takes note of the following discussion in the *Handbook* regarding social workers:

Social workers help people function the best way they can in their environment, deal with their relationships, and solve personal and family problems. . . . Most social workers specialize.

* * *

Medical and public health social workers provide persons, families, or vulnerable populations with the psychosocial support need to cope with chronic, acute, or terminal illnesses, such as Alzheimer's disease, cancer, or AIDS. They also advise family caregivers, counsel patients, and help plan for patients' needs after discharge by arranging for at-home services, from meals-on-wheels to oxygen equipment. Some work on interdisciplinary teams that evaluate certain kinds of patients – geriatric or organ transplant patents, for example. Medical and public health social workers may work for hospitals, nursing and personal care facilities, individual and family services agencies, or local governments.

Regarding the training, other qualifications, and advancement for social workers, the *Handbook* reports:

A bachelor's degree in social work (BSW) degree is the most common minimum requirement to qualify for a job as a social worker; however, majors in psychology, sociology, and related fields may qualify for some entry-level jobs, especially in small community agencies.

* * *

All States and the District of Columbia have licensing, certification, or registration requirements regarding social work practice and the use of professional titles. Although standards for licensing vary by State, a growing number of States are placing greater emphasis on communications, skills, professional ethics, and sensitivity to cultural diversity issues. . . .

The AAO also notes the *Handbook's* discussion regarding the duties of social and human service assistants that provides:

Social and human service assistant is a generic term for people with a wide array of job titles, including human services worker, case management aide, social work assistant, community support worker, mental health aide, community outreach worker, life skill counselor, or gerontology aide. They usually work under the direction of workers from a variety of fields, such as nursing, psychiatry, psychology, rehabilitative or physical therapy, or social work. The amount of responsibility and supervision they are given varies a great deal. Some have little direct supervision; others work under close direction.

Social and human service assistants provide direct and indirect client services to ensure that individuals in their care reach their maximum level of functioning. They assess clients' needs, establish their eligibility for benefits and services such as food stamps, Medicaid, or welfare, and help to obtain them. They also arrange for transportation and escorts, if necessary, and provide emotional support. Social and human service assistants monitor and keep case records on clients and report progress to supervisors and case managers.

Social and human service assistants play a variety of roles in a community. . . . They review clients' records, ensure that they take correct doses of medication, talk with family members, and confer with medical personnel and other caregivers to gain better insight into clients' backgrounds and needs. Social and human service assistants also provide emotional support and help clients become involved in their own well-being, in community recreation programs, and in other activities.

Regarding the training for a social and human service assistant, the *Handbook* reports:

While a bachelor's degree usually is not required for entry into this occupation, employers increasingly seek individuals with relevant work experience or education beyond high school. Certificates or associate degrees in subjects such as social work, human services, gerontology, or one of the social or behavioral sciences meet most employers' requirements. Some jobs may require a bachelor's or master's degree in human services or a related field such as counseling, rehabilitation, or social work.

The descriptions of the duties of the proffered position contain elements of both a social worker and a social and human service assistant. The *Handbook* when providing descriptions of the two distinct positions also contains overlapping duties. The *Handbook* seems to suggest, without defining the distinct job duties, that some social and human service assistant positions may require a bachelor's or master's degree in social work, thus in reality would be more properly identified as a social worker. The *Handbook's* blurring of the duties associated with the two occupations hinders a conclusion that the general duties described are relevant to only one of the occupations. In this matter, the petitioner fails to distinguish which duties¹ of the proffered position elevate the position to that of a social worker. Counsel's assertion on appeal that the individual in the proffered position will not report to a supervisory social worker, thus the proffered position cannot be considered just a social and human service assistant, is not persuasive. The AAO notes that the beneficiary in this matter will report to the owner/administrator and although the AAO does not have information regarding the education or training of the owner/administrator, this individual is held responsible for the six individuals in his care. As the petitioner did not previously employ a social worker, it is also reasonable to believe that the owner/administrator performed

¹ The AAO acknowledges the petitioner's reference to a duty that requires understanding psycho-social and family dynamics issues, a duty that suggests specific courses in psychology or behavioral science might be necessary. However, as will be further discussed below, the beneficiary's coursework as disclosed in the record does not include courses in psychology or behavioral science. Moreover, the *Handbook* indicates that certificates or associate degrees in specific subjects, not a bachelor's degree will meet most employers' requirements for a social and human service assistant position.

some of the duties that will now be part of the proffered position's duties. It is not possible to determine based on the title of the position or the duties of the proffered position that the proffered position requires the theoretical and practical application of a body of highly specialized knowledge, and the 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.

For example, counsel notes that the petitioner has indicated that the beneficiary will provide residents and families with psychosocial support needed to cope with illnesses and will counsel clients and assist in their acclimation to the assisted living environment, and that these duties are similar to the *Handbook's* indication that social workers help people function the best way they can in their environment, and provide persons and families with the psychosocial support needed to cope with illnesses. However, repeating portions of the generalized descriptions found in the *Handbook* is insufficient to establish a position is a specialty occupation. Such a generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. Moreover, the *Handbook* reports that social and human service assistants also provide direct and indirect client services to ensure that individuals reach their maximum level of functioning and that they also provide emotional support and help clients become involved in their own well-being. Again, the petitioner does not offer information distinguishing the duties it describes from the duties of a social and human service assistant, but instead relies on the *Handbook's* broad statements, rather than identifying the elements of its position that mandate a conclusion that the position requires the specialized knowledge associated with the attainment of a four-year college degree in a specific discipline. Moreover, as the petitioner acknowledged, the proffered position requires the performance of administrative duties such as record-keeping, phoning, traveling, and following-up with doctors and families and other service providers. Although these administrative duties may be inherent to the proffered position they are not indicative of a position that necessarily requires a bachelor's degree.

The AAO acknowledges counsel's expansion of the position's duties on appeal and notes that the added duties reflect more supervisory and oversight duties as well as training caretakers on therapeutic methods. However it is not clear that these duties fall within the parameters of duties of either a social worker or a social and human service assistant. In addition, the petitioner does not provide the necessary detail of these duties as they relate to its business operations. When establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. In the instant matter, the petitioner employs seven individuals for a six-bed facility. The record is unclear regarding the actual duties of the proffered position as those duties relate to the petitioner's other staff and their routine duties. The petitioner does not provide evidence of its organizational hierarchy or otherwise define the duties of its other employees. It is not possible to discern how the proffered position's supervisory, oversight, and training duties require the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in social work to perform them.

The petitioner does not adequately describe how it will utilize the services of a "social worker" to perform the necessary tasks associated with managing a six-bed facility. The AAO also notes that the *Handbook* reports that all States and the District of Columbia have licensing, certification, or registration requirements regarding social work practice and the use of professional titles. In this matter, the petitioner does not require the individual in the proffered position to have a license nor is there evidence in the record that suggests the beneficiary has obtained a

social worker license. The petitioner's failure to require a license for its social work practice undermines its contention that the position encompasses the duties of social work practice.²

The petitioner in this matter has not provided evidence that the duties of the proffered position encompass the theoretical and practical application of a body of highly specialized knowledge that requires the attainment of a bachelor's or higher degree in a specific specialty. 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 demonstrated that the proffered position is a specialty occupation pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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), a 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. In the instant matter, the petitioner has submitted seven job announcements from various facilities for the position of a social worker. Six out of the seven announcements require that the successful incumbent have a license to perform the work of the position in addition to a bachelor's or master's degree. The petitioner in this matter does not require the successful candidate for the proffered position to have a license. Thus, the petitioner has not established that the proffered position is parallel to the positions advertised. In addition, although the advertising organizations are also residential care facilities, the advertisements do not contain information regarding the organizations' level of revenue, their number of staff, or their number of beds. As such, the AAO cannot conclude that the organizations are similar to the petitioner. Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

Neither does the petitioner provide sufficient information to distinguish the proffered position as more complex or unique than similar, but non-degreed, employment, as required by the second prong of the second criterion. The petitioner does not identify which duties are more unique or specialized than the duties performed by non-degreed individuals in the same field. Again, the AAO declines to accept a phrase from the *Handbook* as a definitive element requiring a conclusion that as the proffered position's description contains the same phrase it must also be identified as the position generally described in the *Handbook*. The record does not contain evidence that establishes either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Turning to the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), whether the petitioner normally requires a degree for the position, the AAO notes that the petitioner has not previously hired a social worker. Further, as the director observed a petitioner's desire to employ an individual with a bachelor's degree does not establish that the position is a specialty occupation. The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a

² The California Business and Professions Code section 4996 indicates that individuals holding themselves out as clinical social workers must have a license. The petitioner does not sufficiently identify the proffered position as a social worker position; however, if the individual in the position is performing the duties of a clinical social worker or is holding herself out as a professional, she must have obtained a license in the State of California.

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. The AAO acknowledges counsel's contention that a social worker position is a position that requires a bachelor's degree irrespective of the petitioner's self-imposed requirements. However, as determined above, the petitioner in this matter has not provided a sufficiently comprehensive description of the position to conclude that the position encompasses the duties of a social worker that requires the theoretical and practical application of a body of highly specialized knowledge. The petitioner has not submitted evidence to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Turning to the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the description of the duties in the record does not substantiate that the duties are sufficiently specialized or complex to require knowledge usually associated with the attainment of a baccalaureate degree in a specific field of study. In this matter, the petitioner has not provided an adequate distinction between the duties of a social worker and the duties of a social and human service assistant. The petitioner has not provided examples of specific duties that are either specialized or complex, other than to restate a portion of the *Handbook's* report regarding social workers. Moreover, the petitioner's failure to require the beneficiary to be licensed suggests that the position as it relates to the petitioner's operations is a social and human service assistant position. The petitioner has not provided definitive information regarding the proffered position or otherwise established that the duties it describes are specialized or complex. Accordingly, the petitioner has failed to classify the proffered position as a specialty occupation pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Beyond the decision of the director, the AAO finds that the petitioner has not established the beneficiary's eligibility to perform the duties of 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.

In this matter, as previously noted, the record contains a November 4, 2005 statement of evaluation indicating that the beneficiary had achieved the equivalent of a bachelor's degree in social work at an accredited institution in the United States based on the beneficiary's studies in Germany which resulted in the award of the degree of Certified Social Worker/Social Educator. However, the evaluation does not reference the number of years the beneficiary attended university, if any; does not indicate the number of credit hours the beneficiary obtained; and does not provide a statement or information regarding the type of educational facility the beneficiary attended to obtain her degree of certified social worker/social educator. The evaluator does not substantiate the conclusions in the evaluation with a factual analysis of the beneficiary's coursework. The evaluation is insufficient on its face to establish that the beneficiary's foreign education is the equivalent of a four-year course of study at an accredited university in the United States.

A review of the nature of the subjects identified as part of the beneficiary's intermediate exam shows that the beneficiary's coursework focused on the history of social work, social policy, the legal foundation of social work, basic courses in socialization, social medicine, and sociology. The coursework tested as part of the beneficiary's final exam includes courses in research methods, public welfare law, social administration/administrative law, labor law, social security law, the business administrative and socioeconomic basics of social work, methods of social work, and social management. These courses do not indicate that the beneficiary's study focused on the practical application of psychology, behavioral science, or social engagement, study central to the routine duties and education of a social worker in the United States. Without a more complete understanding of the beneficiary's foreign education that would be forthcoming in a proper evaluation, the AAO cannot conclude that the beneficiary's foreign education is the equivalent to a bachelor's degree in the social work from an accredited university in the United States. 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 evaluation submitted is conclusory and does not contain a discussion of the beneficiary's coursework; nor does the evaluation contain evidence of the evaluator's credentials.

In addition, the AAO notes that if the individual in the proffered position would actually be performing duties of a clinical social worker as described in the *Handbook*, duties the current description does not encompass, the beneficiary would require a license. In this matter, the record does not contain evidence that the beneficiary had obtained the appropriate licensure to perform the duties of a clinical social worker in the State of California or

evidence that the pertinent California agencies do not require the beneficiary to be licensed for the duties she would perform.

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. As always, 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 met that burden.

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