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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

D2

[redacted]

FILE: WAC 07 131 52333 Office: CALIFORNIA SERVICE CENTER Date: SEP 29 2009

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director 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 is a corporation that provides consulting, technical support, and services to the Information Technology (IT) industry. To employ the beneficiary as a programmer analyst, the petitioner endeavors to classify him 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).

The director denied the petition because her review of the copies of the quarterly Employer's Contribution and Wage Reports (ECWRs) that the petitioner submitted for each quarter of 2006 and the first quarter of 2007 caused her to doubt that the petitioner had been meeting its obligations to pay its H-1B beneficiaries in accordance with its attestations in the related Form I-129s and Labor Condition Applications (LCAs). In pertinent part, the director's decision states:

> Subsequent to the filing of the petition, the petitioner was requested to provide additional evidence to substantiate that the petitioning entity is a bona fide business, including its annual income, current number of employees, type of business, and type of employment as shown on the I-129. Specifically, the petitioner was requested to provide tax returns, and quarterly wage reports.
>
> Copies of the petitioner's [ECWRs] for all employees for the four quarters of the year 2006 and the first quarter of 2007 shows [sic] that the petitioner's other H-1B employees have not been compensated at the rates of pay which were originally stated in those I-129 Petitions and in each corresponding [LCA]. Also, other inconsistencies are reflected in the record.
>
> It does not appear that the beneficiaries have been employed on a continual basis pursuant to the hours originally specified on each subsequent I-129 petition. For instance, although the beneficiaries' 2006 W-2 Wage and Tax Statements show total wages for 2006, the same wages are not reflected in the petitioner's [ECWRs] for 2006. In fact, in many cases, no wages are reflected in the quarterly reports.

The next section of the director's decision is a table that includes the following columns for each of 16 H-1B beneficiaries working for the petitioner: (1) the related Form I-129 receipt number; (2) the beneficiary's last and first name; (2) the compensation listed for the beneficiary on the Form I-129; (3) the period of the beneficiary's employment by the petitioner; (4) the beneficiary's employment status; (5) the wages reported for the beneficiary in the ECWRs filed in the first quarter of 2007 and each quarter of 2006; and (6) the amount recorded on the beneficiary's W-2 Form for the year 2006. According to the table's entries, the wages reported in W-2 reports for 15 of the 16 beneficiaries for the year 2006 were not corroborated by the ECWRs that were before the director. The table also

indicates that 11 of the beneficiaries were not included in the ECWRs filed for the year 2006, and that three of those 11 also do not appear in the ECWRs for the first quarter of 2007.

On the basis of the discrepancies reflected in the decision's table, the director stated that "it appears that the petitioner's statements with regards to the proffered wage, and[/]or hours worked, were not true and correct" for each of the beneficiaries listed in the table. The director further determined that the discrepancies with regard to the wages paid the 16 beneficiaries named in the decision's table "call into question the petitioner's ability to document the requirements under the statute and regulations" and strongly indicate that the petitioner had not complied with its wage obligations under the H-1B program.

On appeal, the petitioner asserts that its accountant's error caused the discrepancies noted by the director. The petitioner submits a memorandum from the CEO of the accounting firm that provides accounting services to the petitioner. The memorandum is dated October 26, 2007; bears the subject line: "RE: Unemployment Tax Returns (2006 2nd, 3rd & 4th and 2007 1st)"; is addressed "To Whom It May Concern"; and acknowledges a clerical error by which some persons were not included in the ECWRs filed with the Illinois Department of Employment Security. The petitioner also submits a copy of an October 26, 2007 letter from its president to the Illinois Department of Employment Security that indicates that revised ECWRs are submitted to add persons not reported in 2006 and to subtract the previous entries for five beneficiaries for whom, the CEO says, "we double filled [sic] in IL and MN"[;] in fact they worked in MN for that time period."

For the reasons discussed below, the AAO finds that the evidence submitted on appeal is not sufficient to favorably resolve the issue of the petitioner's intention to comply with its H-1B wage obligations. Accordingly, the decision of the director will not be disturbed. The appeal will be dismissed, and the petition will be denied.

Based upon its review of the entire record of proceedings, including the documents submitted on appeal, the AAO finds that the ECWR copies submitted into the record indicate that the petitioner has not complied with its H-1B wage obligations with regard to at least two beneficiaries.

For the H-1B beneficiary whose social security number's last four digits are [redacted], the petitioner's Florida ECWR for the first quarter of 2006 reports pay of $2,898, and the the petitioner's Florida ECWR for the first quarter of 2007 reports pay of $8,460. However, according to USCIS records and the table in the director's decision, the salary specified in the Form I-129 is $38,000 per year, which translates into $9,500 per quarter.[1] For the H-1B beneficiary whose social security number's last four digits are [redacted] the petitioner's Florida ECWR for the third quarter of 2006 reports pay of $9,504. However, USCIS records indicate that in the third quarter of 2006, this person was working

[1] According to USCIS records, this person's H-1B status was approved for the period October 1, 2005 to September 3, 2008. The petitioner's "All Employee's Till Date" table lists this beneficiary as currently employed in H-1B status.

for the petitioner in H-1B status at a salary of $50,000, which equates to $12,500 per quarter.[2] These aspects of the record indicate that the petitioner has not recognized its obligation to pay its salaried H-1B beneficiaries the wage rate specified on the LCA on a regular basis and without reduction, suspension, or delay except in certain limited circumstances that do not appear in this record of proceeding. *See* 20 C.F.R. § 655.731(c) (Satisfaction of required wage obligation). For this reason, the AAO will not disturb the director's decision.

Beyond the decision of the director, the AAO also finds that the petitioner has failed to establish that the proffered position is a specialty occupation. For this reason also, the petition must be denied.

The AAO analyzes this issue according to the statutory and regulatory framework below.

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

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which [1] 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 [2] 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."

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[2] According to USCIS records, this person's H-1B status was approved for the period September 23, 2005 to September 22, 2006. The petitioner's "All Employee's Till Date" table also lists this beneficiary as still employed in H-1B status.

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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000) (hereinafter referred to as *Defensor*). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

Based upon its review of the entire record including the matters submitted on appeal, the AAO concludes that the petitioner failed to establish that the beneficiary would perform specialty occupation services for the period sought in the petition. As will be discussed below, the AAO bases this conclusion on its evaluation of the evidence of record related to the proposed duties and the knowledge required to perform them. The AAO finds this evidence insufficient to satisfy any of the

criteria at 8 C.F.R. 214.2(h)(4)(iii)(A), that is, as either (*a*) a particular position for which the normal minimum requirement for entry would be at least a bachelor's degree, or its equivalent, in a specific specialty (criterion 1); (*b*) one parallel to those for which organizations in the petitioner's industry that are similar to the petitioner commonly require at least a bachelor's degree, or its equivalent, in a specific specialty (the first alternative prong of criterion 2); (*c*) a particular position shown to be so complex or unique that it can be performed only by an individual with a degree (the second alternative prong of criterion 2); (*d*) one for which the employer normally requires at least a bachelor's degree, or its equivalent, in a specific specialty (criterion 3); or (*e*) one with specific duties so specialized and complex that their performance requires knowledge usually associated with the attainment at least a bachelor's degree in a specific specialty (criterion 4).

To determine whether a particular job qualifies as a specialty occupation, the AAO does not simply rely on the position's title or the extent to which the petitioner's descriptions of the position and its underlying duties correspond to occupational descriptions in the *Handbook.* Critical factors for consideration are the record's evidence about specific duties of the proffered position and the particular business matters upon which the duties are to be performed. In this pursuit, the AAO must examine the evidence about the substantive work that the alien will likely perform for the entity or entities ultimately determining the work's content. In the present petition, the petitioner's business is providing IT services for clients contracting for those services. In this context, the clients are the entities generating the projects upon which the beneficiary will work and determining the actual content of the beneficiary's work.

As recognized by the court in *Defensor*, evidence of the client companies' job requirements is critical where, as here, the work is to be performed for entities other than the petitioner. The court held that the legacy Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. Such evidence must be sufficiently detailed and explained as to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work. The record of proceedings lacks such substantive evidence from the end-user entities, whose IT needs directly determine what the beneficiary would actually do on a day-to-day basis. In the present petition, the business entities who would determine the substantive nature of the beneficiary's work have not provided evidence delineating the specific components of the work that the beneficiary would perform for them. Therefore, the AAO is unable to determine whether the proffered position incorporates the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree, or its equivalent, in the specific specialty as the minimum for entry into the occupation as required by the Act. Accordingly, the petitioner has not established that the proffered position is a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) or that the beneficiary would be coming temporarily to the United States to perform the duties of a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(1)(B)(1).

In its March 27, 2007 letter submitted with the Form I-129, the petitioner describes itself as a firm that "provides consulting, technical support and services to the Information Technology (IT) industry," and "provides a full range of information technology services in systems evaluation, design, development and integration, working for both small and Fortune 500 companies." It is in this context that the letter provides the following description of the proffered position:

> The Programmer Analyst analyzes the data processing requirements to determine the computer software, which will best serve those needs. Thereafter, he will design a computer system using that software, which will process the data in the most timely and inexpensive manner, and implements [sic] that design by overseeing the installation of the necessary system software, and its customization to client's unique requirements. The actual computer programming will be performed with the assistance of programmers.
>
> Throughout this process, the Programmer Analyst must constantly interact with the management, explaining to it each phase of the system development process, responding to its questions, comments, and criticism, and modify the system so the concerns raised are adequately addressed. Consequently, the Programmer Analyst must constantly revise and revamp the system as it is being created to respond to unanticipated software anomalies heretofore undiscovered, to the extent that occasionally the system finally created bears seemingly little resemblance to that which was initially proposed.

This letter submitted with the Form I-129 also provides a table that lists the following items as the six phases that will be involved in the beneficiary's "development of the systems": (1) analysis of the existing system and user needs; (2) communication and interaction with current system users; (3) design and development of a new computerized system; (4) writing and testing of newly designed programs; (5) implementation of the newly developed system; and (6) provid[ing] technical support after system implementation. The letter also provides a table dividing the beneficiary's day-to-day responsibilities into the following components and related percentages of worktime devoted to them: (1) analysis of software requirements – 25%; (2) evaluation of interface feasibility between hardware and software – 10%; (3) software system design (using scientific analysis and mathematical models to predict and measure design consequences and outcome) – 20%; (4) programming – 10% ; (5) unit and integration testing – 25%; (6) system installation – 5% ; and system maintenance – 5%.

The comments at the letter's "Agreement with [the Beneficiary]" section makes it clear that the beneficiary will be subject to assignment to client locations. However, the petitioner identifies none of them. It is also noteworthy that the petitioner provides no substantive information about any particular project to which the beneficiary may be assigned.

The AAO recognizes the Department of Labor's *Occupational Outlook Handbook* (*Handbook*) as an authoritative source on the duties and educational requirements of the wide variety of occupations that it

addresses. The Programmer Analyst occupational category is discussed in the *Handbook* chapters entitled "Computer Programmers" and "Computer Systems Analysts."

The *Handbook's* information on educational requirements in the programmer analyst occupation indicates that a bachelor's or higher degree, or the equivalent, in a specific specialty is not a normal minimum entry requirement for this occupational category. Rather, the occupation accommodates a wide spectrum of educational credentials, as indicated in the following excerpt from the "Educational and training" subsection of the *Handbook's* "Computer Systems Analysts" chapter:

> When hiring computer systems analysts, employers usually prefer applicants who have at least a bachelor's degree. For more technically complex jobs, people with graduate degrees are preferred.
>
> The level and type of education that employers require reflects changes in technology. Employers often scramble to find workers capable of implementing the newest technologies. Workers with formal education or experience in information security, for example, are currently in demand because of the growing use of computer networks, which must be protected from threats.
>
> For jobs in a technical or scientific environment, employers often seek applicants who have at least a bachelor's degree in a technical field, such as computer science, information science, applied mathematics, engineering, or the physical sciences. For jobs in a business environment, employers often seek applicants with at least a bachelor's degree in a business-related field such as management information systems (MIS). Increasingly, employers are seeking individuals who have a master's degree in business administration (MBA) with a concentration in information systems.
>
> Despite the preference for technical degrees, however, people who have degrees in other majors may find employment as systems analysts if they also have technical skills. Courses in computer science or related subjects combined with practical experience can qualify people for some jobs in the occupation.
>
> Employers generally look for people with expertise relevant to the job. For example, systems analysts who wish to work for a bank should have some expertise in finance, and systems analysts who wish to work for a hospital should have some knowledge of health management.

As evident above, the *Handbook* does not indicate that programmer analyst positions normally require at least a bachelor's degree in a specific specialty. The *Handbook* only indicates that employers often seek or prefer at least a bachelor's degree level of education in a technical field for this type of position; and, more importantly, the evidence of record regarding the particular position proffered here does not demonstrate requirements for the theoretical and practical application of such a level of highly specialized computer-related knowledge. Thus, it is incumbent on the

petitioner to provide sufficient evidence to establish not only that the beneficiary would perform the services of a programmer analyst, but that he would do so at a level that requires the theoretical and practical application of at least a bachelor's degree level of knowledge in a computer-related specialty. This the petitioner has failed to do.

Not only does the *Handbook* not support the programmer-analyst occupation as one that normally requires at least a bachelor's degree in a specific specialty, but the evidence about the duties that the beneficiary would perform is insufficient to satisfy any specialty-occupation criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

The record's descriptions of the duties comprising the proffered position generally comport with the Programmer Analyst occupational category as discussed in the 2008-2009 edition of the *Handbook*. However, neither those descriptions nor any other evidence of record distinguish the proffered position from those computer systems analyst positions which do not require at least a bachelor's degree or the equivalent in a specific specialty closely related to their duties. Given the lack of evidence about the particular client projects designated for the beneficiary and the actual and specific performance requirements of those projects, the petitioner has failed to establish both the substantive nature of the actual services that the beneficiary would perform and the nature and educational level of knowledge required to perform them.

As the evidence of record does not indicate that this petition's particular position is one that normally requires at least a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The first alternative prong assigns specialty occupation status to a proffered position whose asserted requirement for at least a bachelor's degree in a specific specialty is common to positions in the petitioner's industry that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava,* 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO here reiterates that the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a U.S bachelor's or higher degree, but such a degree in a specific specialty that is directly related to the specialty occupation claimed in the petition.

As reflected in this decision's earlier comments, the *Handbook* does not indicate that a programmer analyst position as so generally described in this petition would require at least a bachelor's degree in a specific specialty. Thus, the *Handbook* does not support a favorable finding under this criterion. The AAO also notes that the record does not include submissions from a professional association or from individuals or other firms in the petitioner's industry attesting to routine employment and recruiting practices.

As the evidence of record does not establish a bachelor's degree or higher in a specific specialty as an industry-wide requirement for positions substantially similar to the one proffered in this petition, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*), which provides that "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." The evidence of record does not develop relative complexity or uniqueness as an aspect of the position. The information about the position and the duties comprising it is limited to generalized functional descriptions (such as "analysis," "communication and interaction," and "design and development"). This generalized information is not supplemented by documentation identifying specific projects in which the duties would be applied, describing the particular components of those projects that are so complex or unique as to satisfy this criterion, and explaining why those components are so complex or unique that their performance necessitates a person with at least a bachelor's degree in a specific specialty.

Next, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), by establishing that the employer normally requires a degree or its equivalent for the position.

To merit approval of the petition under this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency in its prior recruiting and hiring for the position. This petition's record of proceeding does not contain such evidence.

It is important to note that, to satisfy this criterion, the record must also establish that a petitioner's historical imposition of a degree requirement in its recruiting and hiring is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. This requirement resides in section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), which defines the term "specialty occupation" as requiring both "(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 petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the

fact that the position is not a specialty occupation. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor*, 201 F. 3d at 387-388. 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 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. To interpret the regulations any other way would lead to absurd results: if USCIS 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 menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. To satisfy this third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) in the context of the present petition, which involves the beneficiary's performing work on client projects, the petitioner must establish that performance of those projects requires the theoretical and practical application of at least a bachelor's degree level of knowledge in a particular specialty.

As noted earlier in this decision, the petitioner has limited the record's duty descriptions to generalized and generic terms. They lack the specificity necessary to establish whatever level of specialization and complexity resides in the proposed duties. Consequently, the AAO can reasonably determine no more than that the duties of the proffered position generally comport with those of the programmer analyst occupation as described in the *Handbook*. The educational requirements for positions in this occupation are so varied, as noted in this decision's earlier discussion of the relevant *Handbook* observations, and the record's duty descriptions are so generalized and non-specific, that there is no basis for the AAO to find the degree association required by this criterion.

For the reasons discussed above, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For this reason also, the petition will be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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