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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

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FILE: WAC 08 144 53048 Office: CALIFORNIA SERVICE CENTER Date:

APR 29 2010

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.

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is a non-profit foster family agency in California with nine employees. It seeks to employ the beneficiary as a social worker 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 concluding that the petitioner failed to establish that the beneficiary is qualified to perform services in a specialty occupation. Specifically, the director found that the beneficiary is not licensed to work as a social worker in California.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) counsel's response to the director's RFE; (3) the director's denial letter; and (4) Form I-290B with counsel's brief and evidence. The AAO reviewed the record in its entirety before reaching its decision.

The issue to be discussed in this proceeding is whether 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

(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.

In addition, pursuant to the regulation at 8 C.F.R. § 214.2(h)(4)(v)(A), if an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license “prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.”

Pursuant to 8 C.F.R. § 214.2(h)(4)(v)(B), if a temporary license is available and the alien is allowed to perform the duties of the occupation without a permanent license, the director shall examine the nature of the

duties, the level at which the duties are performed, the degree of supervision received, and any limitations placed on the alien. If an analysis of the facts demonstrates that the alien under supervision is authorized to fully perform the duties of the occupation, H classification may be granted.

Where licensure is required in any occupation, 8 C.F.R. § 214.2(h)(4)(v)(E) specifies that the H petition may only be approved for a period of one year or for the period that the temporary license is valid, whichever is longer, unless the alien already has a permanent license to practice the occupation. This regulation also provides that an alien who is accorded H classification in an occupation which requires licensure may not be granted an extension of stay or accorded a new H classification after the one year, unless he or she has (1) obtained a permanent license in the state of intended employment, or (2) continues to hold a temporary license valid in the same state for the period of the requested extension.

As previously stated, the director denied the petition because the beneficiary is not licensed to work as a social worker in California.

The issue before the AAO is whether the beneficiary is qualified to perform the duties of a social worker in the petitioner's business environment. The petitioner states that a license is not required to perform the duties of the proffered position, and that the beneficiary is otherwise qualified. While the AAO finds that a license is not always required to perform the duties of a social worker at a Foster Family Agency in California (unless the social worker is held out to be a clinical social worker, in which case a license is required),¹ the AAO does

¹ It should be noted that while not all social workers need be licensed in California, those providing clinical social work, unless otherwise exempted, are required to be licensed. Clinical Social Worker Practice Act, California Business & Professions Code, Chapter 14, Article 4 (hereinafter the Clinical Social Worker Practice Act), sections 4996 and 4996.10. Clinical social work is defined under the Clinical Social Worker Practice Act, section 4996.9, as follows:

The practice of clinical social work is defined as a service in which a special knowledge of social resources, human capabilities, and the part that unconscious motivation plays in determining behavior, is directed at helping people to achieve more adequate, satisfying, and productive social adjustments. The application of social work principles and methods includes, but is not restricted to, counseling and using applied psychotherapy of a nonmedical nature with individuals, families, or groups; providing information and referral services; providing or arranging for the provision of social services; explaining or interpreting the psychosocial aspects in the situations of individuals, families, or groups; helping communities to organize, to provide, or to improve social or health services; or doing research related to social work.

Psychotherapy, within the meaning of this chapter, is the use of psychosocial methods within a professional relationship, to assist the person or persons to achieve a better psychosocial adaptation, to acquire greater human realization of psychosocial potential and adaptation, to modify internal and external conditions which affect individuals, groups, or communities in respect to behavior, emotions, and thinking, in respect to their intrapersonal and interpersonal processes.

not agree that the beneficiary is qualified to perform the duties of the proffered specialty occupation.

The AAO takes administrative notice of the regulations governing foster family agencies in California as provided under Title 22, Division 6, Chapter 8.8 from the *Manual of Policies and Procedures, Community Care Licensing Division, State of California* (January 2004) (hereinafter *Manual*). The regulation at 88065.3 provides, in pertinent part, as follows:

88065.3 SOCIAL WORK PERSONNEL

(a) Social work personnel shall be employed to provide the social services of the foster family agency.

(b) Social work personnel shall meet the following education and experience requirements:

(1) A Master's Degree from an accredited or state approved graduate school, as defined in Section 94310 of the Education Code, in social work or social welfare, marriage, family, and child counseling, child psychology, child development, counseling psychology or social psychology.

(2) In addition to the degree specifications in Subsection (b)(1) above, all of the following coursework and field practice or experience shall be required of all new hires effective January 1, 1993:

(A) At least three semester units or 100 days of field practice or experience in a public or private social service agency setting at the Master's Degree level.

(B) At least nine semester units of coursework related to children and families, or 18 months experience in working with children and families.

(C) At least three semester units in working with minority populations; six months of experience in working with minority populations; or six months in-service training in working with minority populations within the first year of employment as a condition of employment.

(D) At least three semester units in child welfare, or two year experience in a public or private child welfare social services setting.

(c) Social work personnel who do not meet the Master's Degree requirements specified in Subsection (b)(1) above may apply for an exception provided he/she completes the

Based on the brief and generic job description provided by the petitioner, it does not appear that the proffered position is that of a clinical social worker.

coursework and field practice or experience requirements specified in Subsection (b)(2) above. . . .

Therefore, to be employed as a social worker in California at a foster family agency, the beneficiary must: (1) have either a Master's degree in one of the above-listed fields from an accredited or state approved graduate school or be granted an exception from this requirement from the California Department of Social Services (the Department); *and* (2) demonstrate field practice or experience as defined in subsection 88065.3(b)(2), above. The *Manual* does not indicate that social work personnel at foster family agencies in California need to be licensed clinical social workers. Moreover, as discussed *infra*, the U.S. Department of Labor's Occupational Outlook Handbook (*Handbook*) indicates that there are some settings in which unlicensed social workers may work depending on individual state requirements.

The record indicates that the beneficiary received foreign degrees, which were found by a credential evaluation service to be equivalent to a Master of Arts in Education with a concentration in Psychology as well as a Bachelor of Science in Nursing from an accredited college or university in the United States.

Section 94310 of the California Education Code, referenced in section 88065.3(b)(1), above, which related to approval of institutions to operate and award degrees, was repealed by Stats.1995, c. 758 (A.B.446), § 282, operative Jan. 1, 1997. Therefore it is not clear from the *Manual* how an accredited or state approved graduate school is defined under section 88065.3. However, the beneficiary does not have a U.S. Master's Degree and the plain language of the regulation does not indicate that a foreign equivalent is acceptable as a Master's Degree from an accredited or state approved graduate school. Therefore, the AAO finds that the beneficiary does not have a Master's Degree as required under section 88065.3 to work as a social worker in California at a foster family agency.

The record does not establish that the beneficiary possesses the education required for the position in California (a Master's degree from an accredited or state approved graduate school), nor does the record establish that the beneficiary has been granted an exemption from that requirement by the Department which would enable her to work for the petitioner. As such, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position. Further, the petitioner did not provide evidence establishing that the beneficiary's supervisor possesses the necessary education and experience requirements set forth in Section 88065.2 of the regulations applicable to social work supervisors in foster family agencies.

Moreover, even if the petitioner could demonstrate that the beneficiary has met the Master's degree requirement, the petitioner has not provided sufficient evidence that the beneficiary has also met the requirements under Section 88065.3(b)(2), provided above, which apply to new hires, effective January 1, 1993. Counsel for the petitioner submitted a certification from the Republic of the Philippines City Social Welfare and Development Office in the City of Roxas, dated October 31, 2007, which provides that the beneficiary had been employed as a Social Welfare Officer there since July 3, 2006. The letter and the beneficiary's education documents do not specify whether the beneficiary had, as required under Subsection (b)(2): at least three semester units or 100 days of field practice or experience in a public or private social service agency setting at the Master's Degree level; at least nine semester units of coursework related to children and families, or 18 months experience in working with children and families; at least three semester units in working with minority populations, six months of experience in working with minority populations,

or six months in-service training in working with minority populations within the first year of employment as a condition of employment; and at least three semester units in child welfare, or two years experience in a public or private child welfare social services setting. Therefore, the petitioner has not demonstrated that the beneficiary met the coursework and field practice or experience requirements under Section 88065.3.

The position offered to the beneficiary is with a “foster family agency” regulated by the state of California. The duties of the proffered position may be performed by qualified individuals who do not hold a California social work license, provided they meet the degree and coursework and field practice or experience requirements under section 88065.3, as described above. However, for the reasons provided herein, the evidence does not establish that the beneficiary is such an individual.

Beyond the decision of the director, the AAO finds that the proffered position is not a specialty occupation. Notwithstanding the preceding discussion, which affirms the director’s finding that the beneficiary is not qualified to perform the duties of a social worker at a foster family agency in California, the AAO finds that the proffered position is not that of a social worker but, instead, is closer to that of a social and human service assistant.

Section 214(i)(1) of the Immigration and Nationality Act (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 regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

Specialty occupation means 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, a proposed position must also 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). 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. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The petitioner’s support letter describes the proffered position as follows:

[O]btaining and coordination of services of psychiatrist, psychologists and other professional personnel for residents of their assigned caseloads, meet with foster parents, children or significant others as required. Supervised and arranged visits between children and their parents, relatives. Responsible for providing typed treatment and/or quarterly reports on time. Responsible for proper documentation of client case records, treatment planning, treatment evaluation and discharged reports; participate in case views, treatment and planning sessions and social work meetings.

Section 88065.3(g) of the *Manual*, provides that a social worker employed with a Foster Family Agency in California will be responsible for the following:

- (1) Orientations of potential certified family home applicants.
- (2) Evaluation and assessment of the application of the potential certified family home.

- (3) Evaluation and assessment of a child for placement and continued placement in a certified family home or licensed foster family home.
- (4) Placement of the child in the certified family home or licensed foster family home.
- (5) Development and updating of the needs and services plan.
- (6) Supervision of the placement of the child including direct contact with the child and the certified parent(s) or foster family home licensee(s).
- (7) Provision of support services to certified parents or foster family home licensees assigned to the social worker. . . .

Therefore, while the proffered position entails coordinating services of professional personnel, arranging visits, making reports, documenting case records, and participating in planning sessions and meetings, the state of California defines a social worker employed with a Foster Family Agency as making evaluations and assessments of the family applicants as well as the children for placement, placing the children in the homes, and supervising the placements, including direct contact with the children and parents, as well as providing support services. In other words, the proffered position is different from that described in the *Manual*.

The AAO also takes note of the following discussion in the *Handbook*, 2010-11 online edition, regarding social workers:

Social work is a profession for those with a strong desire to help improve people's lives. Social workers assist people by helping them cope with and solve issues in their everyday lives, such as family and personal problems and dealing with relationships. Some social workers help clients who face a disability, life-threatening disease, social problem, such as inadequate housing, unemployment, or substance abuse. Social workers also assist families that have serious domestic conflicts, sometimes involving child or spousal abuse. Additionally, they may conduct research, advocate for improved services, or become involved in planning or policy development. Many social workers specialize in serving a particular population or working in a specific setting. In all settings, these workers may also be called licensed clinical social workers, if they hold the appropriate State mandated license.

Child, family, and school social workers provide social services and assistance to improve the social and psychological functioning of children and their families. Workers in this field assess their client's needs and offer assistance to improve their situation. This often includes coordinating available services to assist a child or family. They may assist single parents in finding day care, arrange adoptions, or help find foster homes for neglected, abandoned, or abused children. These workers may specialize in working with a particular problem, population or setting, such as child protective services, adoption, homelessness, domestic violence, or foster care. . . .

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

A bachelor's degree in social work (BSW) 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. Although a bachelor's degree is sufficient for entry into the field, an advanced degree is required for some positions. A master's degree in social work (MSW) is typically required for positions in health and school settings and is required for clinical work, as well. Some jobs in public and private agencies may require an advanced degree, such as an MSW with a concentration in social services policy or administration. Supervisory, administrative, and staff training positions usually require an advanced degree. College and university teaching positions and most research appointments normally require a doctorate in social work (DSW or Ph.D.).

As of June 2009, the Council on Social Work Education accredited 468 bachelor's programs and 196 master's programs. The Group for the Advancement of Doctoral Education listed 74 doctoral programs in social work (DSW or Ph.D.) in the United States. Bachelor degree programs prepare graduates for direct service positions, such as caseworker, mental health assistant, group home worker and residential counselor. These programs include courses in social work values and ethics, dealing with a culturally diverse clientele and at-risk populations, promotion of social and economic justice, human behavior and the social environment, social welfare policy and services, social work practice, social research methods, and field education. Accredited programs require a minimum of 400 hours of supervised field experience.

Master's degree programs prepare graduates for work in their chosen field of concentration and continue to develop the skills required to perform clinical assessments, manage large caseloads, take on supervisory roles, and explore new ways of drawing upon social services to meet the needs of clients. Master's programs usually last 2 years and include a minimum of 900 hours of supervised field instruction or internship. A part-time program may take 4 years. Entry into a master's program does not require a bachelor's degree in social work, but courses in psychology, biology, sociology, economics, political science, and social work are recommended. In addition, a second language can be very helpful. Most master's programs offer advanced standing for those with a bachelor's degree from an accredited social work program.

Licensure: All States and the District of Columbia have licensing, certification, or registration requirements regarding social work practice and the use of professional titles. Most States require 2 years or 3,000 hours of supervised clinical experience for licensure of clinical social workers. Due to some limitations on what settings unlicensed social workers may work and some variation in the requirements to obtain a license, those interested in becoming a social worker should research requirements in their State.

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

that provides:

Social and human service assistants *help social workers, healthcare workers, and other professionals to provide services to people*. Social and human service assistant is a generic term for workers with a wide array of job titles, including human service worker, case management aide, social work assistant, community support worker, mental health aide, community outreach worker, life skills counselor, social services aide, youth worker, psychological aide, client advocate, or gerontology aide. They usually work under the direction of workers from a variety of fields, such as nursing, psychiatry, psychology, or social work. The amount of responsibility and supervision they are given varies a great deal. Some have little direct supervision. For example, they may run a group home. Others work under close direction.

Social and human service assistants provide services to clients to help them improve their quality of life. They assess clients' needs, investigate their eligibility for benefits and services such as food stamps, Medicaid and welfare, and help clients obtain them. They also arrange for transportation, if necessary, and provide emotional support. They monitor and keep case records on clients and report progress to supervisors and case managers. . . .

(Emphasis added). As the proffered position description indicates that the duties will focus more on assistance of other professionals and performing administrative tasks than providing direct evaluations and assessments, the AAO finds that the proffered position is closest to that of a social and human service assistant as described in the *Handbook*.

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

A high school diploma is the minimum education requirement, but employers often seek individuals with relevant work experience or education beyond high school. . .

The description of the duties of the proffered position does 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 duties of the proffered position elevate the position to that of a social worker. Given the brief description of duties provided and the lack of an organization chart or other evidence to demonstrate how the beneficiary's role and qualifications would be similar or different to social workers or other positions employed by the petitioner, it is not possible to determine based on the title of the position or the duties as described 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.

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. The petitioner has not submitted any expert opinions, job announcements, or documentation regarding other foster family agencies. 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. 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 provided evidence about other social workers it has hired. 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. The AAO acknowledges 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 at least 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. 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).

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 appeal will be dismissed and the petition denied 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.