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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

PUBLIC COPY

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FILE: WAC 09 149 51475 Office: CALIFORNIA SERVICE CENTER Date: MAY 28 2010

IN RE: Petitioner:
Beneficiary: [redacted]

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 provider of healthcare services with 23 employees. It seeks to employ the beneficiary as a patient services director 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 finding that the petitioner failed to provide requested evidence that was material to determining its eligibility for the benefit sought in this matter.

On July 6, 2009, the service center issued an RFE in this matter, the pertinent parts of which requested: 1) a more detailed job description, including specific job duties, the percentage of time to be spent on each duty, level of responsibility, hours per week of work, and the minimum education, training, and experience necessary to do the job as well as an explanation of why the work to be performed requires the services of a person who has a college degree or its equivalent in the occupational field; 2) an organizational chart; 3) evidence that organizations similar to the petitioner require a degree in a specific specialty for closely related positions; 4) job listings; 5) copies of the petitioner's past and present vacancy announcements for the proffered position; 6) evidence regarding the petitioner's past employment practices for the proffered position; 7) a more detailed description of the petitioners' products or services that demonstrate the petitioner normally requires a degree in a specific specialty to perform the proposed duties; 8) a more detailed company profile; 9) copies of the petitioner's filed Federal income taxes for 2006, 2007 and 2008; and 10) copies of the petitioner's quarterly wage reports for all employees for the last eight quarters. The RFE instructed the petitioner to submit a response by August 17, 2009, or six weeks from the date of the RFE issuance.

On August 17, 2009, counsel for the petitioner submitted a letter in response to the RFE, dated August 13, 2009, which stated as follows:

> [D]ue to the voluminous documents required to complete the Memorandum-response to the RFE, Petitioner needs additional time to comply therewith.
>
> Accordingly, petitioner prays for an extension of thirty (30) days from today, or until September 13, 2009, within which to submit the response to the RFE. This request is not intended to delay the proceedings but necessary to submit the requested additional evidences.

The regulation at 8 C.F.R. § 103.2(b)(8) does not permit the director to extend the time within which the petitioner may submit evidence in response to the RFE. The petitioner had not submitted any additional documentation by the time the director's decision was issued on September 8, 2009. Consequently, the director did not err in denying the petition due to the petitioner's failure to timely submit requested documentation required for a material line of inquiry. Moreover, as the director did not require that the requested tax returns be certified by the Internal Revenue Service, the AAO finds that the six week timeframe provided for the petitioner to submit a response to the RFE was reasonable. The petitioner and counsel did not provide any reason why the six week time period provided in the RFE for the petitioner's response was unreasonable, but simply stated that the requested documentation was voluminous. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do

not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

On appeal, counsel for the petitioner submits some, but not all of the relevant documentation requested in the RFE. As will be noted below in the discussion of the USCIS regulations governing RFEs, all documents in response to an RFE must be submitted at the same time and within the response period specified in the RFE. In this matter, the petitioner's response to the RFE neither verbally addressed the issues raised in the director's RFE nor provided any of the requested documentation.

For the reasons discussed below, the AAO will not consider evidence submitted on appeal that was requested by the RFE, but not provided within the petitioner's response to the RFE. Consequently, in this particular proceeding the AAO will limit its review to the evidence of record that was before the director when she issued her decision to deny the petition.

A service center director may issue an RFE for evidence that he or she may independently require to assist in adjudicating an H-1B petition, and his or her decision to approve a petition must be based upon consideration of all of the evidence as submitted by the petitioner, both initially and in response to any RFE that the director may issue. *See* 8 C.F.R. § 214.2(h)(9). The purpose of an RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(1), (b)(8), and (b)(12).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano,* 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena,* 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* As discussed below, the pertinent regulations, at 8 C.F.R. § 103.2, compel the same outcome.

The regulation at 8 C.F.R. § 103.2(b)(11) provides the following rules on responding to an RFE. The petitioner has three options during the response period specified in the RFE: submission of a complete response containing all of the requested information; submission of a partial response with a request for a decision based on the record; or withdrawal of the petition. Submission of only some of the requested evidence will be considered a request for a decision on the record. Materials in response to the RFE must be submitted together at one time, along with the original RFE, and they must be filed within the period afforded in the RFE. Further, the regulation at 8 C.F.R. § 103.2(b)(8)(iv) states that in no case shall the maximum response period provided in an RFE exceed 12 weeks, and that additional time to respond may not be granted. Thus, the petitioner is afforded only one opportunity to file materials in response to the RFE. Operation of this provision precludes the petitioner from submitting on appeal any type of documentation requested in the RFE, but not provided within the time specified in the RFE. In the context of this particular record of proceeding, this means that the AAO will not consider the documents submitted with the Form I-290B and the petitioner's letter on appeal, for they fall within the category of documentary evidence requested by an RFE, but not included in the RFE response.

Because the petitioner submitted a response (albeit just a request for extension of time) before the deadline

stated in the RFE, the regulation at 8 C.F.R. § 103.2(b)(13) does not come into play, which states that, if the petitioner fails to respond to an RFE within the specified time, a petition may be summarily denied, denied based on the record, or denied for both reasons. However, pursuant to provisions at 8 C.F.R. § 103.2(b)(11) and (b)(14), if, as here, the petitioner submits a response to the RFE, however inadequate, the petitioner's RFE response will be deemed a request for a decision on the record, and a decision will be issued on the basis of the record as it existed upon receipt of the timely filed RFE response. For this reason also, the AAO shall not consider the documentary evidence submitted with the Form I-290B and the petitioner's letter on appeal.

Additionally, 8 C.F.R. § 103.2(b)(14) also states that failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition.

In light of the regulations discussed above, the petitioner is foreclosed from now expanding USCIS consideration to evidence sought by, but not submitted in response to, the RFE; and the issue for the AAO's determination is whether the director's decision to deny the petition was the correct disposition for failure to submit requested evidence precluding a material line of inquiry.

On appeal, counsel includes copies of the petitioner's federal income tax returns for 2007-08, but not 2006. Counsel includes four quarterly wage reports for 2008 and one quarterly report for 2009, but not all of the last eight quarters before the petition was filed. Counsel also provides on appeal the same job description submitted with the petition, but not a more detailed job description or an organizational chart. Additionally, counsel provides advertisements from other employers, but no explanation regarding the petitioner's past hiring practices for the proffered position. The AAO makes the following specific findings with regard to these documents, all of which are submitted for the first time on appeal. All of these documents are submitted for their value as documents with the types of information sought by the RFE. As such, the fact that these documents were submitted after the petitioner's RFE response forecloses their consideration in this appeal. However, even if they were proper subjects for consideration in this appeal, counsel and the petitioner still have not included all the tax returns, wage reports, a more detailed job description, an organizational chart, or an explanation regarding the petitioner's past hiring practices. Therefore, even if these documents submitted for the first time on appeal were to be considered by the AAO, the petitioner has still failed to submit requested evidence precluding a material line of inquiry.

As stated above, 8 C.F.R. § 103.2(b)(14) states that failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. Therefore, the AAO affirms the director's decision to deny the petition on this basis.

Beyond the decision of the director, the AAO finds, based on the evidence of record, that the petitioner failed to establish that the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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 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.

In this matter, the petitioner seeks the beneficiary's services as a patient services director.

The petitioner indicates the proffered position would require the beneficiary to:

- Plan, direct, coordinate and monitor the delivery of all direct and indirect services to clients;
- Participate in the agency's strategic planning activities;
- Assist in the planning and development of company structure, clinical and administrative policies and procedures, and the annual operating and capital budgets;
- Develop organization policy and procedures and assure compliance;
- Review policies and updates as necessary and communicate changes to staff;
- Establish and implement systems to inform clients and their families of the scope and nature of health care services and community resources; and
- Identify admission criteria for new clients and evaluate eligibility for health care benefits through third-party payor.

The job description and support letter state that the proffered position requires a Bachelor's Degree in Nursing. For the first time on appeal, the petitioner submits the beneficiary's education documents, indicating that he received a foreign degree and his Commission on Graduates of Foreign Nursing Schools (CGFNS) certification.

On appeal, counsel argues in its response that the proffered position is closest to the description of Medical and Health Service Managers in the Department of Labor's *Occupational Outlook Handbook* (*Handbook*).

On appeal, counsel also includes printouts from the website of the Illinois Department of Employment Security, which lists General and Operations Managers as well as Administrative Service Managers as requiring a bachelor's degree. However, these documents do not indicate that a bachelor's degree in a specific specialty is required for entry into these positions.

As discussed previously, no additional explanation or breakdown of the proffered position's duties was provided, despite the director's request in the RFE for this information. The non-existence or unavailability of evidence material to an eligibility determination creates a presumption of ineligibility. *See* 8 C.F.R. § 103.2(b)(2)(i).

Further, counsel argues that under the Occupational Information Network *O*Net On-line* Summary Report, Quality Improvement/Assurance Managers in healthcare are classified under Medical and Health Services Managers and therefore the proffered position requires a minimum of a bachelor's degree. On May 26, 2010, the AAO accessed the pertinent section of the *O*Net Online* Internet site, which addresses Medical and Health Services Managers under the Department of Labor's Standard Occupational Classification code of 11-9111.00.[1] *O*Net Online* assigns Medical and Health Services Managers a Job Zone "Five" rating, which groups them among occupations of which most employers require a graduate school degree and at least five years of experience. As the petitioner does not require a graduate degree plus extensive experience for the proffered

[1] That site is http://online.onetcenter.org/link/summary/11-9111.00.

position, this is additional evidence that the proffered position does not fit best under the *O*Net Online*'s section on Medical and Health Services Managers. Regardless, the *O*Net Online* does not indicate that degrees required by Job Zone Five occupations must be in a specific specialty closely related to the requirements of that occupation. Therefore, the *O*Net Online* information is not probative of the proffered position's being a specialty occupation.

To make its determination whether the proffered position, as described in the initial petition and the petitioner's response to the RFE, qualifies as a specialty occupation, the AAO first turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)*(1)* and *(2)*: a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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)).

USCIS often looks to the *Handbook* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. In reviewing the duties provided for the proffered position as well as the organizational chart and other supporting documentation, the AAO disagrees with counsel that the *Handbook*'s description of Medical and Health Service Managers is the most suitable approximation of the proffered position. The *Handbook*, 2010-11 edition, provides as follows:

> Healthcare is a business and, like every business, it needs good management to keep the business running smoothly. Medical and health services managers, also referred to as healthcare executives or healthcare administrators, plan, direct, coordinate, and supervise the delivery of healthcare. These workers are either specialists in charge of a specific clinical department or generalists who manage an entire facility or system.
>
> * * *
>
> A small group of 10 to 15 physicians might employ 1 administrator to oversee personnel matters, billing and collection, budgeting, planning, equipment outlays, and patient flow. A large practice of 40 to 50 physicians might have a chief administrator and several assistants, each responsible for a different area of expertise. . . .

No objective evidence was provided to demonstrate that the beneficiary would work as a healthcare executive or administrator. Moreover, the petitioner, which has 23 employees, stated in the job description that it already employs an administrator, who is the person to whom the beneficiary would report. 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)).

Instead, the proffered duties to be performed by the beneficiary involve areas of health planning and development within the petitioner's business environment, and are essentially those performed by nurses (or other healthcare personnel) who have moved into the business side of healthcare. The *Handbook*, 2010-11 edition, notes the following:

> Some nurses move into the business side of healthcare. Their nursing expertise and experience on a healthcare team equip them to manage ambulatory, acute, *home-based*, and chronic care businesses. Employers—including hospitals, insurance companies, pharmaceutical manufacturers, and managed care organizations, among others—need RNs for *health planning and development*, marketing, consulting, policy development, and quality assurance. Other nurses work as college and university faculty or conduct research.

[Emphasis added.] As the petitioner states it requires a bachelor's degree in nursing and as the proffered position entails having responsibility for health planning and development of the petitioner's home healthcare services business, the AAO finds that the proffered position fits under the *Handbook*'s section on Registered Nurses.

A review of the *Handbook* section on Registered Nurses finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a registered nurse. The *Handbook* does state, however, that:

> [I]ndividuals who complete a bachelor's degree receive more training in areas such as communication, leadership, and critical thinking, all of which are becoming more important as nursing practice becomes more complex. Additionally, bachelor's degree programs offer more clinical experience in nonhospital settings. A bachelor's or higher degree is often necessary for administrative positions, research, consulting, and teaching. . . .

The proffered position appears to resemble a nursing position beyond the entry-level registered nurse, but it is not analogous to an administrative nursing position. A Service policy memo provides the following commentary on administrative nursing positions: "Nursing Services Administrators are generally supervisory level nurses who hold an RN, and a graduate degree in nursing or health administration. (*See* Bureau of Labor Statistics, U.S. Dep't of Labor, Occupational Outlook Handbook at 75.)." *See* Memorandum from Johnny N. Williams, Executive Associate Commissioner, INS Office of Field Operations, Guidance on Adjudication of H-1B Petitions Filed on Behalf of Nurses, HQISD 70/6.2.8-P (November 27, 2002). The proffered position does not appear to be supervisory and the petitioner does not require a graduate degree for the proffered position. Moreover, the petitioner has already hired an administrator who would supervise the beneficiary in the proffered position. Therefore, the proffered position is not that of an administrative nursing position. Even if it were, the *Handbook* only states that a "bachelor's or higher degree is often necessary"; it does not state that such a degree is a prerequisite or even a normal requirement for entry into the position.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply 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. USCIS must examine the ultimate employment of the alien, and

determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not 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.

A review of the *Handbook* finds no requirement of a baccalaureate or higher degree in a specific specialty for employment in the proffered position. Experience and good performance can lead to promotion for a registered nurse to more responsible positions, such as assistant head nurse or head nurse/nurse supervisor. Likewise, good performance and experience can equip a nurse to perform the duties of a patient care coordinator or quality assurance coordinator/staff developer in the healthcare field. There is no requirement, however, that a nurse, or any other healthcare professional performing the duties of a quality assurance coordinator/staff developer, have a baccalaureate or higher degree or its equivalent in a specific specialty as a minimum requirement for entry into that position. Thus, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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). This prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

Again, 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

The petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. As discussed previously, the advertisements submitted for the first time on appeal will not be considered as the petitioner had the opportunity to submit this documentation in response to the RFE. However, even if the AAO were to consider this documentation, none of this evidence establishes the petitioner's degree requirement as the norm within its industry as only one of the advertisements list a requirement of a bachelor's degree in a specific specialty and it is not clear that the organization placing the advertisement is a small home healthcare-based business similar to the petitioner. Additionally, the job description in this advertisement is not sufficiently detailed to determine whether it is similar to the proffered duties. Therefore, the announcements are not probative for the purposes of these proceedings and do not establish a degree requirement in a specific specialty in parallel positions.

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 refute the Handbook's information to the effect that a bachelor's degree is not required in a specific specialty. As evident in the earlier discussion about the generalized descriptions of the proffered position and its duties, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than registered nursing positions that can be performed by persons without a specialty degree or its equivalent.

As the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO does not find that the proffered duties, as described by the petitioner in support of the petition and in response to the RFE, reflect a higher degree of knowledge and skill than would normally be required of registered nurses working in the business side of healthcare. Nor do they represent an amalgam of jobs that would require the beneficiary to possess skills and qualifications beyond those of a registered nurse. The AAO, therefore, concludes that the proffered position cannot be established as a specialty occupation under the requirements 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 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.