

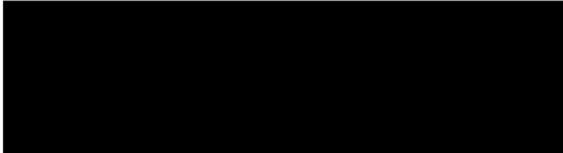
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: **NOV 22 2011** OFFICE: CALIFORNIA SERVICE CENTER FILE:

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:

SELF-REPRESENTED

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 \$630. 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, 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 remain denied.

The petitioner states that it is a non-profit public benefits corporation established in 1984 with 400 employees and a gross annual income of \$310,190,300. It seeks to continue the employment of the beneficiary as a disability child/adult development specialist 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 proffered position is a specialty occupation or that the beneficiary is qualified to perform the duties of the proffered position.

The record of proceeding before the AAO contains: (1) the Form I-129, Petition for Nonimmigrant Worker, and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the director's RFE; (4) the director's denial letter; and (5) the Form I-290B, Notice of Appeal or Motion, with the petitioner's accompanying statement. The AAO reviewed the record in its entirety before issuing its decision.

The primary issue in this matter is whether the 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 [1] 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 [2] 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 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 occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

In this matter, the petitioner initially stated that it seeks the beneficiary’s services as a disability adult/child development specialist. In its June 10, 2009 letter in support of the petition, the petitioner indicated the beneficiary would spend 50 percent of her time assisting clients to improve

the physical and psychological functioning of infants or children and her duties associated with this function would include:

- Develop and implement infant/toddler development education programs and activities at children's home or at center-based programs as directed by the Program Coordinator.
- Provide mental therapy or physical therapy techniques and behavior modification instructions to parents of physically or mentally handicapped children.
- Observe and play with children to obtain information relating to child's physical development under the supervision of US licensed Physical Therapists and Psychologists.
- Confer with children's parents to discuss relative education development progress and instruction techniques.
- Prepare development progress reports of children and present these reports to Physical Therapists and Psychologists for further evaluation.
- Submit child education reports of professional quality in relation to child development programs and activities.
- Ensure client/family participation in program planning.

The petitioner indicated the beneficiary would spend: ten percent of her time delivering the highest quality service to clients; 15 percent of her time contributing to the overall success of the petitioner consistent with organizational goals and enhancing the petitioner's image; and 20 percent of her time subscribing to and upholding all professional ethical standards and maintaining professional and technical knowledge.

The petitioner stated that the minimum qualification for the position is the equivalent of a bachelor's degree in child development, education psychology, or other related fields such as physical therapy, special education, or nursing. The petitioner stated that as the beneficiary would work under the supervision of "occupational therapy" a state license is not required. The petitioner noted that the beneficiary had been granted a bachelor of science degree in physical therapy from a college in the Philippines and that her foreign degree had been evaluated as equivalent to a United States bachelor's degree in physical therapy.

On September 14, 2009, the director requested a more detailed description of the work to be performed, the petitioner's organizational chart, evidence of the beneficiary's health care certification and state license, and additional evidence pertaining to the petitioner, among other things.

In an October 24, 2009 response to the director's RFE, the petitioner changed the description of the duties of the position stating the beneficiary would spend 75 percent of her time teaching and educating handicapped children and/or adults according to the person-centered model to increase or maintain their quality of life, including their physical and psychological health and functioning. The petitioner stated the duties of the position included:

- Research and study mental and physical therapy techniques, including behavior modification. This includes our center's past records and case files.
- Develop and implement health, educational, and developmental educational programs, lesson plans, and consultation-related activities as directed by and subject to review by the Program Coordinator.
- Observe and play with physically or mentally handicapped children to monitor, evaluate, and study the child's ongoing physical and mental development. This includes the children's development in character, culture, and sexual orientation.

The petitioner also indicated that the beneficiary would spend 20 percent of her time organizing lectures, classes, demonstrations, health screenings, or educational materials and five percent of her time contributing to the overall success of the petitioner. The petitioner noted that the proffered position is known by different titles including child development specialist or child educator but is not a physical therapist or assistant physical therapist position. The petitioner indicated that it is a non-profit and research organization, not a public health department and any duties necessitating a licensed professional, such as a physical therapist would be handled by licensed professionals.

The petitioner provided three advertisements to demonstrate an industry-wide degree requirement for positions parallel to the proffered position, including advertisements for: (1) a child development specialist for a family health center which required a bachelor of arts degree in child development, psychology or equivalent field; (2) a child development specialist for a consulting firm in association with the Head Start program which required a bachelor's degree in early childhood education or a related field; and (3) a developmental specialist/early intervention position for a non-profit organization which required a bachelor's degree in child development or related area. The petitioner also provided its organizational chart depicting the beneficiary in the position of child health educator reporting to a program supervisor in the petitioner's family, adult and child education program division. The petitioner's job posting for the proffered position identified the position as an infant educator/child development specialist and provided an overview of the duties of the proffered position summarizing the duties described in the petitioner's June 10, 2009 letter in support of the petition. The petitioner's job posting indicated that a bachelor's degree in psychology, sociology, or related field such as special education, physical therapy, medicine is required for the position. The petitioner also submitted copies of the beneficiary's Internal Revenue Service (IRS) federal tax returns where she self-identified her employment as a community support facilitator in 2008 and an infant educator in 2007.

The director denied the petition, finding that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation.

On appeal, the petitioner asserts that the duties of the position are specialized and complex and business necessity requires that the incumbent hold at least a bachelor's degree to help children and adults with disabilities overcome diseases and other health problems. The petitioner also notes that it submitted evidence of its past employment practices. The petitioner states that the alternate job titles used by the beneficiary on her tax return are for the position as child/adult development specialist although she used

a different title. The petitioner provides a copy of an excerpt from the Department of Labor's *Occupational Outlook Handbook (Handbook)* on social and human service assistants.

To make its determination whether the proffered position, as described 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 *Occupational Outlook Handbook (Handbook)*,¹ 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)).

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.

In this matter, the petitioner's initial description of the proffered position included observing and playing with children to obtain information and preparing reports to provide to physical therapists and psychologists for further evaluation. In response to the director's RFE, the petitioner changed the description indicating that the beneficiary would observe and play with physically or mentally handicapped children to monitor, evaluate, and study the child's ongoing physical and mental development. This change in description is a material change as it appears from the initial general description, which indicated that the beneficiary would provide information regarding behavior she observed to licensed professionals while in response to the director's RFE, the beneficiary herself would study and evaluate the observed behavior. In the first version of this particular duty, the beneficiary is not evaluating observed behavior but is simply noting the behavior and providing it to licensed professionals for their review and evaluation. In response to the director's RFE, the petitioner indicates that it is the beneficiary who provides the evaluation. In addition, the petitioner initially stated the

¹ Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos001.htm> (last accessed November 2011).

beneficiary would provide instructions to parents regarding mental therapy or physical therapy techniques and behavior modification; however, in response to the director's RFE, the petitioner indicated that the beneficiary would research and study mental and physical therapy techniques including case files. Again, the petitioner changes the beneficiary's duties to include research of mental or physical therapy techniques, rather than providing a demonstration of established mental or physical therapy techniques. Further, the petitioner initially indicates that the beneficiary will spend only 50 percent of her time on duties relating to the interaction with clients and the rest on administrative duties. In response to the director's RFE, the petitioner states that the beneficiary will spend 75 percent of her time performing duties that involve interacting with clients and 20 percent of her time organizing lectures, classes, demonstrations, health screenings or educational materials. The addition of duties to the job description involving 20 percent of the beneficiary's time that heretofore had been generically categorized is also a material change to the petitioner's initial description of duties. Thus, the petitioner's descriptions of the beneficiary's duties are inconsistent and do not provide a clear picture of her actual day-to-day duties.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of responsibility, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits H-1B classification. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 ('Reg. Comm'r 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position, but rather added new duties to the job description attempting to elevate the nature of the position. Therefore, the analysis of this criterion will be based on the job description submitted with the initial petition.

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. Upon review of the petitioner's initial description of the proffered position, the position most closely resembles positions set out in the *Handbook*'s section on social and human service assistants. The *Handbook* indicates:

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 play a variety of roles in the community. For example, they may organize and lead group activities, assist clients in need of counseling or crisis intervention, or administer food banks or emergency fuel programs. In halfway houses, group homes, and government-supported housing programs, they assist adults who need supervision with personal hygiene and daily living tasks. They review clients' records, ensure that they take prescribed medication, talk with family members, and confer with medical personnel and other caregivers to provide insight into clients' needs. Assistants also give emotional support and help clients become involved in community recreation programs and other activities.

In psychiatric hospitals, rehabilitation programs, and outpatient clinics, social and human service assistants work with psychiatrists, psychologists, social workers, and others to help clients master everyday living skills, communicate more effectively, and live well with others. They support the client's participation in a treatment plan, such as individual or group counseling or occupational therapy.

A review of the *Handbook* finds no requirement of a baccalaureate or higher degree in a specific specialty for employment in the proffered position. Under significant points, the *Handbook* indicates: a high school diploma is the minimum education requirement for social and human service assistants, but employers often seek individuals with relevant work experience or education beyond high school. Under education and training, the *Handbook* notes:

Many employers prefer to hire people with some education beyond high school. Certificates or associate degrees in subjects such as human services, gerontology or one of the social or behavioral sciences meet many employers' requirements. Some jobs may require a bachelor's or master's degree in human services or a related field, such as counseling, rehabilitation, or social work.

Workers level of education often determines the kind of work they are assigned and the degree of responsibility that is given to them. For example, workers with no more than a high school education are likely to work in direct-care services and helping clients to fill out paperwork. They may receive extensive on-the-job training on how to perform these tasks. Workers with a college degree, however, might do supportive counseling, coordinate program activities, or manage a group home. Social and human service assistants with proven leadership ability, especially acquired from paid or volunteer experience in social services, often have greater autonomy in their work. Regardless of the academic or work background of employees, most employers provide some form of in-service training, such as seminars and workshops, to their employees.

Thus, there is no requirement for a bachelor's degree in a specific discipline as a prerequisite to a position as a human services aide. Although bachelor's or higher degrees may lead to positions with greater responsibility, the proffered position as described does not require that an individual 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 alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, 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).

In this matter although the petitioner asserts that a bachelor's degree in child development, education psychology or related fields such as physical therapy, special education or nursing is a typical minimum requirement by the industry, the record does not include documentation refuting the *Handbook's* conclusion to the contrary. 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)). A review of the three advertisements submitted in support of the petition fails to establish that the proffered position compares to the positions identified in the advertisements or that the companies advertising are similar to the petitioner's organization. Although one advertisement provided is from a non-profit organization, the description of duties is not parallel to the petitioner's initial description of the duties of the proffered position and the size and nature of the organization, other than it being a non-profit, are not provided. Similarly, the other two advertisements submitted do not describe duties that are parallel to the proffered position. None of the advertisements provide sufficient information to establish that the organizations advertising are similar to the petitioner in size and income. 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. Neither has the petitioner provided other evidence of an industry-wide standard for a bachelor's degree in a specific specialty for the proffered position.

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." Again, the evidence of record does not refute the *Handbook's* information to the effect that a bachelor's degree or its equivalent is not required in a specific specialty for the proffered position as described. The petitioner has not provided information

for the record that distinguishes the proffered position as unique from or more complex than that of an assistant or aide to social or behavioral or physical therapy workers, a position that can be performed by persons without a baccalaureate specialty degree or its equivalent.

In order to satisfy the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the petitioner indicates that it employs other individuals in similar positions and provides some information indicating that it has obtained H-1B classification for these individuals in the past. The AAO observes that the beneficiary in this matter also received H-1B classification. However, if any of the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record they would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of eligibility for the benefit sought. *See Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved nonimmigrant petitions on behalf of a beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The petitioner has not provided evidence that it normally requires a bachelor's degree in a specific specialty or its equivalent for the proffered position. The AAO again notes that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's self-imposed requirements, than any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. *See Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

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, reflect a higher degree of knowledge and skill than would normally be required of a social or physical therapy aide or support person. Nor do they represent an amalgam of jobs that would require the beneficiary to possess skills and qualifications beyond those of an aide or assistant worker. 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).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

It is unnecessary to assess the beneficiary's eligibility to perform the duties of a specialty occupation as we have determined that the proffered position is not a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. § 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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