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U.S. Citizenship
and Immigration
Services

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FILE: SRC 05 109 50478 Office: TEXAS SERVICE CENTER Date: **SEP 18 2006**

IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas 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 sells marine equipment and supplies. It seeks to employ the beneficiary as a purchasing coordinator. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

On April 27, 2005, the director denied the petition determining that the record did not establish that the proffered position is a specialty occupation or that the beneficiary is qualified to perform services in a specialty occupation. On appeal, counsel for the petitioner asserts the director erred when making her decision.

The record contains: (1) the Form I-129 filed March 2, 2005 and supporting documentation; (2) the director's March 15, 2005 request for evidence (RFE); (3) counsel's April 12, 2005 response to the director's RFE with documentation; (4) the director's April 27, 2005 denial decision; and, (5) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The first issue in this matter is whether the petitioner has established that the proffered position is a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The petitioner seeks the beneficiary's services as a purchasing coordinator. In a February 28, 2005 letter appended to the Form I-129 petition, the petitioner indicated that the beneficiary:

[W]ill be responsible for managing procurement of marine navigational and electrical equipment for our company. He will analyze technical data, design specifications, manufacturing limitations, supplier facilities, availability of materials and equipment; consult with ship personnel to establish performance criteria, investigate equipment vendors and make recommendations regarding purchase options. He will also advise company personnel, vendors and customers as to [the] nature and function of captain's and company personnel to facilitate inspection, substitution, standardization, salvage, utilization and economical procurement of equipment.

On March 15, 2005, the director requested that the petitioner submit evidence to establish that the proffered position's duties require both a theoretical and practical application of a body of highly specialized knowledge and attainment of a baccalaureate or higher degree or is equivalent as a minimum requirement for entry into the occupation in the United States.

In an April 12, 2005 letter in response, the petitioner submitted the same description of the proffered position as initially provided and added that:

[The beneficiary] will analyze industry trends for the use of various marine navigational and electrical equipment so that we stock only equipment for which there is a market; make purchase quotes; request sales quotes; complete Purchase Orders and Invoices electronically; recognize manufacturer limitations regarding purchase options; investigate vendors and supply facilities and make recommendations regarding purchase options; advise superiors about proper utilization and economical procurement of goods; and control inventory.

The petitioner provided eighteen job announcements for positions titled purchasing/sourcing manager, purchasing manager, senior purchasing agent, director of procurement, associate director of purchasing,

senior transportation purchasing manager, purchasing supervisor, purchasing system coordinator, and materials purchasing manager. The employers for the advertised positions included a chemical packaging and blowmolding company, a utility company, a company housing seniors, transportation provider, logistics, and related services company, and several manufacturing facilities. Several advertisements did not identify the type of business advertising for the position. Most of the advertising businesses indicated that a generic bachelor's degree was preferred, few indicated that a generic bachelor's was required, five of the advertisements identified a bachelor's degree in business as preferred, and one advertisement indicated that a bachelor's degree in logistics, transportation, or business was required.

On April 27, 2005, the director denied the petition. The director determined: that the *Occupational Outlook Handbook* reported that the entry requirements for purchasing managers, buyers, and purchasing agents varied widely; that the job postings submitted did not demonstrate that the advertising employers were in the petitioner's industry or that the positions advertised were parallel to the proffered position; that the petitioner had not established that the proffered position is so complex or unique that it can only be performed by an individual with a degree; or that the nature of the specific duties are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree; and that it is not sufficient for the petitioner to merely assert that the position requires a degree but that the position itself must meet the criteria of the classification. The director concluded that the record did not establish that the position met one of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A)

On appeal, counsel for the petitioner observes that the director relied on a statement from the *Occupational Outlook Handbook* from an unspecified year and asserts that reliance on standardized classification systems such as the *Occupational Outlook Handbook* has not been upheld by at least one federal court when the director fails to fully consider the employer's evidence. Counsel contends that many businesses now require that their purchasing coordinators, managers, and directors have a bachelor's degree as stated in their job listings. Counsel claims that the nature of the specific duties of the proffered position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree, also as evidenced by the advertisements submitted. Counsel avers that the petitioner normally requires a degree or its equivalent for the proffered position as evidenced by the approval of petitions for this position or parallel positions for the petitioner's affiliated companies. Counsel questions the director's decision as it substitutes the director's judgment for the petitioner's business judgment. Counsel concludes by noting that the Citizenship and Immigration Services (CIS) previously approved a petition for this beneficiary in the same position.

Counsel's assertions and argument are not persuasive. The AAO does not only rely on the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The AAO has fully considered all the petitioner's evidence submitted. The AAO does however, routinely consult the *Handbook* for its information about the duties and educational requirements of particular occupations. The 2006-2007 edition of the *Handbook* at page 64 reports that purchasing managers, buyers, and purchasing agents buy the goods and services the company or institution needs to either resell to customers or for the establishment's own use. The *Handbook* further notes:

[P]urchasing professionals consider price, quality, availability, reliability, and technical support when choosing suppliers and merchandise. They try to get the best deal for their

company, meaning the highest quality goods and services at the lowest possible cost to their companies. In order to accomplish these tasks successfully, purchasing managers, buyers, and purchasing agents study sales records and inventory levels of current stock, identify foreign and domestic suppliers, and keep abreast of changes affecting both the supply of, and demand for, needed products and materials.

The *Handbook* includes the following regarding training and other qualifications for purchasing managers, buyers, and purchasing agents at page 66:

Qualified persons may begin as trainees, purchasing clerks, expeditors, junior buyers, or assistant buyers. Retail and wholesale firms prefer to hire applicants who have a college degree and who are familiar with the merchandise they sell and with wholesaling and retailing practices. Some retail firms promote qualified employees to assistant buyer positions; others recruit and train college graduates as assistant buyers. Most employers use a combination of methods.

Educational requirements tend to vary with the size of the organization. Large stores and distributors prefer applicants who have completed a bachelor's degree program with a business emphasis. Many manufacturing firms put yet a greater emphasis on formal training, preferring applicants with a bachelor's or master's degree in engineering, business, economics, or one of the applied sciences. A master's degree is essential for advancement to many top-level purchasing manager jobs.

As the *Handbook* indicates, there are a variety of avenues available to obtain a position as a purchasing manager, buyer, or purchasing agent. The *Handbook* does not indicate that the position of purchasing manager (coordinator) requires a degree in a specific discipline. When a job, like that of a purchasing coordinator, can be performed by a range of degrees or a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. As observed above, CIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(A)(1) to require a degree in a specific specialty that is directly related to the proffered position.

The AAO notes counsel's assertion that the job announcements provided substantiate that businesses now require that their purchasing coordinators, managers, and directors have a bachelor's degree. Upon review of the job announcements, the AAO finds that the majority of the job announcements provided do not indicate that a bachelor's degree is required, and even if a bachelor's degree is preferred, do not indicate that the bachelor's degree must relate to a specific field of study. The AAO further notes that requiring a bachelor's degree in a generalized discipline, such as business, also fails to provide the specificity necessary to establish a position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. at 558.

The *Handbook* clearly indicates that the position of purchasing manager, buyer, or purchasing agent, a position comparable to that proffered by the petitioner, may be filled by a bachelor's degree of generalized title or in some

circumstances employers may not even require a degree. The record does not include evidence that the proffered position requires the attainment of a bachelor's degree in a specialized field of study. Thus, the AAO concludes that the petitioner has failed to meet the requirements of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of whether the petitioner may qualify the proffered position under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree. A review of the evidence of record finds it insufficient to establish the proposed duties as a position that is identifiable with an industry-wide educational standard, or distinguishable, by its unique nature or complexity, from a similar but non-degree-requiring position. The AAO has considered the 18 job announcements submitted and determines that the job announcements do not provide sufficient information to enable the AAO to conclude that the businesses advertising the positions are similar to the petitioner in size, number of employees, or level of business. Going on the 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 190 (Reg. Comm. 1972)). Nor are the duties of the proffered position sufficiently similar to the descriptions in the advertised positions. Thus, the record does not show that the proffered position is a parallel position. Moreover, as observed above, the majority of the job announcements do not require the successful candidate to obtain a bachelor's degree in a specific field. The record is insufficient to establish that a degree requirement is common to the industry in parallel positions among similar organizations. The petitioner has not established the first prong of the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(2).

The petitioner in this matter does not seek to establish the second prong at 8 C.F.R. § 214.2(h)(iii)(A)(2) which requires that the proffered position is of such complexity or uniqueness that it can be distinguished from other positions within the same industry. Thus the petitioner has not established the second prong of this criterion that the proffered position qualifies as a complex or unique position within the petitioner's industry.

The record also fails to demonstrate that the petitioner has a history of recruiting and hiring degreed candidates for the proffered position. To determine whether the petitioner has fulfilled the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(3), the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. On appeal, counsel avers that CIS has approved petitions for this position or parallel positions for the petitioner's affiliated companies.

The AAO acknowledges that CIS previously approved an H-1B petition filed for this beneficiary. However, if the previous petition was approved based on the same information that is contained in the current record, the approval would constitute material and gross error on the part of the director. In addition, the record in this matter does not contain all of the supporting evidence submitted to CIS in the matters of the petitioner's affiliated companies. In the absence of all of the corroborating evidence contained in the record of their proceedings, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the petitions were actually parallel to the offered position. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). When making a determination of statutory eligibility CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). 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. 1988). It would be absurd to suggest that CIS 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).

The AAO also acknowledges counsel's claim that CIS is substituting its business judgment for the petitioner's business judgment. In this matter, however, the petitioner has not submitted documentary evidence of its past hiring practices. Further, the AAO 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 CIS 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. The petitioner has not provided sufficient evidence to establish the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(3).

The AAO now turns to the fourth criterion and whether the petitioner has established that the duties of the proffered position are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in a specific discipline and, therefore, establish the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The duties of the proffered position show that the beneficiary's tasks relate primarily to the routine tasks of a purchasing agent or buyer. Counsel's assertion that the specific duties of the proffered position are specialized and complex are not substantiated in the record. 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 Obaighena*, 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). Neither the description provided nor the job announcements establish that the duties of the proffered position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The beneficiary's actual duties involve the routine tasks of managing procurement of marine navigational and electrical equipment for the petitioner and the duties attendant to those tasks. The petitioner does not establish that the tasks associated with the proffered position require the application of specialized or complex knowledge associated with the attainment of a baccalaureate degree or higher degree. In this matter, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4).

The second issue in this matter is whether the petitioner has established that the beneficiary is qualified 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.

As evidence of the beneficiary's qualifications, the petitioner provided a copy of the beneficiary's certificate of merchant shipping to serve in the capacity of "master;" a copy of a certificate of competency (deck officer) issued to the beneficiary in March 1998; a copy of the beneficiary's seaman's log; and a copy of the beneficiary's resume. The record also contains an evaluation of the beneficiary's certificate of competency as a master mariner, by [REDACTED]. The evaluator notes that a master mariner certificate requires completion of examinations at different levels as a deck officer, final examinations, and a required number of years of sea experience. The evaluator concluded that the master mariner certificate is equivalent to a Bachelor's of Science degree in Maritime Transportation awarded by a regionally accredited university or maritime institute in the United States.

On April 27, 2005, the director denied the petition determining: that the record did not demonstrate that the beneficiary had the equivalence of a United States bachelor's degree; that the petitioner had not established that the evaluator of the beneficiary's certificate of competency had authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which had a program for granting such credit; and that the beneficiary's work experience did not include the theoretical and practical application of specialized knowledge required at the professional level of the occupation. The director also noted that the beneficiary's work experience did not pertain to the proffered position of purchasing coordinator.

On appeal, counsel for the petitioner notes that CIS has accepted evaluations from J.B. Ringer Credential Evaluation, Inc. in the past and to question the credibility of the evaluation is illogical. Counsel also contends that CIS has not given the petitioner the opportunity to submit evidence regarding the evaluator. Finally, counsel asserts that the beneficiary's maritime experience is relevant to the proffered position of purchasing coordinator for a marine equipment and supply company.

The petitioner has not provided evidence that the beneficiary holds a United States baccalaureate or higher degree in a field directly related to the proffered position of purchasing coordinator for a maritime equipment and supply company, a foreign degree determined to be equivalent to a United States baccalaureate or higher degree, or that the state requires or that the beneficiary has an unrestricted license, registration, or certification to practice in the field of maritime transportation or as a purchasing coordinator for a marine equipment and supply company. The petitioner has not established that the beneficiary is qualified to perform services in a specialty occupation pursuant to 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1) through (3).

Therefore to establish the beneficiary's qualifications to perform the duties of a specialty occupation, the petitioner must prove that the beneficiary's combined education, training, and employment experience provide him with the equivalent of a baccalaureate or higher degree required by the specialty occupation. To determine eligibility under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the AAO relies upon the five criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(D). A beneficiary who does not have a degree in the specific specialty may still qualify for H-1B status based on:

- (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.

Although the petitioner has submitted an evaluation of the beneficiary's training experience, that evaluation does not come 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 that has a program for granting such credit based on an individual's training and/or work experience. 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). The evaluation provided by [REDACTED] does not indicate that the evaluator has authority to grant college-level credit, nor is it submitted with a letter from a college or university with a program to grant college-level credit in maritime transportation. The AAO requires independent evidence of the evaluator's authority, typically evidence from a dean or provost that verifies the evaluator's authority to grant college-level credit.

Neither does the record contain results of recognized college-level equivalency examinations or special credit programs or an evaluation of education by a reliable credentials evaluation service that specializes in evaluating foreign educational credentials. The evaluation submitted uses the beneficiary's work experience, not the beneficiary's foreign educational credentials to determine the beneficiary's U.S. educational equivalent. 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(2) and (3). The record does not contain sufficient evidence to establish that the Master Mariner Certificate of Competency is a certificate 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. The record is insufficient to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(4).

Thus, the AAO must consider whether the beneficiary's work experience coupled with his education is sufficient to establish that he is qualified to perform the duties of the specialty occupation. In this matter it is not. When evaluating a beneficiary's qualifications under the fifth criterion, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. In addition to documenting that the length of the beneficiary's training and/or work experience is the equivalent of four years of college-level training, the petitioner must also establish that the beneficiary's training and/or work experience has included the theoretical and practical application of the specialized knowledge required by the specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The petitioner must also document recognition of the beneficiary's expertise in the specialty, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority¹ has determined to be significant contributions to the field of the specialty occupation.

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinion, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(i)(C)(ii).

The record does not contain information that establishes the beneficiary's training and/or work experience includes the theoretical and practical application of specialized knowledge required by a specialty occupation; that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or degree equivalent in a specialty occupation; or that the beneficiary's "expertise" in a specialty occupation has been recognized. Accordingly, the petitioner has not established the beneficiary's qualifications to perform the duties of a specialty occupation under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

The petitioner has not submitted argument or documentation on appeal sufficient to overcome the director's decision on this issue. The AAO does not find counsel's argument that the petitioner was not given opportunity to address this issue persuasive. The appeal process itself gives the petitioner opportunity to address issues with evidence or argument. The AAO fails to see what further remedy, other than the appeal process itself, is required to afford the petitioner opportunity to supplement the record. The petitioner has not established that the beneficiary has the requisite qualifications to perform the duties of a specialty occupation. For this additional reason, the petition will not be approved.

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. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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