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

D1

[redacted]

DEC 07 2009

FILE: WAC 08 144 51208 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

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

for Michael T. Kelly
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 software development company with 80 employees. It seeks to employ the beneficiary as an operations and marketing analyst pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition concluding that the petitioner failed to establish that the beneficiary is not qualified to perform services in a specialty occupation.

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

Before discussing the director's basis for the denial, the AAO will first examine whether the proffered position qualifies as a specialty occupation, as the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. Beyond the decision of the director, the AAO finds that the petitioner's proffered position does not qualify 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 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.

The petitioner states that it is seeking the beneficiary's services as an operations and marketing analyst. In the March 27, 2008, letter of support, the petitioner claimed that the beneficiary's duties would be as follows:

> Analyzes trends and changes in client-based commercial software development field, using academic, government, and industry sources. Summarizes [the petitioner's] capabilities, applicability of existing intellectual property, personnel resources at hand, and other factors bearing on potential for new business and retention of current corporate and institutional clients. Based on direction from management as to parameters of assignment, develops mid-range marketing plans and strategies for [the petitioner's] services, to include combination of print and web-based advertising and corporate public relations, trade show participation, direct solicitation by management, and other available resources. Prepares estimated budgets and realistic assessment of new business prospects in view of studied trends in field and marketing/advertising capabilities of firm. Advises management of operational changes necessary to accommodate and address inquiries

> from potential new clients, and to remain ahead of competition in terms of quality of services, cost effectiveness, and responsiveness to client concerns and needs. Upon adoption of plans and strategies, coordinates implementation of plan. Includes continuous monitoring of results, preparation of management reports, and implementing corrective action mid-streams [sic]. As services offered are improved and expanded, devises procedures to ensure communication of information to existing clients (B2B). Works in close collaboration with financial analyst and software development teams. Reports solely to President/CEO.

The director's RFE asked for documentation to support a finding that the proffered position is a specialty occupation. In response to the director's request, counsel for the petitioner included an organizational chart and copies of job advertisements from other companies. Counsel also provided documentation regarding the petitioner's business, including tax records and a license to do business, as well as documentation regarding the beneficiary's qualifications.

In the RFE response letter, counsel for the petitioner breaks down the proposed duties with percentages of time to be spent on each, but provides no further explanation or documentation that describes what the beneficiary will be doing and why the proposed duties require the theoretical and practical application of at least a baccalaureate degree's level of highly specialized knowledge in a specific specialty, which characterizes a specialty occupation. In asserting that the job is a specialty occupation, counsel relies heavily on the description of market research analysts in the Department of Labor's *Occupational Outlook Handbook* (*Handbook*). Contrary to counsel's view, the 2008-2009 edition of the *Handbook* does not indicate that entry into positions in that occupation normally requires at least a bachelor's degree, or the equivalent, in a specific specialty. While the 2008-2009 edition of the *Handbook* reports that a baccalaureate degree is the minimum educational requirement for many market and survey research jobs, it does not indicate that the degrees held by such workers must be in a specific specialty that is directly related to market research, as would be required for the occupational category to be recognized as a specialty occupation. This is evident in the range of qualifying degrees indicated in the Significant Points that introduces the 2008-2009 *Handbook's* chapter "Market and Survey Researchers," which are:

- Market and survey researchers need at least a bachelor's degree.
- Continuing education and keeping current with the latest methods of developing, conducting, and analyzing surveys and other data is important for advancement.
- Employment is expected to grow faster than average.
- Job opportunities should be best for those with a master's or Ph.D. degree in marketing or a related field and strong quantitative skills.

That the 2008-2009 edition of the *Handbook* does not indicate that market research analyst positions normally require at least a bachelor's degree in a specific specialty is also evident in the following discussion in the "Training, Other Qualifications, and Advancement" section of its chapter "Market and Survey Researchers," which does not specify a particular major or academic concentration:

> A bachelor's degree is the minimum educational requirement for many market and survey research jobs. However, a master's degree may be required, especially for technical

> positions.
>
> In addition to completing courses in business, marketing, and consumer behavior, prospective market and survey researchers should take other liberal arts and social science courses, including economics, psychology, English, and sociology. Because of the importance of quantitative skills to market and survey researchers, courses in mathematics, statistics, sampling theory and survey design, and computer science are extremely helpful. Market and survey researchers often earn advanced degrees in business administration, marketing, statistics, communications, or other closely related disciplines.

Because the *Handbook* indicates that entry into the market research analyst occupation does not normally require a degree in a specific specialty and as the limited extent to which the evidence of record develops the proffered position and its duties does not distinguish the proffered position from the general level of market research analysts requiring no more than a bachelor's degree without particular specialization, the *Handbook* does not support the proffered position as being a specialty occupation.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

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

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

As already discussed, 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. Also, there are no submissions from professional associations, individuals, or firms in the petitioner's industry.

Additionally, the record's job-vacancy advertisements are not evidence of a common degree-in-a-specific-specialty requirement in positions that are both: (1) parallel to the proffered position; and (2) located in organizations similar to the petitioner. Most of the advertisements state only a bachelor's degree requirement, without specifying that the degree be in a particular specialty. Moreover, the advertisements' content and the record's information about this petition's proffered position and the petitioner's business operations are too

limited and generalized to establish that the advertised positions are parallel to the proffered position and that the advertising organizations are similar to the petitioner. Furthermore, the range of the degree requirements cited in the job advertisements are not inconsistent with the *Handbook's* information to the effect that a bachelor's degree in a specific specialty is not normally a requirement for market research analyst positions.

The petitioner has not satisfied 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 there is a spectrum of degrees acceptable for market research analyst positions, including degrees not in a specific specialty related to market research analysis. Moreover, as mentioned previously, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than market research analyst 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).

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As mentioned earlier, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than market-research-analyst positions that are not usually associated with a degree in a specific specialty.

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

Even if established by the evidence of record, which it is not, the requirement of a bachelor's degree in business administration is inadequate to establish that a position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). For this reason also, the petition must be denied.

Next, the AAO affirms the director's finding that the petitioner did not submit sufficient documentation to show that the beneficiary qualifies to perform services in any specialty occupation requiring a degree in business administration or a related field under 8 C.F.R. § 214.2(h)(4)(iii)(C).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

(*1*) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

(*2*) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

(*3*) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

(*4*) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

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

(1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;

(2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

(3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

(4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

(5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training

and experience.

In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*):

> For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:
>
> (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
>
> (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
>
> (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
>
> (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
>
> (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The beneficiary does not hold a U.S. degree in business administration or a related field, and her Vietnamese degree has not been determined to be the equivalent of a U.S. degree in business administration or a related field. Instead, it has been found to be the equivalent to a bachelor's degree in English. Therefore, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), in order for the beneficiary to qualify for a specialty occupation requiring a degree in business administration or a related field, the record must demonstrate that she has education, specialized training, and/or progressively responsible experience equivalent to a U.S. baccalaureate or higher degree in business administration, as well as recognition of her expertise through progressively responsible positions directly related to this specialty.

In support of the petition submitted on April 2, 2008, the petitioner provided a credential evaluation written by [redacted]t the [redacted]Undergraduate Business and Management, writing on behalf of [redacted]stating that the beneficiary's education and experience amount to the equivalent of a U.S. bachelor's degree in business administration.

The director issued an RFE on May 5, 2008, which stated that the evaluation previously submitted was insufficient and requested additional documentation to demonstrate that the beneficiary has the equivalent of a

U.S. baccalaureate or higher degree in business administration. In response, the petitioner submitted a revised evaluation from [redacted] together with several documents, including: 1) a letter from [redacted] 2) a detailed resume for [redacted] a letter from [redacted] in connection with another petition as part of counsel for the petitioner's argument that [redacted] credential evaluations have been accepted by USCIS previously.

The letter from [redacted] states in pertinent part:

> This letter is to confirm that [redacted] and is intended to clarify the following:
>
> (1) [redacted] whose main campus is in Phoenix, Arizona, maintains campuses across the United States, including a campus in [redacted] where [redacted] s a Lead Faculty in both the area of Business Administration and of Computer Information Systems, as well as our Area Chair in Finance.
>
> (2) [redacted] is accredited by the [redacted]. The University is authorized to award associate's-level, bachelor's-level, master's-level, and doctoral-level degrees.
>
> (3) [redacted] has a program which acknowledges credit based on the work experience of students and applicants; this Prior Learning Assessment process determines if learning received outside of the traditional university classroom is equivalent to academic curriculum and eligible for college credit through the evaluation of a student's prepared portfolio.
>
> (4) The University of Phoenix draws faculty and students from diverse backgrounds and national origins, and our educational format relies substantially on the leverage of students' work experience.
>
> (5) Included within [redacted] capacity as an Area Chair and as Faculty, are the review of credentials of existing and prospective faculty and the evaluation of students in the fields of Business Administration, Marketing, Management Information Systems, Computer Science and other related areas. As part of these capacities, [redacted] has proven to be a reliable evaluator and has consistently delivered appropriate evaluations for credit-bearing courses.

On September 3, 2008, the director denied the petition on the basis that the beneficiary is not qualified to perform services in a specialty occupation.

The AAO finds that the evaluation from [redacted] together with the supporting documentation submitted, does not meet the standard described in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The correspondence from [redacted] from the [redacted] with regard to [redacted] asserts that he has proven to be a reliable evaluator and has consistently delivered appropriate evaluations for credit-bearing courses, but it does not state that he has the authority to grant credit for coursework and/or work experience, which is a requirement under the regulation. Therefore, the evaluation does not meet the standard of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

On appeal, counsel for the petitioner cites to a section in the DHS Adjudicators Field Manual in arguing that there should be considerable weight given to experience evaluations if the official is formally involved in the college's program for granting credit for work experience, regardless of whether the beneficiary is enrolled in that program. Counsel also states that USCIS appears to have disregarded the evaluation because it was on the stationary of [redacted] rather than on [redacted] letterhead. The AAO agrees with counsel that the stationary is not relevant to the matter at hand and USCIS should not disregard the evaluation solely because it was on the stationary of the credential evaluation service. However, the fact remains that no documentation was submitted demonstrating that [redacted] has the 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, as required under the regulation. Therefore, the director's finding that "the record does not contain evidence of the consultant having the authority to grant college level credit" under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) is correct.

Counsel also argues that [redacted] credential evaluations have been accepted by USCIS previously in other approved H-1B petitions and submits a copy of one of [redacted] evaluations that allegedly has been accepted in the past. Approval of any petition on the basis of an evaluation of the educational equivalency of training and/or experience where the evaluator is not an official authorized to grant college-level credit for the same in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) 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. 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).

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 the nonimmigrant petitions on behalf of the 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).

Aside from the decisive fact that the evidence of record does not establish Professor Jelen as competent under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) to evaluate experience, the AAO finds that the content of his evaluation of the beneficiary's experience would merit no weight even if Professor Jelen were qualified under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Professor Jelen basically summarizes the skeletal letters of the beneficiary's former employers, which describe the beneficiary's experience only in generalized and generic terms, and he then concludes, without analysis, that the "responsibilities handled by [the beneficiary] throughout her career are indicative of Bachelor's-level coursework in Business Administration and related subjects." As this evaluation does not establish a substantive basis for its conclusion, it would have no probative value even if it were rendered by an official qualified under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), USCIS may determine that the beneficiary has the equivalent of a degree in business administration if she has a combination of education, specialized training, and/or work experience in areas related to this specialty. The evaluation on record is not supported by specific evidence. The three letters from the beneficiary's former employers do not contain enough detail to determine how many years of experience the beneficiary has in sales and marketing, and whether this experience was gained while working with peers, supervisors, and subordinates who have a degree or its equivalent in business, marketing, or a related field. Finally, the record lacks the required showing of the beneficiary's expertise in business, marketing or a related field. The evidence does not establish that the beneficiary is qualified to perform a specialty occupation.

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

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 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.