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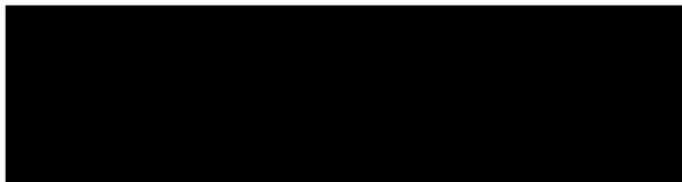
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
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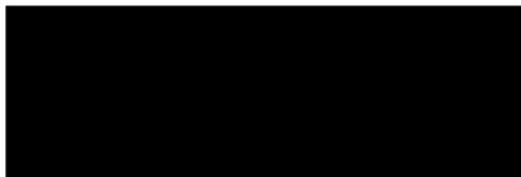
FILE: EAC 08 140 52308 Office: VERMONT SERVICE CENTER Date: NOV 09 2009

IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner avers that it provides sales/marketing (business development) training and recruiting services, that it was established in 2005, that it employs four full-time personnel and three independent contractors, and that it had a gross annual income of \$777,000 and a net annual income of \$100,000 in 2007. It seeks to employ the beneficiary as a business development specialist. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant 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). The director denied the petition determining that the position was not a specialty occupation.

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

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. For purposes of the H-1B adjudication, the issue of *bona fide* employment is viewed within the context of whether the petitioner has offered the beneficiary a position that is determined to be a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job 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 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.

It is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation “which [1] 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 [2] 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), United States 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. 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, to determine whether the position qualifies as a specialty occupation. *Defensor v. Meissner*, 201 F. 3d 384.

The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that “[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation.” Moreover, the regulation at 8 C.F.R. § 214.2(h)(4)(iv)(A)(1) specifically lists contracts as one of the types of evidence that may be required to establish that the services to be performed by the beneficiary will be in a specialty occupation.

In a March 19, 2008 letter appended to the petition, the petitioner stated that it: “provides in sales and marketing (business development) training and recruiting for marketing firms in the fields of design, advertising and public relations.” The petitioner added: “[i]n short, [the petitioner] helps our clients get better at business development and generating new business.” The petitioner noted that it planned “to expand our client base, offering our services in industries other than just advertising and PR” and that it had “determined that offering our services in the real estate design market would prove extremely lucrative, given that many real estate brokerages and development firms are seeking to improve the efficiency of their advertising efforts in the wake of the national downturn in the real estate market.” The petitioner explained that it wished to hire the beneficiary:

To continue advising [it] on how [it] can effectively implement and develop a program aimed at improving the business development capacity of real estate design and development firms and to work directly with [its] new real estate clients to advise them on best marketing practices and to help them analyze the effectiveness of their marketing campaigns.

In that regard, the petitioner indicated the beneficiary’s specific duties would include:

- Developing all training and educational materials that [the petitioner] will use to help train new clients in the real estate industry, including a training curriculum, sample pitch statements, sample ad campaign strategies and ideas, training exercise guidelines, etc.
- Working to educate potential new real estate clients on the benefits of our training programs.
- Implementing our new real estate training program at client sites. The Beneficiary will be asked to participate and lead these trainings, which will include advice on best marketing practices, how to monitor and assess marketing effectiveness, how to develop effective corporate communications, etc.
- Working with the management of our real estate clients to analyze existing marketing efforts to identify effectiveness, areas for improvement, industry challenges, etc. After such analysis, she will also work with clients to improve their marketing strategies and corporate communications.
- Conducting any ad hoc research necessary to educate [the petitioner] and/or our new real estate clientele on the latest developments and cutting edge promotional strategies employed in the industry and/or by competitor companies.

The petitioner also provided website information about its training programs. The petitioner further included three Internet advertisements for marketing manager/associate positions.

The director found the information submitted insufficient and issued an RFE on April 23, 2008. The director questioned the petitioner's capacity to provide sufficient work at the H-1B level. The director requested, among other things, evidence of the petitioner's business activity, evidence of an anticipated increased level of business, and additional evidence regarding the petitioner's history and employment practices. The director also asked that the petitioner indicate whether it had employed business development specialists in the past and, if so, the educational background of those employed. The director further requested evidence that a degree requirement is common to the industry in parallel positions among similar organizations.

In a June 2, 2008 response, the petitioner noted that it had increased its 2007 revenues by nearly 50 percent from its 2006 revenues and that it was on track to increase its revenues an additional 80 percent in 2008. The petitioner provided its Internal Revenue Services (IRS) Forms 1065, U.S. Return of Partnership Income, for 2006 and 2007 and a profit and loss statement for the first four months of 2008 to substantiate its claims. The petitioner indicated that because it specializes in business development and marketing consulting, it has always employed business development specialists, although their internal titles may differ slightly due to their specific roles in the business. The petitioner indicated that the key staff included the two founding partners, an individual recently employed full-time, and an independent contractor. The petitioner noted that these individuals have advanced education in marketing and/or extensive experience in marketing and business development. The petitioner noted that it was in discussions with a few real estate design firms who are interested in receiving business development training and thus it sought to hire the beneficiary to

implement strategies and training plans. The petitioner also provided information regarding its competitors in the consulting business and an advertisement for a senior strategist position.

The petitioner further provided a draft of a power point presentation on training sessions for real estate design firms that the petitioner indicated was prepared by the beneficiary. The petitioner indicated that the beneficiary in the proffered position would help the petitioner to implement the strategies and training plans.

As observed above, the director denied the petition on June 20, 2008. The director determined that the evidence of record did not establish that the specific nature of the duties that the beneficiary would perform while employed by the petitioner qualifies at the H-1B level or that the petitioner routinely required a baccalaureate degree in a specific field of study as a prerequisite for the job offered. The director noted that business development specialists are generally considered to be specialty occupations but not in the case of a small business development company. The director concluded that the evidence of record did not establish that the job offered qualified as a specialty occupation.

On appeal, counsel for the petitioner attempts to clarify the nature of the petitioner's business by explaining that the petitioner is a highly specialized consulting firm that provides business development advice to outside businesses, consisting largely of advertising agencies that are seeking help to improve their sales and marketing capabilities. Counsel asserts that the petitioner must employ only individuals who are more qualified than the marketing professionals that they are advising and training and who possess an advanced theoretical and practical understanding of business management, marketing and related fields – otherwise clients would not seek the petitioner's advice.

Counsel contends that the petitioner submitted printouts from the websites of several competitor companies, that are similar in size and scope to the petitioner and that the websites demonstrate that these businesses employ individuals with at least a bachelor's degree equivalent in business, marketing or a related field. Counsel also submits a July 28, 2008 letter prepared by [REDACTED] Columbia Business School, who indicates that he has examined the petitioner's business activities. [REDACTED] opines: "the minimum requirement for [the petitioner's] business development specialists is the equivalent of at least a bachelor's degree in marketing or a related field" and further that "[t]his is normal across the industry in which [the petitioner] operates." [REDACTED] further opines:

The minimum requirement is because these specialists are being retained due to their expertise in marketing and business development. [The petitioner's] specialists actually train other business development executives and hence require a level of expertise that exceeds the knowledge and skills of their clients. [The petitioner] therefore needs a sophisticated understanding of both theoretical principles in business as well as real-world, practical experience. Simply put, such a combination

cannot be attained without completing advanced educational training and gaining extensive business experience.

Counsel further submits a July 25, 2008 letter from one of the petitioner's advertising agency clients. The client indicates that it had retained the petitioner to advise their senior executive team on improving marketing strategy and business development and thus "[a]ll staff at [the petitioner] who provide business development consulting services are undoubtedly experts who must have an advanced educational and work background in marketing, communications and business."

Counsel also asserts that the director impermissibly focused on the petitioner's size in assessing its need for the beneficiary's services and mischaracterized the facts and evidence presented by the petitioner in response to the director's RFE. Counsel further asserts that the director considered only one of the four criterion set out in 8 C.F.R. § 214.2(h)(4)(iii)(A), failing to consider the petitioner's internal hiring requirements and whether the nature of the job duties are so specialized as to require the services of a specialty occupation professional.

Preliminarily, the AAO withdraws the director's statement that business development specialists are generally considered to be specialty occupations. A business development specialist position is dependent upon the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. The title "business development specialist" is amorphous and may include a range of duties, some of which may be performed with experience alone, some of which may require a general bachelor's degree, and some of which may require a bachelor's or higher degree in a specific discipline. Thus, the crucial aspect of this matter is whether the petitioner has adequately described the duties of the proffered position, such that USCIS may discern the nature of the position and whether the position indeed requires the theoretical and practical application of a body of highly specialized knowledge attained through a baccalaureate program in a specific discipline.

The AAO finds that the director could have better articulated the reasoning in his decision; however, the director's ultimate conclusion that the record is deficient in establishing the proffered position as a specialty occupation is correct. The AAO reiterates that the crux of the failure to establish eligibility for this benefit is not whether the petitioner has established that it has an ongoing business with numerous clients or has self-imposed requirements regarding education, or is similar to other organizations, but is whether the proffered position has been sufficiently described by the company that is utilizing the beneficiary's services to establish the position as a specialty occupation. In that regard, the AAO will examine the descriptions of the proffered employment in an effort to ascertain the beneficiary's actual duties for the user of the beneficiary's services and whether those duties comprise the duties of a specialty occupation.

Upon review of the description of the proffered position, the AAO notes that the individual in the proffered position: will advise the petitioner on how to implement and develop a program aimed at improving the business development capacity of real estate design and development firms; will assist in developing the training and educational materials used to train the petitioner's new clients in the

real estate industry; will explain or “sell” the benefits of the petitioner’s training programs to new real estate clients; will participate and lead trainings; will work with the management of real estate clients in analyzing existing marketing efforts for areas of improvement; and will conduct research on the latest developments and strategies employed in the industry.¹ The question before the AAO is whether the description provided is sufficient to establish that the job is a specialty occupation in accordance with the H-1B statute and regulations. The petitioner’s claim that its business development specialist position qualifies as a specialty occupation is not an element of proof, and it has evidentiary weight only to the extent that it is supported by the record’s documentary evidence on the specific requirements of a specialty occupation under sections 101(a)(15)(H)(i)(b) and 214(i)(1) of the Act and the implementing regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A). *See 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)) (Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.)

The AAO first considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. In this instance, although the *Handbook* reports on the educational requirements for the occupation of marketing manager, market researcher, and management analyst, the *Handbook* does not expound upon the educational requirements for a business development specialist. Thus, the *Handbook* does not offer a clear standard for how one prepares for a career as a business development specialist.

The AAO has also reviewed the letter of ██████████ in an effort to understand the nature of a business development specialist position. ██████████ concludes that a bachelor’s degree in marketing or a related field is required because the petitioner’s business development “specialists actually train other business development executives” and thus “needs an understanding of both theoretical principles in business as well as real-world, practical experience.” ██████████ opines: “such a combination cannot be attained without completing advanced educational training and gaining extensive business experience.” Thus, ██████████ appears to believe that the petitioner’s business development specialist would need an advanced degree in marketing or business as well as business experience in order to successfully perform the duties of the position. ██████████ bases this conclusion, not on objective surveys or a reasoned discussion of the necessity of specific training to perform certain duties described by the petitioner, but rather because the petitioner’s business development specialist will be training other business development executives who may have a degree. Such a conclusion is insufficient to establish that the actual duties of the proffered position require a bachelor’s degree in a specific discipline.²

¹ In an effort to succinctly and in plain language set out the tasks the petitioner expects the beneficiary to perform in the proffered position, the AAO has paraphrased the petitioner’s description of duties, rather than repeating the full description.

² The AAO observes that 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

The AAO has further reviewed the advertisements submitted by the petitioner as similar to the petitioner's position. The AAO notes that in the initial submission, the petitioner provided advertisements: for a regional marketing manager, a marketing manager for a Florida homebuilder, and a marketing associate. The descriptions of duties for the first two advertisements more thoroughly described the advertised position than the petitioner's submitted description of the proffered position and the third advertisement only provided an outline of the advertised position. The AAO observes that the advertised positions, although containing the marketing element of the proffered position, do not appear to be similar positions. In response to the director's RFE, the petitioner provided website printouts for two companies that appear similar to the petitioner, but the printouts do not identify particular positions within the companies or the educational requirements for positions within the companies. The petitioner's response to the director's RFE also included one advertisement for a senior strategist position for a marketing consulting services company that provided an outline of marketing job duties and listed a bachelor's degree in business or marketing as the education or training needed. The AAO has reviewed the power point presentation the petitioner claims was drafted by the beneficiary. However, the presentation, itself, does not provide sufficient information regarding the skills or tasks used by the beneficiary when drafting the document. None of the information provided in response to the director's RFE provided an understanding of the specific position the petitioner was proffering to the beneficiary.

The difficulty in analyzing the petitioner's description of the proffered position is that the description is general and provides only an overview of elements within a marketing position, a market researcher position, a management analyst position, and a training position. There is no comprehensive information that would lead the examiner to a conclusion that the duties generally described require a baccalaureate or higher degree or its equivalent in a specific discipline as the normal minimum requirement for entry into the proffered position. For example, the petitioner indicates that the beneficiary will advise it on implementing and developing a program aimed at new clients and will work with management of real estate clients in analyzing their existing marketing efforts. Although these elements appear to be the tasks of a management analyst, the petitioner does not further elaborate on the methodology the beneficiary will use, such as building and solving mathematical models or provide other information that could be determined to require the theoretical and practical application of specialized knowledge associated with a bachelor's or higher degree. In addition, the petitioner does not provide detail on the training aspect or marketing/sales aspect of the proffered position. The petitioner does not describe the particular methodologies or analytical tools the beneficiary will employ or otherwise substantiate that the duties require or are usually associated with at least a bachelor's degree in a specific specialty. The AAO finds that the beneficiary's duties are so abstractly stated that they do not convey the specific nature of the work that the beneficiary

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 or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

would actually perform and, therefore, do not indicate the nature and level of education that the work requires.

The petitioner has failed to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into a business development specialist's position. Accordingly, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of the proffered position pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is common to the industry in parallel positions among similar organizations or that a particular position is so complex or unique that only an individual with a degree can perform the duties associated with the position. Factors often considered by USCIS when determining the industry standard include: 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)).

In this matter, the AAO has again reviewed the advertisements submitted and the website information regarding firms that are similar to the petitioner. As determined above, two of the advertisements submitted provide detailed information regarding the marketing positions advertised, unlike the petitioner's general outline of duties for its business development specialist position. The other two advertisements also provide an outline of the duties of a marketing associate or a strategic analyst and do not include information that is parallel to the petitioner's outline of duties for its business development specialist position. Thus, the AAO is unable to determine that a degree requirement in a specific discipline is common to the industry in parallel positions among similar organizations, based on the information provided. The website printouts for other similar companies establish that the petitioner's organization has comparable competitors, but does not provide any evidence that these companies hire business development specialists or that they have established degree requirements in specific disciplines for their employees in parallel positions.

The petitioner has also failed to establish that the duties of the proffered position are so complex or unique that only an individual with a degree in a specific specialty can perform the duties associated with the position. Again, the petitioner has provided an overview of tasks associated with a marketing and training position, but has not provided the detail necessary to establish that the duties of the proffered position are so complex or unique that it is distinguishable from similar but non-degreed employment. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent in a specific discipline for the position. The AAO acknowledges that the petitioner has provided the resumes of its two founders and of its full-time business development specialist and one independent contractor. The resumes indicate that

one of the petitioner's founders has a degree in marketing, advertising, and sales promotion from a foreign polytechnic university and one of the petitioner's founders has a bachelor's of science degree in business and marketing management from a U.S. university as well as a master of business administration from the London Business School. The resume of the petitioner's full-time business development specialist indicates that she has a bachelor's of science degree in integrated communications. The resume of the petitioner's independent contractor shows that he has a bachelor's of art degree in an unspecified discipline. The AAO finds that the resumes of the individuals who hold the positions of business development specialist and that of the independent contractor (a position that apparently may include similar general duties as the proffered position) do not show that these individuals have degrees in the same specific or similar discipline. The AAO observes that the beneficiary in this matter has a bachelor's of art degree in geography, not in marketing or business. It is the fact that individuals holding diverse degrees may perform the duties of the proffered position that precludes the proffered position from consideration as a specialty occupation. Again, degrees held by such workers must be in a specific specialty that is directly related to the position in question.

The AAO acknowledges that the resumes of the two individuals currently employed by the petitioner in positions that may be similar to the proffered position show that these two individuals have work experience in marketing strategy, business development and sales; however, the record does not provide the underlying documentation establishing the parameters of the experience, such that the AAO may conclude that the marketing experience is equivalent to a concentration of studies in the specific field. Again, 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. at 165. Moreover, the AAO observes 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, then 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. The AAO emphasizes again that a general description of duties may not be used to establish a position as a specialty occupation. 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 that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. In order to establish this criterion, the petitioner must provide a comprehensive description so that the duties of the particular position may be analyzed to determine whether such duties require the theoretical and practical application of highly specialized knowledge attained through a four-year course of study at the university level resulting in a bachelor's or higher degree in a specific discipline. The petitioner has not provided the necessary detail of the duties associated with this position to comply with this criterion. The petitioner has provided a general description of duties that relates to marketing or market research, or has elements of various occupations that do not necessarily require a degree in a specific discipline. The petitioner has added duties that include training others in marketing skills

and advising the petitioner on how to develop a program to access a particular type of client. However, these added elements are insufficiently described to elevate the position to one that is so specialized or complex, that the knowledge to perform these additional tasks requires the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Beyond the decision of the director, the petitioner has not established that the beneficiary is eligible to perform the duties of a specialty occupation unrelated to a specialty occupation requiring a degree in geography. The AAO has reviewed the evaluation of the petitioner's educational credentials which shows that she has been issued a foreign degree determined to be equivalent to a United States baccalaureate degree from an accredited college or university in geography. However, the March 18, 2008 evaluation of the beneficiary's foreign degree also includes an evaluation of the beneficiary's work experience. When attempting to establish that a beneficiary has the equivalent of a degree based on his or her combined education and employment experience under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), a petitioner may not rely on a credentials evaluation service to evaluate a beneficiary's work experience. A credentials evaluation service may evaluate only a beneficiary's educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). To establish an academic equivalency for a beneficiary's work experience, a petitioner must submit an evaluation of such experience from an official who has the 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. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The record does not include this information. Thus, the evaluation of the beneficiary's work is not probative.

The AAO has reviewed the two letters examined by the credential service relating to the beneficiary's work experience to ascertain whether the beneficiary's work experience could substitute for the necessary concentration of study in a discipline directly related to the proffered position. Neither letter establishes that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. Neither does the petitioner document recognition of the beneficiary's expertise in a specialty occupation 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 authority³ has determined to be

³ *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).

significant contributions to the field of the specialty occupation. *See* 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). The two letters without the above additional and necessary information are insufficient to establish the academic equivalence of the beneficiary's work experience. For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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. Accordingly, the AAO will not disturb the director's denial of the petition.

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