

identifying data deleted to  
prevent unauthorized  
invasion of personal privacy



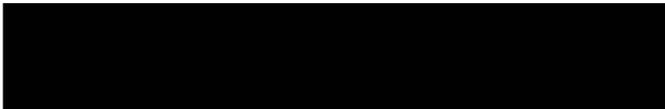
U.S. Citizenship  
and Immigration  
Services

D2



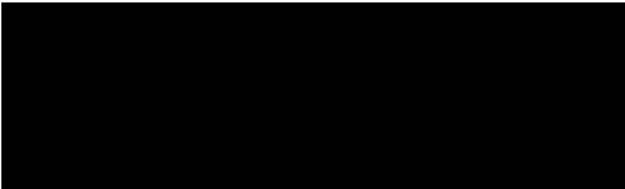
FILE: WAC 03 147 50546 Office: CALIFORNIA SERVICE CENTER Date:

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:



PHOTIC COPY

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, Chief  
Administrative Appeals Office

**DISCUSSION:** On April 10, 2003, the petitioner filed a Form I-129 seeking to employ the beneficiary, who has been previously approved for H-1B status based on a petition filed by another employer, as a structural steel detailer 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 of the California Service Center denied the petition and the petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO dismissed the appeal on April 28, 2006. Subsequently, the petitioner and the beneficiary filed a complaint in the U.S. District Court for the Central District of California seeking declaratory relief requiring Citizenship and Immigration Services (CIS) to approve the beneficiary's H-1B petition. *Global Fabricators and Israel G. Cruz v. Alberto Gonzales and Michael Chertoff, et al.*, CV-06-3959 AHM (JWJx) (filed June 23, 2006). Upon review, the AAO reopened the proceeding to reconsider its previous decision pursuant to 8 C.F.R. § 103.5(a)(5)(ii) and issued a request for evidence. The petitioner submitted its response on November 3, 2006. The AAO will affirm its prior decision. The petition is denied.

The petitioner is a structural steel fabricator that seeks to employ the beneficiary as a senior structural steel detailer 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 based on his determination that the record did not establish the proffered position as a specialty occupation. The AAO dismissed the petitioner's appeal on the same basis.

**The record of proceeding in the case contains:** (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; (4) the Form I-290B, with counsel's brief and additional evidence; (5) the AAO's dismissal of the appeal; (6) the AAO's reopening and request for evidence; and (7) counsel's response to the request, including new and previously submitted evidence. The AAO reviewed the record in its entirety prior to reaching its decision.

The initial issue before the AAO is whether the instant petition has been filed to extend the petitioner's H-1B employment of the beneficiary. On appeal, counsel contended that CIS had previously determined the proffered employment to be a specialty occupation and the beneficiary qualified to perform the position's duties, citing an April 23, 2004 CIS memorandum as prohibiting the readjudication of previously approved H-1B petitions in extension filings.<sup>1</sup> In response to the AAO's request for evidence, counsel indicates that the petitioner has not previously employed the beneficiary as a structural steel detailer, but that another organization employed the beneficiary in this capacity, although to perform the same duties. The instant petition does not, therefore, represent a request for an H-1B extension of previously approved employment. However, as noted by the AAO in its previous dismissal, CIS approval of an earlier petition for the proffered position would not require the AAO to approve the petition, as counsel has asserted.

---

<sup>1</sup> Memorandum from William R. Yates, Associate Director for Operations, Citizenship and Immigration Services, *The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity*, HQOPRD 72/11.3 (April 23, 2004).

CIS is not bound 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). Further, each petition filing is a separate proceeding with a separate record and CIS is limited to the information contained in that record in reaching its decision. 8 C.F.R. §§ 103.2(b)(16)(ii) and 103.8(d). Although counsel claims that the beneficiary's duties for his previous employer were identical to those that would be performed for the petitioner, no such determination may be made without review of the original record in its entirety. If, however, the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, the approval of the prior petition would have been erroneous. Moreover, the AAO's authority over the director is comparable to the relationship between a court of appeals and a district court. Even if a director had approved a nonimmigrant petition on behalf of the beneficiary, the AAO would not be bound to follow that decision. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D.La.), *aff'd*, 248, F.3d 1139 (5<sup>th</sup> Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The AAO now turns to whether the petitioner's proffered position qualifies as a "specialty occupation." As defined in section 214(i) of the Act, 8 U.S.C. § 1184(i), the term "specialty occupation" means an occupation that requires:

- (1) the theoretical and practical application of a body of highly specialized knowledge, and
- (2) 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a 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.

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.

To determine whether a particular job qualifies as a specialty occupation, CIS 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. CIS must examine the ultimate employment of the

alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner seeks the beneficiary's services as a senior structural steel detailer. Evidence of the beneficiary's duties includes: the Form I-129; the petitioner's March 27, 2003 letter in support of the petition; counsel's May 21, 2004 response to the director's request for evidence, including a June 6, 2001 position contract; counsel's brief on appeal; and counsel's response to the AAO's August 14, 2006 request for evidence. This evidence indicates that the performance of the proffered position would require the beneficiary to:

- Draft and complete detailed shop drawings to be fabricated in the company's facility by utilizing knowledge of engineering practices and interpretation of engineering design drawings;
- Provide for and exhibit dimensions, material to be used, and other information necessary to make detailed drawings clear and complete;
- Prepare complete bill of materials and assign mark numbers; and revise dimensions prepared by team members, material to be used, and other information necessary to make detailed drawings clear and complete;
- Prepare nested cut list for cutting main members to proper length;
- Prepare nested cut list for all small parts;
- Detail templates for flame or plasma cutting;
- Prepare bolt schedules showing specifications, quantities, diameters and lengths;
- Complete erection drawings for fabricated steel;
- Send material requisitions to Purchasing Manager for purchasing of all materials for jobs;
- Coordinate details with other architects and engineers to produce drawings; and
- Answer technical questions from shop personnel and on-site superintendents.

The petitioner indicated that the performance of the above duties requires the minimum of a baccalaureate degree in architecture, engineering, mathematics, computer design or a related field, with at least eight years of structural steel detailing experience.

To determine whether the duties previously described by counsel are those of a specialty occupation, the AAO first considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors considered by the AAO when determining these criteria include: whether the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, 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)).

In his denial of the Form I-129, the director found the duties of the proffered position to establish it as that of an architectural drafter. The AAO agrees. The duties described in counsel's response to the director's request for evidence reflect the duties of an architectural drafter, as discussed in the 2006-2007 edition of the *Handbook* under the occupational title of drafters and engineering technicians:

Drafters prepare technical drawings and plans used by production and construction workers to build everything from manufactured products . . . to structures such as houses, office buildings, and oil and gas pipelines. Drafters' drawings provide visual guidelines; show the technical details of the products and structures; and specify dimensions, materials, and procedures. Drafters fill in technical details using drawings, rough sketches, specifications, codes, and calculations previously made by engineers, surveyors, architects, or scientists. For example, drafters use their knowledge of standardized building techniques to draw in the details of a structure. Some use their knowledge of engineering and manufacturing theory and standards to draw the parts of a machine to determine design elements . . . . Drafters use technical handbooks, tables, calculators, and computers to complete their work.

Traditionally, drafters sat at drawing boards and used pencils, pens, compasses, protractors, triangles, and other drafting devices to prepare a drawing manually. Most drafters now use CADD systems to prepare drawings . . . .

*Architectural drafters* draw architectural and structural features of buildings and other structures. These workers may specialize in a type of structure, such as residential or commercial, or in a kind of material used, such as reinforced concrete, masonry, steel, or timber. [*Handbook*, pages 141-142].

With regard to the preparation required for entry-level employment as an architectural drafter, the *Handbook* reports the following:

Employers prefer applicants who have completed postsecondary school training in drafting, training that is offered by technical institutes, community colleges, and some 4-year colleges and universities. Employers are most interested in applicants with well-developed drafting and mechanical drawing skills; knowledge of drafting standards, mathematics, science, and engineering technology; and a solid background in CADD techniques. In addition, communication and problem-solving skills are important.

In that the *Handbook* reports that U.S. employers do not normally require applicants for entry-level drafting positions to hold at least a baccalaureate degree in a specific specialty, the proffered position is not established as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

On appeal, counsel contended that the duties outlined for the proffered position “primarily [involve] pre-design and design services in all phases of development, from the initial discussion through the entire project.” As architects are “people trained in the art and science of all aspects and phases involving structural and building pre-design, construction and design work,” counsel concluded that the beneficiary’s drafting of detailing drawings for parts of machines or structures from rough or general design drawings established the proffered position as a “subcategory” of architect. In response to the AAO’s request for evidence, counsel again asserts that the “design services of the Senior Structural Detailer are similar to the pre-design services of an architect” and also that the position’s duties are “similar to those of a civil engineer,” as both occupations require a knowledge of structural engineering. While the AAO notes counsel’s characterization of the duties that would be performed by the beneficiary, this characterization is not supported by the *Handbook* or the record.

The description of the occupation of architects provided by the 2006-2007 edition of the *Handbook* does not indicate that any of the duties to be performed by the beneficiary may be described as pre-design architectural services. As discussed by the *Handbook*, “architects provide various pre-design services – conducting feasibility and environmental impact studies, selecting a site, or specifying the requirements the design must meet. For example, they may determine space requirements by researching the numbers and types of potential users of a building.” [*Handbook*, page 125]. None of the duties of the proffered position indicate that the beneficiary would have responsibility for any similar activities, including the specification of design requirements. Neither does the record contain evidence – statements from professional/trade organizations or opinions from experts in the fields of architecture or engineering, or construction – that would support counsel’s claims regarding the nature of the position’s duties. Accordingly, counsel’s identification of the proffered position as a subcategory of the occupation of architect is not persuasive. Without supporting documentation, the assertions of counsel are not sufficient to meet the petitioner’s burden of proof in this proceeding. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Moreover, the AAO finds that counsel’s characterization of the proffered position as a subcategory of architect is not supported by the certified Labor Condition Application (LCA) filed by the petitioner in support of the Form I-129. As discussed in the AAO’s request for evidence, the petitioner’s LCA does not

identify the proffered position under the occupational code of “001,” the code for architectural occupations.<sup>2</sup> Instead, the petitioner used the occupational code of “017,” the code for drafters, to describe the proffered position.

Counsel explains that the petitioner relied on the occupational code for drafters because it was the code that most closely matched the occupation, but that the requirements of the proffered position “exceed those of a drafter because they require knowledge of structural engineering.” Structural engineering, counsel contends, is “one of the subdivisions of architecture.” Counsel’s explanation is not persuasive. The instructions that accompany the LCA indicate that, when completing Section D, “Period of Employment and Occupation Information,” the employer should enter the occupational code that most clearly describes the occupation “to be performed.” Based on counsel’s characterization of the proffered position, the LCA should, therefore, list the occupational code for architectural occupations, the employment field that counsel claims is reflected in the duties of the proffered position. In that the LCA lists the occupational code for drafters as describing the duties of the proffered position, it undermines counsel’s assertions that the duties of the proffered position describe a subcategory of the work performed by architects.<sup>3</sup>

To establish the proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(A), a petitioner must prove that a specific degree requirement is common to its industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant case, counsel contends that the *Handbook* supports an industry-wide degree requirement for the proffered position, based on his characterization of the position as that of an architect. The record also includes four Internet advertisements that indicate a degree requirement for the jobs advertised, jobs that counsel contends are similar to the proffered position. However, neither the *Handbook*’s establishment of a degree requirement for architects nor the employment listings demonstrate that the proffered position qualifies as a specialty occupation under the requirements of the criterion’s first prong.

For reasons previously discussed, the record establishes the proffered position as that of an architectural drafter not an architect. Accordingly, the *Handbook*’s discussion of the degree requirement for architects are not relevant and do not establish an industry-wide degree requirement for the position. While each of the four Internet listings does indicate a degree requirement, none satisfy the requirements of the first prong. Only one is published by a steel fabricator, a business similar to the petitioner’s. The other announcements come from a manufacturer of coffee brewers and two organizations with unidentified operations. These same three advertisements do not describe duties that parallel those of the proffered position. The fourth listing, that published by the steel fabrication business, provides no description of the duties to be performed by the incumbent and does not require a degree in a specific specialty, as required for classification as a specialty

---

<sup>2</sup> See Appendix 1 to form ETA 9035CP, Labor Condition Application, Three-Digit Occupational Groups.

<sup>3</sup> The petitioner set the wage to be paid to the beneficiary as that of a drafter, not as an architect. The prevailing wage for the occupation listed by the petitioner on the LCA is \$17.20/hour for Bakersfield, California. The wage source utilized by the petitioner is 2003 USDOL. The May 2003 Metropolitan Area Occupational Employment & Wage Estimates for the Bakersfield, California MSA lists \$24.78 as the median hourly income for architects and \$18.37 as the median hourly income for architectural and civil drafters. See [http://www.bls.gov/oes/2003/May/oes\\_0680.htm#b17-000](http://www.bls.gov/oes/2003/May/oes_0680.htm#b17-000), accessed November 30, 2006.

occupation. Accordingly, the advertisements do not prove that the petitioner's degree requirement is common to its industry in parallel positions among similar organizations.

The AAO also notes that the petitioner's HR/safety manager's statement submitted in response to the director's request for evidence does not support counsel's claims regarding an industry-wide degree requirement. This statement asserts that the proffered position is "a common position with many similar size companies," but also that "some prefer four year college degrees, however not all."

To determine whether the position may be established as a specialty occupation under the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – the position is so complex or unique that it can be performed only by an individual with a degree – the AAO has reviewed the record for evidence that the proffered employment may be distinguished from similar, but nondegreed employment on the basis of its complexity or unique nature. Counsel asserts that the proffered position is similar to that of an architect or civil engineer, as each, like the proffered position, requires knowledge of structural engineering. He also contends that the complexity of the position is evidenced by the knowledge of architecture that is essential to performing the beneficiary's duties. However, counsel's statements do not satisfy the requirements of the second prong. The record offers no evidence – statements from professional/trade associations or experts in the field – that addresses the position's complexity or its unique nature. Without supporting documentary evidence, the assertions of counsel are not sufficient to meet the petitioner's burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Accordingly, the petitioner has not established 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).

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

To determine whether a proffered position may be established as a specialty occupation under the third criterion – the employer normally requires a degree or its equivalent for the position – the AAO usually 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. The petitioner claims to have a practice of requiring its senior structural steel detailers to hold four-year degrees. As proof of the petitioner's hiring practices, the record contains: a statement from the petitioner's HR/Safety Manager indicating that all members of its engineering staff possess four-year college degrees; materials related to the civil engineering degrees held by two of the petitioner's structural steel detailers, including the college transcripts and diploma for a [REDACTED] issued by the National University in The Philippines and a resume for Francisco Jose listing a degree in civil engineering from the Far Eastern University in The Philippines; the petitioner's Quarterly Wage and Withholding Report for the quarter ending September 30, 2006 identifying 53 employees; and a list of the petitioner's degreed personnel. The listing of the petitioner's personnel holding baccalaureate degrees includes a senior structural steel detailer, the vice president of engineering and marketing, the chief sales estimator, two estimators, the engineering department manager, the HR/safety manager, the president/general manager and the information

technology manager. While AAO notes the evidence submitted by the petitioner, it does not find this evidence to establish that the petitioner normally requires a degree in a specific specialty when hiring senior structural steel detailers.

In its letter of support, the petitioner indicated its desire to have the beneficiary join its “team of structural steel detailers.” However, the petitioner has submitted evidence of the foreign civil engineering degree held by only one senior structural steel detailer, [REDACTED] and that degree has not been documented as the equivalent of a U.S. baccalaureate degree.<sup>4</sup> The resume of [REDACTED], who, based on the petitioner’s quarterly wage report ending September 30, 2006, is no longer employed by the petitioner, is not supported by corroborative documentation and thus is not proof of the foreign degree in civil engineering that he claims. In that the petitioner has indicated that it employs multiple structural steel detailers, [REDACTED] civil engineering degree, even if established as equivalent to a U.S. baccalaureate degree, would not be sufficient to satisfy this criterion. **The record reflects that the petitioner has been in business since 1982. One employee’s educational credentials do not demonstrate a normal practice of recruiting and employing only persons with degrees in specific specialties.**

In support of its claim that all members of its engineering staff hold four-year degrees, the petitioner has provided a listing of degreed employees and a quarterly wage report to establish their employment. However, the petitioner’s response lists all degreed personnel in its employ, rather than the members of its engineering staff and the degrees held by each. The petitioner has not, as requested by the AAO, provided evidence regarding the number, identities and duties of all the individuals employed in its engineering department. Neither does the petitioner’s list of degreed employees indicate that it includes all persons employed in the petitioner’s engineering department. Accordingly, the record does not demonstrate that all members of its engineering department hold degrees at the baccalaureate level. The AAO also notes that the petitioner’s listing of degreed employees does not include the architects that counsel indicates are employed within the petitioner’s engineering department.

On appeal, counsel also contended that “[t]he fact that [the petitioner] requires as a prerequisite a bachelor’s degree demonstrates that the proffered position is a specialty occupation.” However, while the petitioner has clearly stated its desires regarding the proffered position, a petitioner’s degree requirements do not determine whether a position qualifies as a specialty occupation under Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1). Were CIS 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. For all the reasons previously discussed, the petitioner has not established that the proffered position qualifies as a specialty occupation based on its normal hiring practices, as required by the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion requires a petitioner to prove that the nature of the proffered position’s duties is so specialized and complex that the knowledge required to perform them is usually associated with the

---

<sup>4</sup> In its August 15, 2006 request for evidence, the AAO specifically asked that documentation of employees’ degrees should include evidence establishing them as equivalent to at least a U.S. baccalaureate degree in a field directly related to their employment.

attainment of a baccalaureate or higher degree. In response to the AAO's request for evidence, counsel contends that "[t]he duties of a senior structural design detailer are highly technical and complex such that the skills and knowledge necessary to perform the duties of this position could only be obtained in [a] Bachelor of Science program in architecture, engineering, mathematics, or a related discipline." Counsel also points to the beneficiary's responsibility for designing a functional product as proof that it requires a knowledge of structural engineering comparable to that of an architect or civil engineer. He submits a letter from the petitioner, which states that the proffered position requires a knowledge of engineering or architecture, a high degree of mathematical ability, with an understanding of science and engineering technology and CADD. However, neither the petitioner's nor counsel's assertions are proof that the duties of the proffered position meet the specialized and complex threshold set by the fourth criterion and the record offers no evidence that this is the case, i.e., evaluations of the proffered position's duties by professional/trade associations or experts in a related field. Going on record without supporting documentary evidence will not satisfy the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Moreover, the AAO finds the petitioner's description of the position's requirements to closely align with the *Handbook's* discussion of the training and knowledge required for employment as a drafter, training and knowledge that may be obtained without a baccalaureate degree. Therefore, the record does not establish the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For reasons previously discussed, the record does not establish the proffered position as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO will affirm its previous decision. The petition will be denied.

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 decision of the AAO is affirmed. The petition is denied.