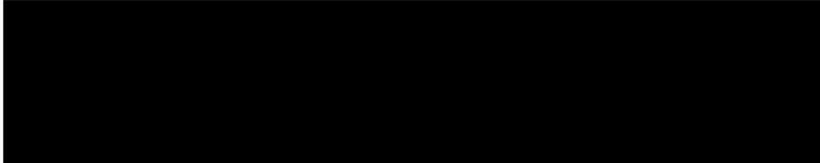




U.S. Citizenship
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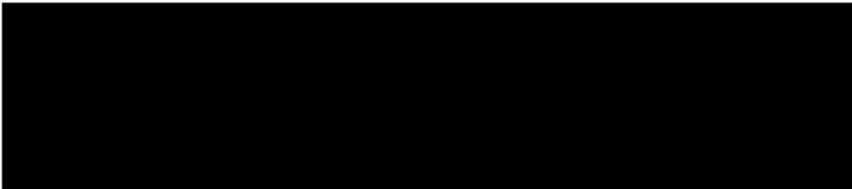
FILE: WAC 04 039 52296 Office: CALIFORNIA SERVICE CENTER Date: JUN 01 2007

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.

for
Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a home health care agency that claims to employ 39 personnel and that it has a gross annual income of \$1.2 million. It seeks to employ the beneficiary as a financial analyst. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

On December 31, 2004, the director denied the petition determining that the record did not establish that the proffered position is a specialty occupation. On appeal, counsel for the petitioner asserts that the director's decision is in error and submits a brief. The issue in this matter is whether the petitioner has established that the proffered position is a specialty occupation.

The record contains: (1) the November 26, 2003 Form I-129 and supporting documentation; (2) the director's April 29, 2004 request for further evidence (RFE); (3) counsel's July 15, 2004 response to the director's RFE; (4) the director's December 31, 2004 denial decision; and (5) the Form I-290B and counsel's brief and documentation in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

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

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

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

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

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

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

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

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

In a November 5, 2003 letter appended to the petition, the petitioner indicated it would like to expand and improve its operations and services. The petitioner indicated it needed an individual who would apply his/her knowledge, theories, and principles in finance in analyzing financial markets and directing and coordinating all account activities of the business. The petitioner stated:

[The beneficiary] will oversee the preparation of financial reports, assist in investment activities and implement cash management strategies. He will study economic and statistical data in the area of marketing and devise methods and procedures for collecting and processing data by utilizing knowledge of available sources of data and various econometric techniques.

Likewise, [the beneficiary] will plan, design and conduct research about the economic trend and market demands in relation to our company. He will use these data to provide our company with necessary recommendation to improve and develop our existing financial operations and status.

[The beneficiary] will compile data pertaining to specific profit area, such as employment, productivity, wage administration and our employees' work schedule. He will then use this information in order to maximize our company's productivity in terms of its operations and employees, which will contribute to the improvement of our financial standing.

[The beneficiary] will assist our operations in relation to management, assessment and methods. He will maintain our client's database. He will perform internal audits and prepare reports for management. [The beneficiary] will further review and analyze economic data in order to prepare reports detailing results of investigation.

Moreover [the beneficiary] will stay abreast with economic changes related to our company. He will make recommendations to our management on future strategy of our company.

[The beneficiary] will use his breadth of knowledge and expertise in financial analysis. Likewise, he will make observations and analyze the operations of our firm. He will advise us on the appropriate operational procedures for the advancement of our management.

On April 29, 2004, the director requested, among other things: a detailed description of the work done, including specific job duties, the percentage of time allocated to each duty, level of responsibility, hours per week of work, types of employees supervised, and the minimum education, training, and experience necessary to do the job, as well as an explanation of or why the work done requires the services of a person who has a college degree or its equivalent in the occupational field. The director also requested a copy of the petitioner's line and block organizational chart showing the petitioner's hierarchy and staffing levels as well as a list of all employees by name and job title.

In a July 20, 2004 response to the director's RFE, the petitioner provided a description similar to the initial description as follows:

With respect to his duties as Financial Analyst, [the beneficiary] will be expected to oversee the preparation of financial reports, identify investment opportunities and strategies as well as implement corporate cash management strategies. [The beneficiary] will analyze the agency's finances and provide counsel and analysis to management regarding the agency's assets, liabilities, investments, financial performance and evaluations of business decisions.

[The beneficiary] will also be responsible for researching market strategies that will keep [the petitioner] successful in a competitive market. Toward this end, [the beneficiary] will monitor trends in the home health care agency field, develop financial forecasts and perform project analysis relating to the company's financial status and performance.

As Financial Analyst, [the beneficiary] will be required to conduct financial research and analyze projects concerning the company's financial status, assets, expenditures and liabilities. He will also analyze billing contracts, structures, accounts payables and accounts receivables to prepare error reports and identify any losses in billing.

Specifically, [the beneficiary's] time will be allocated as follows: perform financial analysis of [the petitioner's] status and efficiency, research and analyze pricing, cost and investment, research financial efficiency and develop business plans to increase economic efficiency, analyze billing (40%); identify investment strategies, report analysis and suggestions to management (20%); compile data and conduct financial research, evaluate business operations, expenditures, projects, assets and investment strategies (20%); [p]repare thorough analysis of research, results, strategies and plan implementation (15%); [r]eport results to management by oral and written report; Evaluate and analyze billing and consistency with business plan and structure (5%).

[The beneficiary] will also focus his duties on compiling data relating to specific profit and project areas including employment, materials, productivity, business expenses, administration and benefits.

The petitioner also provided a separate job description for the proffered position, repeating portions of the previous similar descriptions and adding:

Oversees the preparation of financial reports – employee shall oversee that financial reports are according to the principles of Generally Accepted Accounting Principles (GAAP). Interpret Financial Reports and report financial status to the Board of Directors and Management with corresponding recommendations for managerial responses. From Micro (department) and Macro (corporate) management, recommending co-relational procedures for maximum benefits.

The petitioner also noted that it would be expanding operations to Downey, California and converting a parcel of land in Menifee, California for the company's corporate offices. The petitioner further noted that it employed highly educated and experienced individuals in their respective fields and had a high level of educational expectation so that departments could relate to each other.

The petitioner provided copies of four job announcements for: (1) a project consultant/financial analyst for a major health insurance company that indicated a bachelor's degree or equivalent experience was required and that a bachelor's degree in accounting is preferred; (2) a senior financial analyst for a medical reference laboratory that required a bachelor's degree in accounting/finance and preferred a master's in business administration; (3) a financial analyst for a major provider of insurance that did not list its educational requirements, if any; and (4) a financial analyst for a hospital that required a bachelor's degree in business administration or an equivalent combination of education and experience.

The petitioner also provided its organizational chart and its list of employees and contract workers.

On December 31, 2004, the director denied the petition determining that the evidence failed to substantiate that the petitioner's business engaged in the type of business that would require a regular full-time or part-time financial analyst. The director observed that financial analysts assess the economic performance of companies and industries for firms and institutions with money to invest and the record did not substantiate that the petitioner had capital of its own to invest. The director further determined that without substantial funds to invest, CIS could not determine what duties the beneficiary would actually perform. The director noted that the petitioner did not have a financial staff and implied that the beneficiary would be involved in maintaining the petitioner's financial records similar to performing the tasks of a bookkeeper. The director concluded that the petitioner had not established that the position required the services of an individual with a baccalaureate degree rather than the services of an experienced individual whose educational training was less than that of a baccalaureate degree.

On appeal, counsel for the petitioner asserts that the petitioner has a significant amount of capital and references the petitioner's payment of its employees and taxes on the wages it pays its employees, the petitioner's 2003 Internal Revenue Service (IRS) Form 1120, U.S. Corporation Federal Income Tax, as well as the petitioner's checking account statements from September 2004 through January 18, 2005. Counsel references the Department of Labor's *Occupational Outlook Handbook's (Handbook)* report on financial analysts and contends that the *Handbook* acknowledges that a financial analyst's functions include investing

and managing assets. Counsel asserts that financial analysts analyze company data in order to improve the economic operation of businesses and that the petitioner's job description of the proffered position makes clear that the beneficiary will engage in tasks to improve the economic performance of the company. Counsel also takes issue with the director's analysis of the petitioner's type of business and notes that the *Handbook* does not restrict the occupation of financial analyst to only certain types of companies. Counsel asserts that the director should focus on the current financial status of the petitioner and whether it requires an individual to provide advice on investment decisions. Counsel references the petitioner's desire to expand and the beneficiary's recommendation that the petitioner open a branch office in Downey, California. Counsel contends that the focus should be on the petitioner's financial status, not its type of industry, and the role the beneficiary will play in determining the petitioner's investments. Counsel concludes that the petitioner has established the proffered position is equivalent to that of a financial analyst, thus the petition should be approved.

Counsel submits documentary evidence showing that the petitioner has increased the total amount of wages paid to its employees over several quarters, the petitioner's checking account statements, and a lease agreement for a business office in Downey, California, in order to substantiate that the petitioner is growing and has significant funds. The petitioner also submits three additional job announcements for: (1) a financial analyst for a health care facility that requires either a bachelor's degree or a professional certification requiring formal education beyond a two-year college; (2) a senior financial analyst for the Walt Disney Studios listing a bachelor's degree in accounting or finance as an educational requirement and a preference for a certified public accountant; and (3) a financial analyst for a real estate investment business that does not include its educational requirements, if any.

Counsel's assertions are not persuasive. Upon review, the duties of the position are generally described. The petitioner's general reference to the oversight of the preparation of financial reports, assisting in investment activities and implementing cash management strategies do not inform CIS of the beneficiary's actual daily duties. Even when the petitioner adds in response to the director's RFE that the position will include identifying investment opportunities and strategies, the petitioner does not sufficiently elaborate on the actual duties involved in such a generalized task. The AAO acknowledges counsel's implicit assertions that the beneficiary will be providing analysis and direction to management on investment decisions. However, in this matter, the petitioner is a health care services provider that desires to expand its business, and does not appear to be looking to invest in other companies. The description when reviewed with the nature of the petitioner's business, a factor that must be considered, does not reflect that the occupation is that of a financial analyst. Turning to the 2006-2007 edition of the *Handbook*, the *Handbook* provides the following:

Financial analysts and personal financial advisors provide analysis and guidance to businesses and individuals to help them with their investment decisions. Both types of specialists gather financial information, analyze it, and make recommendations to their clients *Financial analysts* assess the economic performance of companies and industries for firms and institutions with money to invest

Financial analysts, also called *securities analysts* and *investment analysts*, work for banks, insurance companies, mutual and pension funds, securities firms, and other businesses, helping these companies or their clients make investment decisions. Financial analysts read

company financial statements and analyze commodity prices, sales, costs, expenses, and tax rates in order to determine a company's value and to project its future earnings. They often meet with company officials to gain a better insight into the firm's prospects and to determine its managerial effectiveness. Usually, financial analysts study an entire industry, assessing current trends in business practices, products, and industry competition. They must keep abreast of new regulations or policies that may affect the industry, as well as monitor the economy to determine its effect on earnings.

Financial analysts use spreadsheet and statistical software packages to analyze financial data, spot trends, and develop forecasts. On the basis of their results, they write reports and make presentations, usually making recommendations to buy or sell a particular investment or security. Senior analysts may even be the ones who decide to buy or sell if they are responsible for managing the company's or client's assets. Other analysts use the data they find to measure the financial risks associated with making a particular investment decision.

The above description shows that a financial manager focuses on analysis and guidance to businesses and individuals to help them with their investment decisions and in analyzing financial data, spotting trends, and developing forecasts in order to make recommendations to buy or sell a particular investment or security. The duties of a financial analyst pertain more to outward investments in other companies or securities, rather than the inward focus of increasing the profitability of a particular company.

The petitioner's initial description of the proffered position indicates that the individual in the position will oversee the preparation of financial reports, assist in investment activities, implement cash management strategies, study data in the area of marketing, will plan, design and conduct research regarding the economic trends and market demand for the petitioner's services, and will recommend ways to improve and develop the existing financial operations and status. The petitioner also noted that the beneficiary would compile data regarding employment productivity, wage administration, work schedules to maximize the company's productivity in terms of its operations and employees. Further, the petitioner indicated that the beneficiary will maintain the client database, perform internal audits and prepare reports for management and would make recommendations on future strategy. These broadly-stated tasks suggest that the beneficiary's duties may contain elements similar to that of an operations research analyst. The general description also includes duties that suggest the beneficiary will provide some market research to establish the demand for the petitioner's services in new areas. The record does not contain a description that contains specific tasks comprising the duties of a financial analyst.

The petitioner's description of the duties of the proffered position in response to the director's RFE further confuses the record. The petitioner continues to provide a general description of duties including researching market strategies, monitoring trends in the home health care field, analyzing billing contracts, structures, accounts payable and receivable; however, when allocating the beneficiary's time to these broadly-stated tasks the petitioner fails to include them. The petitioner also mentions that the employee in the proffered position must be familiar with GAAP and will be recommending co-relational procedures for maximum benefits. The AAO is again left to speculate on the specific tasks that comprise the duties of the proffered position and the time the beneficiary will allegedly spend on the tasks generally described.

The AAO acknowledges that some of the duties of the vaguely described position may relate to the duties of an operations research analyst,¹ a market researcher,² or even a budget analyst.³ However, the description when reviewed as a whole requires the AAO to speculate on the actual tasks the beneficiary will perform. Utilizing the phraseology the *Handbook* employs in describing various occupations gives only a general idea of the proffered position. Such a generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. The AAO cannot find specific information in the record that demonstrates the actual duties of the proffered position require the theoretical and practical application of a body of highly specialized knowledge and the 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 AAO will not accept a broad overview of an occupation as definitive of a particular occupation's daily duties. The petitioner must provide some evidence of the daily tasks the petitioner requires from the proffered position. To recite generalities, rather than specifics substantiated by the requirements of the particular petitioner, leads to the absurd result of petitioners indiscriminately labeling and summarizing positions in an effort to obtain specialty occupation classification. Each petitioner must detail its expectations of the proffered position and must provide evidence of what the duties of the proffered position entail on a daily basis. Such descriptions must correspond to the needs of the petitioner and be substantiated by documentary evidence. To allow otherwise, essentially requires acceptance of any petitioner's broadly stated description, rather than a detailed, comprehensive description demonstrating what the petitioner expects from the beneficiary and what the proffered position actually requires.

The AAO acknowledges that the petitioner is seeking to expand its home health care agency to other regions in California. However, the petitioner has not provided documentary evidence of the tasks involved in making these decisions. Nor has the petitioner included documentary evidence of the proffered position's involvement in tasks associated with the petitioner's expansion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*,

¹ For example, the *Handbook* reports: "[o]perations research analysts help determine better ways to coordinate [the effective use of money, materials, equipment, and people] by applying analytical methods from mathematics, science, and engineering. Analysts often find multiple possible solutions for meeting the particular goals of a project. These potential solutions are then presented to managers, who choose the course of action that they perceive to be best for the organization;" and "operations research entails following a standard set of procedures and conducting analysis to help managers improve performance."

² For example, the *Handbook* reports that the duties of a market research analyst include gathering data and "[a]fter compiling and evaluating the data, market research analysts make recommendations to their client or employer on the basis of their findings. They provide a company's management with information needed to make decisions on the promotion, distribution, design, and pricing of products or services. The information also may be used to determine the advisability of adding new lines of merchandise, opening new branches, or otherwise diversifying the company's operations."

³ For example, the *Handbook* reports: "[b]udget analysts can be found in private industry, nonprofit organizations, and the public sector. In private sector firms, a budget analyst examines budgets and seeks new ways to improve efficiency and increase profits"

14 I&N Dec. 190 (Reg. Comm. 1972)). Counsel's focus on appeal on the petitioner's capital and its desire to open new branch offices, and implied assertions that the petitioner's financial status and desire to expand the business requires the services of a financial analyst, is misguided. Again, the petitioner has provided general statements that could encompass the duties of various occupations and the description provided does not limit the duties of the proffered position to opening a branch office. As referenced above, the record in this matter is insufficient to enable the AAO to conclude that the proffered position requires the theoretical and practical application of a body of highly specialized knowledge and the 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.

In this matter, the petitioner has provided a generic rather than detailed job description; it cannot, therefore, establish that the position meets any of the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Specifically, the AAO finds that the petitioner has not established that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position as required by 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). Without providing a description of the specific duties included in the proffered position that are directly related to the petitioner's business the AAO is left with general information about occupations such as a market researcher, an operations researcher and a budget analyst. The record does not contain language or documentary evidence connecting the nonspecific duties of those occupations to the petitioner's business. Without such information, the AAO is unable to determine the tasks to be performed by the beneficiary on a day-to-day basis and, therefore, whether the proffered position's duties are of sufficient complexity to require the minimum of a baccalaureate degree or its equivalent in a directly related academic specialty. As the record in the instant matter offers no meaningful description of the proffered position's responsibilities, the petitioner has not established that the duties of the position actually incorporate the duties of any of these various occupations. Accordingly, the petitioner has failed to establish the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

To establish the proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner must prove that a specific degree requirement is common to its industry in parallel positions among similar organizations or, alternately, that the proffered position is so complex or unique that it can be performed only by an individual with a degree. A review of the evidence of record finds it insufficient to establish the proposed duties as a position that is identifiable with an industry-wide educational standard, or distinguishable, by its unique nature or complexity, from similar but non-degree-requiring positions. The AAO has reviewed the several job announcements provided and notes that the petitioner has not documented that the businesses publishing the job announcements are similar to the petitioner in size, number of employees, level of revenue; in fact, the advertisements from major insurance companies, a laboratory, a hospital, a real estate investment company, and an entertainment studio are businesses quite different from that of the petitioner. The most similar business, a health care facility, required either a bachelor's degree in an unspecified discipline or a professional certification requiring formal education beyond a two-year college; such general requirements do not establish that the position advertised is a specialty occupation. Moreover, without a meaningful job description, the petitioner may not establish the proffered position's duties as parallel to any degreed positions within similar organizations in its industry or distinguish the position as more complex or unique than similar, but non-degreed, employment, as required by alternate prongs of the second criterion.

The record also does not demonstrate that the petitioner has a history of recruiting and hiring degreed candidates for the proffered position. To determine whether the petitioner has fulfilled the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(3), the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In this matter, the petitioner indicates that it has not employed anyone in the proffered position prior to offering the position to the beneficiary. The AAO acknowledges the petitioner's statement that it employs highly educated and experienced individuals in their respective fields, but cannot find evidence substantiating the petitioner's statement. Moreover, desiring to employ an individual with a bachelor's degree is insufficient to establish a position as a specialty occupation. If CIS were limited solely to reviewing a petitioner's self-imposed requirements, than any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. The petitioner has not provided evidence to establish the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(3).

The AAO now turns to the fourth criterion and whether the petitioner has established that the duties of the proffered position are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in a specific discipline. Again, the record in this matter does not include sufficient information regarding the duties of the proffered position and how those duties relate to the petitioner's business to demonstrate that the tasks associated with the proffered position require the application of specialized or complex knowledge associated with the attainment of a baccalaureate or higher degree. The AAO cautions that restating portions of descriptions from several different occupations listed in the *Handbook* will not suffice to establish that the position requires the performance of an amalgam of duties, making the proffered position complex and specialized. Again, the petitioner must establish that the actual daily duties of the proffered position encompass the various elements described and substantiate the requirements with documentary information directly related to the petitioner's business. In this matter, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4).

The petitioner has not established the proffered position is a specialty occupation.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the duties of a specialty occupation. The petitioner submitted a copy of the beneficiary's foreign diploma indicating the beneficiary had received a bachelor's of business administration degree conferred by Silliman University in the Philippines. The record does not contain an evaluation of the foreign degree establishing that it is the equivalent of a U.S. degree, nor does the record contain evidence that the beneficiary has obtained a U.S. baccalaureate degree, nor does the record contain sufficient information regarding the beneficiary's past work experience. The record lacks evidence regarding the beneficiary's qualifications to perform the duties of a specialty occupation. The AAO observes, as well, that a degree in business administration alone is insufficient to qualify the beneficiary to perform the services of a specialty occupation, unless the academic courses pursued and knowledge gained is a realistic prerequisite to a particular occupation in the field. The beneficiary's coursework must indicate that he or she obtained knowledge of the particular occupation in which he or she will be employed. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968). In this matter, the petitioner has not established that the beneficiary is qualified to perform the duties of a specialty occupation pursuant to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C). For this additional reason, the petition will be denied.

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 director's decision will be affirmed.

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