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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

SL



FILE: WAC 08 145 50328 Office: CALIFORNIA SERVICE CENTER Date: **JAN 27 2010**

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, 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.

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner states that it engages in consumer products design, manufacturing, and distributing, that it was established in 1988, that it employs 10 persons, and that it has a gross annual income of \$3,800,000. It seeks to employ the beneficiary as a product designer from October 1, 2008 to August 31, 2011. 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 September 23, 2008, the director denied the petition, determining that the petitioner had failed to submit sufficient evidence demonstrating that a credible offer of employment existed for the beneficiary. The director noted that the petitioner had described some duties of the proffered position that corresponded to the Department of Labor's *Occupational Outlook Handbook's* (*Handbook*) discussion of Commercial and Industrial Designers. The director found, however, that the petitioner had not provided sufficient evidence regarding the nature of its business to provide a reliable evidentiary basis to determine that the petitioner's proffer is authentic.

On appeal, the petitioner asserts that the director's basis for denial was erroneous, and contends that the petitioner satisfied all evidentiary requirements.

The record includes: (1) the Form I-129 and supporting documentation filed with United States Citizenship and Immigration Services (USCIS) on April 14, 2008; (2) the director's request for 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 for the petitioner's brief and additional documentation submitted in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

Although the director could have better articulated the reasons for denying the petition, the AAO affirms the director's ultimate decision. The AAO observes that 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. Therefore, of greater importance to this proceeding, although only indirectly addressed by the director, is whether the petitioner has provided sufficient evidence to establish that the services to be performed by the beneficiary are those of a specialty occupation. The AAO will review the evidence of record to determine whether the petitioner has provided sufficient information regarding the nature of the proffered position in conjunction with the nature of the petitioner's business to establish that the proffered position is a specialty occupation.

When filing the Form I-129 petition, the petitioner noted in its March 31, 2008 letter appended to the petition that it was in need "of a highly motivated and creative Product Designer." The petitioner listed the primary responsibilities of the Product Designer position as:

- Research and analyze design trends and work closely with production and sales departments to design and produce products for wholesale distributors and specialty retail outlets;
- Prepare sketches and samples of ideas and blueprints to produce new and creative products as well as to improve existing products;
- Evaluate and draft reports/presentations to show feasibility of new design concepts, factoring the aesthetics, safety, functionality, costs, and consumer appeal and marketability; and
- Be abreast of new and emerging technologies in product materials, treatments, and processes.

The petitioner stated that to qualify as a product designer for the company, the candidate must possess a minimum of a Bachelor's Degree in Product Design or a related field.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on July 15, 2008. In the RFE, the director requested, among other things, a more detailed description of the work to be performed by the beneficiary, including specific job duties, the percentage of time spent on each duty, the level of responsibility and the minimum education, training, and experience necessary to do the job. The director asked that the petitioner explain why the work to be performed required the services of a person who has a college degree in the occupational field. The director also asked for further information regarding the petitioner's business, including tax returns, a company profile, and lease agreement.

In a response dated August 13, 2008, counsel for the petitioner re-stated the initially provided duties and elaborated on the duties as follows:

- Prepare sketches and samples of ideas and blueprints to produce new and creative products as well as to improve existing products – 55 percent of the time;
- Research and analyze design trends and work closely with production and sales departments to design and produce products for wholesale distributors and specialty retail outlets - 20 percent of the time;
- Evaluate and draft reports/presentations to show feasibility of new design concepts, factoring the aesthetics, safety, functionality, costs, and consumer appeal and marketability; Continuously analyze the product development process and procedures in an effort to streamline processing, communication flow, analysis and planning with other departments and outside vendors and agents – 10 percent of the time;
- Keep the Design Director informed of all details related to the product development process, which includes managing the development costs of products and making recommendations for better and more cost effective methods of development – 5 percent of the time;
- Coordinate and work with internal staff, outside designers and vendors on product development to ensure timely development schedule – 5 percent of the time;
- Keep abreast of new and emerging technologies in product materials, treatments, and processes and report to the Design Director regularly – 5 percent of the time.

Counsel noted that the beneficiary would not be micromanaged but would receive general direction and guidance regarding the product design ideas and product development process. Counsel noted further that the petitioner did not require any experience or training but did require a bachelor's degree in product design or a related field. Counsel asserted that the beneficiary's coursework in engineering drawing, representational drawing, design drawing, crafts material, furniture design, craft design, among other courses in obtaining his bachelor's degree, provided the necessary theoretical and practical foundation in qualifying as a professional product designer. Counsel also provided copies of the petitioner's catalog showing the petitioner's products.

Counsel further provided a position evaluation prepared by [REDACTED] [REDACTED] Robert H. Smith, School of Business, University of Maryland, dated July 2, 2008. [REDACTED] recited the original description of the duties of the proffered position and opined: "it becomes apparent that a minimum of a Bachelor's Degree in Product Design or a closely related field, or the equivalent, provides the student with the core competencies and skills needed for a Product Designer position with the responsibilities listed." [REDACTED] opined further: "the nature of these specific responsibilities and knowledge is so specialized and complex that knowledge required to perform these duties is usually associated with the attainment of a Bachelor's degree." [REDACTED] noted that courses such as product design and analysis, technical design, engineering technology, process control, product costing, design communication and other related courses prepare the student for the responsibilities of the position. [REDACTED] averred that the type of position described is a typical job placement position for students completing a bachelor's degree at his school. [REDACTED] concluded: "these duties are specialized and require the theoretical and practical application of a body of highly specialized knowledge" and are the duties of a "specialty occupation" as he understands the term.

As observed above, the director denied the petition on September 11, 2008.

On appeal, counsel for the petitioner submits the petitioner's October 9, 2008 letter in support of the appeal. The petitioner explains that "[d]esigning and developing custom product to satisfy a particular customer, market or demand is a very large part of [its] business." The petitioner indicates that more than 40 percent of the products it sells are designed and manufactured exclusively for a particular customer and that the "custom-product design process not only involves design, but a time investment of communication and collaboration with [its] customers." The petitioner notes that it creates concepts and drawings for each step of the design process and that this would be impossible to perform without a skilled designer at the helm. The petitioner includes examples of drawings from recent presentations. The petitioner further notes that it often creates new graphic styles and patterns that are applied to existing items in its product line and that a "product designer is elemental for conceptualizing and creating new styles and patterns, and also for communication with [its] manufacturers on an on-going basis so that the tone, color and placement of the pattern is proper, appealing and correct." The petitioner adds that a designer's duties at the company include working on the company's trade show presence, its booth, and fixture revisions for the six trade shows it does each year by conceptualizing and executing three-dimensional drawings. The petitioner acknowledged that the president of the company is the creative director and that she "continue[s] to art-direct and oversee all designs created by the company" but that the president needs a product designer who can execute creative concepts for new items, create rapid 3-D renderings of concepts,

components and packaging, as well as manage and maintain a timely project calendar for multiple items in various stages of development.

Counsel also submitted letters from two other companies in the wholesale gift industry that indicated their companies utilized the services of designers. The record further includes several Internet job advertisements for product designers from different companies that include generally stated duties and note the requirement of a bachelor's degree in a variety of disciplines including visual/graphic arts, graphic design or other art-related field, or design.

Counsel asserts that a specialty occupation exists for the beneficiary and that the proffered position satisfies the requirement for a specialty occupation.

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

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

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

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

Thus, 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), 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, U.S. Citizenship and Immigration Services (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.”

The petitioner has provided an overview of the duties of a product designer but has not provided the detail necessary to ascertain that the actual position comprises the duties of a specialty occupation. General statements and vague descriptions of an occupation do not establish that a specific proffered position is a specialty occupation. 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*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Upon review of the evidence in the record the AAO does not find the evidence of record persuasive in establishing the proffered position is a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations as one method to determine whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. The 2010-2011 edition of the *Handbook* discusses the occupations of commercial and industrial designers, occupations that are generally similar to the petitioner’s description of a product designer. The *Handbook* reports:

Commercial and industrial designers combine the fields of art, business, and engineering to design the products people use every day. In fact, these designers are responsible for the style, function, quality, and safety of almost every manufactured good. Usually designers specialize in one particular product category, such as automobiles and other transportation vehicles, appliances, technology goods, medical equipment, furniture, toys, tools and construction equipment, or housewares.

The first steps in developing a new design, or altering an existing one, are to determine the requirements of the client, the purpose of the product, and to the tastes of customers or users. When creating a new design, designers often begin by researching the product user or the context in which the product will be used. They ascertain desired product characteristics, such as size, shape, weight, color, materials used, cost, ease of use, fit, and safety. To gather this information, designers meet with clients, conduct market research, read design and consumer publications, attend trade shows, and visit potential users, suppliers and manufacturers.

Next, designers prepare conceptual sketches or diagrams—by hand or with the aid of a computer—to illustrate their vision of the product. After conducting research and consulting with a creative director or other members of the product development team, designers then create detailed sketches or renderings using computer-aided design (CAD) tools. Computer models make it easier to adjust designs and to experiment with a greater number of alternatives, speeding and improving the design process. Industrial designers who work for manufacturing firms also use computer-aided industrial design (CAID) tools to create designs and machine-readable

instructions that can direct automated production tools to build the designed product to exact specifications.

Designers present the designs and prototypes to their client or managers and incorporate any changes and suggestions. Designers often work with engineers, accountants, and cost estimators to determine if a product can be made safer, easier to assemble or use, or cheaper to manufacture. Before a product is completed and manufactured, designers may participate in usability and safety tests, watching consumers use prototypes and then making adjustments based on those observations.

Regarding the training and education of these occupations, the *Handbook* reports:

A bachelor's degree is required for most entry-level commercial and industrial design positions. Experience through internships and a good portfolio of work are also important for jobseekers to have.

Education and training. A bachelor's degree in industrial design, architecture, or engineering is required for most entry-level commercial and industrial design jobs. Coursework includes principles of design, sketching, computer-aided design, industrial materials and processes, manufacturing methods, and some classes in engineering, physical science, mathematics, psychology, and anthropology. Many programs also include internships at design or manufacturing firms.

The *Handbook's* report on the occupation of commercial and industrial designers does not establish that the proffered position is a specialty occupation. First, the AAO observes that the *Handbook* indicates only that a bachelor's degree is required and does not specify a specific discipline for entry into the occupation. Rather, the *Handbook* notes that a variety of degrees, such as industrial design, architecture, or engineering may be required to enter the field. It is the variety of fields dependent upon the nature of the specific position that precludes a determination that the occupation is a specialty occupation. Second, the petitioner in this matter has provided a broad description of the duties of the proffered position. The description borrows liberally from the phraseology employed in the *Handbook* regarding the occupation of a commercial or industrial designer. For example, the petitioner, through counsel, indicated that the beneficiary would spend the majority of his time preparing sketches and samples of ideas and blueprints to produce new and creative products and improve existing products. This paraphrases the *Handbook's* indication that "designers prepare conceptual sketches or diagrams" and "create detailed sketches or renderings." 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. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. In the instant matter, the petitioner has offered no description of the duties of its proffered position beyond the generalized outline it provided at the time of filing. It has not detailed the actual work to be performed for this position rather than describing the occupation. The AAO observes that the petitioner's description of the position does not even provide the general detail reported in the *Handbook*. For example, the petitioner has not indicated in detail whether the

beneficiary will be hand drawing his sketches or using computer aided design software. The AAO is unable to determine from the general description of the duties whether the position requires a bachelor's degree in graphic art, requires an associate's degree in design, requires a technical degree in drafting, a degree in business, or some other general degree. As the description provides only an overview of the expected duties of the beneficiary, the petitioner has not established 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).

The AAO has reviewed the opinion letter prepared by [REDACTED] Dr. [REDACTED] notes that he has reviewed the petitioner's general description of the duties of the proffered position. From this general description, [REDACTED] opines that courses such as product design and analysis, technical design, engineering technology, process control, product costing, design communication and other related courses prepare the student for the responsibilities of the position. The AAO does not disagree. It is the fact that the description of the duties of the proffered position does not provide a comprehensive understanding of the beneficiary's daily duties that precludes a determination that the proffered position is a specialty occupation. [REDACTED] does not indicate in his opinion letter that he has reviewed detailed company information about the petitioner, visited the petitioner's site, or interviewed the petitioner's principal. While some product designer positions may require a bachelor's degree in a specific discipline, [REDACTED] does not provide sufficient details about the complexity of the duties of this particular position in relation to the petitioner's product design, manufacturing, and distributing business to substantiate his conclusions. There is thus an inadequate factual foundation established to support his opinion. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The AAO notes that the petitioner adds on appeal that the beneficiary will work on the company's trade show presence, its booth, and fixture revisions for the six trade shows the petitioner does each year by conceptualizing and executing three-dimensional drawings. However, the petitioner does not provide further information or evidence of the theoretical and practical application of specialized knowledge at the university level that this duty would require. Again, the lack of information regarding this particular duty precludes the AAO from determining that the addition of this skill elevates the position to a specialty occupation.

The AAO now turns to a consideration of whether the petitioner may qualify the proffered position under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree. The AAO has reviewed the advertisements submitted and determines that the job announcements do not provide sufficient information to enable the AAO to conclude that the businesses advertising the positions are similar to the petitioner in size, number of employees, level of revenue or nature of business. 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. Similarly, the advertisements although including some similar duties, do not contain substantive evidence that the positions advertised are parallel to the proffered position. The listings provided either fail to offer meaningful descriptions of the positions advertised or rely on

duties unlike the duties listed by the petitioner. Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations. The petitioner has not provided sufficient evidence establishing that there is an industry-wide educational standard for parallel positions among similar organizations.

The AAO has also reviewed the letters submitted by organizations that the petitioner claims are similar to its consumer products design, manufacturing, and distributing firm. The letter-writers, while indicating that their organizations need and employ designers, do not state that they routinely employ only designers with bachelor or higher degrees obtained in a specific discipline. Thus, the letters do not assist in establishing that the proffered position is a specialty occupation.

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner has submitted insufficient documentation to distinguish the proffered position from similar but non-degreed employment. The AAO again notes that the petitioner's broadly-defined product design position does not offer a meaningful understanding of the beneficiary's actual duties; thus the AAO is unable to discern any particular duties or skills that would elevate the proffered position to one that is a specialty occupation. 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).

Turning to the third criterion, it appears that the petitioner's chief executive previously performed the duties of this position. However, the record does not include the academic credentials of the chief executive officer. As such, the AAO is unable to review the petitioner's past employment practices to determine that the petitioner normally requires a degree or its equivalent for the position. Moreover, the petitioner's desire to employ an individual with a bachelor's degree does not establish that the position is a specialty occupation. The critical element is not the title of the position or 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. To interpret the regulations any other way would lead to absurd results. If USCIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate degrees or higher degrees. Accordingly, the AAO finds that proffered position cannot be established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(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 field of study and, therefore, establish the proffered position as a specialty occupation under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not provided a comprehensive description of duties of the position that demonstrates that the position is one that requires a bachelor's degree or its equivalent in a specific discipline. The duties described are general and fail to include sufficient information to determine that such a position requires specialized and complex knowledge usually associated with

the attainment of a baccalaureate degree in a specific discipline. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

The petition will be denied and the appeal dismissed for the above stated reason. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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