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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



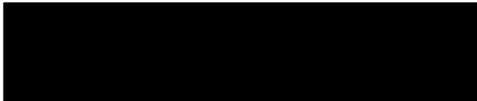
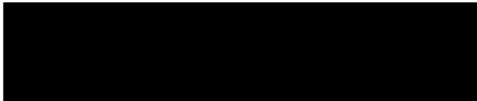
U.S. Citizenship
and Immigration
Services

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FILE:  Office: VERMONT SERVICE CENTER Date: JUL 01 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the Vermont 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 claims to be an information technology service provider with 14 employees. It seeks to employ the beneficiary as a systems analyst pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition concluding that the petitioner failed to establish that the beneficiary is qualified to perform services in a specialty occupation.

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

Before discussing the director's basis for the denial, the AAO will first examine whether the proffered position qualifies as a specialty occupation, as the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. Beyond the decision of the director, the AAO finds that the petitioner's proffered position does not qualify as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

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

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

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

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular

position is so complex or unique that it can be performed only by an individual with a degree;

- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The petitioner indicates in the Form I-129 that it is seeking the beneficiary's services as a systems analyst. In a March 31, 2007 letter, counsel for the petitioner claimed that the beneficiary's duties would be as follows:

- Review and develop current and future requirements with respect to business process and ERP solutions. Develop detailed business specifications, requirements, and business solution justifications. Prepare and manage detailed execution plans for design, development, and implementation of ERP solutions. Document anticipated measure for maintenance of ERP solutions.
- Analyze, design, develop, and integrate client server and web related eCommerce applications specifications including Internet-, intranet-, extranet- and internal business applications including automation of back end systems using knowledge of eCommerce principles involving business models, Internet marketing, online transactions, ethics and security, and Business Rules; [sic] etc.;

- Research web technologies and analyze business requirements and ensure that underlying application technology meets both short-term and long-term business needs and that system designs can adapt to emerging business and technology demands;
- Work with the assigned development team to write and maintain software life-cycle documentation such as user guides, systems administration manuals, maintenance manuals, and other related materials;
- Perform and provide end-user support, systems and business analysis, documenting business processes and systems requirements, systems configuration and systems testing.

Counsel states that all duties will be performed under supervision from the Team Leader and:

To perform the above mentioned duties, a strong background in courses taught in Computer Science, Engineering, Business Management, Finance, or related area is required because the System Analyst must understand the user systems in order to analyze the problem before a solution can be designed and implemented. For this professional position of Systems Analyst, Company requires, at the minimum, a Bachelor's degree with a concentration in Computer Science/Engineering/Business Administration/Finance/related field/ and proficiency in ERP software such as SAP or Oracle, with prior experience as an ERP professional.

Counsel does not provide any documentation prepared by the petitioner regarding the proffered position or the minimum requirements, other than an offer letter, which does not include a position description. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported 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).

The education evaluation and supporting documentation provided by counsel indicate that the beneficiary's foreign education is equivalent to a Bachelor of Business Administration Degree from an accredited institution of higher education in the United States.

The director's RFE noted that the beneficiary's education does not appear to qualify him for an occupation in computers. The director therefore requested additional documentation, detailing how the degree relates to the proffered position, to demonstrate how the beneficiary's degree in business administration qualifies him for the proffered position as a Systems Analyst. Alternatively, the director provided the opportunity for the petitioner to submit a new evaluation demonstrating that the beneficiary has the equivalent of a U.S. bachelor's degree in a computer-related occupation.

In response to the RFE, counsel for the petitioner provided an Expert Opinion from [REDACTED] University of Phoenix Jersey City Campus in New Jersey. This letter states that:

[C]ompanies seeking to employ a Systems Analyst require prospective candidates to possess at least a Bachelor's degree in the area of Business Administration, or a related field, from an accredited institution of higher learning. The skills, knowledge, and analytical thinking acquired through the acquisition of a Bachelor's degree or its equivalent, with a concentration in Business Administration, or a related field, is considered necessary by people in the industry seeking to hire a Systems Analyst in the field of Business Administration, and thus the degree is considered an industry standard requirement for the position.

* * *

Furthermore, the position of Systems Analyst requires the theoretical and practical application of an advanced highly specialized body of knowledge in the field of Business Administration, which requires the attainment of at least a Bachelor's degree or its equivalent, as the minimum requirement for entry into the occupation. The skills required for the position are developed in the junior and senior years of an undergraduate program in Business Administration or a related field.

The director denied the petition on October 15, 2008.

On appeal, counsel resubmits the letter from [REDACTED] stating that it does not appear that the director reviewed [REDACTED] opinion. Counsel argues, "[T]he Opinion Letter from [REDACTED] [sic] states that the position of System Analyst is clearly a specialty occupation and requires the services of someone with the minimum of a Bachelor's Degree in Business Administration or related field."

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty 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 in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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)).

Upon review, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which assigns specialty-occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. The *Handbook's* section (2010-11 online edition) on Computer Systems Analysts states as follows:

Nearly all organizations rely on computer and information technology (IT) to conduct business and operate efficiently. Computer systems analysts use IT tools to help enterprises of all sizes achieve their goals. They may design and develop new computer systems by choosing and configuring hardware and software, or they may devise ways to apply existing systems' resources to additional tasks.

Most systems analysts work with specific types of computer systems—for example, business, accounting, and financial systems or scientific and engineering systems—that vary with the kind of organization. Analysts who specialize in helping an organization select the proper system hardware and software are often called system architects or system designers. Analysts who specialize in developing and fine-tuning systems often have the more general title of systems analysts.

To begin an assignment, systems analysts consult with an organization's managers and users to define the goals of the system and then design a system to meet those goals. They specify the inputs that the system will access, decide how the inputs will be processed, and format the output to meet users' needs. Analysts use techniques such as structured analysis, data modeling, information engineering, mathematical model building, sampling, and a variety of accounting principles to ensure their plans are efficient and complete. They also may prepare cost-benefit and return-on-investment analyses to help management decide whether implementing the proposed technology would be financially feasible.

When a system is approved, systems analysts oversee the implementation of the required hardware and software components. They coordinate tests and observe the initial use of the system to ensure that it performs as planned. They prepare specifications, flow charts, and process diagrams for computer programmers to follow; then they work with programmers to “debug,” or eliminate errors, from the system. Systems analysts who do more in-depth testing may be called software quality assurance analysts. In addition to running tests, these workers diagnose problems, recommend solutions, and determine whether program requirements have been met. After the system has been implemented, tested, and debugged, computer systems analysts may train its users and write instruction manuals. . . .

* * *

[W]hen hiring computer systems analysts, employers usually prefer applicants who have at least a bachelor's degree. For more technically complex jobs, people with graduate degrees are preferred. For jobs in a technical or scientific environment, employers often seek applicants who have at least a bachelor's degree in a technical field, such as computer science, information science, applied mathematics, engineering, or the physical sciences. For jobs in a business environment, employers often seek applicants with at

least a bachelor's degree in a business-related field such as management information systems (MIS). Increasingly, employers are seeking individuals who have a master's degree in business administration (MBA) with a concentration in information systems.

Despite the preference for technical degrees, however, people who have degrees in other areas may find employment as systems analysts if they also have technical skills. Courses in computer science or related subjects combined with practical experience can qualify people for some jobs in the occupation. . . .

As evident above, the information in the *Handbook* does not indicate that computer systems analyst positions normally require at least a bachelor's degree or its equivalent in a specific specialty for entry into this occupational category. Rather, the occupation accommodates a wide spectrum of educational credentials. In addition, while the *Handbook* indicates that particular positions may prefer at least a bachelor's degree level of education in a specific specialty, it does not state that this is a normal minimum requirement for such positions, and the evidence of record on the particular position here proffered does not even demonstrate requirements for the theoretical and practical application of such a level of highly specialized computer-related knowledge.

The record's descriptions of the petitioner's duties, which are provided by counsel, rather than the petitioner, and appear to be routine, do not elevate the proffered position above that of a computer systems analyst for which no particular educational requirements are demonstrated. The AAO rejects as unsubstantiated counsel's declaration that the proffered position requires an individual with a bachelor's degree in Computer Science, Engineering, Business Management, Finance, or a related area. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

As the evidence of record does not indicate that this petition's particular position is one that normally requires at least a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both (a) parallel to the proffered position and (b) located in organizations that are similar to the petitioner.

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

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty.

Regarding the expert opinion letter submitted by counsel in response to the RFE and on appeal, [REDACTED] does not list the reference materials on which he relies as a basis for his conclusion. It appears that [REDACTED] did not base his opinion on any objective evidence, but instead restates the proffered position description as provided by counsel. 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).

Moreover, [REDACTED] finds that the proffered position requires the attainment of a bachelor's degree or its equivalent in business administration or a related field. Even if established by the evidence of record, which it is not, the requirement of a bachelor's degree in business administration is inadequate to establish that a position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

Therefore, the AAO finds that the letter from [REDACTED] does not establish that the proffered position is a specialty occupation.

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." The evidence of record does not develop relative complexity or uniqueness as an aspect of the position. As discussed previously, the job description provided by counsel is insufficient to establish that the proffered position is a specialty occupation.

Next, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). The record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty. The petitioner did not provide any information about its other computer systems analysts.

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The evidence of record fails to establish specialization and complexity beyond that of a computer systems analyst, and as reflected in this decision's discussion of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), the

Handbook does not indicate that the attainment of at least a bachelor's degree in a specific specialty is usually associated with computer systems analysts in general.

For the reasons discussed above, the AAO finds that the petitioner has not established that the proffered position qualifies as a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Even if the petitioner could demonstrate that the proffered position is a specialty occupation, the AAO affirms the director's finding that the petitioner did not submit sufficient documentation to show that the beneficiary qualifies to perform services in any specialty occupation requiring a degree in a computer related field under 8 C.F.R. § 214.2(h)(4)(iii)(C).

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

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

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

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

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

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The beneficiary's foreign education has only been found to be equivalent to a U.S. bachelor's degree in business administration. As such, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), in order for the beneficiary to qualify for a specialty occupation requiring a degree in a computer related field, the record must demonstrate that he has education, specialized training, and/or progressively responsible experience equivalent to a U.S.

baccalaureate or higher degree in a computer related field, as well as recognition of his expertise through progressively responsible positions directly related to this specialty.

As discussed above, the director issued an RFE, which indicated that if the petitioner could not demonstrate that the proffered position is a specialty occupation that requires at least a bachelor's degree in business administration, the evaluation previously submitted would be insufficient. The petitioner and counsel did not establish the proffered position as a specialty occupation requiring a bachelor's degree in business administration and failed to submit any evaluation for the beneficiary demonstrating that he has the equivalent of a U.S. bachelor's degree in a computer-related field. Therefore, the petitioner and counsel did not submit an evaluation meeting the standard of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Nor did counsel submit other documentation to establish the beneficiary is qualified to perform the duties of a computer-related specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(2) to (D)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), USCIS may determine that the beneficiary has the equivalent of a degree in a computer related field if he has a combination of education, specialized training, and/or work experience in areas related to this specialty. The letter from the beneficiary's former employer does not contain enough detail to determine how many years of experience the beneficiary has, whether he was employed in a computer-related occupation and whether this experience was gained while working with peers, supervisors, and subordinates who have a degree or its equivalent in a computer-related field. Finally, the record lacks the required showing of the beneficiary's expertise in a computer-related field. The evidence does not establish that the beneficiary is qualified to perform a specialty occupation requiring at least a bachelor's degree in a computer-related field.

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

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

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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