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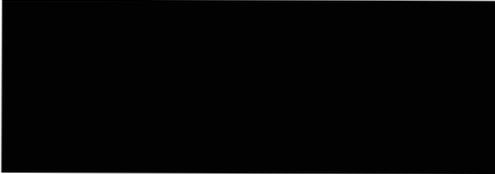
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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

82



FILE: WAC 09 185 51473 Office: CALIFORNIA SERVICE CENTER Date: APR 01 2011

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)

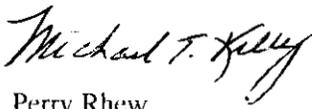
ON BEHALF OF PETITIONER:
[Redacted]

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 \$630. 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,

Per 
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director 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 visa petition the petitioner stated that it is a nonprofit cultural promoting organization. To continue to employ the beneficiary in what it designates as a cultural program director position, the petitioner endeavors to extend his classification 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).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and attached exhibits in support of the appeal.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would be employing the beneficiary in a specialty occupation position.

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.

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 a particular position 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 occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its

equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

With the visa petition, counsel submitted a copy of the beneficiary's résumé, which states that the beneficiary has a bachelor's degree in history from Nanjing University in Nanjing, China; and a master's degree in East Asian Studies from the University of Arizona. It also states, "Ph.D. course completed, the University of Arizona, May 2006."

Counsel provided no corroborating evidence pertinent to the beneficiary's claimed bachelor's degree or his claimed doctorate. As to the beneficiary's master's degree, counsel provided what purports to be a diploma issued by the University of Arizona. That document states that the beneficiary received a master's degree on August 13, 1998. It does not state the beneficiary's major course of study.

Counsel also submitted a letter, dated June 11, 2009, from the petitioner's president. That letter states:

[The duties of the proffered position] include, but are not limited to, plan, develop, direct, implement and coordinate cultural programs, design and supervise programs that promote Chinese culture and language education in the Tucson community; teach Chinese calligraphy and brush painting, and other core subjects as needed.

The petitioner's president noted that the beneficiary had served in the proffered position during the previous three years, and stated:

In his work, he has provided teaching and instruction on the Chinese language and Chinese calligraphy and brush painting. He has served as the curator of several Chinese art exhibitions and is responsible for the design and display of all art work by students and cultural artifacts at the Center, and serves as advisor to other cultural and art displays. [The beneficiary] is the official interpreter and provides translation of the Chinese and English languages as a service for our members and the community on request. He is the editor of our newsletter and oversees our collection of books in the library. [The beneficiary] has assisted in many cultural events and festival celebrations at the [the petitioner] by providing logo design, decorations of the venue and stage design. Both at [the petitioner's] events and at Tucson community events, [the beneficiary] provides art demonstrations as part of his education and outreach effort. [The beneficiary], in his capacity as key personnel of the [the petitioner], has provided invaluable service in public relations particularly during visits by foreign representatives.

As to the educational requirement of the proffered position, the petitioner's president stated that the position requires, "at least a Bachelor of Arts degree in Asian Studies or major in Chinese arts, language, or history." The petitioner's president did not explain why the duties of the proffered position, or any one of them, requires such a degree.

The AAO notes that, as the petitioner has failed to establish as Asian studies, Chinese art, Chinese language, and Chinese history as delineating a single specific specialty, the educational requirement of the proffered position, as described by the petitioner's president, is not a minimum of a bachelor's degree or the equivalent in a specific specialty. The petitioner's president's has, in effect, conceded that the proffered position is not a specialty occupation position. This is sufficient reason, in itself, to dismiss the appeal and to deny the visa petition. The AAO will, however, continue its analysis of the specialty occupation issue.

Because the evidence submitted did not demonstrate that the proffered position qualifies as a position in a specialty occupation, the service center, on June 24, 2009, issued an RFE in this matter. The service center requested additional evidence that the proffered position qualifies as a specialty occupation position.

In response, counsel submitted (1) an undated letter from the petitioner's president; (2) a letter from the principal of the Tucson Chinese School and a copy of its winter 2009 schedule of classes; (3) a copy of a periodical issued by the petitioner; and (4) an announcement of a vacant position for Cultural Coordinator for the Tribal Educational/Cultural Program of the Gila River Indian Program.

The petitioner's president's undated letter reiterated her previous description of the duties of the proffered position. She further stated that during the previous three years the beneficiary had taught Chinese language, Chinese history, and Chinese painting in classes offered by a local community college and held at the petitioner's location. It stated that teaching those classes requires a bachelor's degree, but did not state the specific specialty the requisite degree must be in.

The petitioner's president further stated that the beneficiary has taught Chinese painting, Chinese brush watercoloring, and Chinese calligraphy in classes offered by the Tucson Chinese School, and also taught at the petitioner's location. The petitioner's president stated, "A bachelor's degree in Chinese history is a must to have the ability to do the above work as well." The petitioner's president did not explain why a degree in Chinese history is necessary to teach painting, watercolors, or calligraphy.

The petitioner's president asserted that the beneficiary had assisted in annual events and donated art to fund raising events, but did not assert that such work requires a minimum of a bachelor's degree or the equivalent in a specific specialty.

The letter from the principal of the Tucson Chinese School is dated June 29, 2009 and states that the beneficiary had taught Chinese Painting for Children, Chinese Painting for Adults, and Chinese Calligraphy, and was then scheduled to teach Chinese Literature and History beginning in August 2009. The Tucson Chinese School's winter 2009 schedule of classes lists the beneficiary as teaching its Chinese Brush Painting and Chinese Calligraphy classes.

The periodical submitted was issued by the petitioner during the summer of 2009, and lists the beneficiary as one of its editors.

The duties described in the vacancy announcement for a Cultural Coordinator for the Gila River Indian Community's Tribal Education/Cultural Program indicate that the position offered administers the entire program, including controlling the budget, rather than only teaching classes. That announcement states that the position requires a bachelor's degree in education, art education, or native American studies.

In her own letter, dated July 8, 2009, counsel compared the proffered position to various position descriptions taken from the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* and elsewhere. Counsel asserted, citing the *Handbook* and other sources, that those various other positions require a minimum of a bachelor's degree or the equivalent in a specific specialty. Counsel did not explain why the specific duties of the proffered position, or any one of them, would require a minimum of a bachelor's degree or the equivalent in a specific specialty.

The director denied the visa petition on July 24, 2009. In that decision the director found, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation.

On appeal, counsel observed that the beneficiary had been working in the proffered position for three years pursuant to a previously approved H-1B visa. Counsel cited a memorandum issued on April 23, 2004 by USCIS Associate Director of Operations for the proposition that, in such an instance, the previous decision, that the proffered position qualifies as a specialty occupation position, should generally be accorded deference. That memorandum adds, however, that USCIS is not bound to defer to a previous decision where eligibility has not been demonstrated, where a material error was made in the previous petition, where a substantial change in circumstances has taken place, or where there is new material evidence.

In her letters, the petitioner's president attributed various duties to the proffered position. The best documented duties are the beneficiary's duties teaching classes in art and calligraphy. Other duties, such as translation, research, organizing art shows, designing art displays, etc., appear to be mere adjunct duties.

The AAO recognizes the *Handbook*, cited by both counsel and the director, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹ The *Handbook* describes the duties of Teachers—Self-Enrichment Education positions as follows:

Self-enrichment teachers provide instruction on a wide variety of subjects that students take for fun or self-improvement. Some teach classes that provide students with useful life skills, such as cooking, personal finance, and time management.

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2010 – 2011 edition available online.

Others provide group instruction intended solely for recreation, such as photography, pottery, and painting. Many others provide one-on-one instruction in a variety of subjects, including singing, or playing a musical instrument. Some teachers conduct courses on academic subjects, such as literature, foreign languages, and history, in a nonacademic setting.

The duties of the proffered position accord very closely with the duties of self-enrichment teachers as described in the *Handbook*. The AAO finds that the proffered position is a position for a self-enrichment teacher as described in the *Handbook*. The *Handbook* describes the educational requirements of self-enrichment teacher positions as follows:

In general, there are few educational or training requirements for a job as a self-enrichment teacher beyond being an expert in the subject taught. To demonstrate expertise, however, self enrichment teachers may be required to have formal training in disciplines such as art or music, where specific teacher training programs are available. Prospective dance teachers, for example, may complete programs that prepare them to teach many types of dance—from ballroom to ballet. Other employers may require a portfolio of a teacher's work. For example, to secure a job teaching a photography course, an applicant often needs to show examples of previous work. Some self-enrichment teachers are trained educators or other professionals who teach enrichment classes in their spare time. In many self-enrichment fields, however, instructors are simply experienced in the field, and want to share that experience with others.

The *Handbook* indicates that self-enrichment teacher positions do not normally require a minimum of a bachelor's degree or the equivalent in a specific specialty. Further, based upon its review of the entire record of proceeding the AAO finds that neither the duties ascribed to the proffered position nor any other evidence of record establishes that the proffered position is one that would require the practical and theoretical application of at least a bachelor's degree level of highly specialized knowledge in a specific specialty, which is an overarching requirement for classification as a specialty occupation under section 214(i)(1) of the Act.

Thus, the petitioner has not demonstrated that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO will consider the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

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 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As was previously noted, the *Handbook* does not support the assertion that positions similar to the proffered position require a minimum of a bachelor’s degree or the equivalent in a specific specialty. The record contains no evidence that a professional association of self-enrichment teachers has made a bachelor’s degree in a specific field a prerequisite to membership. Counsel submitted no letters or affidavits from firms or individuals in the petitioner’s industry to support the assertion that they exclusively employ and recruit individuals with degrees.

The only evidence in the record pertinent to other organizations’ recruitment and hiring practices is a single vacancy announcement placed by the Gila River Indian Community’s Tribal Education/Cultural Program for a Cultural Coordinator. As was noted above, that announcement states that the position requires a bachelor’s degree in education, art education, or native American studies.

The AAO observes that education, art education, and native American studies do not delineate a single specific specialty. The position offered in that vacancy announcement does not require a minimum of a bachelor’s degree or the equivalent in a specific specialty. Under any circumstances, it would not be probative evidence for the proposition that any other position requires a bachelor’s degree in a specific specialty and therefore qualifies as a specialty occupation. Further, as was noted above, the duties of that position appear to include administering an entire educational/cultural program, rather than solely, or principally, teaching classes. That position does not appear to be a position parallel to the proffered position. Thus, even if that position required a bachelor’s degree in a specific specialty, it would not be probative evidence that the proffered position does as well.

Yet further, even if the vacancy announcement provided were for a parallel position in a similar organization and required a minimum of a bachelor’s degree or the equivalent in a specific specialty, an announcement for one single vacancy is manifestly insufficient to demonstrate an industry-wide requirement.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor’s degree in a specific specialty or the equivalent is common to the petitioner’s industry in parallel positions among similar organizations, and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). That prong is satisfied if the petitioner is able to demonstrate that the proffered position is so complex or unique that it can be performed only by an individual with a degree.

The proffered position, as was noted above, is chiefly a position teaching art and calligraphy classes. Nothing in the record of proceeding establishes that any aspect of these classes is so complex or unique as to require a teacher with a bachelor's degree or the equivalent in any specific specialty. Further, as was noted above, the petitioner's president indicated, in her June 11, 2009 letter, that the proffered position requires a bachelor's degree in any of the following subjects: Asian Studies, Chinese Arts, Chinese Language, or Chinese History. The petitioner has not established that this array of subjects delineates a specific educational specialty. That a degree in any of those diverse subjects would satisfy the educational requirement for the proffered position does not demonstrate that the proffered position is unique or sufficiently complex that it requires a minimum of a bachelor's degree or the equivalent *in a specific specialty*. The petitioner has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As the record contains no evidence that, prior to employing the beneficiary, the petitioner ever previously hired anyone to fill the proffered position, there is no evidence relevant to whether the position proffered qualifies as a position in a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO will consider whether the petitioner has satisfied the alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner is able to demonstrate that 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 in a specific specialty.

Again, the duties of the proffered position are chiefly those of a teacher of art and calligraphy. The June 29, 2009 letter from the Tucson Chinese School principal also indicated that it anticipated that the beneficiary would, in the future, teach a Chinese Literature and History class. The petitioner's president asserted, in her June 11, 2009 letter, that the beneficiary had taught Chinese language and implied that he might teach or might have taught Chinese history. The record contains no evidence, however, the assertion that the beneficiary has taught Chinese language or that he would teach those subjects in the future.

The record does not demonstrate that any of those specific duties, those the beneficiary has performed, those that the principal of the Tucson Chinese School stated that he would perform, or those that the petitioner's president implied that he might have performed or might perform in the future, is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO finds, first, that such specialization and complexity is not self-evident in the extent to which the duties are described in the record of proceeding, and, second, that the petitioner has not provided documentary evidence establishing the duties as sufficiently specialized and complex to satisfy this criterion.

Further, the petitioner's president indicated that the duties of the proffered position, rather than being so specialized and complex that they are usually associated with the attainment of a bachelor's degree in a specific specialty, may be performed by a person with a degree in any one of a number of

fields that have not been demonstrated to constitute a specific specialty. The petitioner has not, therefore, demonstrated that the proffered position qualifies as a position in a specialty occupation pursuant to the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)

The AAO finds that the director was correct in her determination that the record before her failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds that the argument submitted on appeal has not remedied that failure.

As for counsel's assertion that deference should be accorded to the approval of a previous visa petition the instant petitioner filed for the instant beneficiary, the prior approvals do not preclude USCIS from denying an extension of the original visa petition based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990).

Accordingly, the appeal will be dismissed and the petition denied based on the petitioner's failure to demonstrate that it would employ the beneficiary in a specialty occupation position.

The record suggests an additional issue that was not addressed in the decision of denial. Had the petitioner demonstrated that the proffered position qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty, it would then have been obliged, in order for the petition to be approvable, to demonstrate that the beneficiary has a minimum of a bachelor's degree or the equivalent *in that specific specialty*.

In his résumé, the beneficiary stated that he has a bachelor's degree in history from Nanjing University in China and a master's degree in East Asian Studies from the University of Arizona. That résumé also states, "Ph.D. course completed, the University of Arizona, May 2006."

The record contains no evidence to corroborate the assertion that Nanjing University awarded the beneficiary a bachelor's degree in history. The record contains no evidence pertinent to any doctorate the beneficiary may have been awarded or may anticipate being awarded in the future.

The only evidence pertinent to the beneficiary's master's degree from the University of Arizona is a diploma. That diploma shows that, on August 13, 1998, the University of Arizona awarded the beneficiary a Master of Arts degree. It does not, however, indicate the subject, whether East Asian Studies or some other course of study, that the beneficiary's master's degree is in.

Pursuant to the instant visa category, a beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. As discussed in this decision, the proffered position has not been shown to require a baccalaureate or higher degree, or its equivalent, in a specific specialty and has not, therefore, been shown to qualify as a position in a specialty occupation. Because the finding that the petitioner failed to demonstrate that the proffered position qualifies as a specialty occupation position is dispositive, the AAO need not further address

the beneficiary's qualifications. However, if the petitioner had demonstrated that the proffered position required a minimum of a bachelor's degree or the equivalent in a specific specialty, it would be further obliged to show that the beneficiary has a minimum of a bachelor's degree or the equivalent *in that specific specialty*. This the petitioner has failed to do.

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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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. The appeal will be dismissed and the petition denied.

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