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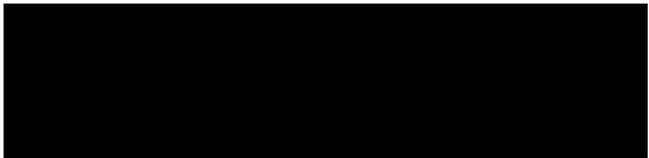
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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W. MS 2090  
Washington, DC 20529-2090



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

D2



Date: Office: CALIFORNIA SERVICE CENTER FILE: WAC 09 185 51510

IN RE: APR 29 2011  
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 \$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,

*Michael T. Kelly*  
for 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 an information technology firm with one employee. To employ the beneficiary in a position designated as a SAP developer, the petitioner endeavors to classify him 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, on each of three independent grounds, namely, that the petitioner failed to establish (1) that the beneficiary would be employed in a specialty occupation, (2) that the petitioner has standing to submit the visa petition as either a U.S. employer or a U.S. agent, and (3) that the Labor Condition Application (LCA) submitted to support the visa petition is valid for employment in all of the locations where the petitioner would employ the beneficiary. In a brief filed on appeal, counsel asserted that the director's bases for the denial were erroneous, and contended that the petitioner satisfied all evidentiary requirements.

The AAO bases its decision upon its review of the entire record of proceedings, 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 counsel's brief and exhibits submitted in support of the appeal.

Based upon its review of the entire record of proceeding as supplemented by the Form I-290B, the accompanying brief, and the documents filed in support of the appeal, the AAO finds that the director was correct in denying the petition on each of the three grounds that he cited as the bases for his decision. Therefore, the appeal will be dismissed, and the petition will be denied.

While fully affirming the director's separate determinations that denial of the petition is also required by the petitioner's failures to establish that the petitioner has standing to submit the visa petition as either a U.S. employer or a U.S. agent, and that the LCA submitted to support the visa petition is valid for employment in all of the locations where the petitioner would employ the beneficiary, the AAO will address in detail only the specialty occupation basis of the director's decision, as establishing specialty occupation status (along with the requisite beneficiary qualifications) is paramount to the successful adjudication of any H-1B petition, regardless of the locations where the proffered position would be performed or the entity that would employ the beneficiary.

In deciding whether a proffered position qualifies as a specialty occupation, the AAO analyzes the evidence of record according to the statutory and regulatory framework below.

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 (5<sup>th</sup> 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 following description of the duties of the proffered position was appended to the visa petition:

- Interpretation of functional requirements and development of ABAP programs according to specifications. Programs to be developed include, but are not limited to, the following: (RICEF) reports, interfaces, conversions, enhancements, and forms.
- Propose and present solutions to address requirements.
- Develop functional prototypes to explore different design concepts.
- Work closely with Business Analysts and Subject Matter Expert to ensure accuracy and completeness of Functional Specifications.
- Data analysis and data gaps identification between Legacy System and SAP for data conversion activities.
- Design, develop and test RICEF objects.
- Assist in system, integration, performance and user acceptance testing.
- Development of technical and support documentation. Provide Business Process Procedure, Knowledge Transfer documents for developed objects.
- Provide assistance to the Business Analyst with the analysis of ABAP change requests.
- Provide training and/or assistance to Junior ABAP programmer colleagues.<sup>1</sup>

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<sup>1</sup> Given that the petitioner only claims one current employee, the meaning of the reference to junior ABAP programmer colleagues is unclear. The petitioner did not specify whether it is asserting that

- Proven experience working on all phases of a project from design through implementation.
- Must understand full life cycle development from plan design, coding, testing, implementation and support
- Thorough understanding of ABAP Workbench tools such as ABAP Dictionary, ABAP Editor, Area Menus, SAP Script, Function Builder, Transactions, and Business Object Builder.
- Experience also includes the following SAP ABAP technical areas: Reporting (conventional and interactive OALV)), Userexits, BDC and Call-Transaction, Interfaces including ALE, IDOC, and BAPI, Module Pool (on-line dialog), SAPScript and Smart-Forms, Object Oriented ABAP, and Business Add-ins

In a letter dated June 18, 2009, also submitted with the visa petition, the petitioner's president stated that the proffered position requires a bachelor's degree in "Computer Application, Computer Science, Information Systems Administration, Engineering, or equivalent thereof." The AAO notes, initially, that computer applications, computer science, and information systems administration are sufficiently closely-related that they might be regarded as a single specialty. With the addition of engineering to that list, however, the list clearly does not describe a specific specialty.

The petitioner also submitted evidence that the beneficiary has a bachelor's degree in mechanical engineering from the University of Nueva Caceres in Naga City, Philippines. The record contains what appears to be the cover letter for an evaluation of the beneficiary's credentials. That cover letter states that the beneficiary's Philippine mechanical engineering degree is equivalent to a bachelor's degree earned in the United States, presumably in mechanical engineering. Whatever facts or reasoning may have supported that conclusion are not provided.

The record contains seven vacancy announcements seeking SAP developer candidates. All of those announcements indicate that the position requires a college degree. Four, however, do not indicate any subject or range of subjects the degree should be in. One calls for a bachelor's degree in "computer science, software engineering or relevant business discipline." One calls for a bachelor's degree in computer science or information technology. The last announcement calls for a degree in computer science, information systems, or a related field.

Those vacancy announcements, considered together, are not probative of the claim that SAP developer positions normally require a bachelor's degree, or the equivalent, in mechanical engineering or any other specific specialty closely related to the claimed specialty occupation. Two call for a degree in computer-related specialties. One includes a business degree as a possible qualification for the job. The remaining four give no indication that the position requires a degree in any specific specialty, nor even in any range of specialties.

Because the evidence submitted did not demonstrate the approvability of the visa petition, the service center issued a request for evidence on August 26, 2009. The service center requested, *inter alia*, an evaluation of the beneficiary's foreign educational credentials. The service center also

requested a copy of the petitioner's employment contract with the beneficiary and contracts with end users of the beneficiary's services showing the actual work that the beneficiary would perform.

In response, counsel submitted an itinerary that states that the beneficiary would work exclusively at the petitioner's own offices in Irvine, California, and a letter dated October 3, 2009, in which counsel stated that the beneficiary had attempted to find his credential evaluation but had been able to find only the cover page, which counsel submitted. The AAO notes that, in addition to not containing any facts or reasoning to support its conclusion, that cover page is not signed. Further, although it is on the letterhead of World Evaluation Services, Inc., it does not contain that company's address and does not indicate what individual or individuals prepared the report that presumably accompanied that cover page. Counsel stated, however, that the beneficiary had requested a copy of the complete report and would provide it when he received it. That credential evaluation was never subsequently provided.

Counsel stated that the petitioner is under contract with [REDACTED] to perform work for Ariat International, Inc. (Ariat), and that the petitioner is also under contract with Workcentives Incorporated (Workcentives) to perform work for Sempra Energy (Sempra). Counsel further stated:

Unfortunately, for confidentiality reasons, Petitioner was not able to get from Gravity the contract that it signed with Ariat or the contract between Workcentives and Sempra.

Counsel similarly stated that the end-users of the beneficiary's services, presumably either Ariat or Sempra, would not assign the beneficiary's duties, but that, rather, the petitioner, pursuant to its contracts to provide computer services, would assign them. Counsel stated that the contracts between the petitioner and both Gravity and Workcentives demonstrate that the petitioner would provide them with services, rather than personnel. Further, counsel stated that the beneficiary would be working on an in-house project, developing SAP software. Counsel stated, "The [petitioner] has successfully designed, developed, and deployed several applications for well-respected clients."

Counsel provided a contract between the petitioner and Workcentives. That contract and an accompanying work order, both dated July 30, 2009, indicate that the petitioner would provide [REDACTED] to Workcentives to perform SAP implementation for Sempra from "August 10, 2010 to December 10, 2009." That end date precedes the commencement date. As such, the actual span of time that contract and work order were intended to encompass is unknown to the AAO. The AAO notes, however, that the work order states that the work will be performed at Workcentives's San Diego location.

That contract does not accurately indicate the period of time to which it pertains, does not indicate that the beneficiary would perform services under it, and does not demonstrate that services to be performed under it would constitute specialty occupation work.

Further, the LCA in this case is approved for employment in Irvine, California, whereas the Workcentives contract indicates that performance would take place in San Diego. Irvine, California is in the Santa Ana, Anaheim, Irvine Metropolitan Statistical Area (MSA) of Orange County, California. San Diego is in the San Diego, Carlsbad, San Marcos MSA of San Diego County. The LCA does not appear to be valid for the proposed employment for Workcentives.

The contract between the petitioner and Workcentives does not show that the beneficiary would be assigned to any work under it, that the work under it qualifies as specialty occupation employment, or that the work would take place in a location for which the LCA is valid. Counsel did not then provide any indication of a business relationship between the petitioner and Gravity.

Further still, the instant visa petition was submitted on June 19, 2009, prior to the ratification of the Workcentives contract. USCIS regulations require a petitioner to establish that it was eligible for the benefit it is seeking at the time the petition was filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved because the petitioner or beneficiary becomes eligible subsequent to filing the visa petition. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Because it was ratified after the visa petition was submitted, the contract between the petitioner and Workcentives is of no relevance to work the petitioner had to which it could have assigned the beneficiary when it submitted the visa petition, and of no apparent relevance to the instant visa petition.

Further, counsel provided no evidence to support his assertion that a contractual relationship exists between Gravity and Ariat, or between Workcentives and Sempra, or his implication that that the end-users of the beneficiary's services would be Ariat and/or Sempra. Counsel also provided no evidence that the petitioner has in-house projects for the beneficiary to work on.

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 organizational chart provided indicates that the petitioner employs its president/supervisor and its human resources director. It indicates that the petitioner uses independent contractors for its accountant and attorney, that it intends to hire both the beneficiary, to work as its SAP developer, and to hire a programmer analyst. That chart indicates that both the petitioner and the programmer analyst would be supervised by the petitioner's president.

Given that the petitioner employs only a president/supervisor and a human resources manager, and anticipates employing the beneficiary and a programmer analyst, the assertion that the petitioner's "team" has successfully designed, developed, and deployed several applications is questionable, as is the assertion that the petitioner will fulfill its obligations under two contracts with companies at other locations while the beneficiary remains in the petitioner's home office.

The director denied the petition on May 1, 2009. As was noted above, the director found that the evidence submitted was insufficient to demonstrate that the beneficiary would be employed in a

specialty occupation, that the petitioner has standing to submit the visa petition as either a U.S. employer or a U.S. agent, or that the LCA submitted to support the visa petition is valid for employment in all of the locations where the petitioner would employ the beneficiary.

On appeal, counsel submitted a brief that is substantially similar to his response to the request for evidence. He also submitted additional copies of evidence previously submitted. The AAO will not comment further on that evidence and argument.

In the decision of denial, in finding that the petitioner had not shown that it would employ the beneficiary in a specialty occupation, the director dwelt on whether the beneficiary would work at the petitioner's location or at remote locations, and on who would assign him duties and supervise his performance of them.

The AAO notes that the various documents submitted demonstrate that the petitioner has, during a period of time not adequately identified, had a project to employ [REDACTED] but not the beneficiary. The record does not demonstrate that even that work, to which the evidence does not demonstrate that the beneficiary would be assigned, qualifies as employment in a specialty occupation.

The proffered position, as stated on the visa petition and the LCA, is an SAP developer position. Counsel provided no evidence that SAP developer positions categorically require a minimum of a bachelor's degree or the equivalent in a specific specialty. Further, in her June 18, 2009 letter, the petitioner's president stated that the position requires a minimum of a bachelor's degree in "Computer Applications, Computer Science, Information Systems Administration, Engineering, or equivalent thereof." As was noted above, the inclusion of engineering, a subject only peripherally related to computers, in a list of subjects directly related to computers, makes clear that the array of subjects does not delineate a specific specialty. The assertion that the duties of the proffered position can be performed by a person with a degree in any one of those disciplines, demonstrates that the proffered position is not, in fact, a specialty occupation.

The AAO notes that the field of engineering is a very broad category that covers numerous and various disciplines, some of which are only related through the basic principles of science and mathematics, *e.g.*, petroleum engineering and aerospace engineering. 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 correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or engineering, 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).

Again, 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. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) 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).

As a finding applicable to, and to be incorporated by reference and adopted in this decision's analysis of all of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO observes that, although the proposed duties as described in this record of proceeding are replete with unexplained computer and IT acronyms and terms of art, they do no more than indicate that the proffered position is technical and requires a compatible level of technical knowledge. The AAO finds that if a particular level of formal education, or the equivalent, in a particular specialty would be required to perform the position, it is certainly not self-evident in the record's description of the proffered position and the duties comprising it. . In this regard, the AAO notes in particular, that there is no evidence of record that performance of the proposed duties requires the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge, rather than a lesser level of knowledge such as could be obtained by training at technical schools, vocational schools, or vendor courses, or by education at community colleges.

For the reasons discussed above, 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).

The AAO turns now to the alternative requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first of those alternative prongs requires the petitioner to demonstrate 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 U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (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)).

The *Handbook* contains no section pertinent to SAP developers or that mentions SAP developers, *per se*. Such a position would apparently be considered within the section pertinent to Computer Software Engineers and Computer Programmers, or perhaps within the section pertinent to Computer Systems Analysts. The petitioner has not asserted, however, that the proffered position is a software engineer position, a computer programmer positions, or a computer systems analyst position and, in any event, according to the *Handbook*, none of those positions categorically requires a minimum of a bachelor's degree or the equivalent in a specific specialty.

The record does not indicate that any professional association of SAP developers has made a minimum of a bachelor's degree or the equivalent in a specific specialty an entry requirement. The record contains no letters or affidavits from firms or individuals in the petitioner's industry. The vacancy announcements in the record are the only evidence provided pertinent to the recruitment and hiring practices of other companies.

For reasons explained in detail above, those vacancy announcements are not probative of the claim that SAP developer positions normally require a bachelor's degree, or the equivalent, in mechanical engineering or any other specific specialty closely related to the claimed specialty occupation. The petitioner has not demonstrated that a bachelor's degree, in a specific specialty, is common to the petitioner's industry for positions in similar organizations in positions that are parallel to the proffered position, and has not, therefore, satisfied the requirements of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to demonstrate that, notwithstanding that it is not typical within the industry, the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty because it is sufficiently complex or unique that it could not be performed without such a degree. Nothing in the record suggests that the proffered position is more complex or unique than other SAP developer positions, which the record of proceeding does not demonstrate as requiring at least a bachelor's degree, or the equivalent, in a specific specialty. Further, the generalized and generic descriptions of the duties comprising the proffered position, though replete with technical IT and computer-related terms, do not convey whatever relative complexity or uniqueness may reside in the proffered position.

Next, the AAO finds that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) by demonstrating that it normally requires a degree for the proffered position. On the visa petition, the petitioner stated that it then had only one employee, who is apparently either the petitioner's president and owner herself, or the petitioner's human resources director. In any event, however, the record contains no evidence pertinent to the educational credentials of any other person the petitioner may now or may have previously employed as an SAP developer.

As the record of proceeding does not establish any previous recruiting and hiring history with regard to the proffered position, the petitioner has not demonstrated that it normally requires a degree for the proffered position and that the position qualifies as a position in a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

For the proffered position to qualify as a position in a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) the petitioner must demonstrate that the nature of the specific duties of the proffered position is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a minimum of a bachelor's degree or the equivalent in a specific specialty.

A description of the ostensible duties of the position was appended to the visa petition, and the petitioner's president reiterated, in her June 18, 2009 letter, that those are the duties of the proffered position. The record contains no indication, however, that those duties are so specialized and complex that they require a minimum of a bachelor's degree or the equivalent in a specific specialty. The petitioner has not, therefore, demonstrated 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. 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).

Because the petitioner failed to show that the proffered position qualifies as a position in a specialty occupation pursuant to any of the alternative criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A), the petition may not be approved.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation, the director's decision shall not be disturbed. As this adverse determination of the specialty occupation issue is dispositive of the appeal, the AAO will not further address its affirmation of the director's denial of the petition for the petitioner's failure to establish that the petitioner has standing to submit the visa petition as either a U.S. employer or a U.S. agent, and its failure to establish that the LCA submitted to support the visa petition is valid for employment in all of the locations where the petitioner would employ the beneficiary.

The record suggests additional issues that were not addressed in the decision of denial. If the vacancy announcements submitted were somehow considered to demonstrate that the proffered position requires a degree in a subject closely related to computers, the visa petition still could not be approved, as the beneficiary has a degree in a subject that is only peripherally related to computers. However, as the AAO finds that the petitioner has not demonstrated that the proffered position qualifies as a specialty occupation, it does not rely on the beneficiary's qualifications issue, even in part.

Yet further, however, the service center asked the petitioner to provide an evaluation of the beneficiary's education. The request for evidence did not discuss whether the petitioner already had such a document. The petitioner was accorded 42 days either to provide a copy of such an evaluation already in its possession or to commission such a report and to provide it. Counsel's response that the beneficiary was unable to locate a previous evaluation was insufficient.<sup>2</sup> Such an evaluation would be relevant to the material issue of whether the beneficiary is qualified to perform in the proffered position. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The appeal will be dismissed and the petition denied on this additional basis.

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<sup>2</sup> Counsel stated that a new report had been commissioned and would be provided when ready, but did not provide it. The AAO observes, however, that, not only was that evaluation never provided, but, pursuant to *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988), the AAO would typically not consider such a late submission in response to a request for evidence.

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

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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, and the petition is denied.