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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

PUBLIC COPY

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[redacted]

Date: Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: DEC 0 1 2011
Petitioner:
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,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner describes itself as an information technology development firm. It seeks to employ the beneficiary as a Computer Programmer 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 petition and the evidence submitted is credible and sufficient to demonstrate that the petitioner will comply with the terms and conditions of employment.

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

In the petition submitted on September 21, 2009, the petitioner stated it has 42 employees and a gross annual income of $4.6 million. The petitioner indicated that it wished to employ the beneficiary as a Computer Programmer from October 1, 2009 to September 30, 2012 at the offices of Target Corporation in Minneapolis, MN.

The proffered duties can be broken down as follows:

- Responsible for software development cycle (30% of the beneficiary's time);
- Requirement gathering, development of new reports, writing functional specifications and program specification, technical design, coding reviews and drafting detailed unit test plans (30% of the beneficiary's time);
- Running various reports and monitoring process scheduler (10% of the beneficiary's time);
- Create, plan, design, and execute test scenarios, test cases, test script procedures and debugging (15% of the beneficiary's time); and
- Work with the Quality Control team during integration testing and resolve any issues uncovered during the debugging process (15% of the beneficiary's time).

The petitioner states that the proffered position requires at least a Bachelor's degree or the equivalent in Computer Science or a related field.

The petitioner submitted the beneficiary's foreign education documents indicating that she has a foreign degree in business administration. No documentation was submitted that the beneficiary has a U.S. equivalent of any degree, let alone a degree in computer science or a related field.

On September 29, 2009, the director issued an RFE stating, in part, that the evidence of record is not sufficient to demonstrate that a specialty occupation exists. The petitioner was advised to submit documentation clarifying the petitioner's relationship with the beneficiary, which could include an itinerary of definite employment, listing the names of the employers and locations where the beneficiary would provide services, as well as copies of its contractual agreements

with its clients. The RFE specifically noted that "[t]he evidence must show specialty occupation work for the beneficiary with the actual end-client company where the work will ultimately be performed. . . ." The director also requested evidence regarding the petitioner's business and specifically asked for the 2006 and 2007 state quarterly wage reports for another H-1B worker, [redacted]

In response to the RFE, counsel for the petitioner states that the beneficiary will work in-house at the petitioner's offices, which directly contradicts the petitioner's statements that the beneficiary will work at the offices of Target Corporation in Minneapolis, MN. The petitioner also submits its offer letter to the beneficiary, which states that the petitioner is an information technology staffing and consulting firm and that the beneficiary is being offered the position of "Programmer Analyst," not computer programmer, which was the title provided in the Form I-129 and Labor Condition Application (LCA). The offer letter further states, "[y]our base salary for this position will be calculated based on your bill rate achieved at an 80-20 consultant to company model and the benefits package that you choose. The expected rate of pay for your position is at the rate of $65000 per year and overtime pay." Further, the offer letter states, "[y]ou will also receive [a] business development bonus based at a $1000.00 per consultant hired into the company and/or placed on a client project for a term of 3 months or longer."

The copy of the 2008 U.S. corporate Income Tax Return submitted by the petitioner indicates that it is in the business of providing computer consultants. The petitioner provided copies of contracts it has with its clients. However, none of these contracts are relevant to the specific project on which the beneficiary will allegedly work. The contract with Target was not provided, even though this is the client site where the petitioner claimed the beneficiary would work in the petition.

The petitioner further provided copies of its lease, its 2007 and 2008 quarterly wage and withholding reports, its employees' 2008 Forms W-2, and its Employee Earnings Records covering January 1, 2009 to September 30, 2009. The petitioner also provided a list of its H-1B workers.

The director denied the petition on November 23, 2009.

According to the evidence of record, [redacted] worked on the petitioner's payroll from June 6, 2005 to May 29, 2009. [redacted] Form W-2 indicated that [redacted] earned $58,826.83 in taxable wages. The petitioner's proffered salary for [redacted] is $70,000 per year. On appeal, counsel submits a letter from the petitioner's Controller, [redacted] states that [redacted] was paid more than the proffered salary of $70,000 and explains that [redacted] Form W-2 does not include [redacted] full salary because it does not take into account $7,332.22, which was deducted for medical insurance, or additional compensation that was paid to [redacted] in the amount of $15,152 for 2008. In support of [redacted] statements, the petitioner submitted a copy of a 2007 Employee Earnings Record for [redacted] This document indicates that [redacted] was paid a regular salary of $60,310.98 plus per diem funds totaling $12,063.00. These amounts added together are greater than $70,000.

Although the AAO finds the petitioner's evidence that [redacted] was paid the proffered wage to be reasonable in light of the corroborating evidence submitted, the AAO does not find that the that the petitioner established that the petition and the evidence submitted is credible and sufficient to demonstrate that the petitioner will comply with the terms and conditions of employment. This finding is based, *inter alia*, on the petitioner's offer letter to the beneficiary, dated October 1, 2009, which states that the petitioner is an information technology staffing and consulting firm. The offer letter further states, "[y]our base salary for this position will be calculated based on your bill rate achieved at an 80-20 consultant to company model and the benefits package that you choose. The expected rate of pay for your position is at the rate of $60,000 per year and overtime pay." Further, the offer letter states, "[y]ou will also receive [a] business development bonus based at a $1000.00 per consultant hired into the company and/or placed on a client project for a term of 3 months or longer."

The offer letter to the beneficiary indicates that $60,000 is only an expected but contingent annual wage based on a projected consulting billing rate, and not a guaranteed salary. Because the petitioner has not obligated itself to at least pay the beneficiary the proffered wage, the petitioner has failed to produce evidence that it will comply with the terms and conditions of employment.

More specifically, the petitioner indicated in the offer letter to the beneficiary that it would not provide the wage required by the attestations in the LCA and the Form I-129. The principal function of the LCA in the H-1B process is to secure the petitioner's attestation that it will abide by the terms of that document as signed by the petitioner. In the Form I-129 Supplement H, the petitioner expressly attests that it agrees to, and will abide by, the terms of the LCA for the beneficiary's authorized period of stay for H-1B employment.[1] The U.S. Department of Labor (DOL) regulation at 20 C.F.R. § 655.730(c)(2), which provides a general summation of each of these attestations, states, in pertinent part:

> *Undertaking of the Employer.* In submitting the LCA, and by affixing the signature of the employer or its authorized agent or representative on Form ETA 9035E or Form ETA 9035, the employer (or its authorized agent or representative on behalf of the employer) attests the statements in the LCA are true and promises to comply with the labor condition statements (attestations) specifically identified in Forms ETA 9035E and ETA 9035, as well as set forth in full in the Form ETA 9035CP. The labor condition statements (attestations) are described in detail in [20 C.F.R.] §§ 655.731 through 655.734, and the additional attestations for LCAs filed by certain H-1B-dependent employers and employers found to have willfully violated the H-1B program requirements are described in [20 C.F.R] §§ 655.736 through 655.739.

It is presumed that a petitioner is aware of the full import of its signing the LCA and the Form I-129 as well as of the DOL regulation at 20 C.F.R. 655.731 regarding the wage requirement undertaken by signing the LCA (entitled, "What is the first LCA requirement, regarding wages?"). That regulation prohibits involuntary, unauthorized deductions, which includes the

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[1] *See* section 1 of the Form I-129 Supplement H.

type of contingent-wage practice in which the petitioner would have engaged if the instant petition had been approved. *See generally id.* The appeal will therefore be dismissed and the petition denied due to the petitioner's failure to establish that it would more likely than not comply with the terms and conditions of employment as attested to in the Form I-129 and LCA.

Beyond the decision of the director, the AAO finds that the petition is not approvable in that the evidence is insufficient to establish that the proffered position is more likely than not a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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 [(1)] 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 [(2)] 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.

(Emphasis added.)

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 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 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.

In this matter, although the petitioner seeks the beneficiary's services as a Computer Programmer, the petitioner's offer letter states that the beneficiary will work as a Programmer Analyst. Further, the petitioner states that the beneficiary will work at the offices of Target Corporation in Minneapolis, MN, but has not provided copies of any contracts, Statements of Work (SOW), or other documentation regarding the duties, the project, and the work the beneficiary will actually perform for Target, even though this documentation was specifically requested in the RFE. 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).

To the extent that the proposed duties are described in the record of proceeding, it is not evident that their actual performance would require the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty.

In this regard, the AAO finds that, regardless of the job title applied to them, the duties are described in terms of generic and generalized functions – for example, responsible for software

development cycle, responsible for requirement gathering, and responsible for working with the Quality Control team - that convey neither the substantive nature of the work that the beneficiary would actually perform nor a need for a particular level of education, or educational equivalency, in a specific specialty in order to perform that work.

The AAO further notes that even if the petitioner could demonstrate that the beneficiary will work as a programmer analyst for the duration of the petition, the petitioner has failed to demonstrate that the claimed proffered position is a specialty occupation.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO first 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 DOL'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)).

The Programmer Analyst occupational category is encompassed in two sections of the *Handbook* (2010-11 online edition) – "Computer Software Engineers and Computer Programmers" and "Computer Systems Analysts."

The *Handbook* describes computer programmers as follows:

> [C]omputer programmers write programs. After computer software engineers and systems analysts design software programs, the programmer converts that design into a logical series of instructions that the computer can follow (A section on computer systems analysts appears elsewhere in the Handbook.). The programmer codes these instructions in any of a number of programming languages, depending on the need. The most common languages are C++ and Python.
>
> Computer programmers also update, repair, modify, and expand existing programs. Some, especially those working on large projects that involve many programmers, use computer-assisted software engineering (CASE) tools to automate much of the coding process. These tools enable a programmer to concentrate on writing the unique parts of a program. Programmers working on smaller projects often use "programmer environments," applications that increase productivity by combining compiling, code walk-through, code generation, test data generation, and debugging functions. Programmers also

> use libraries of basic code that can be modified or customized for a specific application. This approach yields more reliable and consistent programs and increases programmers' productivity by eliminating some routine steps.
>
> As software design has continued to advance, and some programming functions have become automated, programmers have begun to assume some of the responsibilities that were once performed only by software engineers. As a result, some computer programmers now assist software engineers in identifying user needs and designing certain parts of computer programs, as well as other functions. . . .
>
> * * *
>
> [M]any programmers require a bachelor's degree, but a 2-year degree or certificate may be adequate for some positions. Some computer programmers hold a college degree in computer science, mathematics, or information systems, whereas others have taken special courses in computer programming to supplement their degree in a field such as accounting, finance, or another area of business. . . .

See Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook*, 2010-11 Edition, "Computer Software Engineers and Computer Programmers" <http://www.bls.gov/oco/ocos303.htm> (accessed November 17, 2011).

The *Handbook*'s section on computer systems analysts reads, in pertinent part:

> In some organizations, programmer-analysts design and update the software that runs a computer. They also create custom applications tailored to their organization's tasks. Because they are responsible for both programming and systems analysis, these workers must be proficient in both areas. (A separate section on computer software engineers and computer programmers appears elsewhere in the Handbook.) As this dual proficiency becomes more common, analysts are increasingly working with databases, object-oriented programming languages, client–server applications, and multimedia and Internet technology.
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> * * *
>
> [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. . . .

See Handbook, 2010-11 Edition, "Computer Systems Analysts" <http://www.bls.gov/oco/ocos287.htm> (accessed November 17, 2011).

Therefore, the *Handbook's* information on educational requirements in the programmer analyst occupation indicates that a bachelor's or higher degree, or the equivalent, in a specific specialty is not a normal minimum entry requirement for this occupational category. Rather, the occupation accommodates a wide spectrum of educational credentials.

As evident above, the information in the *Handbook* does not indicate that programmer analyst positions normally require at least a bachelor's degree or its equivalent in a specific specialty for entry into the occupation in the United States. While the *Handbook* indicates that a bachelor's degree level of education in a specific specialty may be preferred for particular positions, the generically described position duties do not demonstrate a requirement for the theoretical and practical application of highly specialized computer-related knowledge.

As the *Handbook* indicates no specific degree requirement for employment as a programmer analyst, and as it is not self-evident that, as described in the record of proceeding, the proposed duties comprise a position for which the normal entry requirement would be at least a bachelor's degree, or its equivalent, in a specific specialty, the AAO concludes that the performance of the proffered position's duties does not require the beneficiary to hold a baccalaureate or higher degree in a specific specialty. Accordingly, the AAO finds that the petitioner has not satisfied the requirements of the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 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.

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.

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 refute the *Handbook's* information to the effect that a bachelor's degree in a specific specialty is not normally required. The record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than programmer analyst positions that can be performed by persons without a specialty degree or its equivalent.

No evidence was provided that the petitioner has a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).[2]

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's duties 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 here incorporates and augments its earlier comments regarding the petitioner's failure to describe the duties of the proffered position in other than non-specific, generalized, and generic terms. The AAO does not find that the evidence does not support that the proposed duties reflect a higher degree of knowledge than would normally be required of programmer analysts not equipped with at least a bachelor's degree, or its equivalent, in a specific specialty. The AAO, therefore, concludes that the proffered position has not been established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)*(4)*.

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient documentation to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are

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[2] While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d 384, 387 (5th Cir. 2000). In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications further, except to note that, in any event, the petitioner did not submit an education evaluation as required for a foreign degree or other sufficient documentation to show that the beneficiary qualifies to perform services in a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C). As such, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The appeal will be dismissed and the petition denied 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. The petition is denied.