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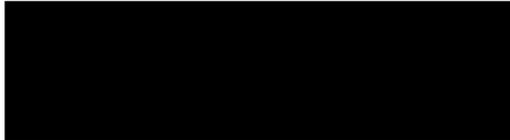
U. S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W. MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

*10/20/2011*

*D2*



Date: DEC 01 2011 Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:   
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$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 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 software development services company. To employ the beneficiary in what it designates as a programmer analyst position, the petitioner endeavors to classify her 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. In support of these contentions, counsel submitted a brief statement. Although counsel then stated that a brief in support of the appeal would be provided within 30 days, no other evidence, information, or argument was submitted.

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 counsel's statement on 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 (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 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 letter, dated March 30, 2009, from the petitioner's president. That letter contains the following description of the duties of the proffered position:

Analyze, design, modify and implement software/systems applications in a client/server environment using Siebel CRM on Windows operating systems; Specific projects may include requirement gathering and analysis for CRM implementation, systems analysis, Business Process mapping, finalization of key parameters, test plans and test cases, and post-implementation support; Will work alongside other programmer analysts in a team environment analyzing and designing user-friendly software/systems applications in accordance with project specifications; Will also work under the supervision of the project manager.

In explaining why the beneficiary's employment contract was not submitted, the petitioner's president also stated:

Please note, while it is not our practice to enter into formal written agreements with out employees, kindly consider this a summary of our agreement with [the beneficiary], to wit; pending proper authorization from [USCIC], [the beneficiary] will assume employment with [the petitioner] for the temporary period from October 1, 2009 to September 29, 2012.

Yet further, the petitioner's president stated:

We . . . require that our Programmer Analyst possess the minimum of a Bachelor's Degree or equivalent in one of a variety of industry-recognized areas including Engineering, Computer Science, CIS, Business Administration, Mathematics, Management, Electronics, Communications, Technology or a related field.

If the educational requirement of the proffered position may be satisfied by a degree in any one of those diverse areas, then it clearly does not require a minimum of a bachelor's degree or the equivalent *in a specific specialty* and does not, therefore, qualify as a position in a specialty occupation.

Further, if the educational requirement may be satisfied by a degree in engineering, without further specification, that alone is sufficient to demonstrate that it is not a position in a specialty occupation. This is because 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. A requirement that may be satisfied by a bachelor's degree in engineering,

without further specification, is not a requirement of a minimum of a bachelor's degree or the equivalent in a specific specialty.

Similarly, that the educational requirement of the proffered position may be satisfied by a degree in business administration, without further specification, demonstrates that the proffered position does not qualify as a specialty occupation. 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, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a particular, 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 an otherwise undifferentiated degree in engineering or business administration, may be a legitimate prerequisite for a particular position, requiring such a degree 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).

The petitioner's president's statement that the educational requirement of the proffered position may be satisfied by a degree in any of a wide range of subjects, including engineering or business administration, indicates that the proffered position does not require a minimum of a bachelor's degree or the equivalent *in a specific specialty*. That statement is therefore tantamount to an admission that the instant visa petition is not approvable. This is sufficient reason, in itself, to dismiss the appeal and deny the visa petition. However, the AAO will continue its analysis of the specialty occupation issue.

Counsel also provided evidence showing that Bangalore University in India awarded the beneficiary a bachelor's degree in business management, and that the Indiana University of Pennsylvania awarded her a master's degree in business administration. The record contains no evidence that the beneficiary has any other degrees.

Because the evidence did not demonstrate that the petitioner would employ the beneficiary in a specialty occupation position, the service center, on April 25, 2009, issued an RFE in this matter. The service center requested, *inter alia*, additional evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, counsel submitted an employment contract, a vacancy announcement, contracts and statements of work between the petitioner and clients, and a document headed, "Employment Itinerary for [the beneficiary]."

The employment contract submitted indicates that the beneficiary would work for the petitioner as a human resources recruiter, rather than as a programmer analyst. Further, that contract is dated

February 5, 2009 and purports to have been signed by the beneficiary and the petitioner's president on that date.

The AAO notes that, in his March 30, 2009 letter, the petitioner's president stated that the petitioner is not in the habit of executing written employment contracts with its employees, implying that no such written contract existed between the petitioner and the instant beneficiary. In response to the RFE, however, counsel submitted what purports to be just such a contract, executed by the petitioner's president the previous month.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The employment itinerary provided states that the beneficiary would work at the petitioner's offices except for short assignments to clients' locations. That document also includes a greatly expanded statement of the duties of the proffered position, as follows:

- Analyze, design, modify and implement software/systems applications in a client/server environment using Siebel CRM on Windows operating systems; Specific projects may include requirement gathering and analysis for CRM implementation, systems analysis, Business Process mapping, finalization of key parameters, test plans and test cases, and post-implementation support; Will work alongside other programmer analysts in a team environment analyzing and designing user-friendly software/systems applications in accordance with project specifications; Will also work under the supervision of the project manager.
- Provide technical support and analysis on infrastructure related projects and for the production environment.
- Develop recommendations or solutions for upgrades, improvements, and strategies to ensure client has a stable, available, and protected technical infrastructure.
- Research and consult with resources and industry experts to ensure the effectiveness and efficiencies of client's infrastructure.
- Monitor capacity plan, measure, and test new products and services being installed on the infrastructure.
- Assist in supporting new infrastructure products or modules of Siebel CRM. Develop and maintain infrastructure documentation such as design specifications, user manuals, technical manuals, and methodology documentation related to all environments.
- Coordinate any activities, tasks, or efforts that could impact our technical infrastructure.
- Siebel CRM Level 3 Technical Support. Provide needed support for Siebel CRM product for critical contact center customers Enterprise-wide. Also, be willing to be available 7x24.
- Implementing Siebel CRM for internal/external facing contact centers.

- Research web technologies and analyze business requirements and ensure that underlying application technology meets both short-term and long-term business needs and that system designs can adapt to emerging business and technology demands.
- Manage the development infrastructure, change control and application security utilizing knowledge or Information Resource Management.
- Test and document all code changes. This includes unit testing, system testing, performance testing and capacity testing.
- Communicate with project managers as to the progress of open items and work with other developers, suppliers, contractors or other infrastructure resources as needed using knowledge of information systems infrastructure, systems development stages, systems development life cycle, rapid application development, systems analysis, systems design, steps in preliminary construction, steps in final construction, data modeling, process modeling, object modeling, project planning and control, economic system and project justification, evaluation of systems alternatives, web and GUI design, systems view, environmental constraints, methodology selection, preliminary investigation, project analysis, design tips, etc.
- Work with the assigned development team to write and maintain software life-cycle documentation such as user guides, systems administration manuals, maintenance manuals, and other materials.
- Perform and provide end-user support, systems and business analysis, documenting business processes and systems requirements, systems configuration and systems testing. All of the above job duties will be performed under supervision from the Project Manager.

The vacancy announcement appears to have been placed on a job search website by the petitioner for a Siebel Developer. It states that the position requires a bachelor's degree in computer science, engineering or mathematics. As both the job title and the requirements of the position are different from those of the proffered position, the announcement appears to be for a different position. The contracts and statements of work show that the petitioner contracts with other companies to provide them development services, but has no apparent relevance to the proffered position.

Counsel also provided her own undated letter in response to the RFE. In it, she stated:

The proffered position requires the minimum of a Bachelor's Degree or Bachelor's Degree equivalent in Engineering, Computer Science, CIS, Business Administration, Mathematics, Management, Electronics, Communications, Technology or a related field.

As was explained above, this is tantamount to an admission that the proffered position does not qualify as a specialty occupation and the visa petition is not approvable.

The director denied the petition on July 15, 2009, finding, as was noted above, that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation.

On appeal, counsel abstractly asserted that the evidence provided demonstrates that the instant visa petition is approvable, and stated that a detailed brief would follow. As was indicated earlier in this decision, no such brief has been received by the AAO.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup> The *Handbook* discusses programmer analyst positions in the section entitled Computer Systems Analysts. The *Handbook* describes the duties of those positions as follows:

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

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

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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<sup>1</sup> 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.

After comparing the descriptions of the duties of the proffered position to the description of the duties of programmer analyst positions in the *Handbook*, the AAO finds that the position proffered in the instant case is, in fact, a programmer analyst position as described in the *Handbook*.

As to the education required for computer systems analyst positions, including programmer analyst positions, the *Handbook* states:

When 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.

That employers "usually prefer" applicants with bachelor's degrees does not indicate that a bachelor's degree is a minimum requirement. Further, that discussion indicates that, even for those positions requiring a bachelor's degree, degrees in various disparate areas are acceptable. The *Handbook* does not support the proposition that programmer analyst positions categorically require a minimum of a bachelor's degree or the equivalent in a specific specialty. Further, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of technical knowledge in the computer/IT field, but do not establish any particular level of formal education as minimally necessary to attain such knowledge.

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 observed above, the *Handbook* provides no support for the proposition that the petitioner's industry, or any other, requires computer systems analysts to possess a minimum of a bachelor's degree or the equivalent in a specific specialty. The record contains no evidence pertinent to a professional association of systems analysts or programmer analysts that requires a minimum of a bachelor's degree or the equivalent in a specific specialty as a condition of entry. The record contains no letters or affidavits from others in the petitioner's industry. In short, the record contains no evidence 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. The petitioner 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), which is satisfied if the petitioner demonstrates that, notwithstanding that other programmer analyst positions may not require a minimum of a bachelor's degree or the equivalent in a specific specialty, the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with such a degree.

The descriptions of the duties of the proffered position are the only evidence in this record of proceeding that might have differentiated it from other programmer analyst positions. Those descriptions, far from demonstrating that the proffered position is unusually complex or unique, are indistinguishable from the description of the generic duties of programmer analysts contained in the *Handbook*, which suggests that the proffered position is a typical programmer analyst position, which the *Handbook* indicated may not require a minimum of a bachelor's degree or the equivalent in a specific specialty.

The petitioner has not demonstrated that the particular position proffered is so complex or unique that it can be performed only by an individual with a degree; and 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).

The only evidence pertinent to the petitioner's history of recruiting is the vacancy announcement provided. As that announcement does not appear to pertain to the position proffered in the instant case, it sheds no light on the petitioner's previous history of recruiting and hiring for the proffered position. The record, therefore, contains no evidence of a previous history of recruiting and hiring to fill the proffered position, and the petitioner has not demonstrated that the proffered 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).

Finally, the AAO will consider the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner demonstrates 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.

Again, as was noted above, the duties of the proffered position appear to be materially identical to the duties the *Handbook* attributes to typical programmer analyst positions, which the *Handbook* indicates may not need a minimum of a bachelor's degree or the equivalent in a specific specialty. The petitioner has not demonstrated that anything about analyzing, designing, modifying and implementing software/systems applications, for instance, inherently requires the application of knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty.

The petitioner has not 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 criterion 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. Accordingly, the appeal will be dismissed and the petition denied on this basis.

The record suggests an additional issue that was not relied upon in the decision of denial. The AAO conducts appellate review on a *de novo* basis (*See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)), and it was in the exercise of this function that the AAO identified this additional issue.

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 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

An examination of the various descriptions of the duties of the proffered position suggests that those duties might be closely related to computer science, information technology or information systems, computer engineering, or, of course, computer systems analysis. The beneficiary, however, has a two degrees in business administration, a subject only peripherally related to computers.

The AAO observes that if the petitioner had demonstrated that the proffered position required a minimum of a bachelor's degree or the equivalent in a specific specialty, the petitioner would be obliged, in order for the visa petition to be approvable, to demonstrate, not only that the beneficiary has a bachelor's degree or the equivalent, but that the beneficiary has a minimum of a bachelor's

degree or the equivalent *in that specific specialty*. See *Matter of Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968).

Pursuant to the instant visa category, however, 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 reach the issue of the beneficiary's qualifications.

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.