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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: JUL 25 2011 Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

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 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.

The petitioner stated that it has 11 employees and a gross annual income of over \$1.5 million. The petitioner indicated that it wished to employ the beneficiary as a part-time database administrator from August 10, 2008 through August 9, 2011 at an hourly wage rate of \$21.88.

In the job description, the petitioner claimed that: 50% of the beneficiary's time would be spent analyzing the company's software and hardware requirements to design, develop, implement, and maintain database, application, and network systems; 20% of the beneficiary's time would be spent conducting testing on existing and/or developed programs or databases; 10% of the beneficiary's time would be spent preparing database users' procedural manuals and conducting training; 10% of the beneficiary's time would be spent designing, developing, and implementing computer security measures; and 10% of the beneficiary's time would be spent establishing standards, access levels, and database parameters.

The petitioner submitted a document entitled "Evaluation of Academics and Experience" that the petitioner obtained from an employee of a credential evaluation service and that opines upon the U.S. educational equivalency of the petitioner's work and experience. However, as the record of proceeding does not establish that the evaluator is "an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience," as required by the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), the AAO accords no weight to the evaluator's opinion that the beneficiary has attained the equivalence of a U.S. Bachelor of Science in Computer Information Systems.

The director denied the petition on July 24, 2009, citing the following observations by USCIS officers after conducting an onsite investigation at the petitioner's offices on June 26, 2009:

- The petitioner has six computers and one server.
- The computers and server are maintained by an outside contractor whenever a problem arises.
- The petitioner employed another H-1B worker who stopped working on January 1, 2009, however the petitioner never withdrew that worker's petition.
- Although the beneficiary began working for the petitioner on February 9, 2009, one of the petitioner's managers stated he did not know the beneficiary.
- The petitioner's CEO made a statement indicating that the beneficiary spends 40% of this time performing non-computer related work.
- The beneficiary could not answer basic questions about the petitioner's computers and database system.

Based on the information obtained through the onsite visit, the director found that the petitioner does not have a bona fide position of a database administrator available for the beneficiary.

On appeal, counsel takes issue with the findings resulting from USCIS's investigation of the

petitioner.¹ Counsel's arguments can be summarized as follows:

- The petitioner's small size should not be taken into consideration because small companies may still need a database administrator.
- The petitioner's outside contractor was hired only once during 2009 when the beneficiary had not yet been hired. The petitioner decided to no longer use this contractor because of the cost.
- The petitioner delayed requesting that the H-1B petition be withdrawn for its H-1B employee because it was waiting for final notice from the worker who left the job without informing the petitioner if she would return to work.
- The beneficiary is known by another name than the one in the proffered petition, which is why the manager did not know when the USCIS officer was referring to the beneficiary.
- The CEO inadvertently stated that the beneficiary spends 40% of his time order processing, when she meant data processing.
- The beneficiary has the knowledge to perform the duties of a database administrator as is evidence from his coursework and work experience.

In support of counsel's brief, counsel has submitted a letter from its outside IT contractor, who states that he only provided services once in 2009. Counsel has also submitted a letter from the petitioner's manager, who stated that, at the time of the USCIS investigation, he knew the beneficiary only by another name than the one in the proffered petition. Further, counsel submitted a letter from the petitioner's CEO, who states that she did not enough about computers to adequately respond to the USCIS officer's questions regarding the beneficiary's duties.

Upon review of the information submitted by counsel, the AAO finds that the petitioner's appeal is not sufficient to overcome the objections raised by the director. Preliminarily and contrary to counsel's assertion, the AAO notes that it is reasonable to assume that the size of an employer's business has or could have an impact on the duties of a particular position. *See EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). Thus, the size of a petitioner may be considered as a component of the nature of the petitioner's business, as the size impacts upon the duties of a particular position.

According to the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2010-11 online edition, database administrators identify user needs, set up new computer databases, integrate data from old systems to new systems, and plan and coordinate computer security measures with network administrators. These duties entail modernizing and/or expanding existing networks. At the site visit, the USCIS officer observed that the petitioner has

¹ The AAO acknowledges counsel's contention on appeal that the director's decision may not stand because it is based upon derogatory evidence for which the petitioner was not offered a rebuttal opportunity. However, the AAO finds that the on-site investigator observations cited by the director were, for the most part, known by the petitioner, as they cite statements made by officers and employees of the petitioner – including the beneficiary – who, as such, are not distinct from the petitioner. The AAO further finds that the appeal process has afforded the beneficiary full opportunity to address, rebut, and refute the accuracy of the director's statements with regard to the on-site visit.

only six computers, one server, and one office. Further, although the CEO states on appeal that the petitioner is migrating an old UNIX operating system into a Windows based system, the petitioner did not submit evidence to support this claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Also, tellingly as a factor affecting the petitioner's credibility, the petitioner did not mention this newly asserted aspect in either the documents filed with the initial petition or in its response to the RFE.

Second, even though the petitioner's outside contractor was only hired once during 2009, the CEO states that the outside contractor was hired to fix a computer crash. The CEO further stated that because this outside contractor's rates are too high, the petitioner intends to hire the beneficiary instead. Therefore, it appears that at least part of the beneficiary's duties entail fixing a computer system, which, according to the *Handbook's* section on Computer Network, Systems, and Database Administrators, appears to be the function of a Network and Computer Systems Administrator, rather than a Database Administrator. According to the *Handbook*, an associate's degree or professional certification plus experience may be sufficient for some Network and Computer Systems Administrator positions.

Regarding the third item, again the CEO failed to submit evidence to support her claim that she was waiting to hear from the employee who left before withdrawing her H-1B petition. For example, the petitioner could have submitted copies of e-mails or other written correspondence that it had with the former employee. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

Fourth, as the petitioner noted, the petitioner is a small office with only 11 employees. The AAO further notes that in Form I-129, part 3, section 1, the petitioner wrote "None" in the box titled "All Other Names Used," even though it claims the beneficiary is known by another name. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). This is an additional factor weighing against the credibility of the petitioner's assertions with regard to the nature of the beneficiary's work.

Fifth, the AAO is not persuaded by the CEO's claim that the description of a major portion (40%) of the beneficiary's work as entailing order processing was based upon a lack of familiarity with computer terms. The AAO notes that the CEO apparently did not express that lack of familiarity during the onsite visit. Moreover, the CEO is likely familiar enough with her business operations to understand that "order processing" does not indicate or connote computer "data processing."

Finally, the AAO affords great weight to the fact that the petitioner does not adequately respond to the statement in the director's decision that the beneficiary "did not know the answers to basic

questions regarding the computers he was maintaining.” The petitioner’s response is to claim that the beneficiary’s coursework and experience indicate that he has the knowledge required to perform the duties of a database administrator. The issue of the beneficiary’s qualifications is separate from the fact that his alleged ignorance about the petitioner’s computers indicates that he, in fact, was not performing the work claimed in the petition. In this regard, the AAO finds that the statements submitted on appeal neither address nor rebut the director’s statement to the effect that the beneficiary was ignorant about the computers with which he was allegedly working. The AAO also notes that the petitioner did not provide a statement from the beneficiary refuting or explaining the investigative finding with regard to his knowledge. The AAO also finds that the fact that the petitioner has not effectively rebutted the director’s statement regarding the beneficiary’s ignorance with regard to the petitioner’s computers is, in and of itself, sufficiently damaging to the credibility of the petition as to preclude its approval.

In sum, the AAO finds that, on appeal, the petitioner has not overcome the basis identified by the director for concluding that the petition should be denied because it appeared that the beneficiary was not actually engaged in the type of work specified as the basis of the petition.

Accordingly, as the petitioner has failed to demonstrate that there exists a reasonable and credible offer of employment, the AAO shall not disturb the director's denial of the petition.

As will now be discussed, the AAO also finds that, aside from the basis discussed immediately above for upholding the director’s decision, the petitioner also failed to establish that the particular position that is the subject of this petition would be a specialty occupation even if it were performed in accordance with the duties that the petitioner ascribed to it.

At the outset, the AAO disagrees with, and therefore withdraws, the director’s finding that database administrators constitute an occupational group for which a bachelor’s degree, or the equivalent, in a specific specialty is categorically required, which the director’s decision phrased as follows: “USCIS does not dispute that a bona fide position of data base administrator requires a beneficiary to have a baccalaureate degree.”

In this regard, it is first important to note that, taken literally, the director misstated the specialty occupation threshold because, as explained early in this decision, as is clear in the language at section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), to merit recognition as a specialty occupation, a proffered position must require not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the 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 theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act 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.

The AAO recognizes the U.S. Department of Labor’s (DOL) *Occupational Outlook Handbook* (the *Handbook*) as an authoritative source on the duties and educational requirements of a wide variety of occupations.² The *Handbook* discusses the Database Administrators occupational classification in its chapter “Computer Network, Systems, and Database Administrators.” Pertinent to the educational requirements for inclusion in this Database Administrators occupational group, the *Handbook* states:

(As a Significant Point at the outset of the chapter:)

- Workers can enter this field with many different levels of formal education, but relevant computer skills are always needed.

(As the introductory paragraph for the Training, Qualification, and Advancement section regarding Computer Network, Systems, and Database Administrators:)

Training requirements vary by occupation. Workers can enter this field with many different levels of formal education, but relevant computer skills are always needed. Certification may improve an applicant’s chances for employment and can help workers maintain adequate skill levels throughout their careers.

(With regard to database administrators in particular:)

For network architect and database administrator positions, a bachelor’s degree in a computer-related field generally is required, although some employers prefer applicants with a master’s degree in business administration (MBA) with a concentration in information systems. MBA programs usually require 2 years of study beyond the undergraduate degree, and, like undergraduate business programs, include courses on finance, marketing, accounting, and management, as well as database management, electronic business, and systems management and

² 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.

design. In addition to formal education, network architects may be required to have several years of relevant work experience.

Upon review of the relevant chapter in the *Handbook*, and with particular focus upon the information in the above excerpts, the AAO finds that, at most, the *Handbook* indicates that a bachelor's degree in a computer-related field is only "generally" – but not standardly - required, that "some" employers prefer an MBA with a concentration in information systems, and, that some employers require neither, but require relevant computer skills commensurate with the specific duties of the particular position for which it is hiring.³ Thus, it follows that both the director and the petitioner erred to the extent that they held that mere inclusion in the Database Administrator occupation categorically and necessarily qualifies that position as a specialty occupation. Rather, based upon the *Handbook's* information, it is incumbent upon the petitioner to establish why its particular position falls within the spectrum of database administrators requiring at least a bachelor's degree in a specific specialty.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

As discussed previously, the evidence indicates that, more likely than not, the beneficiary will work as a network and computer administrator, rather than a database administrator. However, even if the beneficiary were employed as a database administrator, as discussed above, the *Handbook* indicates no specific degree requirement for employment as a database administrator, 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

³ Also, while not based upon a scientific sampling, the *O*NET Online* chapter on Database Administrators, accessible on the Internet at <http://www.onetonline.org/link/summary/15-1061.00>, reports the following educational credential information provided by those database administrators responding to DOL's request for information about their educational backgrounds:

| Percentage of Respondents | Education Level Required |
|---------------------------|--------------------------|
| 60 | Bachelor's degree |
| 20 | Some college, no degree |
| 16 | Associate's degree |

degree in a specific specialty. Accordingly, the AAO finds that the petitioner has not established its proffered position as a specialty occupation under 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.

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 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 advertisements submitted by the petitioner for database administrator positions do not indicate that at least a bachelor's degree in a specific specialty is required by similar firms for parallel positions. First, as discussed previously, the AAO does not find that the proffered position is similar to that of a database administrator, but instead appears to more closely resemble a network and computer administrator. Therefore, as all of these advertisements are for database administrators, they are not sufficiently similar to the proffered position. Second, a number of the advertisements require either a bachelor's degree in an unspecified field or merely prefer a bachelor's degree in computer science. Third, the advertisements that state a bachelor's degree in computer science as a requirement were not placed by firms that are similar to the petitioner or are for positions that entail duties similar to those proffered in this petition. As a result, the petitioner has not established that parallel firms routinely require 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 there is a spectrum of degrees acceptable for computer network, systems, and database administrator positions, including degrees not in a specific specialty. Moreover, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than computer network, systems, and database administrator positions, or other positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

As the record has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 augments its earlier comments regarding the petitioner's failure to establish this criterion. The AAO does not find that there is enough evidence to document that the proffered position is that of a database administrator. However, even if the position were most closely aligned to that of a database administrator, the AAO does not find that the proposed duties, as generically described by the petitioner, reflect a higher degree of knowledge and skill than would normally be required of database administrators 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).

Beyond the decision of the director, the AAO further finds that the beneficiary is not qualified to perform the duties of a specialty occupation. Counsel argues on appeal that the beneficiary has the knowledge to perform the duties of a database administrator, however the petitioner has failed to produce sufficient evidence to support this assertion.

The petitioner submitted a document entitled "Evaluation of Academics and Experience," written by [REDACTED] on behalf of Morningside Evaluations and Consulting, which opined that the beneficiary has the U.S. equivalent of a B.S. degree in computer information systems based on a combination of education and experience. However, the evaluation does not meet the standard described in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) as no evidence was submitted to establish that [REDACTED] either works at a college or university that has a program for granting credit in a program in a specific specialty based on an individual's training and/or work experience in that specialty or that [REDACTED] has the authority to grant credit for such training and/or work experience, both of which are requirements under the regulation. Therefore, the evaluation does not meet the standard of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) and 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 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. The petition is denied.