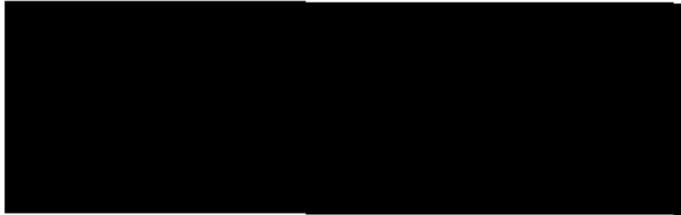


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U. S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W. MS 2090  
Washington, DC 20529-2090



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



D2

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

IN RE: Petitioner: [Redacted] Beneficiary: [Redacted] **OCT 03 2011**

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

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

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

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

Thank you,

*Michael T. Keeney*  
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 "School: Preschool to 1<sup>st</sup> Grade," with four employees. To employ the beneficiary in what it designates as an instructional coordinator 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.

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 first request for additional evidence (RFE) issued by the service center; (3) the response to that RFE; (4) the second RFE issued by the service center; (5) the response to the second RFE; (6) the decision of denial, and (7) the Form I-290B and counsel's brief in support of the appeal.

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

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge,  
and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which (1) requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health,

education, business specialties, accounting, law, theology, and the arts, and which (2) requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.”

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

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in a particular position meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (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 25, 2009, from the petitioner's owner/director; vacancy announcements; and the beneficiary's diplomas and résumé.

The petitioner's owner/director's March 25, 2009 letter states that the petitioner has about 60 children from preschool to the first grade. That letter also contains the following description of the duties attributed to the proffered position, along with the percentages of the work day anticipated to be spent on them:

1. Plan and coordinate educational and curriculum materials used by teachers in the areas of mathematics, science, literature, reading, writing, history, geography, art music, ethics and other subjects associated with the children for the most effective education in support of the school's mission. (60%)
  - Research available textbooks, study guides, exercise books, and other study materials that are suitable for each age group and if no appropriate materials are available, then create our own binder of study materials;
  - Research educational materials, assessing the educational program design criteria conducive to maximum utilization of available researched resources for the betterment of children;
  - Consult with the director regarding presentation of educational and/or curriculum materials and coordinate distribution of materials to teachers, and assist with setup and restoration for trainings/workshops; and
  - Responsible for assimilation of new course materials into curriculum, as well as dissemination of information about course changes, updates, additions, etc.
2. Plan and coordinate extracurricular activities for our student to remain health, well-rounded, and social. (15%)
  - Research, plan, and organize sports events for our students to realize importance of cooperating with other students, importance of sharing with fellow classmates, importance of helping those whom [sic] need help, and importance of taking care of one's body;
  - Research, plan, and organize drawing competitions or music competitions for our students to find out their talents at much earlier age; and
  - Organize various fun activities that would allow our students to socialize with each other.
3. Plan and coordinate field trips for our students to personally experience and affirm what they have learned during classes (15%)

- Design and create parent permission forms for the parents to sign before we take the students on field trips;
  - Plan field trips to museums, zoos, aquarium, etc. by contacting the person in charge, arrange time schedule in advance, arrange transportation, and prepare for any emergencies; and
  - Organize events and sessions for our students to express what they have learned or felt.
4. Plan and organize meetings for parents to meet with teachers. (10%)
- Organize periodical [sic] meetings at school for the parents to come to school and see the environment and progress the children are making;
  - Organize private sessions for teachers to explain the individual student's weakness and strength; and
  - Organize a meeting with the director for the parents to express their concerns or to propose suggestions.

The petitioner's owner/director cited a section of the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* for the proposition that instructional coordinator positions require a bachelor's degree. The petitioner's owner/director also cited the vacancy announcements submitted for the same proposition, and stated that the petitioner requires a minimum of a bachelor's degree in education or a related field.

Two diplomas provided relate to the beneficiary. The more advanced diploma shows that the beneficiary was awarded a Bachelor of Arts degree in early childhood education by Kyungnam University. On her résumé, the beneficiary stated that her goal is to obtain a preschool teacher position.

One of the vacancy announcements submitted was placed by the Houston Independent School District for an instructional coordinator for a public elementary school in Houston, Texas. That announcement states that a bachelor's degree is required for the position and that a master's degree is preferred, but does not state that the requisite degree must be in any specific specialty.

Another of the vacancy announcements was also placed by the Houston Independent School District for an instructional coordinator. Whether it is for the identical position identified in the previous announcement is unclear. That announcement states that a bachelor's degree is required for the position and that a master's degree is preferred, but does not state that the requisite degree must be in any specific specialty.

Another vacancy announcement was placed by the Fort Worth Independent School District for a high school academic coordinator, and states that a bachelor's degree is required for the position and that a master's degree is preferred, but does not state that the requisite degree must be in any specific specialty.

The final vacancy announcement was placed by Columbia University for a program coordinator to organize instructional support at the university. That announcement states that the position requires a bachelor's degree or the equivalent, but not that the requisite degree must be in any specific specialty.

Because the evidence submitted did not demonstrate that the petitioner would employ the beneficiary in a specialty occupation, the service center, on April 11, 2009, issued an RFE in this matter. The service center requested, *inter alia*, an explanation of why the duties of the proffered position require the services of a person with a college degree or the equivalent in the occupational field.

In response, counsel submitted a letter, in which counsel stated:

In order for an Instructional Coordinator to competently and successfully carry out the assigned duties, such incumbent must have in-depth knowledge in early childhood education. Such knowledge can only be acquired through the completion of a four-year university or college program and thus, the petitioner requires the incumbent of the offered position to possess a minimum of a bachelor's degree.

Counsel did not state any basis for the assertion that instructional coordinators must have an in-depth knowledge of early childhood education. Counsel did not state any basis for the assertion that such knowledge may only be gained in a four-year university or college program.

The assertions of counsel are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Unsupported assertions of counsel are, therefore, insufficient to sustain the burden of proof.

Because the petitioner had still not established that the visa petition is approvable, the service center, on May 28, 2009, issued another RFE in this matter. The service center noted that the petitioner is obliged to demonstrate that the proffered position qualifies as a position in a specialty occupation pursuant to one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and requested that the petitioner provide evidence pertinent to at least one of those criteria. The service center also specifically requested:

Provide, in layman's terms, a clear explanation of what differentiates the proffered position from other related "non-specialty occupation" positions. Compare and contrast those duties to be performed that are more discretionary, demanding, complex, highly advanced, specialized, or sophisticated – exceeding industry standards – such that a baccalaureate level of education in a specific field of study is a realistic prerequisite for entry into the proffered position. Be exact and provide documentation to substantiate the claims of complexity.

In response counsel submitted a letter, dated June 24, 2009, in which he reiterated the previous description of the duties of the proffered position and cited additional duties that materially expand the nature and scope of the positions as initially described. For instance, "Supervise educational staff," "Provide educational advising to students," and "Hiring and orientation of faculty and education staff."

Counsel did not provide any basis for his attribution of additional duties to the proffered position. As was noted above, the unsupported assertions of counsel are of no evidentiary weight. Further, on appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A petition may not be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). For both reasons, counsel assertion of additional duties will not be considered.

Counsel also provided two letters, both dated March 4, 2004, from two directors of apparently private preschools.

In one letter, from UC Education Center in Los Angeles, the school director stated that her school has five employees, and that the minimum education required of an instructional coordinator at her school is a bachelor's degree. She stated that she had worked as an instructional coordinator and educational director for many years before establishing her own school, and that she has a degree in education. She provided no evidence pertinent to that degree, and neither alleged nor demonstrated that she has ever hired an instructional coordinator for her school.

The other school director's letter stated that her school employs four people. She stated that instructional coordinators need a minimum of a bachelor's degree in education or a related subject, and that her school requires instructional coordinators to obtain such a degree. She provided no corroborating evidence to demonstrate that her school has ever employed an instructional coordinator.

Counsel cited a portion of the *Handbook* for the proposition that the proffered position requires a bachelor's degree.

On July 10, 2009, the director issued the denial of the visa petition, finding, as was noted above, that the petitioner had not demonstrated that it would employ the beneficiary in a specialty occupation position. More specifically, the director found that the petitioner had not demonstrated that the proffered position qualifies as a specialty occupation position pursuant to any of the alternative requirements of the subsections of 8 C.F.R. § 214.2(h)(4)(iii)(A). In that decision, the director analyzed the proffered position as one for an education administrator as described in the *Handbook*.

On appeal, counsel asserted that the proffered position is an instructional coordinator position as described in the *Handbook*, rather than an education administrator position, as the director found. Counsel stated that the petitioner's owner/director performs the duties of education administrator for the petitioner. Counsel's basis for making that statement was not provided.

The AAO notes, once again, that counsel is permitted to argue from the evidence, and his arguments based on the evidence will be considered. Counsel's unsupported assertions, however, are not evidence, and will be accorded no weight.

Counsel again cited the *Handbook* for the proposition that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty. Counsel also cited a non-precedent AAO decision for the proposition that a toddler curriculum instructional coordinator positions qualifies as a specialty occupation.

Counsel's citation of previous AAO decisions opinions pertinent to positions other than that proffered here is not persuasive. Counsel has not established that the facts of the cited decision are substantially the same as the facts in the instant case. Further, while 8 C.F.R. § 103.3(c) provides that USCIS precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Counsel also cited the two letters from other preschools as evidence that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty. Counsel stated that most of the petitioner's competitors employ instructional coordinators, but provided no evidence in support of that assertion, other than those two letters.

Counsel stated that the proffered position is more specialized or complex than other preschool instructional coordinator jobs because, paraphrasing a passage from a brochure provided by the petitioner, "Most preschools' or kindergartens' primary mission is to provide a smooth transition into more academically challenged years, [whereas] the Petitioner's primary focus is to build the foundations for children to develop into model citizens of our society." Counsel provided no evidence that other preschools and kindergartens do not make similar abstract and unsubstantiated claims.

The AAO recognizes the *Handbook*, cited by counsel and the petitioner's owner/director as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup>

The director, in the decision of denial, analyzed the position as one for an education administrator as described in the *Handbook*. On appeal, counsel asserted that it is, rather, a position for an instructional coordinator as described in the *Handbook*, and that there is very limited overlap

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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.

between the two positions. The AAO, in comparing the two job descriptions in the *Handbook* and the description of the duties of the proffered position as provided in the owner/director's March 25, 2009 letter, finds that considerable overlap exists. The AAO finds that the proffered position could arguably be classified as either an education administrator position or an instructional coordinator position, and notes that it is obliged to rely on the description of the duties provided by the petitioner's owner/director, absent any less partial evidence. For the purpose of analysis, however, the AAO will assume, *arguendo*, that the proffered position is an instructional coordinator position as counsel asserts.

The *Handbook* describes the duties of instructional coordinator positions as follows:

*Instructional coordinators*—also known as *curriculum specialists*, *personnel development specialists*, *instructional coaches*, or *directors of instructional material*—play a large role in improving the quality of education in the classroom. They develop curricula, select textbooks and other materials, train teachers, and assess educational programs for quality and adherence to regulations and standards. They also assist in implementing new technology in the classroom. At the primary and secondary school levels, instructional coordinators often specialize in a specific subject, such as reading, language arts, mathematics, or science.

Instructional coordinators evaluate how well a school or training program's curriculum, or plan of study, meets students' needs. Based on their research and observations of instructional practice, they recommend improvements. They research teaching methods and techniques and develop procedures to ensure that instructors are implementing the curriculum successfully and meeting program goals. To aid in their evaluation, they may meet with members of educational committees and advisory groups to explore how curriculum materials relate to occupations and meet students' needs. Coordinators also may develop questionnaires and interview school staff about the curriculum.

Some instructional coordinators review textbooks, software, and other educational materials to make recommendations. They monitor the ways in which teachers use materials in the classroom and supervise workers who catalogue, distribute, and maintain a school's educational materials and equipment.

Some instructional coordinators find ways to use technology to enhance student learning and monitor the introduction of new technology into a school's curriculum. In addition, instructional coordinators might recommend educational software, such as interactive books and exercises designed to enhance student literacy and develop math skills. Instructional coordinators may invite experts to help integrate technological materials into the curriculum.

Besides developing curriculum and instructional materials, many of these workers plan and provide onsite education for teachers and administrators. Instructional

coordinators mentor new teachers and train experienced ones in the latest instructional methods. This role becomes especially important when a school district introduces new content, programs, or a different organizational structure. For example, when a State or school district introduces standards or tests that students must pass, instructional coordinators often advise teachers on the content of those standards and provide instruction on how to implement them in the classroom.

The *Handbook* describes the educational requirements of the proffered position as follows:

The minimum educational requirement for most instructional coordinator positions in public schools is a master's degree or higher—usually in education—plus a State teacher or administrator license. A master's degree also is preferred for positions in other settings.

\* \* \* \*

Instructional coordinators should have training in curriculum development and instruction or in the specific field for which they are responsible, such as mathematics or history. Courses in research design teach how to create and implement research studies to determine the effectiveness of a given method of instruction or curriculum and how to measure and improve student performance.

Instructional coordinators are usually required to take continuing education courses to keep their skills current. Topics may include teacher evaluation techniques, curriculum training, new teacher orientation, consulting and teacher support, and observation and analysis of teaching.

That passage indicates that the proffered position, if it were in a public school, would typically require a master's degree, which the beneficiary does not appear to have, and that the degree would usually be in education. It makes clear, however, that this requirement is limited to positions in public schools. It does not state any minimum requirement for the same position in a private school setting. It does not indicate the particular instructional coordinator position that is the subject of this case requires a minimum of a master's degree, or a bachelor's degree or the equivalent, and it certainly does not indicate that the proffered position requires a minimum of a bachelor's degree or the equivalent in any specific specialty. The record contains no other evidence that private school instructional coordinator positions categorically require a minimum of a bachelor's degree or the equivalent in a specific specialty.

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 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)).

In support of the assertion that the petitioner's industry requires a minimum of a bachelor's degree or the equivalent in a specific specialty for parallel instructional coordinator positions with similar organizations, counsel provided both vacancy announcements and the two letters from other preschool directors.

Of the four vacancy announcements provided, three were placed by public schools and one by a university. Of the three that are not at the university level, one is for an elementary school, one is for a high school, and one does not specify a grade level. None were placed by private preschools or kindergartens. Further, none of those vacancy announcements state that they require a minimum of a bachelor's degree or the equivalent *in any specific specialty*. Those vacancy announcements are of no weight in demonstrating that similar organizations in the petitioner's industry require a minimum of a bachelor's degree or the equivalent in a specific specialty for positions parallel to the proffered position.

Although one of the two preschool directors who provided the above-described letters implied that she had performed the instructional coordinator duties for her school and that she has a bachelor's degree in education, she provided no evidence pertinent to that degree. Further, neither of the two letters from other preschool directors explicitly states that the preschools have ever employed an instructional coordinator, or, if they have, provided evidence pertinent to the duties of that position and the educational qualifications of the people who have held the position. Further still, even if both of those letters demonstrated that those schools had employed instructional coordinators and that each of those workers had a minimum of a bachelor's degree or the equivalent in a specific specialty, childhood education, for instance, the experience of two schools does not support an industry-wide practice. Those letters are insufficient to demonstrate that preschools or kindergartens similar to the petitioner employ instructional coordinators in positions parallel to the proffered position in the instant case and that they require those instructional coordinators to have a minimum of a bachelor's degree in a specific specialty.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among

similar organizations, and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of the first clause of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Counsel asserted that, notwithstanding that other preschool instructional coordinator positions may not require a minimum of a bachelor's degree or the equivalent in a specific specialty, the proffered position in the instant case is sufficiently complex or unique that it does. In support of that assertion, counsel quoted the petitioner's brochure, stating that:

Most preschools' or kindergartens' primary mission is to provide a smooth transition into more academically challenged years, [whereas] the Petitioner's primary focus is to build the foundations for children to develop into model citizens of our society.

That statement is so very abstract that its meaning, if any, is entirely obscure. It does not describe any specific duties that could be examined to see whether they require a bachelor's degree. The petitioner provided no other evidence that the proffered position is so complex or unique that it can be performed only by an individual with a degree. The petitioner has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the second clause of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record contains no evidence pertinent to anyone the petitioner has previously hired to work in the proffered position. On appeal, counsel stated that the petitioner had previously employed an individual in the proffered position pursuant to an H-1B visa, which individual counsel identified by name and USCIS receipt number. The record of proceeding in that case is not before the AAO.

Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding, *see* 8 C.F.R. § 103.2(b)(16)(ii), and the record presently before the AAO does not establish that the petitioner has previously only, or even typically, recruited and hired applicants with a minimum of a bachelor's degree or the equivalent in a specific specialty to fill the proffered position. The petitioner has not, therefore demonstrated that it normally requires a degree for the proffered position and that the position qualifies as a position in a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Nothing in the record suggests that the duties described by the petitioner's owner/director in the March 25, 2009 letter are more specialized or complex than the duties of other private preschool or kindergarten instructional coordinators. The petitioner and counsel have not pointed to any particular duty or combination of duties that could not be adequately performed by someone without a minimum of a bachelor's degree or the equivalent 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 criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)

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

The record suggests another issue that was not addressed in the decision of denial.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
  - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have [a] education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and [b] have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary does not have a U.S. bachelor's degree. The beneficiary does not hold an unrestricted state license, registration or certification pertinent to practice of the proffered position. The evidence in the record does not indicate that the beneficiary has education, specialized training,

and/or progressively responsible experience equivalent to a U.S. bachelor's or higher degree and recognition of expertise in the proffered position through progressively responsible positions directly related to instructional coordination.<sup>2</sup>

Instead, the petitioner seeks to rely on the beneficiary's Korean bachelor's degree in early childhood education to show that she is qualified for the proffered position. The petitioner did not, however, provide an evaluation of her Korean degree to demonstrate that it is equivalent to a U.S. bachelor's degree, as required by 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) when relying on the equivalence of a foreign degree.

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 further address the issue of the beneficiary's qualifications.

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

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will be dismissed and the petition denied.

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

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<sup>2</sup> If the petitioner wished to rely, rather than on a foreign degree, on the beneficiary's education, training, and/or expertise, *per se*, being equivalent to a bachelor's degree, the petitioner would be obliged to provide an evaluation from 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. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D).