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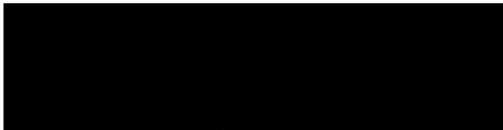
**PUBLIC COPY**

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**

b2



Date: **FEB 02 2012** 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 director of the California Service Center denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner claims to be a locksmith, alarm and security service company with five employees and a stated gross annual income of approximately \$1.1 million. It seeks to employ the beneficiary as a Technical Sales Engineer pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition concluding that the record lacks a reliable evidentiary basis to determine whether the petitioner's offer of employment is bona fide.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the director's RFE; (4) the director's denial letter; and (5) the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

United States Citizenship and Immigration Services (USCIS) is required to follow long-standing legal standards and determine first, whether the proffered position is a specialty occupation, and second, whether an alien beneficiary is qualified for the position at the time the nonimmigrant visa petition is filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].").

In determining whether the petitioner has established that the proffered position is a specialty occupation, USCIS must also determine in part whether the petitioner's offer of employment is bona fide. In other words, while the proffered position must qualify as a specialty occupation, the claimed specialty occupation employment to be performed by the beneficiary must also be principally based on a reasonable and credible offer of employment that is actually for the proffered position as described. In the instant case, the director did not discuss the specialty occupation issue directly. Nevertheless, the AAO will first consider whether the position qualifies as a specialty occupation before addressing the bona fides of the job offer. 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 Act, 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one that requires:

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

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires [(1)] theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires [(2)] the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. See *K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); see also *COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. See *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

In this matter, the petitioner seeks the beneficiary's services as a Technical Sales Engineer. The support letter indicates the duties of the proffered position would include:

- Using mechanical engineering knowledge in providing mechanical and technical support and services to clients regarding use, operation, and maintenance of residential, commercial, industrial high-end security and alarm systems;

- Developing and responding to specific customer requirements including project quotations and industry-specific solutions using extensive technical expertise;

- Conferring with clients and technicians to assess security needs;

- Conferring with clients regarding their specific needs. Planning and overseeing implementation of company specific solutions to security maintenance needs. This includes drawing up detailed plans of the multi-lock and/or security alarm locations, writing up technical specifications for ordering custom made locks and security systems, reviewing the end-product and overseeing the appropriate technical installation and operation by the end-user/client;

- Responding to and identifying problems with installed equipment and recommending effective solutions.

The letter goes on to state that the proffered position requires in-depth knowledge of highly technical mechanical engineering principles and processes, and therefore, education at the baccalaureate level or its equivalent education or experience is an absolute minimum requirement. The petitioner submitted documentation evidencing that the beneficiary has the equivalent of a U.S. bachelor's degree in mechanical engineering.

The Labor Condition Application (LCA) was submitted for a Technical Sales Engineer to work at the petitioner's offices at a hourly wage of \$24.65.

On September 18, 2009, the director requested additional information from the petitioner pertaining to the petitioner's business, its job offer, and the beneficiary and his qualifications.

With regard to the petitioner's offer of employment, counsel's response provided a more detailed job description of the proffered position from the petitioner. In support of counsel's assertion that the petitioner's unique business model requires the performance of specialized and complex duties in the proffered position, counsel submitted photographs of the equipment being used at the petitioner's business, brochures and promotional materials showing its products and services, an organizational chart, and its business license. Additionally, counsel submitted five advertisements from other companies for technical sales engineer, sales engineer, and technical support engineer positions.

The petitioner's letter submitted in response to the director's RFE provides the following additional description of the proffered position's duties:

- Using mechanical engineering knowledge in providing mechanical and technical support and services to clients regarding use, operation, and maintenance of residential, commercial, industrial high-end security and alarm systems. This includes providing technical presentations of high-security multi-lock system.
- Planning and overseeing implementation of company specific solutions to security maintenance needs. This includes drawing up detailed plans of the multi-lock and/or security alarm locations, writing up technical specifications for ordering custom made locks and security systems, reviewing the end-product and overseeing the appropriate technical installation and operation by the end-user/client.
- Provide technical presentations to clients regarding the company's advanced electro-mechanical locking solutions and systems.

The petitioner indicates that the beneficiary would spend 70% of his time performing these three aspects of the job duties.

The petitioner's support letter goes on to state that the beneficiary would spend 15% of his time performing the following two aspects of the job duties:

- Developing and responding to specific customer requirements including project quotations and industry-specific solutions using extensive technical expertise.
- Conferring with clients and technicians to assess security needs.

The petitioner also indicates that the beneficiary would spend another 15% of his time performing duties in responding to and identifying problems with installed equipment and recommending effective solutions.

The LCA shows that counsel used the SOC (ONET/OES) code of 41-9031.00 and SOC (ONET/OES) occupation title of Sales Engineer as the closest one to a Technical Sales Engineer. Counsel asserted that the proffered position is closest to that of a Sales Engineer listed in the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* and submitted a printout of the Sales Engineer Chapter from the *Handbook*, 2008-09 Edition.

The director denied the petition, finding that the record lacks a reliable evidentiary basis to determine authenticity of the petitioner's offer of employment, and therefore, the petitioner had not established that the proposed position qualifies for classification as a specialty occupation. In the denial, the director found that the proffered position does not resemble that of a Sales Engineer in the *Handbook*, because the petitioner's business lacks the product and service complexity to support a Technical Sales Engineer, but also noting that the position of Technical Sales Engineer requires a bachelor's degree.

On appeal, counsel contends in the Form I-290B that the director erred in denying the petition. Counsel asserts that the director committed a grave abuse of discretion in denying the petition on the ground that no reasonable and credible offer of employment exists since the petitioner has clearly established otherwise. Counsel contends that the evidence regarding the nature of the petitioner's products and services and the fact that the beneficiary is currently employed for the petitioner in the proffered position clearly support the conclusion that there is a bona fide offer of employment for a Technical Sales Engineer position. Counsel also asserts that the proffered position is a specialty occupation since the director admitted that the position of Technical Sales Engineer requires a beneficiary to have a baccalaureate degree.

To make its determination whether the proffered position, as described in the initial petition and the petitioner's response to the RFE, qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations, or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

On appeal, counsel for the petitioner argues that the proffered position most closely resembles the position of Sales Engineer in the *Handbook*. The AAO agrees with counsel's assessment that the proffered position most closely resembles that of a Sales Engineer as described in the *Handbook*. However, the AAO does not agree with counsel's assertion that the proffered position is a specialty occupation simply on the basis that the director stated that a bona fide position of Technical Sales Engineer requires a beneficiary to have a baccalaureate degree. Instead, the AAO finds that the petitioner has failed to demonstrate that the proffered position constitutes a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore affirms the director's decision to deny the petition.

The overarching reason for the AAO's dismissal of this appeal is that the proposed duties as described in the record do not establish that performance of the proffered position requires the theoretical and practical application of at least a bachelor's degree level of highly specialized knowledge in a specific specialty, as required by the H-1B specialty occupation provisions of the Act and their implementing regulations. In this regard, the AAO has considered all of the assertions of counsel in support of the requirements of the position, but finds that they are not supported by documentation in the record. 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)). As stated previously, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

The record's descriptions of the proposed duties are limited to generic and generalized functions which, even when read in the context of the evidence submitted in support of the petition, do not convey the educational level of any body of highly specialized knowledge that the beneficiary would apply theoretically and practically.

The *Handbook's* description of Sales Engineer provides in pertinent part:

Many products and services, especially those purchased by large companies and institutions, are highly complex. Sales engineers—also called technical sales support workers—determine how products and services could be designed or modified to suit customers' needs. They also may advise customers on how best to use the products or services provided.

Sales engineers specialize in technologically and scientifically advanced products. They possess extensive knowledge of these products, including knowledge about their components, functions, and the scientific processes that make them work. They use their technical skills to explain the benefits of their products to potential customers and to demonstrate how their products are better than the products of their competitors. Often, they modify and adjust products to meet customers' specific needs. Some sales engineers work for the companies that design and build technical products, while others work for independent sales firms.

Many of the duties of sales engineers are similar to those of other salespersons. They must interest the client in purchasing their products, negotiate a price, and complete the sale. Some sales engineers, however, are teamed with other salespersons who concentrate on marketing and selling the product, enabling the sales engineer to concentrate on the technical aspects of the job. By working on a sales team, each member is able to focus on his or her strengths and expertise. (Information on other sales occupations, including sales representatives, wholesale and manufacturing, appears elsewhere in the Handbook.)

Sales engineers tend to employ selling techniques that are different from those used by most other sales workers. They generally use a "consultative" style; that is, they focus on the client's problem and show how it can be solved or mitigated with their product or service. This selling style differs from the "benefits and features" method, whereby the salesperson describes the product and leaves the customer to decide how it would be useful.

In addition to retaining current clients and attracting new ones, sales engineers help clients solve any problems that arise when the product is installed. Afterward, they may continue to serve as a liaison between the client and their company. Increasingly, sales engineers are asked to undertake additional tasks related to sales, such as market research, because of their familiarity with clients' purchasing needs. Drawing on this same familiarity, sales engineers may help identify and develop new products.

*Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos123.htm> (last accessed January 27, 2012). In short, the description provided above encompasses the duties of the proffered position as described by the petitioner and counsel.

For the description of education and training for Sales Engineer, the *Handbook* states:

Sales engineers *generally* are required to possess a *bachelor's degree in engineering*, and many have previous work experience in an engineering specialty. New sales engineers may need some on-the-job training in sales or may work closely with a sales mentor before they can work on their own.

Education and training. *A bachelor's degree in engineering usually is required for a person to become a sales engineer. However, workers without a degree, but with previous experience in sales and technical experience or training, sometimes hold the title of sales engineer.* Also, workers who have a degree in a science, such as chemistry, or even a degree in business with little or no previous sales experience, may be called sales engineers.

*Id.* (emphasis added).

While the *Handbook* states that a bachelor's degree is usually required for Sales Engineer, it also indicates that some people without a degree hold the title of sales engineer. In addition, the AAO notes that the O\*Net Summary Reports are insufficient to establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor's degree or its equivalent in a specific specialty. On January 27, 2012, the AAO accessed the pertinent sections of the O\*Net Online Internet site, which address 41-9031.00 – Sales Engineer. Contrary to the assertions of counsel, O\*Net Online does not state a requirement for a bachelor's degree. Rather, it assigns this occupation as a Job Zone "Four" rating, which groups them among occupations of which "most," but not all, "require a four-year bachelor's degree."

Further, the O\*Net Online does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty closely related to the requirements of that occupation. Therefore, the O\*Net Online information is not probative of the proffered position being a specialty occupation.

Even though the Handbook describes that a bachelor's degree in engineering is usually required for a Sales Engineer, a bachelor's degree in engineering does not delineate a specific specialty as required under Section 214(i)(1) of the Act. More specifically, the field of engineering is a very broad category that covers numerous and various disciplines, some of which are only related through the basic principles of science and mathematics, e.g., petroleum engineering and aerospace engineering. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or engineering, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

Again, to prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 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.

Again, in determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ

and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. In response to the RFE, counsel for the petitioner submitted five job advertisements. However, the advertisements provided are not evidence of a common degree-in-a-specific-specialty requirement in positions that are both: (1) parallel to the proffered position; and (2) located in organizations similar to the petitioner. While all of the five advertisements were for Sales Engineer, Technical Sales Engineer, or Technical Support Engineer positions, all of them are in the manufacturing industry and none requires a degree in a specific specialty.<sup>1</sup>

The petitioner has also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." The evidence of record does not refute the *Handbook's* information to the effect that a bachelor's degree is not required in a specific specialty for entry into the occupation. Counsel claimed that the petitioner's products and services are unique and complex such that the petitioner's business is different from other entities in the traditional locksmith industry, requiring the proffered position be a specialty occupation. These products and services include custom and client-specific design and installation of high-end security and alarm systems, closed circuit televisions (CCTV), and advanced electromechanical locking solutions. However, counsel did not provide evidence to distinguish the proffered position as unique from or more complex than Sales Engineer positions, such as those as described in the *Handbook*, that can be performed by persons without a specialty degree or its equivalent. The evidence submitted in the record, such as the petitioner's brochure, photographs of equipment, its business license and tax returns do not support counsel's assertion regarding uniqueness or complexity relative to other Sales Engineer positions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec.

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<sup>1</sup> Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from five job postings with regard to determining the common educational requirements for entry into parallel positions in similar locksmith companies. See generally [REDACTED] *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of technical sales engineer for a five person locksmith company required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) -- the employer normally requires a degree or its equivalent for the position. The petitioner did not provide information about its normal requirements and recruitment history for the position. The petitioner's organizational chart shows that the petitioner has only one position as a Technical Sales Engineer and the instant beneficiary is currently employed for the petitioner in the proffered position on a part-time basis. Therefore, the petitioner has not previously employed a full-time technical sales engineer. As the record has not established a prior history of 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).<sup>2</sup>

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. As previously discussed, counsel claimed that the petitioner's products and services are unique and complex such that the petitioner's business is different from other entities in the traditional locksmith industry, necessitating that the proffered position be a specialty occupation. Again, these products and services include custom and client-specific design and installation of high-end security and alarm systems, CCTV, and advanced electromechanical locking solutions. The record shows that the petitioner does not manufacture these products; it only sells and provides installation and maintenance services related to them. This office consults the *Handbook* again for the section on Electrical and Electronic Installers and Repairs. *Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos184.htm> (last accessed January 27, 2012). The *Handbook* states the education and training requirements for Electrical and Electronic Installers and Repairs as follows:

Education and training. Knowledge of electrical equipment and electronics is necessary for employment. Employers often prefer applicants with *an associate degree from a community college or technical school*, although a high school diploma may be sufficient for some jobs. Entry-level repairers may begin by working with experienced technicians who provide technical guidance, and work independently only after developing the necessary skills.

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

(Emphasis added).

The record does not contain sufficient evidence showing that the petitioner must have an individual with at least a bachelor's degree in a specific specialty, or its equivalent, to perform the duties of selling and installing these products or that these duties can only be performed by an individual with such a degree. Corroborating evidence aside, nor does counsel even explain why the duties of this position are so specialized and complex they can be performed only by individual with a bachelor's degree in a specific specialty instead of someone who has an associate degree from a community college or technical school as the *Handbook* describes. To the extent that they are depicted in the record, the duties of the proposed position do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. The AAO, therefore, concludes that the proffered position does not meet 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 any of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the petition cannot be approved.

The director denied the petition on the ground that the record lacks a reliable evidentiary basis to determine the petitioner's proffer is authentic. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. § 291 of the Act, 8 U.S.C. § 1361. For H-1B classification, the petitioner must establish that the proffered position is a specialty occupation as well as that a bona fide offer of employment in the proffered position is real and existing at the time of filing. See 8 C.F.R. § 103.2(b)(1).

A critical analysis of the nature of the petitioner's business undermines counsel's assertion that such a bona fide position of Technical Sales Engineer as a specialty occupation existed with the petitioner at the time the instant nonimmigrant petition was filed. Rather, it appears from the record that the beneficiary mainly performs duties of a traditional locksmith, instead of the duties a technical sales engineer would perform. Even though the petitioner claims that the beneficiary has spent and would spend 70% of his time performing duties related to high technical product sales or services described in the petitioner's supporting letter, the evidence in the record does not support the petitioner's claim.

North American businesses and governments categorize and measure economic activity in Canada, Mexico, and the United States using the North American Industry Classification System (NAICS). The petitioner claims NAICS code [REDACTED] as its activity category on the Form I-129 and LCA. The 2007 NAICS Definitions, available at <http://www.naics.com/censusfiles/ND561622.HYM> (last accessed January 27, 2012), define NAICS code 561622 as Locksmiths and details as follows:

This U.S. industry comprises establishments primarily engaged in (1) selling mechanical or electronic locking devices, safes, and security vaults, along with installation, repair, rebuilding, or adjusting services or (2) installing, repairing,

rebuilding, and adjusting mechanical or electronic locking devices, safes, and security vaults.

The petitioner's business license issued by the City of Irvine also indicates that the petitioner is doing its business under the classification of "Locksmith Service." The petitioner submitted promotional materials and photographs of its equipment. This evidence does not establish that the petitioner is doing business in any other category other than the locksmith service category. The AAO notes that the O\*Net assigns locksmiths code 49-9094.00 – Locksmiths and Safe Repairers. The Summary Reports indicate that this is a Job Zone Two occupation and usually requires a high school diploma. Thus, the record does not support that the petitioner employs or would employ the beneficiary as a technical sales engineer.

Counsel claims that the fact that the beneficiary is currently employed with the petitioner in the proffered position clearly supports the conclusion that there is a bona fide offer of employment for a Technical Sales Engineer position. The petitioner claims that the beneficiary is working in the proffered position and submitted the beneficiary's Employment Authorization Card (EAD) valid from April 15, 2009 to October 14, 2010, paystubs for three months from September to November 2009, and letters from clients in support of its assertion. One letter from [REDACTED]

[REDACTED] states that they required the services of a professional security consultant for improving their existing security and methodologies in attempting to maximize security, and the beneficiary clearly delivered the security specifications they desired. However, the letter does not contain the client's address; it is not dated; and the contents of the letter do not establish that the beneficiary performed any duties of a technical sales engineer. The other letter is from [REDACTED] verifying that they received services from the beneficiary of a security system that combined electrical and mechanical security. Again, this letter does not contain the client company address and is not dated. The statement in the letter does not establish that the beneficiary has performed the duties of a technical sales engineer. Furthermore, the two letters are formatted exactly same and both of them were submitted without the companies' addresses and dates the letters issued. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The AAO cannot give the two letters full evidentiary weight in determining whether the beneficiary is being hired for and would perform the duties of a technical sales engineer as the *Handbook* and the petitioner describe.

Furthermore, the record contains the beneficiary's paystubs for the three months from September 2009 to November 2009. The petitioner indicates on the petition that the beneficiary would work in the proffered position 25 hours per week and the LCA shows the petitioner agrees to pay the beneficiary at least the prevailing wage level of \$24.65 per hour, which would equate to \$616.25 per week, \$32,045 per year or \$2,670.42 per month. However, the paystubs in the record show that the petitioner paid the beneficiary \$1,000 per month in September, October, and November 2009. Evidence in the record does not establish that the petitioner hired and paid the beneficiary as a technical sales engineer during the periods covered by the beneficiary's paystubs. Counsel's claim that the beneficiary is currently working for the petitioner in the proffered position performing duties

of a technical sales engineer as a specialty occupation is not supported by the evidence of record, and thus the claim that the beneficiary's employment itself establishes that a bona fide offer of employment in the proffered position as a specialty occupation exists is misplaced. The petitioner failed to submit sufficient evidence to establish there is a bona fide offer of employment for the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the AAO finds that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation regarding at least a bachelor's degree in mechanical engineering or its equivalent. However, a beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the proffered position does not require a baccalaureate or higher degree, or its equivalent, in a specific specialty and the petitioner failed to establish there was a bona fide offer of employment in a specialty occupation being offered to the beneficiary at the time of filing. Therefore, the AAO need not and will not address the beneficiary's qualifications further, except to note that, in the event an alien tries to qualify for H-1B classification based on experience in the specialty being equivalent to the completion of a bachelor's degree in specific specialty, the petitioner must also submit recognition of expertise in the specialty through progressively responsible positions relating to the specialty. See 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) states that an alien must have education, specialized training, and/or progressively responsible experience that are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, *and* have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree, the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require one or more of the following:

- (1) 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;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or

registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

(5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . . .

The record contains an Expert Opinion Evaluation dated October 13, 2009 prepared by [REDACTED] [REDACTED] concluding that the beneficiary's diploma upon completion of two years of academic coursework at Technion, Israel Institute of Technology combined with his more than seven years of work experience in mechanical engineering and related fields is equivalent to a Bachelor of Science degree in Mechanical Engineering in the United States. Counsel also submitted a letter dated November 8, 2007 from [REDACTED] [REDACTED] stating that [REDACTED] is qualified to comment on the work experience of such professionals and qualified to evaluate whether coursework and professional experience can be considered to be the equivalent of a B.S. or M.S. level education in Mechanical Engineering. However, [REDACTED] letter does not indicate that [REDACTED] has "authority" to grant college-level credit for training and/or experience in the specialty at an accredited college or university, and the record does not contain any evidence showing the University of Maryland has a program for granting credit based on an individual's training and/or work experience. Therefore, the petitioner failed to establish that the beneficiary holds a U.S. bachelor's degree in mechanical engineering or its equivalent. As such, since evidence was not presented that the beneficiary has at least a bachelor's degree or the equivalent in a specific specialty or that he has recognition of expertise in the specialty through progressively responsible positions directly related to the claimed specialty, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The appeal will be dismissed and the petition denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. § 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.