



U.S. Citizenship
and Immigration
Services

Administrative Appeals Office
U.S. Citizenship and Immigration Services
Investment Visa Services

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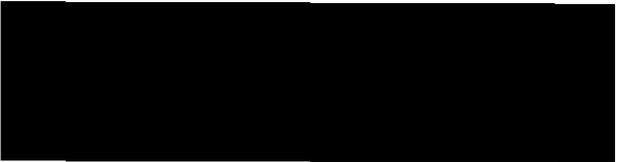
Office: VERMONT SERVICE CENTER

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:



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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner states that it is a restaurant with 19 employees and a gross annual income of approximately \$2,000,000. It seeks to employ the beneficiary as a food service manager and to classify him 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 on the grounds that the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation.

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

The primary issue for consideration is whether the petitioner's proffered position qualifies as a specialty occupation. 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 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

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, a proposed 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 states that it is seeking the beneficiary's services as a food service manager. In the April 1, 2010, letter of support, the petitioner states that the beneficiary will:

1. Manage operations of full service restaurant;
2. Supervise and coordinate activities of staff in kitchen, dining room, bar

- and banquet operation;
3. Monitor and maintain budget, sales, expenses, [and] payroll records. [sic];
 4. Establish budget control to ensure profitability[;]
 5. Hire, train and fire personnel;
 6. Plan and price dishes in menu[;]
 7. Establish standards of customer service and operational procedures to comply with regulations[;]
 8. Schedule staff hours and assign duties[;]
 9. Purchase supplies including food ingredients, beverage and wines[;]
 10. Resolve complaints regarding food and service; [and]
 11. Redevelop and redesign business plan as well when the need develops.

The support letter does not indicate the education requirement for the proffered position. The petitioner submitted copies of the beneficiary's foreign vocational certificates and transcripts, as well a credential evaluation from [REDACTED] finding that the beneficiary's vocational training and work experience amounts to the equivalent of a U.S. bachelor's degree in hospitality management.

On April 23, 2010, the director issued an RFE requesting the petitioner to submit, *inter alia*, (1) a detailed description of the proffered position, to include approximate percentages of time for each duty the beneficiary will perform; (2) copies of any written contracts (or work orders) between the petitioner and the beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the beneficiary will be employed that indicates the services being provided by the company and/or the beneficiary; (3) documentation of how many other individuals in the establishment are currently, or were, employed in the proffered position or similar positions (documented with copies of the former employees' degrees and evidence of employment such as pay stubs or Form W-2s or W-3s); and (4) brief job descriptions for the majority of positions within the petitioner's employ and approximately how many individuals occupy such positions (to include job titles, duties and education requirements).

On May 27, 2010, in response to the director's RFE, the petitioner explained in more detail the duties of the proffered position as follows:

- Monitor the operations of the restaurant to assure compliance with rules and regulations of all regulatory agencies of the City and State of New York, where the restaurant is located. This requires the individual to be able to read and comprehend the regulations to assure implementation of programs and processes for complete compliance. This requires and [sic] understanding of the regulation, why the regulation exists in the first place, and a determination as to how to assure that changes are put in place to follow the law. Sometimes wholesale changes are needed to comply, while minor adjustments sometimes do the trick. Proper evaluation will allow compliance without breaking the bank.
- This involves the ability to understand laws and regulations and to make determinations as to how to comply. This is not following instructions, but it

is giving instructions and assuring that these instructions are followed. See Exhibit "E", Board of Health Permit and State Taxation certification, for which [the beneficiary] must assure full compliance with laws and regulations.

- The above duties relating to governmental regulation also requires that the manager maintain records are [sic] required by the different agencies.
- The manager will organize and direct worker training programs and resolve all personnel programs, hire and supervise the training of new staff, and evaluate employee performance to determine promotions, salary increases, and so on.
- This involves knowledge of human behavior, interpersonal relations, and ability to comprehend and apply the restrictions and requirements of basic labor law and equal employment.
- [The beneficiary] will monitor the budget, payroll records and review all financial transactions to assure that expenditures are authorized and budgeted. [The beneficiary] will conduct cost analysis for both foods and beverages, and use the findings in directing a financially viable restaurant during these difficult times. With this function, [the beneficiary] will work with the chef de cuisine, who actually orders foodstuffs and kitchen equipment, as well as the company's accountant. This requires knowledge in basic accounting practices, as one would learn in introductory university accounting courses, or on one's own through employment experience. This is necessary to understand the balance sheets needed to be maintained and presented. Furthermore, the manager would meet regularly with the company's accountant to assure that the business is functioning in a fiscally efficient manner. It is the manager's input to the accountant and his understanding of instructions or explanations from the accountant critical to a sound fiscal operation. This requires knowledge of economic and accounting principles and practices, banking and analysis and reporting of financial data.
- The manager must have knowledge as to the principles and processes involved in business and organizations [sic] planning, coordination and execution, including strategic planning, resource allocation, manpower modeling, leadership techniques and production methods, as well as principles and processes for providing customer and personal services.

In addition, the petitioner indicated that the proffered position is performed by an individual with an appropriate university degree, or its equivalent, but did not indicate a specific specialty.

The petitioner also submitted, in part, (1) a list of its employees, which includes the job titles, job duties, and experience; (2) a print out of the curriculum for a bachelor in hotel and restaurant management from the [redacted]; (3) a print out of

the curriculum for a bachelor in hotel, restaurant, and institutional management from the [REDACTED]; and (4) job vacancy advertisements.

The director denied the petition on June 7, 2010.

On appeal, counsel for the petitioner claims that the reason for the denial of the petition is that USCIS does not understand or recognize the type of business operation that the petitioner operates. Counsel further claims the the proffered position qualifies as a specialty occupation because it is for a fine-dining restaurant in the [REDACTED]. In addition, counsel states that the proffered position is a specialty occupation because the beneficiary will be (1) responsible for the development and maintenance of the wine cellar; (2) acting as a “compliance officer” to assure compliance with all laws, rules, and regulations; and, (3) responsible for supervising, hiring, training, firing, and promoting the bar tender, executive chef, sous chef, cooks, kitchen help, bookkeeper, accountant/controller, maître d’, host/hostess, waiters, food servers, and coat room staff.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO first turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor’s (DOL’s) *Occupational Outlook Handbook* (hereinafter 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)).

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹ The duties, as described by the petitioner, reflect the employment of food service managers. As indicated by the *Handbook*:

Food service managers are responsible for the daily operations of restaurants and other establishments that prepare and serve food and beverages to customers. Managers ensure that customers are satisfied with their dining experience.

¹ 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 2012 – 2013 edition available online.

Duties

Food service managers typically do the following:

- Interview, hire, train, oversee, and sometimes fire employees
- Oversee the inventory and ordering of food and beverage, equipment, and supplies
- Monitor food preparation methods, portion sizes, and the overall presentation of food
- Comply with health and food safety standards and regulations
- Monitor the actions of employees and patrons to ensure everyone's personal safety
- Investigate and resolve complaints regarding food quality or service
- Schedule staff hours and assign duties
- Keep budgets and payroll records and review financial transactions
- Establish standards for personnel performance and customer service

Besides coordinating activities among the kitchen and dining room staff, managers must ensure that customers are served properly and in a timely manner. They monitor orders in the kitchen and, if needed, they work with the chef to remedy any delays in service.

Food service managers are generally responsible for all functions of the business related to people. For example, most managers interview, hire, train, and, when necessary, fire employees. Finding and keeping good employees is a challenge for food service managers. Managers schedule work hours, making sure that enough workers are present to cover each shift—or managers may have to fill in themselves.

Food service managers plan and arrange for clean tablecloths and napkins, for heavy cleaning when the dining room and kitchen are not in use, for trash removal, and for pest control when needed.

In addition, managers do many administrative tasks, such as keeping employee records, preparing the payroll, and completing paperwork to comply with licensing, tax and wage, unemployment compensation, and Social Security laws. While they may give some of these tasks to an assistant manager or bookkeeper, most general managers are responsible for the accuracy of business records. Managers also keep records of supply and equipment purchases and ensure that suppliers are paid.

Many full-service restaurants have a management team that includes a general manager, one or more assistant managers, and an executive chef. Managers add up the cash and charge slips and secure them in a safe place. Many managers also lock up the establishment; check that ovens, grills, and lights are off; and switch on the alarm system.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., at <http://www.bls.gov/ooh/Management/Food-service-managers.htm#tab-2> (accessed May 30, 2012).

Under the section on “How to Become a Food Service Manager,” the *Handbook* states that:

Experience in the food services industry—as a cook, waiter or waitress, or counter attendant—is the most common training for food service managers. Many jobs, particularly for managers of self-service and fast-food restaurants, are filled by promoting experienced food service workers. However, a growing number of manager positions require postsecondary education in a hospitality or food service management program.

Although most food service managers have less than a bachelor’s degree, some postsecondary education is increasingly preferred for many manager positions. Many food service management companies and national or regional restaurant chains recruit management trainees from college hospitality or food service management programs, which require internships and real-life experience to graduate.

Handbook, 2012-13 ed., at <http://www.bls.gov/ooh/Management/Food-service-managers.htm#tab-4> (accessed May 30, 2012).

Because the *Handbook* indicates that working as a food service manager does not normally require at least a bachelor’s degree in a specific specialty or its equivalent, the *Handbook* does not support the proffered position as being a specialty occupation. Further, there is nothing in the evidence of record that otherwise establishes that the duties described for the proffered position would require the application of at least a bachelor’s degree level of highly specialized knowledge in any specialty.

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.

As stated earlier, 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).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. The petitioner in this case does not even specify the specialty in which the degree would allegedly be required. 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, 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).

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).

Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner submitted copies of two advertisements. The advertisements provided, however, establish at best that a bachelor's degree is generally required for most of the positions posted, but a bachelor's degree or the equivalent in a *specific specialty* is not. In addition, even if all of the job postings indicated that a bachelor's or higher degree in a specific specialty or its equivalent were required, the petitioner fails to establish that the submitted advertisements are relevant in that the posted job announcements are not for parallel positions in similar organizations in the same industry. For instance, one of the advertisements is for a food and beverage manager position at a cancer center and, therefore, it cannot be found to be a parallel position in a similar organization in the same industry. As a result, the petitioner has not established that similar companies in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.²

² 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 just two job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar fine-dining restaurants. [REDACTED] Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such

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." As discussed previously, the petitioner itself does not require at least a baccalaureate degree in a specific specialty or its equivalent. Furthermore, the *Handbook* reveals that the proffered duties are performed by food service managers, an occupation which does not require at least a bachelor's degree in a specific specialty, or its equivalent, for entry into the occupation, and the petitioner has not demonstrated with sufficient evidence how the proffered position is so complex or unique relative to general food service manager positions such that it requires at least a specialty baccalaureate degree to perform its duties.

Next, the record of proceeding does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).³

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. Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than food service manager positions that,

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 food service manager for a fine-dining restaurant 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.

³ Even if 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").

according to the *Handbook*, are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.⁴

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

The AAO does not need to examine the issue of the beneficiary's qualifications because the petitioner has not provided sufficient documentation to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications further, except to note that, in any event, the evaluation from The [REDACTED] does not meet the standard described in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Specifically, as the claimed equivalency was based in part on experience, the record 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 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Furthermore, there is insufficient evidence that the beneficiary has recognition of expertise in the specialty through progressively responsible positions directly related to the claimed specialty as required in part by 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). As such, the evaluation does not meet the standards of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and (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. § 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.

⁴ It must be noted that the petitioner has designated the proffered position as a Level II position on the submitted Labor Condition Application (LCA), which is for qualified employees who have attained, either through education or experience, a good understanding of the occupation. *See* Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009). Therefore, it is simply not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage. 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).