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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
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Services

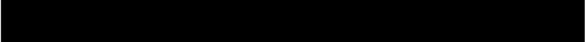


D2

Date: **JUN 12 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:



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, 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 preschool educational institution. To employ the beneficiary in what it designates as a preschool teacher 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, the petitioner asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements. In support of these contentions, the petitioner submitted a brief and additional evidence.

As will be discussed below, the AAO has determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and the petitioner's submissions on appeal.

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

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 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 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 (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.

With the visa petition, counsel submitted evidence that the beneficiary was awarded a bachelor's degree in psychology from ██████████ in the Philippines. An evaluation provided indicates that the beneficiary foreign education is equivalent to a bachelor's degree in psychology earned at a U.S. institution.

Counsel also submitted a letter, dated August 19, 2009, from the petitioner's owner. In that letter, the petitioner's owner stated that the proffered position is that of "Preschool educator" and cited the U.S. Department of Labor's Occupational Outlook *Handbook (Handbook)* as evidence that the proffered position qualifies as a specialty occupation position.

On December 14, 2009, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center also specifically requested a more detailed description of the duties of the proffered position and, if the beneficiary would supervise others, an organizational chart of the petitioner's operation.

In response, counsel provided (1) a document with the heading, "Evidence Pertaining to the Proffered Position," (2) a descriptions of pre-kindergarten positions at the petitioner's school, and (3) a letter, dated November 23, 2009, from the petitioner's owner.¹ Counsel did not provide the conditionally requested organizational chart, apparently indicating that, in the proffered position, the beneficiary would not supervise anyone.

The document headed Evidence Pertaining to the Proffered Position states:

Teachers of [the petitioner's] pre-kindergarten classes, the kindergarten classes, and elementary school classes, however, must have a baccalaureate degree, at a minimum. These teachers have the titles of preschool teacher, kindergarten teacher, and elementary school teacher, respectively.

Subsequently, that document states that the beneficiary would work as a "preschool teacher of prekindergarten children." Elsewhere, that document refers to the proffered position as a "lead or head teacher" position. The AAO observes that if any distinction exists between preschool teacher positions and lead or head teacher positions, the proffered position will be analyzed as a preschool teacher position, as that is the position for which the visa petition was filed.

The Evidence Pertaining to the Proffered Position document concedes that California law provides for preschool teachers with less than a bachelor's degree, but asserts that those positions are merely

¹ A minor discrepancy exists in that the November 23, 2009 letter states explicitly that it was submitted in response to the December 14, 2009 RFE, which it predates. The AAO finds that this apparent discrepancy is the result of an incorrect date on the letter.

custodial, whereas the proffered position involves teaching and requires a bachelor's degree. It also includes a paragraph from the results of a study published by the Rand Corporation that asserts, "Typically, . . . effective [pre-kindergarten] programs have [six characteristics in common including] lead teachers with postsecondary education (typically a bachelor's degree)."

The Evidence Pertaining to the Proffered Position document refers to Exhibit B, Job Description, [The petitioner], Preschool (Pre-Kindergarten) Teacher, for a description of the duties of the proffered position. That job description states that the proffered position encompasses the following duties:

Complies with all preschool-employee duties of health and safety imposed on [the petitioner] (as state licensee) and preschool teachers by the California regulations.

Understands concepts of academic subjects in mathematics, science, and language arts.

Observes, evaluates, and documents student's performance, behavior, social and emotional development, and physical health.

Instructs a student individually and in groups, implementing instructional activities that contribute to a climate where students are actively engaged in meaningful learning experiences.

Devises effective strategies with administration, families, and education professionals to enhance development and education of students.

Identifies, selects, and modifies instructional resources to meet the needs of the students with varying backgrounds, learning styles, and special needs.

Assists in assessing changing curricular needs and offers plans for improvement.

Maintains effective and efficient record keeping procedures.

Provides a positive environment in which students are encouraged to be actively engaged in the learning process.

Communicates effectively, both orally and in writing, with students, parents, and other professionals on a regular basis.

Collaborates with peers to enhance the instructional environment.

Models professional and ethical standards when dealing with students, parents, peers, and community.

Ensures that student growth and achievement are continuous and appropriate for age group, subject area, and/or program classification.

Establishes and maintains cooperative working relationships with students, parents, and schools, and measured by [the petitioner's] survey results.

Assumes responsibility for meeting his/her course and school-wide student performance goals.

Demonstrates gains in student performance.

Participates in professional development training and presentations.

Meets professional obligations through efficient work habits.

Performs other duties and responsibilities as assigned by the school director or other administrator.

The AAO finds that, to the extent that the proposed duties are described – which the AAO finds to be exclusively in generalized terms of functions generic to preschool teacher positions in general – those duties fail to convey any particular level of specialization, complexity, or uniqueness that would distinguish them from preschool teacher positions performed by persons without at least a bachelor's degree, or the equivalent, in a specific specialty.

That job description further states that the proffered position requires, "[a] Bachelor's Degree (Major in Early Childhood Education or Child Development preferred)." The AAO notes that a preference for a particular major is not a minimum requirement. The description of the proffered position does not indicate that it requires a minimum of a bachelor's degree or the equivalent *in a specific specialty*.

The petitioner's owner's November 23, 2009 letter describes the classes the beneficiary took in order to obtain her degree in psychology, and how her education has rendered her eminently qualified to work in the proffered position. The visa petition was denied, however, based on the director's finding that the petitioner had not demonstrated that it would employ the beneficiary in a specialty occupation position. The immediate issue is not whether the beneficiary is qualified for the proffered position. Neither the petitioner's owner's letter nor any other evidence provided with the visa petition or in response to the RFE, however, indicates that the proffered position requires a minimum of a bachelor's degree or the equivalent *in a specific specialty*.

The director denied the petition on January 22, 2010, 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 satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner's owner submitted a brief.² In it, he stated that the proffered position is a "Head Preschool Teacher" position, and must be distinguished from various other positions at the petitioner's school, including preschool teacher positions, which assist the Head Preschool Teacher. The petitioner's owner also indicated that a teacher's aide would assist the beneficiary in her Head Preschool Teacher position.

The AAO notes, initially, that the service center requested, in the RFE issued in this matter, that if the beneficiary would supervise any other workers, the petitioner submit an organizational chart showing its various employees. The petitioner submitted no such chart. Such a chart would be relevant to the material issue of the nature of the beneficiary's duties and the educational requirements of the proffered position. If the beneficiary would supervise two employees while working in the proffered position, then the petitioner failed to submit requested evidence that precluded a material line of inquiry. In that event, the visa petition would be denied pursuant to 8 C.F.R. § 103.2(b)(14).

On appeal, however, 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 that the position offered to the beneficiary when the petition was filed merits approval of the visa petition. *See 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).

The AAO will not, therefore, consider the revised assertions submitted on appeal pertinent to the proffered position, that it is a Head Preschool Teacher, rather than a preschool teacher, as asserted on the visa petition and elsewhere, or that its duties include supervision of two other employees. The decision on appeal will be based upon the position offered to the beneficiary in the visa petition.³

The petitioner submitted a list of the head preschool teachers it has employed since its inception. That list shows that all of those head preschool teachers had bachelor's degrees. The AAO observes that, as it will not consider the proffered position as a head preschool teacher position, the qualifications of the petitioner's previous and present head preschool teachers is irrelevant to whether

² Although counsel filed the Form I-290B appeal in this matter, the brief, which was subsequently submitted, contains no indication that counsel participated in its preparation. All representations will be considered, and the decision in this matter will be provided to the petitioner and its counsel or record.

³ In fact, considering the revised position offered on appeal would not affect the outcome of the appeal, as, even on appeal, the petitioner provided no evidence, nor even an assertion, that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty.

the proffered preschool teacher position qualifies as a specialty occupation position, and that list will not be considered in issuing today's decision.⁴

The AAO will now discuss the application of the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

We will first address the supplemental, alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied if the petitioner demonstrates that the normal minimum entry requirement for the proffered position is a bachelor's or higher degree in a specific specialty or its equivalent.

The AAO recognizes the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, cited by the petitioner's owner, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁵ In this instance, the petitioner may be able to meet this criterion by (1) establishing the occupational classification under which the proffered position should be classified and (2) providing evidence that the *Handbook* supports the conclusion that this occupational classification normally requires a bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation in the United States.

In the chapter entitled "Preschool Teachers," the *Handbook* describes the duties of those positions as follows:

- Prepare children for kindergarten by introducing concepts they will explore further in kindergarten and elementary school
- Work with children in groups or one on one, depending on the needs of children and the subject matter
- Plan and carry out a curriculum that targets different areas of child development, such as language, motor, and social skills
- Organize activities so children can learn about the world, explore interests, and develop talents
- Develop schedules and routines to ensure children have enough physical activity, rest, and playtime

⁴ The AAO further observes, however, that the subjects in which the petitioner's preschool teachers had degrees when hired included sociology, elementary education, English, sociology, liberal studies, and child development. If the proffered position were to be considered as a head preschool teacher position, and that list were therefore deemed relevant, it would still not support the proposition that the proffered position is a specialty occupation position by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty, as sociology, elementary education, English, sociology, liberal studies, and child development do not delineate *a specific specialty*.

⁵ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/ooh/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

- Watch for signs of emotional or developmental problems in children and bring problems to the attention of parents
- Keep records of the students' progress, routines, and interests, and keep parents informed about their child's development

The referenced section of the U.S. Dept. of Labor's Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., available at <http://www.bls.gov/ooh/education-training-and-library/preschool-teachers.htm> (last accessed May 29, 2012).

The duties the petitioner's owner attributed to the proffered position are consistent with the duties of preschool teachers as described in the *Handbook*. On the balance, the AAO finds that the proffered position is a preschool teacher position as described in the *Handbook*.

The *Handbook* states the following about the educational requirements of preschool teacher positions:

In childcare centers, preschool teachers generally are required to have at least a high school diploma and a certification in early childhood education. However, employers may prefer to hire workers with at least some postsecondary education in early childhood education.

Preschool teachers in Head Start programs must have at least an associate's degree. However, by 2013, at least 50 percent of preschool teachers in Head Start programs nationwide must have a bachelor's degree in early childhood education or a related field. As a result, Head Start programs may prefer to hire workers with a bachelor's degree. Those with a degree in a related field must have experience teaching preschool-age children.

In public schools, preschool teachers are generally required to have at least a bachelor's degree in early childhood education or a related field. Bachelor's degree programs teach students about children's development, strategies to teach young children, and how to observe and document children's progress.

The *Handbook* indicated that educational requirements for preschool teacher positions vary by venue, and that, in childcare centers, a high school diploma and a certification in early childhood education, which is less than a bachelor's degree, is a sufficient educational qualification for a preschool teacher position. The *Handbook* indicates that only public schools' preschool teachers are required to have a minimum of a bachelor's degree or the equivalent in a specific specialty.

Further, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge pertinent to caring for children, and some level of teaching skill, but do not establish any particular level of formal education as minimally necessary to attaining such knowledge and skill.

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, satisfied 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)).

As was observed above, the *Handbook* does not report that the petitioner's industry normally requires preschool teachers to possess a minimum of a bachelor's degree or the equivalent in a specific specialty. The record contains no evidence pertinent to a professional association of preschool teachers that requires a minimum of a bachelor's degree or the equivalent in a specific specialty as a condition of entry. The record contains no letters or affidavits from others in the preschool industry.

Counsel cited the results of a study published by Rand Corporation as evidence that some positions at preschools require, or perhaps should require, a bachelor's degree. That study, however, merely asserted that effective pre-kindergarten programs typically have six characteristics in common, including lead teachers with bachelor's degrees.

As was stated above, to the extent that a head teacher or lead teacher position differs from a preschool teacher position, the AAO is not considering the proffered position as a head teacher position or a lead teacher position. The finding of the study cited by counsel does not appear to be relevant to the proffered position. Further, even if the results of that study were found to be relevant and were considered, they would not be evidence that the proffered position qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty, as the study only states that lead teachers in effective prekindergarten schools typically have bachelor's degrees, not that they tend to have a minimum of bachelor's degrees or the equivalent *in any 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, satisfied the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner establishes that, notwithstanding that other preschool teacher positions in the petitioner's industry may not require a minimum of a bachelor's degree, or the equivalent, in a specific specialty, the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with such credentials.

The petitioner's owner stated that, although other preschool teachers are essentially care-givers, preschool positions at the petitioner's school require bachelor's degrees because the curriculum has a "substantial academic component." The duties of the proffered position most closely related to academics, however, are:

Understands concepts of academic subjects in mathematics, science, and language arts.

Instructs a student individually and in groups,

Assumes responsibility for meeting his/her course and school-wide student performance goals.

Demonstrates gains in student performance.

Those duties indicate that the beneficiary would teach academic subjects, but, again, at a preschool level. They do not demonstrate that the proffered position in the instant case is so complex or unique that it can be performed only by an individual with a minimum of a bachelor's degree or the equivalent in a specific specialty. That teaching mathematics, science, and language arts in the proffered position is so complex or unique that it requires a minimum of a bachelor's degree or the equivalent in a specific specialty has not been demonstrated, especially when compared to other preschool positions, which the *Handbook* makes clear may not require any such degree. The petitioner has not, therefore, satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The proffered position is being considered as a preschool teacher position, not a head preschool teacher position. The petitioner provided evidence pertinent to the degrees its head preschool teachers have held. It did not, however, provide evidence pertinent to the educational qualifications of its other preschool teachers. The petitioner has not, therefore, provided any evidence for analysis under the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).⁶

⁶ In any event, 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

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree, or the equivalent, in a specific specialty.

The duties of the proffered position, however, contain no indication of specialization or complexity such that knowledge to perform them is usually associated with a minimum of a bachelor's degree or the equivalent in a specific specialty. For instance, as minimally and generally described as they are in this record of proceeding, complying with health and safety regulations; observing, evaluating, and documenting students' performance, behavior, social and emotional development, and physical health; implementing instructional activities that contribute to a climate where students are actively engaged in meaningful learning experiences; devising effective strategies to enhance development and education; identifying, selecting, and modifying instructional resources; maintaining effective and efficient record keeping procedures; and communicating effectively, for instance, do not appear to be so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree, or the equivalent, in a specific specialty.

As already reflected in this decision's comments about the petitioner's dependence upon generalized and generic descriptions of the duties of the proffered position, the record of proceeding does not present the duties with sufficient specificity to establish their substantive nature, and, thereby, whatever degree of specialization and complexity may reside in them. Therefore, the petitioner has also failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), by not developing the proposed duties to an extent establishing their nature as so specialized and complex that their performance would require knowledge usually associated with the attainment of at least a bachelor's degree, or the equivalent, in a specific specialty. The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO finds that the director did not err 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 submissions on appeal have not remedied that failure. Accordingly, the appeal will be dismissed and the petition denied on this basis.

The record suggests an additional issue that was not addressed in the decision of denial. The description of the duties of the proffered position suggests that those duties might be closely related to early childhood education. The beneficiary, however, has a bachelor's degree in psychology.

The AAO observes that if the petitioner had demonstrated that the proffered position qualified as a specialty occupation by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty, the petitioner would be obliged, in order for the visa petition to be approvable, to

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").

demonstrate, not only that the beneficiary has a bachelor's degree or the equivalent, but that the beneficiary has a minimum of a bachelor's degree or the equivalent *in that specific specialty*. See *Matter of Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968). The beneficiary's degree in psychology does not appear to be such a 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 (9th 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).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

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.