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



U.S. Citizenship
and Immigration
Services

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DATE: **MAR 19 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, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner describes itself as a screen print and embroidery provider and seeks to employ the beneficiary as its Web Sales IT Specialist. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 position was not a specialty occupation. On appeal, counsel for the petitioner submits a brief and additional evidence and contends that, contrary to the director's findings, the proffered position is a specialty occupation.

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

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job 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 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.

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

In a letter of support dated August 28, 2009, the petitioner claimed that it is "the leading provider of custom design print T-shirts, jackets, cap bags, uniforms, and promotional products for various industries such as athletics or teams, schools, corporate, industrial, medical, and non-profit organizations." It further claimed that it wished to fully develop its Internet sales capability and, as a result, required the services of the beneficiary as a Web Sales IT Specialist to achieve this goal. Regarding the duties of the proffered position, the petitioner states that the duties would include the following:

Primary responsibility for the development and maintenance of the company's website. Upgrade the company's website to become interactive and make available to its customers the ability to create or modify screen print or embroidery designs for their orders. Conduct research to make the company's website more accessible and generate more responses from customers. Respond to all customer service inquiries from [I]nternet customers. Assist the IT manager in the maintenance of the company's local area network, [I]nternet system, and database. Coordinate with the IT Manager and Controller in developing an accounting and billing system so that all [I]nternet sales are automatically recorded in the accounting database. Monitor all [I]nternet sales. Primary responsibility for recording, storing, and analyzing sales information for all [I]nternet sales. Assist the Controller in all other accounting functions as needed.

The petitioner concluded by stating that this was a new position, and that it required the incumbent to possess at least a bachelor's degree in computer science or a related field, as well as a minimum of six months experience in accounting, finance, or business administration.

In a September 22, 2009 RFE, the director requested additional information. Specifically, the director requested more detailed evidence demonstrating that the proffered position is a specialty occupation, including but not limited to a more detailed description of the proffered position and information pertaining to the petitioner's business, its organizational chart, and standards within the petitioner's industry.

The petitioner addressed the director's queries in a response dated October 26, 2009. The petitioner stated that "the single most compelling reason why we are hiring a Web Sales IT Specialist is that it

will allow us to focus on broader business issues and allow operational details to be handled by an online approach in the accounting and sales and marketing aspect. It also submitted an updated description of duties for the proffered position which identified the percentage of time she would devote to each such duty. Specifically, the description indicated that the beneficiary would report to the Controller and IT Manager, and further indicated that her duties would be divided as follows:

1. Primary responsibility for the development and maintenance of the company's website. Upgrade the company's website to become interactive and make available to its customers the ability to create or modify screen print or embroidery designs for their orders. Conduct research to make the company's website more accessible and generate more responses from customers. (35%)
2. Respond to all customer service inquiries from [I]nternet customers. (15%)
3. Assist the IT manager in the maintenance of the company's local area network, [I]nternet system, and database. (35%)
4. Coordinate with the IT Manager and Controller in developing an accounting and billing system so that all [I]nternet sales are automatically recorded in the accounting database. Monitor all [I]nternet sales. Primary responsibility for recording, storing, and analyzing sales information for all [I]nternet sales. Assist the Controller in all other accounting functions as needed. (15%)

The petitioner also submitted seven job postings in support of the contention that the degree requirement is common in the petitioner's industry, as well as a copy of its own vacancy announcement for the proffered position and its organizational chart.

On January 6, 2010, the director denied the petition, determining that the petitioner had failed to establish that the proffered position is a specialty occupation. The director found that, contrary to the assertions of the petitioner and counsel, the proffered position does not require a degree in a specific specialty.

On appeal, counsel contends that the director's findings were erroneous, and argues that a bachelor's degree is the normal prerequisite for entry into the occupation. Counsel further contends that the petitioner submitted sufficient evidence to establish eligibility for the benefit sought, and that the director erroneously discounted and/or failed to consider this evidence.

In reviewing the record, the AAO observes that the critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty or its equivalent as the minimum for entry into the occupation, as required by section 214(i)(1) of the Act.

To make its determination as to whether the employment described above qualifies as a specialty occupation, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Factors considered by the AAO when determining this criterion include whether the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty.

To determine whether the duties of the proffered position support the petitioner's characterization of its proposed employment, the AAO first turns to the 2010-2011 online edition of the *Handbook*. The director determined that the proffered position of Web Sales IT Specialist, an occupational category not listed in the *Handbook*, was most akin to the *Handbook's* description of Database Administrators and Network Systems Analysts, included in the *Handbook's* section entitled "Computer Network, Systems, and Database Administrators." According to the *Handbook*, this occupational category, is described as follows:

Information Technology (IT) has become an integral part of modern life. Among its most important functions are the efficient transmission of information and the storage and analysis of information. The workers described below all help individuals and organizations share and store information through computer networks and systems, the Internet, and computer databases.

Network architects or *network engineers* are the designers of computer networks. They set up, test, and evaluate systems such as local area networks (LANs), wide area networks (WANs), the Internet, intranets, and other data communications systems. Systems are configured in many ways and can range from a connection between two offices in the same building to globally distributed networks, voice mail, and e-mail systems of a multinational organization. Network architects and engineers perform network modeling, analysis, and planning, which often require both hardware and software solutions. For example, setting up a network may involve the installation of several pieces of hardware, such as routers and hubs, wireless adaptors, and cables, as well as the installation and configuration of software, such as network drivers. These workers may also research related products and make necessary hardware and software recommendations, as well as address information security issues.

Network and computer systems administrators design, install, and support an organization's computer systems. They are responsible for LANs, WANs, network segments, and Internet and intranet systems. They work in a variety of environments, including large corporations, small businesses, and government organizations. They install and maintain network hardware and software, analyze problems, and monitor networks to ensure their availability to users. These workers gather data to evaluate a system's performance, identify user needs, and determine system and network requirements.

Systems administrators are responsible for maintaining system efficiency. They ensure that the design of an organization's computer system allows all of the components, including computers, the network, and software, to work properly together. Administrators also troubleshoot problems reported by users and by automated network monitoring systems and make recommendations for future system upgrades. Many of these workers are also responsible for maintaining network and system security.

Database administrators work with database management software and determine ways to store, organize, analyze, use, and present data. They identify user needs and set up new computer databases. In many cases, database administrators must integrate data from old systems into a new system. They also test and coordinate modifications to the system when needed, and troubleshoot problems when they occur. An organization's database administrator ensures the performance of the system, understands the platform on which the database runs, and adds new users to the system. Because many databases are connected to the Internet, database administrators also must plan and coordinate security measures with network administrators. Some database administrators may also be responsible for database design, but this task is usually performed by *database designers* or *database analysts*. (Database designers are covered in the *Handbook* section on computer software engineers and computer programmers.)

Computer security specialists plan, coordinate, and maintain an organization's information security. These workers educate users about computer security, install security software, monitor networks for security breaches, respond to cyber attacks, and, in some cases, gather data and evidence to be used in prosecuting cyber crime. The responsibilities of computer security specialists have increased in recent years as cyber attacks have become more sophisticated.

Telecommunications specialists focus on the interaction between computer and communications equipment. These workers design voice, video, and data-communication systems, supervise the installation of the systems, and provide maintenance and other services to clients after the systems are installed. They also test lines, oversee equipment repair, and may compile and maintain system records.

Web developers are responsible for the technical aspects of Web site creation. Using software languages and tools, they create applications for the Web. They identify a site's users and oversee its production and implementation. They determine the information that the site will contain and how it will be organized, and may use Web development software to integrate databases and other information systems. Some of these workers may be responsible for the visual appearance of Web sites. Using design software, they create pages that appeal to the tastes of the site's users.

Webmasters or *Web administrators* are responsible for maintaining Web sites. They oversee issues such as availability to users and speed of access, and are responsible for approving the content of the site. Webmasters also collect and analyze data on Web activity, traffic patterns, and other metrics, as well as monitor and respond to user feedback.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., "Computer Network, Systems, and Database Administrators," <http://www.bls.gov/oco/ocos305.htm> (accessed March 6, 2012).

The AAO concurs with the director's finding that this section of the *Handbook* most closely reflects the duties of the proffered position. However, the AAO finds that the proffered position more closely resembles the profession of web developer or webmaster, since the petitioner claims that the majority of the beneficiary's time will be devoted to development and maintenance of the petitioner's website.

The *Handbook's* section pertaining to the educational requirements for web developer or webmaster states:

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

Education and training. Network and computer systems administrators often are required to have a bachelor's degree, although an associate degree or professional certification, along with related work experience, may be adequate for some positions. Most of these workers begin as computer support specialists before advancing into network or systems administration positions. (Computer support specialists are covered elsewhere in the *Handbook*.) Common majors for network and systems administrators are computer science, information science, and management information systems (MIS), but a degree in any field, supplemented with computer courses and experience, may be adequate. A bachelor's degree in a computer-related field generally takes 4 years to complete and includes courses in computer science, computer programming, computer engineering, mathematics, and statistics. Most programs also include general education courses such as English and communications. MIS programs usually are part of the business school or college and contain courses such as finance, marketing, accounting, and management, as well as systems design, networking, database management, and systems security.

For network architect and database administrator positions, a bachelor's degree in a computer-related field generally is required, although some employers prefer applicants with a master's degree in business administration (MBA) with a concentration in information systems. MBA programs usually require 2 years of study

beyond the undergraduate degree, and, like undergraduate business programs, include courses on finance, marketing, accounting, and management, as well as database management, electronic business, and systems management and design. In addition to formal education, network architects may be required to have several years of relevant work experience.

For Webmasters, an associate degree or certification is sufficient although more advanced positions might require a computer-related bachelor's degree. For telecommunications specialists, employers prefer applicants with an associate degree in electronics or a related field, but for some positions, experience may substitute for formal education. Applicants for security specialist and Web developer positions generally need a bachelor's degree in a computer-related field, but for some positions, related experience and certification may be adequate.

Id. The *Handbook* does not indicate that a bachelor's degree or higher in a specific specialty or its equivalent is the normal minimum requirement for entry into the position. While formal education is available through degree programs, it may also be obtained through certification programs and associate programs. Moreover, the *Handbook* indicates that webmasters typically require only an associate degree or certification for entry into the occupational category and, while web developers sometimes are required to have a bachelor's degree in a computer-related field, related experience and certification may be adequate. Consequently, the *Handbook* fails to demonstrate that a baccalaureate degree in a specific specialty or its equivalent is normally the minimum entry requirement for a career as a web developer, web master, or similar positions within the IT industry.

The petitioner has therefore failed to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the position of Web Sales IT Specialist as described in the record of proceeding. Accordingly, the petitioner has not established 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. Factors often considered by USCIS when determining the industry standard include: 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)).

The petitioner submitted seven job postings from hiring organizations which it claims support the contention that a degree in a specific specialty is required for parallel positions within similar organizations in the petitioner's industry. However, none of the organizations represented in the postings are akin to the petitioner in size and scope. Moreover, several of the positions advertised in

these postings differ from that of the proffered position, since they appear to focus primarily on marketing duties as opposed to web development. Finally, while it is noted that all postings require a bachelor's degree or "professional" degree as a prerequisite for entry into the advertised positions, none of the postings require a degree in a specific specialty. While two of the postings narrow the degree requirement (i.e., one requires a bachelor's degree in electrical engineering or computer engineering, and another requires a bachelor's degree in business, technology, or a related field), these degree requirements are not sufficient to demonstrate that a common, specialty degree requirement exists within the petitioner's industry. It is further noted that the two companies specifying the types of degrees required are engaged in insurance and electronics, respectively, and therefore cannot be considered akin to the petitioner, a screen printing and embroidery company with nine employees. Consequently, these postings cannot be deemed representative evidence that screen printing/embroidery businesses similar to that of the petitioner routinely require a bachelor's degree or higher for web developers. Therefore, the petitioner has failed to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).¹

In the alternative, the petitioner may submit evidence to establish that the duties of the position are so complex or unique that only an individual with a degree in a specific specialty can perform the duties associated with the position. The AAO observes that the petitioner has indicated that the beneficiary's educational background and experience in the industry will assist him in carrying out the duties of the proffered position; however, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. The petitioner does not explain or clarify

¹ 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 seven job postings with regard to determining the common educational requirements for entry into parallel positions in similar religious organizations. *See generally* Earl Babbie, *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 Web Sales IT Specialist for a nine-person screen print and embroidery provider 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.

which of the duties, if any, of the proffered position are so complex or unique as to be distinguishable from those of similar but non-degreed employment. The petitioner has thus failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that it normally requires a degree or its equivalent for the position. However, since the petitioner claims in its August 28, 2009 letter of support that this is a new position, there is no hiring history to examine. Therefore, the petitioner cannot demonstrate that it has satisfied this criterion since it has not previously employed individuals in this position.

Moreover, despite claiming that it requires at least a bachelor's degree in computer science or a related field, the petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were limited to reviewing a petitioner's self-imposed requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. As already discussed, the duties of the proffered position are performed by a category of occupations that do not require a baccalaureate degree in a specific specialty or its equivalent.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The duties of the position described encompass routine duties associated with web development and maintenance. While the petitioner claims that the duties of the proffered position are sufficiently complex, the record does not contain explanations or clarifying data sufficient to elevate the position to one that is so specialized and complex that the knowledge to perform these additional tasks is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

The AAO notes that the duties as described in the record of proceeding are broad and numerous and appear to span a variety of functions, including responding to customer service inquiries in addition to web development. The AAO finds that, to the extent that they are described, the duties do not convey either the need for the beneficiary to apply a particular body of highly specialized knowledge in a specific specialty, or a usual association between such knowledge and the attainment of a particular educational level in a specific specialty. As the petitioner has not established that the

proffered position's specific duties require the application of specialized and complex knowledge usually associated with the attainment of a baccalaureate degree or higher degree in a specific discipline, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).²

Based on the record of proceeding, the AAO determines that the petitioner has not established that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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

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

² While counsel emphasizes the specialized nature of the proffered position's duties and although the petitioner claims that they are sufficiently complex, the duties as described lack sufficient specificity to distinguish the proffered position from other web developer or webmaster positions for which a bachelor's or higher degree in a specific specialty, or its equivalent, is not required to perform their duties.

Moreover, the petitioner has designated the proffered position as a Level I position on the submitted Labor Condition Application (LCA), indicating that it is an entry-level position for an employee who has only basic 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).