

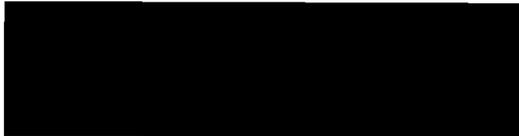
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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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Services

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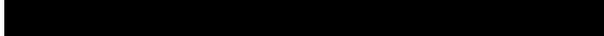
Date: **MAR 29 2012**

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:

SELF-REPRESENTED



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 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 an IT (information technology) development and consulting firm. To employ the beneficiary in what it designates as an analyst/programmer position, the petitioner endeavors 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 appeal is filed to contest each of the three independent grounds upon which the director denied this petition, namely, the director's separate determinations that the petitioner (1) failed to establish that it has standing to file the visa petition as the beneficiary's prospective employer or agent, (2) failed to establish that the proffered position qualifies as a specialty occupation, and (3) made a material change to the claim to eligibility since filing the visa petition. On appeal, counsel contests all three findings.

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. Because the petitioner is seeking to have a visa issued to the beneficiary so that it may employ him pursuant to that section of law, whether the petitioner has provided evidence sufficient to establish that it would be employing the beneficiary in a specialty occupation position is properly at issue.

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.

The visa petition states that the petitioner is located in Cedar Rapids, Iowa. It also states that the beneficiary would work in Cedar Rapids. With the visa petition, counsel submitted a letter, dated

March 3, 2009, from the petitioner's president. The petitioner's president described the duties of the proffered position as follows:

The beneficiary, under close supervision, will analyze user requirements, procedures, and problems to automate processing or to improve existing computer systems. The beneficiary will confer with personnel organizational units involved to analyze current operational procedures, identify problems, and learn the specific output requirements, such as data input, how data is to be summarized, and forms for reports. Moreover, the beneficiary will write detailed descriptions of user needs, program functions and the steps required to develop or modify computer programs.

The AAO notes that, although the proffered position is labeled an analyst/programmer position, the description of its duties includes no programming duties. The petitioner's president further stated:

An individual would need a minimum of a Bachelor's degree or equivalent to perform the job duties as described. The petitioner attests that it has not hired any individuals in the above-described position who did not have at a minimum a Bachelor's degree or equivalent.

The petitioner's president did not state, nor provide evidence to show, the number of people who currently work or have previously worked in the proffered position, or provide evidence pertinent to their educational qualifications. He did not indicate what the petitioner would consider to be equivalent to a bachelor's degree or how many people had qualified to work in the proffered position based on that equivalency, rather than having a bachelor's degree, *per se*. Further, he did not indicate that the proffered position requires a degree *in any specific specialty*.

The petitioner's president stressed steps it had taken to increase its capacity for in-house software development, and stated that its largest in-house project was then a web application and database system pertinent to hazardous materials that it was developing for the Iowa Department of Natural Resources (DNR).

Counsel provided various documents pertinent to the beneficiary's education that contain writing in a language other than English. They were not accompanied by English translations.

Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3). Accordingly, the evidence containing foreign language and unaccompanied by translation and certification is not probative and will not be accorded any weight in this proceeding.

Because the evidence submitted did not demonstrate that the proffered position qualifies as an H-1B specialty occupation position, the service center, on May 15, 2009, issued an RFE in this matter.

The service center requested, *inter alia*, evidence pertinent to the requirements of the end-user of the beneficiary's services.

In response, counsel submitted information pertinent to a Professional Services Tracking System (PSTS) project the petitioner had pending.

The director denied the visa petition on July 22, 2009 finding, as was noted above, that the petitioner had failed to demonstrate that the proffered position qualifies as a specialty occupation, had failed to demonstrate that it has standing to file the instant visa petition as the beneficiary's prospective employer or agent within the meaning of 8 C.F.R. § 214.2(h)(2)(i)(A) or 8 C.F.R. § 214.2(h)(2)(i)(F), and had made a material revision to the claim to eligibility presented in the visa petition.

The AAO observes that the finding that the petitioner has not demonstrated that it would be the beneficiary's employer appears to be based on a misconstruction of the petitioner's president's letter of March 3, 2009. The director appears to have construed the description of the beneficiary's duties to indicate that the beneficiary would not work on the petitioner's premises, but at some remote location. The AAO finds no such implication in the petitioner's president's letter, and withdraws the finding that the petitioner would not be the beneficiary's employer.

Further, the finding that the petitioner made a material revision to the claim of eligibility stated on the visa petition is based on the perception that the petitioner initially asserted that the beneficiary would work for DNR, and subsequently, in response to the RFE, asserted that the beneficiary would be working on an unrelated PSTS project. On appeal, counsel asserted that the DNR project is the PSTS project. The AAO further notes that the petitioner did not initially indicate that the beneficiary's work would be limited to the DNR project. The AAO finds that the director, in finding a material change in the claim to eligibility, misconstrued the petitioner's initial claim. The AAO withdraws this additional basis for the decision of denial.

The remaining basis for the decision of denial is the specialty occupation issue.

On appeal, counsel quoted a section of the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook*¹ (*Handbook*) for the proposition that software engineer positions require a minimum of a bachelor's degree or the equivalent in a specific specialty.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. However, in order to show that the section pertinent to software engineers is relevant, counsel would first be obliged to show that the proffered position, which the petitioner has labeled an analyst/programmer position, is actually a software engineer position within the meaning of the *Handbook*.

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 2010 – 2011 edition available online.

In any event, the *Handbook*, in the section entitled Computer Systems Analysts, provides the following description of the duties of those positions:

To begin an assignment, systems analysts consult with an organization's managers and users to define the goals of the system and then design a system to meet those goals. They specify the inputs that the system will access, decide how the inputs will be processed, and format the output to meet users' needs. Analysts use techniques such as structured analysis, data modeling, information engineering, mathematical model building, sampling, and a variety of accounting principles to ensure their plans are efficient and complete. They also may prepare cost-benefit and return-on-investment analyses to help management decide whether implementing the proposed technology would be financially feasible.

When a system is approved, systems analysts oversee the implementation of the required hardware and software components. They coordinate tests and observe the initial use of the system to ensure that it performs as planned. They prepare specifications, flow charts, and process diagrams for computer programmers to follow; then they work with programmers to "debug," or eliminate errors, from the system. Systems analysts who do more in-depth testing may be called *software quality assurance analysts*. In addition to running tests, these workers diagnose problems, recommend solutions, and determine whether program requirements have been met. After the system has been implemented, tested, and debugged, computer systems analysts may train its users and write instruction manuals.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos287.htm> (last accessed March 26, 2012).

The description of the proffered position's duties corresponds very closely with the *Handbook's* description of a computer systems analyst's duties. The AAO finds that the description of duties provided by the petitioner's president describes a computer systems analyst position within the meaning of the *Handbook*.

The AAO will now consider the various alternative criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO will first consider the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is satisfied if the petitioner demonstrates that computer systems analyst positions normally require a minimum of a bachelor's degree in a specific specialty or its equivalent.

The *Handbook* describes the educational requirements of systems analyst positions as follows:

When hiring computer systems analysts, employers usually prefer applicants who have at least a bachelor's degree. For more technically complex jobs, people with graduate degrees are preferred. For jobs in a technical or scientific environment,

employers often seek applicants who have at least a bachelor's degree in a technical field, such as computer science, information science, applied mathematics, engineering, or the physical sciences. For jobs in a business environment, employers often seek applicants with at least a bachelor's degree in a business-related field such as management information systems (MIS). Increasingly, employers are seeking individuals who have a master's degree in business administration (MBA) with a concentration in information systems.

Despite the preference for technical degrees, however, people who have degrees in other areas may find employment as systems analysts if they also have technical skills. Courses in computer science or related subjects combined with practical experience can qualify people for some jobs in the occupation.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos287.htm> (last accessed March 26, 2012).

That employers prefer applicants with a minimum of a bachelor's degree does not indicate that it is a minimum requirement. Further, that section of the *Handbook* makes clear that the positions that require a bachelor's degree, rather than requiring a degree in any specific specialty, may be available to an applicant with a degree in computer science, information science, applied mathematics, engineering, or any of the physical sciences. The broad range of majors listed, i.e., computer science, information science, applied mathematics, engineering, and the physical sciences, does not delineate a specific specialty.

The record contains no evidence that programmer-analyst positions typically require a minimum of a bachelor's degree or the equivalent in a specific specialty. The petitioner has not demonstrated that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO will consider the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In the instant case, as was noted above, the *Handbook* does not support the assertion that parallel positions within similar organizations in the petitioner's industry require a minimum of a bachelor's

degree or the equivalent in a specific specialty. The record does not indicate that any professional association of programmer-analysts requires such a degree for admission. The record contains no letters or affidavits from firms or individuals in the petitioner's industry. The record contains no vacancy announcements or any other evidence pertinent to the minimum educational requirements of programmer-analyst positions.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) is satisfied if the petitioner demonstrates that the particular position proffered 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. In the instant case, nothing about the proffered position sets it apart from other programmer-analyst positions that do not require a minimum of a bachelor's degree or the equivalent in a specific specialty.

The description of the proffered position's duties is the only evidence submitted that might have differentiated the proffered position from other computer systems analyst positions. The duties described, however, appear to be the generic duties of a computer systems analyst as described in the *Handbook*. Conferring to analyze operational procedures, learning specific output requirements, identifying problems, and writing descriptions of user needs, for instance, contain no indication of complexity or uniqueness that would require a minimum of a bachelor's degree or the equivalent in a specific specialty.

Counsel also submitted a letter, dated June 23, 2009, in which he reiterated that the beneficiary would work at the petitioner's own address. Counsel's letter also contains what purports to be a more detailed description of the duties of the proffered position. Counsel's basis for asserting that it corresponds to the duties the beneficiary would perform is unknown to the AAO, as that enhanced description does not appear to be based on any evidence in the record.

Without documentary evidence to support them, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Nothing about the proffered position indicates that it would require a minimum of a bachelor's degree or the equivalent in a specific specialty, notwithstanding that the *Handbook* indicates that other computer systems analyst positions do not. The petitioner has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) is satisfied if the petitioner shows that it normally requires a minimum of a bachelor's degree or the equivalent in a specific specialty for the proffered position. Although the petitioner's owner asserted that the petitioner "has not hired any individuals in the [proffered position] who did not have a minimum of a bachelor's degree or the equivalent," he provided no evidence pertinent to any people the petitioner has hired to fill the proffered position or their educational credentials. The record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore, demonstrated that the position qualifies as a position in a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).²

The criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) is satisfied if the petitioner demonstrates that the nature of the specific duties of the proffered position is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

In the instant case, the duties attributed to the proffered position, analyzing user requirements and operational procedures, for instance, appear to be the generic duties of a computer systems analyst. Nothing in those duties suggests that the proffered position would require a minimum of a bachelor's degree or the equivalent in a specific specialty notwithstanding that other programmer-analyst positions do not. The petitioner has not demonstrated that the proffered position qualifies as a position in a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).³

As a final note, counsel claims that many computer programmer positions are specialty occupations and cites the legacy U.S. Immigration and Naturalization Services (INS) memorandum from the Nebraska Service Center Director, [REDACTED]. Counsel indicates that this legacy INS

² While a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, 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").

³ It is also noted that the petitioner has designated the proffered position as a Level II position on the submitted Labor Condition Application (LCA), indicating that it is a position for an employee who has a good understanding of the occupation but who will only perform moderately complex tasks that require limited judgment. 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.

⁴ It is noted that the legacy memorandum cited by counsel does not bear a "P" designation. According to the Adjudicator's Field Manual (AFM) § 3.4, "correspondence is advisory in nature, intended only to convey the

memorandum states that, where the position of programmer primarily involves the analysis, design, and modification of software or hardware, that fact would be sufficient to establish eligibility.

Specifically, the [REDACTED] states:

In accordance with the above guidelines and in light of the fact that in 1998, 60% of the universe of programmers had a bachelor's degree or higher, we will generally consider the position of programmer to qualify as a specialty occupation. This will especially be true if the position involves providing clients with programming analysis, custom designs, modification, and/or problem solving of software. Positions such as these are usually associated with consulting firms.

There are several issues with this service center memorandum. For instance, according to the 2000-2001 edition of the *Handbook*, it is actually 58.7% of programmers that had a bachelor's degree or higher in 1998. This does not indicate that a bachelor's or higher degree is a normal minimum entry requirement for computer programmer positions. It only indicates that "most" or the "majority" of programmers have a bachelor's degree or higher. However, "most" is not indicative that a computer programmer position normally requires at least a bachelor's degree, or its equivalent, in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)), or that a computer programmer position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)).⁵ More importantly, however, the statement does not indicate that the programmers had a bachelor's degree or higher in a *specific specialty*. Therefore, the memorandum fails to demonstrate how computer programmer positions, such as the one proffered here qualifies as a specialty occupation based on the plain language of the statutory and regulatory definition of that term, necessitating in part that the proffered position have a minimum entry requirement of a U.S. bachelor's or higher degree *in a specific specialty*. See section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii).

author's point of view. . . ." AFM § 3.4 goes on to note that examples of correspondence include letters, memoranda not bearing the "P" designation, unpublished AAO decisions, USCIS and DHS General Counsel Opinions, et cetera.

Nevertheless, the Nebraska Service Center no longer adjudicates H-1B petitions. Therefore, the memorandum is not followed by any USCIS officers even as a matter of internal, service center guidance.

⁵ The first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of computer programmer positions require at least a bachelor's degree in computer science or a closely related field, it could be said that "most" computer programmer positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist.

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

The record suggests an additional issue that was not addressed in the decision of denial. As was noted above, documents submitted pertinent to the beneficiary's education were not accompanied by English translations and, therefore, were not considered. The remaining evidence in the record does not demonstrate that the beneficiary has any bachelor's degree or foreign equivalent degree in any subject.

The AAO observes that if the petitioner had demonstrated that the proffered position required 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 approved, to demonstrate that the beneficiary has a minimum of a bachelor's degree or the equivalent in that specific specialty. *See Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968).

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 reach 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).

The appeal will be dismissed, and the petition will be denied. 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.