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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
and Immigration
Services**



D2

Date: **MAY 08 2012** Office: VERMONT 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 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 a private driving school with nine employees. To employ the beneficiary in what it designates as an operations manager 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, and also finding that the petitioner did not demonstrate that the beneficiary is qualified to serve in the claimed position of operations manager. The director summarized his two independent bases for denying the petition as follows:

You [i.e., the petitioner] did not submit evidence that the position is a specialty occupation or that the beneficiary is qualified to perform in the position of operations manager.

On appeal, counsel asserts that the director's bases for denial were erroneous, and contends that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in his 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 on this basis.

A beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the proffered position does not require a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

The AAO will now address the specialty occupation basis of denial, that is, whether 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.

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 counsel'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 sufficient to show that the beneficiary received a bachelor's degree in teaching primary education from the Superior Normal School of Ayacucho in Peru. Counsel also submitted a letter, dated July 6, 2009, from the petitioner's vice president, who stated that the proffered position requires a bachelor's degree "in management, administration or in any related field or the equivalent." She further stated that the beneficiary "has a Bachelor degree in Teacher of Education."

As to the duties of the proffered position, the petitioner's vice president stated:

Briefly, her specific job duties and responsibilities include: plans, develops, and administers information system and plan, direct, or coordinate the operations of the company' formulating policies, managing daily operations, and planning the use of materials and human resources; develops and implements policies and procedures for documenting, storing and retrieving information, and for processing legal documents, insurance data, and correspondence requests; supervise staff in preparing and analyzing legal documents; analyze clients data for reimbursement, facility planning, risk management, and management; administer and direct management of properties; and administer and direct financial aspects of business, property investment and the management of properties.

[Verbatim from the original.]

The AAO notes that some of those job duties are very abstractly described. "[M]anaging daily operations, and planning the use of materials and human resources," for instance, contain no indication of the complexity inherent to those duties.

Further, the applicability of some of the duties to the proffered position is questionable. The position proffered is operations manager of a driving school. The petitioner's vice president provided no explanation of the assertion that the beneficiary would "administer and direct management of properties; and administer and direct financial aspects of business, property investment and the management of properties."

In any event, regarding the application of the statutory and regulatory provisions governing the question of this proffered positions qualification as a specialty occupation, the AAO finds that, regardless of the title assigned to the proffered position, the record of proceeding presents the duties comprising the position in terms of generalized and generic functions which, when considered together and in the context of the relatively general information that the petitioner has provided about its general business operations, do not convey either the substantive nature of the matters which would occupy the beneficiary or any particular level of educational attainment in any specific specialty that would be required to perform the position. This fundamental evidentiary deficiency precludes the AAO from determining that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) and that it meets the requirements of a specialty occupation as stated at section 214(i)(1) of the Act. Accordingly, the appeal will be dismissed, and the petition will be denied. The following comments and findings reflect this cardinal conclusion.

On October 23, 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.

In response, counsel submitted (1) a letter, dated December 4, 2009, from the petitioner's vice president; (2) an evaluation, dated December 2, 2009, of the beneficiary's education; (3) evidence pertinent to previous positions the beneficiary has held; and (4) vacancy announcements posted by other companies. The vacancy announcements will be addressed below.

In her December 4, 2009 letter, the petitioner's vice president stated that the proffered position requires "an equivalent of a baccalaureate degree or a combination of education, specialized training, and/or work experience as an Operation Manager, Director or Administrator of a school." She did not indicate that the beneficiary must have a bachelor's degree or the equivalent *in any specific specialty*.

The December 2, 2009 evaluation states that the beneficiary's education is "equivalent to a four[-]year Bachelor of Arts in Education with a major in Primary Education as awarded by an accredited U.S. university."

The director denied the petition on January 15, 2010, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty.

On appeal, counsel asserted that the educational requirement of the proffered position is based on the specialized, complex, and unique management duties involved in the proffered position, but did not provide any more detail of that specialization, complexity, or uniqueness.¹

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 (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² 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 "Administrative Services Managers," the *Handbook* describes the duties of those positions as follows:

Administrative services managers plan, coordinate, and direct a broad range of services that allow organizations to operate efficiently. They might, for example, coordinate space allocation, facilities maintenance and operations, and major property and equipment procurement. They also may oversee centralized operations that meet the needs of multiple departments, such as information and data processing, mail, materials scheduling and distribution, printing and reproduction, records management, telecommunications management, security, recycling, wellness, and transportation services. Administrative services managers also ensure that contracts, insurance requirements, and government regulations and safety standards are followed and up to date. They may examine energy consumption patterns, technology usage, and personal property needs to plan for their long-term maintenance, modernization, and replacement.

The referenced section of the U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos002.htm> (last accessed January 30, 2012).

¹ Although counsel indicated, on the Form I-290B appeal form, that a brief and/or additional evidence would follow within 30 days, that time has passed and no further evidence or argument has been submitted. The AAO will, therefore, adjudicate the appeal based on the evidence in the record as presently constituted.

² 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.

The AAO finds that the description of the duties of the proffered position is substantially similar to the *Handbook* description of the duties of an administrative services manager position, and that the proffered position is an administrative services manager position as described in the *Handbook*.

The *Handbook* states the following about the educational requirements of administrative services manager positions:

Specific education and training requirements vary by job responsibility. Office managers in smaller operations or lower-level administrative services managers with fewer responsibilities may only need a high school diploma combined with appropriate experience, but an associate degree is increasingly preferred.

In larger companies with multiple locations, equipment, and technologies to coordinate, higher-level administrative services managers need at least a bachelor's degree. Managers of highly complex services, such as contract, insurance, and regulatory compliance, generally need at least a bachelor's degree in business administration, human resources, accounting, or finance.

The *Handbook* makes clear that many administrative services manager positions, especially those in smaller companies, do not require a bachelor's degree. Further, even the educational requirement of those positions that may require a bachelor's degree, rather than requiring a degree in a specific specialty, may be satisfied by a degree in any of a wide array of subjects. Further still, an otherwise undifferentiated bachelor's degree in business may suffice, which, as was noted above, is not a degree in a specific specialty.

Yet 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 administrative knowledge, but do not establish any particular level of formal education as minimally necessary to attain such knowledge.

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* provides no support for the proposition that the petitioner's industry, or any other, normally requires administrative services managers 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 administrative services managers 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 petitioner's industry.

As was noted above, the petitioner submitted three vacancy announcements in response to the RFE.

Of those announcements, one was placed by an insurance company, one was placed by a [REDACTED] Learning Center, and one was placed by the California State University Office of the Chancellor (CSU). None was placed by a driving school.

The three positions announced are entitled Operations Manager (Insurance Claims Background Required); Operations Manager/District Sales Manager; and Manager, Operations & Administration. Only the manager position for CSU, however, includes a description of the duties of the position with any detail. As that duty description bears little similarity to the description of the duties of the proffered position, none of the three positions has been shown to be parallel to the proffered position.

The position with the insurance company states, "Bachelors in Management, Art, Art history, Fashion, Interior Design or related field required."³ A requirement of any degree out of that wide array of subjects is clearly not a requirement of a degree in a specific specialty. That position is clearly not a specialty occupation position.

The announcement posted by [REDACTED] states that its position requires a bachelor's degree in business administration, management, or a related field. Any educational requirement that may be satisfied by an otherwise undifferentiated degree in business administration is not a requirement of a minimum of a bachelor's degree or the equivalent in a specific specialty. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). Because that position does not require a minimum of a bachelor's degree or the equivalent in a specific specialty, it is not a specialty occupation position.

³ The first page of the insurance company's announcement identifies the company, the industry, and the position. The second page states the educational requirement. The first page was printed from content of monster.com, a popular job search website. The second page is not identified as having come from that source, and contains no indication that it pertains to the same job as the first page. The typeface and content of the second page, including its mention of art, art history, fashion, and interior design, indicates that it may not actually be the second page of that same vacancy announcement, as the counsel indicated by submitting them together. Nevertheless, the AAO will assume that those two pages are the first and second pages of the same vacancy announcement, as represented.

The announcement posted by CSU states that the position requires a bachelor's degree in organizational management, accounting, or business. Organizational management and accounting do not appear to be so similar that they should be considered a single specific specialty and, in any event, as was noted above, as per *Matter of Michael Hertz Associates*, an educational requirement that may be satisfied by an otherwise undifferentiated degree in business administration is not a requirement of a minimum of a bachelor's degree or the equivalent in a specific specialty.

None of the three position-announcements specify a requirement for a minimum of a bachelor's degree or the equivalent in a specific specialty. These announcements, then, are not evidence that the proffered position qualifies as a specialty occupation position by virtue of some perceived similarity to those advertised.

Further, even if all three positions were demonstrated to be for parallel positions in the petitioner's industry with organizations similar to the petitioner and unequivocally required a minimum of a bachelor's degree or the equivalent in a specific specialty, the submission of the three announcements is statistically insufficient to demonstrate an industry-wide requirement.⁴ The record contains no independent evidence that the announcements are representative of common recruiting and hiring practices for the proffered position in the petitioner's industry.

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 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 administrative services

⁴ 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 three job postings with regard to determining the common educational requirements for entry into parallel managerial positions in similar driving schools. 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 operations manager of a nine-employee driving school required a bachelor's or higher degree in a specific specialty or its equivalent, it still could not be found that such a limited number of postings that may 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.

manager 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.

However, as reflected in this decision's earlier discussion regarding the abstract nature of the information provided about the proffered position, the list of proposed duties conveys no level of complexity or uniqueness that would require a minimum of a bachelor's degree or the equivalent in a specific specialty. Planning, developing, and administering an information system; planning, directing, or coordinating the petitioner's operations; formulating policies; managing daily operations; administering and directing management of properties; and planning the use of materials and human resources are so abstractly phrased that whether they require a specialized degree or the equivalent is entirely unclear, and the record contains no other evidence that suggests that the proffered position is so complex or unique that it requires a person with a minimum of a bachelor's degree or the equivalent in a specific specialty.

For the reasons discussed above, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, the petitioner has not met the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) for a position for which the employer normally requires at least a baccalaureate degree or its equivalent in a specific specialty.⁵

The record contains no evidence pertinent to anyone that the petitioner has ever previously hired anyone to fill the proffered position. The petitioner's vice president asserted that hers is the only similar position in the petitioner's business, and that she holds a bachelor's degree in law. No evidence was provided, however, to demonstrate that the educational requirements of the two positions are similar, or to corroborate that the petitioner's vice president has a bachelor's degree in law. Further, if the two positions have similar educational requirements, then the fact that the petitioner's vice president's bachelor's degree in law qualifies her for the position, and stated that the proffered position requires a degree in management, administration, or a related field, or the equivalent to such a degree, demonstrates that those positions do not require a minimum of a bachelor's degree or the equivalent *in a specific specialty*, and do not qualify as specialty occupation

⁵ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

positions. That a bachelor's degree in law, management, administration, or education are equally qualifying would demonstrate that the proffered position is not a specialty occupation position.

The petitioner has not satisfied the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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.

Again, however, the duties of the proffered position are phrased so abstractly that they evince no degree of specialization and complexity that is usually associated with any particular level of education. Developing and implementing policies and procedures for documenting, storing and retrieving information, and for processing legal documents, insurance data, and correspondence requests, for instance, are not duties that are necessarily associated with a minimum of a bachelor's degree or the equivalent in a specific specialty. Similarly, supervising staff in preparing and analyzing legal documents, analyzing clients' data for reimbursement, facility planning, risk management, and management; administering and directing financial aspects of business, property investment, and the management of properties, absent a more specific description, contain no indication that those duties are sufficiently specialized and complex that the knowledge required to perform them is usually associated with a bachelor's degree or the equivalent in a specific specialty.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A) alternatively requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree, or the equivalent, in a specific specialty. While the petitioner claims that the duties of the proffered position are sufficiently specialized and 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 its specific duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has not, therefore, 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 his determination that the record before him 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.

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.