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U.S. Citizenship
and Immigration
Services

DATE: JAN 08 2015

OFFICE: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Form I-129 visa petition, the petitioner describes itself as an "Applications software, computer, packaged" firm. To employ the beneficiary in a position it designates as a "Quality Assurance Engineer" position, the petitioner seeks 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).

Although the petitioner was previously represented, counsel, by letter dated July 29, 2014, withdrew his appearance in this matter after submitting the appeal. The petitioner is therefore considered to be self-represented and today's decision will be furnished only to the petitioner. References to counsel refer to the petitioner's former counsel.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary is qualified for the proffered position. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements. In support of these contentions, counsel submitted a brief and additional evidence.

We base our decision upon our 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) and the response to that RFE; (4) the director's denial letter; (5) the Form I-290B and counsel's submissions on appeal; and (6) the RFE we issued and the response to our RFE.

II. THE LAW

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human

endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The degree referenced by section 214(i)(1)(B) of the Act, 8 U.S.C. § 1184(i)(1)(B), means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position.

A bachelor's degree does not, *per se*, qualify a beneficiary for employment in a specialty occupation. Rather, the position must require a degree in a specific specialty. *Cf. Matter of Michael Hertz, Assoc.*, 19 I&N Dec. 558,560 (Comm'r 1988). Further, the beneficiary must have a degree in that specific specialty. *See Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968).

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and

- (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have [a] education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and [b] have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In addition, 8 C.F.R. § 214.2(h)(4)(v)(A) states:

General. If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary possesses the requisite license or, if none is required, that he or she has completed a degree in the specialty that the occupation requires. Alternatively, if a license is not required and if the beneficiary does not possess the required U.S. degree or its foreign degree equivalent, the petitioner must show that the beneficiary possesses both (1) education, specialized training, and/or progressively responsible experience in the specialty equivalent to the completion of such degree, and (2) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

III. EVIDENCE

The visa petition and the Labor Condition Application (LCA) state that the beneficiary would work at the petitioner's address at [REDACTED] Colorado. The LCA states that the proffered position is a Quality Assurance Engineer position, and that it corresponds to Standard Occupational Classification Computer Occupations, All Other, from the Occupational Information Network (O*NET). Computer Applications, All Other, are classified at SOC code 15-1199.¹ The LCA further states that the proffered position is a Level II position.

With the visa petition, counsel submitted evidence that the beneficiary has a bachelor of science degree from [REDACTED] in India and a master's degree in mathematics from [REDACTED] which is also in India. Counsel also submitted an evaluation of the beneficiary's education which states that the beneficiary's foreign education and degree are equivalent to at least a U.S. bachelor's degree in mathematics.

Counsel also submitted a letter, dated March 28, 2013, from [REDACTED] the petitioner's president, who noted that the beneficiary's Indian degrees have been found to be equivalent to a U.S. bachelor's degree in mathematics and that the beneficiary has related employment experience. The petitioner's president provided the following description of the duties of the proffered position:

The Quality Assurance Engineer will primarily work with the Systems Analyst and the Solution Architect to create test scripts for the various storyboards, assist in creating data sets, and executing the test scripts. In this position, [the beneficiary] will be responsible for ensuring that the Prototype that is being built is in line with the high-level requirements identified by the Solution Architect. Further responsibilities include accountability for the release execution leveraging Waterfall and Agile Testing strategies; maintenance of the quality assurance and Integrated Test Environment, including coordination of re-points across multiple Cross Line of Business Interfaces; conditioning test data for quality assurance, development and performance testers; testing in a Matrixed Cross-Line of Business Project requiring Integrated Interface Testing leveraging a Waterfall Strategy; creating estimates, test strategies, test plans, user stories, acceptance criteria and quality center test cases; and testing web services.

As to the educational requirements of the proffered position, the petitioner's president stated: "The [proffered position] with our company requires the attainment of at least a Bachelor's degree in Computer Science, Engineering, Mathematics, or a closely related field."

On June 6, 2013, 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 and evidence that the beneficiary is qualified to work in a specialty occupation position. The service

¹ The LCA mistakenly indicated that Computer Applications, All Other, are classified at 15-1799.

center provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements.

In response, counsel provided (1) evidence pertinent to the beneficiary's employment experience; (2) 14 vacancy announcements; (3) a Consulting Agreement, dated April 18, 2012, between the petitioner and [REDACTED] (4) an Attachment A appended to that agreement, headed Statement of Work and Rates; (5) a document headed Application Statement of Work; (6) an evaluation, dated August 27, 2013, of the proffered position and the beneficiary's qualifications; (7) a letter, dated August 28, 2013, from [REDACTED] signing as the petitioner's managing principal; and (8) counsel's own letter, dated August 28, 2013. The vacancy announcements will be addressed below.

The April 18, 2012 Consulting Agreement contains general terms pursuant to which [REDACTED] may utilize the services of the petitioner's workers. It does not reveal the location where the workers thus utilized would work, and does not indicate that [REDACTED] would utilize the beneficiary's services. The Attachment A appended to that document indicates that [REDACTED] would utilize the services of [REDACTED] who is not the beneficiary. It does not state when that work would begin, when it would end, or where the work would be performed, but does indicate that payments to the petitioner would include travel expenses, which suggests that the work would not be performed at the petitioner's location. For some of those details, it refers to an "IT Consulting SOW."

Whether the Application Statement of Work provided is the IT Consulting SOW referred to in the Attachment A to the Consulting Agreement is unclear. In any event, the Application Statement of Work is unsigned and does not indicate where the work to be performed pursuant to it, if any, would be performed.

The August 28, 2013 letter from [REDACTED] stated that the Consulting Agreement discussed above was provided to show that the petitioner has sufficient work to occupy the beneficiary, but did not indicate that the beneficiary would be employed pursuant to that agreement. He reiterated that a bachelor's degree in computer science, engineering, mathematics, or a closely related field would be a sufficient educational qualification for the proffered position. That letter attributes the following duties to the proffered position:

Creates estimates, test strategies, test plans, user stories, acceptance criteria, and quality center test cases, and testing web services.

Works with the Systems Analyst and Solution Architect to create test scripts for the various storyboards, assist in creating data sets, and executing the test scripts. Responsible for ensuring that the Prototype that is being built is in line with the high-level requirements identified by the Solution Architect.

Evaluates and tests new or modified software programs and software development procedures used to verify that programs function according to user requirements and

conform to establishment guidelines: Writes, revises, and verifies quality standards and test procedures for program design and project evaluation to attain quality of software economically and efficiently.

Enters instructions into computer to test program for validity of results, accuracy, reliability, and conformance to establishment standards.

Writes documentation to describe program evaluation, testing, and correction.

Reviews new or modified program, including documentation, diagram, and flow chart, to determine if program will perform according to user request and conform to guidelines.

Recommends program improvements or corrections to programmers. Reviews software logs to identify program processing errors.

Observes computer monitor screen during program test to detect error codes or interruption of program and corrects errors.

Responsible for the release execution leveraging Waterfall and Agile testing strategies; Identifies difference between establishment standards and user applications and suggests modifications to conform to standards.

Sets up tests at request of user to locate and correct program operating error following installation of program; Conducts compatibility tests with vendor-provided programs.

Monitors program development after implementation to prevent reoccurrence of program operating problems and ensure efficiency of operation.

May use statistical packages to understand the data and perform analysis to identify the underlying distributions.

Use statistical knowledge to generate data. May evaluate proposed software or software enhancement for feasibility; May develop utility program to test, track, and verify defects in software program; May write programs to create new procedures or modify existing procedures; May train software program users.

As to the requisite knowledge of statistical data, the petitioner's managing partner stated: "Data in a database needs to be represented in mathematical terms (distributions, mean, median[,] etc[.,]) so that generating the data is easier."

The August 27, 2013 evaluation contains that same duty description and states that, based on those duties, the proffered position would require "a minimum of a Bachelor's Degree in Computer

Information Systems or a related area, or the equivalent." The evaluator did not reveal whether he was aware that a previous evaluation had indicated that a degree in mathematics or an otherwise unspecified degree in engineering would be a sufficient educational qualification for the proffered position, and did not indicate, therefore, whether he disagreed or concurred. He did not reveal whether he was including those subjects among those that he deems sufficiently closely related to computer information systems such that a bachelor's degree in those subjects would be a sufficient educational qualification for the proffered position. He did not reveal what other subjects he would deem sufficiently closely related to computer information systems. As to the beneficiary's qualifications, the evaluator stated that the beneficiary's education and employment experience, considered together, are equivalent to a U.S. bachelor's degree in computer information systems.

In his August 28, 2013 letter, counsel asserted that the evidence submitted demonstrates that the instant visa petition is approvable.

The director denied the visa petition on October 11, 2013 finding, as was noted above, that the petitioner has not demonstrated that the beneficiary is qualified to work in a specialty occupation position.

On appeal, counsel provided additional evidence pertinent to the beneficiary's employment experience and a brief. In the brief, counsel stated:

The requirements for the position as stated in the employer's support letter are the attainment of at least a Bachelor's degree in Computer Science, Engineering, Mathematics, or a closely related field.

Counsel cited the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for the proposition that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. Specifically, counsel stated:

[T]he [*Handbook*] notes that "Software Developers" which are very closely related to Quality Assurance Engineers/Analysts (for which there is no entry in the [*Handbook*]), "usually have a bachelor's degree, typically in computer science, software engineering, or a related field. A degree in mathematics is also acceptable.

Counsel asserted that, even if the beneficiary's degree in mathematics were found to be insufficient to qualify her for the proffered position, the petitioner has also demonstrated that her education and her experience, considered together, are equivalent to a U.S. bachelor's degree in computer information systems.

IV. SPECIALTY OCCUPATION

USCIS is required to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether an alien beneficiary was qualified

for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].").

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 result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and 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. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular 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 directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

We note that, as recognized by the court in *Defensor, supra*, where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. *See Defensor v. Meissner*, 201 F.3d at 387-388. The court held that the former Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. *Id.* at 384. Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

Absent a determination that the proffered position is in fact a specialty occupation, there is no basis on which the director could have determined whether the beneficiary is qualified or unqualified to perform the duties of the claimed specialty occupation.

The petitioner's president and its managing principal both asserted that the educational requirement of the proffered position can be satisfied by a bachelor's degree in computer science, engineering, mathematics, or a closely related field. On appeal, counsel reiterated that assertion.

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in any one of three disparate fields, such as computer science, engineering, and mathematics, would not meet the statutory requirement that the degree be "in *the* specific specialty." Section 214(i)(1)(B) (emphasis added).

Absent evidence to the contrary, computer science, engineering, and mathematics, and any field that may be deemed "closely related" to one or more of them do not, when considered together, delineate a specific specialty. Absent such additional evidence, the petitioner's claim that a degree in any of those subjects, or in any subject related to them, would be a sufficient educational qualification for the proffered position does not demonstrate that the petitioner requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the position.

In fact, even the assertion that an otherwise unspecified bachelor's degree in engineering is a sufficient educational qualification for the proffered position, absent evidence that a degree in any field of engineering would be closely related to the duties of the proffered position, raises the issue of whether the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.² The assertions of the petitioner's president and the petitioner's managing principal suggest that the proffered position does not require a minimum of a bachelor's degree in a specific specialty or its equivalent and does not, therefore, qualify as a specialty occupation.

² The field of engineering is a broad category that covers numerous and various specialties, some of which are only related through the basic principles of science and mathematics, e.g., nuclear engineering and aerospace engineering. Therefore, besides a degree in electrical engineering, it is not readily apparent that a general degree in engineering or one of its other sub-specialties, such as chemical engineering or nuclear engineering, is closely related to computer science or that engineering or any and all engineering specialties are directly related to the duties and responsibilities of the particular position proffered in this matter. As such, an educational requirement that may be satisfied by an otherwise unspecified bachelor's degree in engineering is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, although USCIS does not simply rely on a position's title to determine whether a particular job qualifies as a specialty occupation, we observe that the LCA is certified for a position categorized under SOC code and title 15-1199, Computer Occupations, All Other, from O*NET. On appeal, however, counsel asserted that the proffered position is "very closely related" to a software developer position, so closely, in fact, that he implied that the educational requirements of the proffered position must be identical to those of a software developer position. This would only be true if the duties of the proffered position and the duties of a software developer are essentially identical.

O*NET describes the duties of software developer position at SOC 15-1132. Positions included in the Computer Occupations, All Other, category are described at 15-1199, which states:

"All Other" titles represent occupations with a wide range of characteristics which do not fit into one of the detailed O*NET-SOC occupations. O*NET data is not available for this type of title. For more detailed occupations under this title, see below.

As was noted above, one of the titles described in detail elsewhere in O*NET is Software Developers at SOC 15-1132. As such, software developer positions are explicitly excluded from the positions described by SOC 15-1199, Computer Occupations, All Other.

Counsel's assertion that the position of software developer position is very similar to the proffered position suggests that the duties of the proffered position are software developer duties. This inference is strengthened by counsel's implication that the educational requirements of the two positions are identical. The classification of the proffered position as a Computer Occupations, All Other, position, however, indicates that the duties of the proffered position are not software developer duties. As such, the substantive nature of the duties that the beneficiary would actually perform if the visa petition were approved has not been established.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

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

V. BENEFICIARY QUALIFICATIONS

The basis for the director's decision of denial is her finding that the petitioner has not demonstrated that the beneficiary is qualified for the proffered position.

As was observed above, the petitioner provided an evaluation stating that the beneficiary's foreign education is equivalent to a U.S. bachelor's degree in mathematics. The petitioner submitted another evaluation that stated that the beneficiary's education and experience, considered together, are equivalent to a U.S. bachelor's degree in computer information systems.

We observe that if the petitioner had demonstrated that the proffered position required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged, in order for the visa petition to be approvable, to demonstrate, not only that the beneficiary has a bachelor's degree or its equivalent, but that the beneficiary has a minimum of a bachelor's degree or its equivalent *in that specific specialty*. See *Matter of 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, we need not further address the issue of the beneficiary's qualifications.

VI. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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