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U.S. Citizenship
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FILE: EAC 04 229 51212 Office: VERMONT SERVICE CENTER Date: AUG 30 2006

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn. The petition will be remanded for entry of a new decision.

The petitioner is a computer software development and consulting company that seeks to employ the beneficiary as a programmer analyst. The petitioner, therefore, endeavors to classify the beneficiary 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 record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The record reflects that the beneficiary has been in the United States, in H-4 and H-1B status, since September 22, 1998. The petitioner filed an application for alien labor certification for the beneficiary on September 19, 2003.

The petitioner filed the instant petition on July 30, 2004, requesting that the beneficiary be granted an additional year of H-1B status pursuant to the American Competitiveness in the Twenty-First Century Act (AC-21) (as amended by the Twenty-First Century DOJ Appropriations Authorization Act (DOJ-21)). The requested start date of employment in the petition was July 31, 2004.

The director denied the petition, holding that since 365 days had not elapsed between the filing of the application for alien labor certification and the filing of the instant petition, the beneficiary did not meet the requirements set forth at AC-21 (as amended by DOJ-21) and therefore did not qualify for a seventh year of H-1B status.

As a general rule, section 214(g)(4) of the Act, 8 U.S.C. § 1184(g)(4), provides that "the period of authorized admission of [an H-1B nonimmigrant] shall not exceed 6 years." However, AC-21 removed the six-year limitation on the authorized period of stay in H-1B visa status for aliens whose labor certifications or immigrant petitions remain pending due to lengthy adjudication delays, and DOJ-21 broadened the class of H-1B nonimmigrants able to avail themselves of this provision.

As amended by section 11030(A)(a) of DOJ-21, section 106(a) of AC-21 states the following:

(a) EXEMPTION FROM LIMITATION. -- The limitation contained in section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. § 1184(g)(4)) with respect to the duration of authorized stay shall not apply to any nonimmigrant alien previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of such Act (8 U.S.C. § 1101(a)(15)(H)(i)(b)), if 365 days or more have elapsed since the filing of any of the following:

- (1) Any application for labor certification under section 212(a)(5)(A) of such Act (8 U.S.C. § 1182(a)(5)(A)), in a case in which certification is required or used by the alien to obtain status under section 203(b) of such Act (8 U.S.C. § 1153(b)).
- (2) A petition described in section 204(b) of such Act (8 U.S.C. § 1154(b)) to accord the alien a status under section 203(b) of such Act.

Section 11030(A)(b) of DOJ-21 amended section 106(a) of AC-21 to state the following:

(b) EXTENSION OF H-1B WORKER STATUS--The Attorney General shall extend the stay of an alien who qualifies for an exemption under subsection (a) in one-year increments until such time as a final decision is made—

(1) to deny the application described in subsection (a)(1), or, in a case in which such application is granted, to deny a petition described in subsection (a)(2) filed on behalf of the alien pursuant to such grant;

(2) to deny the petition described in subsection (a)(2); or

(3) to grant or deny the alien's application for an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence.

Two recent Citizenship and Immigration Services (CIS) policy memoranda have clarified how CIS is to implement these provisions of AC-21 and DOJ-21. In accordance with these two policy memoranda, the AAO has determined that the beneficiary is eligible for an exemption from the six-year limitation on his H-1B classification under section 106(a) of AC-21, and for an extension of his H-1B status for a seventh year under section 106(b) of AC-21.

Both memoranda provide, in part, that an alien who is otherwise eligible for an H-1B extension does not need to first file a form I-129 requesting an extension of time to allow the beneficiary to complete the six years, and then file an additional Form I-129 requesting an extension of time beyond the six years. Memorandum from William R. Yates, Associate Director for Operations, Citizenship and Immigration Services, Department of Homeland Security, *Interim Guidance for Processing Form I-140 Employment-Based Immigrant Petitions and Form I-485 and H-1B Petitions Affected by the American Competitiveness in the Twenty-First Century Act of 2000 (AC 21)(Public Law 106-313)* HQPRD70/6.2.8-P (May 12, 2005); Memorandum from William R. Yates, Associate Director for Operations, Citizenship and Immigration Services, Department of Homeland Security, *Interim Guidance Regarding the Impact of the Department of Labor's (DOL) PERM Rule on Determining Labor Certification Validity, Priority Dates for Employment-Based Form I-140 Petitions, Duplicate Labor Certification Requests and Requests for Extension of H-1B Status Beyond the 6th Year: Adjudicator's Field Manual Update AD05-15*. HQPRD70/6.2.8 (September 23, 2005). The second memorandum, at page 5, states, in part, the following:

Once [the requirements of Section 106(a) of AC-21] have been met, the alien may be granted an extension beyond the 6-year maximum on or prior to the date the alien reaches the 6-year maximum. Such extensions may only be granted in one-year increments, but may be requested on a single (combined) extension request for any remaining time left in the initial 6-year period. Requiring the filing of two extension petitions merely increases petitioner and CIS workloads, and has no basis in statute.

The date of the filing of the application for alien labor certification, September 19, 2003, is less than 365 days prior to the July 31, 2004 requested employment start date specified on the Form I-129. This would appear to preclude the beneficiary from a seventh year of H-1B status, as, at first glance, the application for alien labor certification appears to not have been filed more than 365 days prior to the petition's requested employment

start date. However, the AAO has reviewed the record and determined that the alien's maximum period of stay in H-1B status expires on September 22, 2004, which is more than 365 days after the filing date of the Form ETA-750. Thus, the beneficiary will begin working under the seventh year extension of status under AC-21 on September 23, 2004. That date is more than 365 days after the application for alien labor certification was filed. Under the CIS guidance quoted above, the petitioner may combine the extension request to complete the alien's six year maximum and to extend for a seventh year under AC-21 on one Form I-129 petition.

Accordingly, the petitioner has overcome the ground for denial in the director's decision. The petition may not be approved, however, unless the record establishes that the proffered position qualifies as a specialty occupation and that the beneficiary is qualified to perform services in a specialty occupation.

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.

As provided in 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation the position must 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.

Citizenship and Immigration Services (CIS) 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.

The petitioner describes itself as a software development and consulting firm, established in 2001, with seven employees and a projected gross annual income of \$700,000. In a letter accompanying Form I-129 the petitioner described the proffered position as follows:

[The beneficiary] will be working as in-house project development Programmer/Analyst with our computing systems professionals currently working on fine-tuning and improving the above mentioned software development and implementation project. [He] will utilize [his] training and expertise as he performs a broad range of networking knowledge, and programming duties. [He] will be responsible for maintaining the network systems and development of applications: provide guidance to quality assurance team for testing, [advise] client of all general purpose routines; provide system security and administration including user rights and restrictions; write store procedures and triggers using Oracle 7.1, Oracle Developer/2000, and PL/SQL 2.0 to perform payroll, month-end and annual processing; design user interface; develop reduplication module; develop main base classes in system; create a core library containing functions providing several utilities to handle windows for displaying and capturing information; handle notification of windows events and process them; handle listboxes and other controls notification functions; design windows through Open Interface design painter; design toolbars; develop modules to allow specifications of common database tables/columns; maintain system.

The technical environment in which the beneficiary will be working, the petitioner indicates, includes the following:

Hardware – SUNSPARC stations, Intel 80 x 86 based computers, IBM PC-A

Languages – C, PL/SQL 2.0

Operating System – MS Windows 95, MS Windows NT/3.51/4.0, MS DOS 6.22,
S Solaris 4.5, UNIX

Software – Oracle 7.1, Oracle Developer/2000

According to the petitioner, the minimum educational requirement for the proffered position is a bachelor's degree in computer science and/or a master of computer applications, science, commerce, engineering, civil engineering, industrial production, mechanical engineering, electrical engineering, electronics, electronics and communications, electronics and telecommunications, electronics engineering, business administration, or the equivalent in education and relevant work experience. The beneficiary is qualified for the job, the petitioner declares, by virtue of his bachelor of technology (electronics and communications) from Nabarjuna University in India, awarded in December 1981, and a one-year post graduate diploma in computer applications from the Institute of Computer Software Sciences in India, awarded on April 8, 1993, together with extensive experience as a programmer/analyst.

The AAO notes that the nature of the petitioner's business is unclear. The petitioner states in its Form I-129 and letter of support that it is a computer software development and consulting company with seven employees and projected gross annual income of \$700,000, though no tax returns or wage records have been submitted. Nor have any contracts between the petitioner and its clients been provided indicating the nature of the petitioner's business. Going on record without supporting documentation does not satisfy the petitioner's burden of proof. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO further notes that the petitioner had twelve petitions approved for H-1B workers, yet lists only seven employees. The petition will be remanded for the director to determine whether the petitioner will employ the beneficiary in a specialty occupation.

If the petitioner is an employment contractor, the AAO notes, it must submit proof that the duties the beneficiary will perform at the ultimate work location will be in a specialty occupation. In determining the

nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are dispositive, not the title of the position. The petitioner must show that the duties of the position normally require a degree in a specialty field. The critical issue is not the employer's self-imposed standard, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree in the specific specialty as a minimum for entry into the occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000).

CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. *See Shanti Inc. v. Reno, id.*, at 1165-66.

The duties of the proffered position combine the functions of a computer programmer and a computer systems analyst, as described in the DOL *Handbook*. Computer programmers are described in the *Handbook*, in pertinent part, as follows:

Computer programmers write, test, and maintain the detailed instructions, called programs, that computers must follow to perform their functions. Programmers also conceive, design, and test logical structures for solving problems by computer

[A]lthough simple programs can be written in a few hours, programs that use complex mathematical formulas whose solutions can only be approximated or that draw data from many existing systems may require more than a year of work. In most cases, several programmers work together as a team under a senior programmer's supervision.

Programmers write programs according to the specifications determined primarily by computer software engineers and systems analysts. After the design process is complete, it is the job of the programmer to convert that design into a logical series of instructions that the computer can follow. The programmer codes these instructions in a conventional programming language such as COBOL; an artificial intelligence language such as Prolog; or one of the most advanced object-oriented languages, such as Java, C++, or ACTOR. . . . Programmers generally know more than one programming language and, because many languages are similar, they often can learn new languages relatively easily

Many programmers update, repair, modify, and expand existing programs

[P]rogrammers in software development companies may work directly with experts from various fields to create software – either programs design for specific clients or packaged

software for general use – ranging from games and educational software to programs for desktop publishing and financial planning

In some organizations, particularly small ones, workers commonly known as *programmer-analysts* are responsible for both the systems analysis and the actual programming work

Handbook, 2006-07 edition, at 104-05. With respect to the educational requirements of the occupation, the *Handbook* states as follows:

Although there are many training paths available for programmers . . . the level of education and experience employers seek has been rising due to the growing number of qualified applicants and the specialization involved with most programming tasks. Bachelor's degrees are commonly required, although some programmers may qualify for certain jobs with two-year degrees or certificates. The associate degree is a widely used entry-level credential for prospective computer programmers

[I]n the absence of a degree, substantial specialized experience or expertise may be needed. Even when hiring programmers with a degree, employers appear to place more emphasis on previous experience.

Some computer programmers hold a college degree in computer science, mathematics, or information systems, whereas others have taken special courses in computer programming to supplement their degree in a field such as accounting, inventory control, or another area of business As indicated by the following tabulation, more than two-thirds of computer programmers had a bachelor's or higher degree in 2004.

High school graduate or less	8.3%
Some college, no degree	14.1%
Associate degree	10.2%
Bachelor's degree	49.1%
Graduate degree	18.3%

Id. at 105-06. As the foregoing information indicates, a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry into a computer programming position. One-third of computer programmers have either a two-year associate degree, some college courses but no degree, or a high school education or less. Moreover, some baccalaureate degree holders earned their degrees in disciplines not directly related to the computer field. Accordingly, a computer programmer does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

Computer systems analysts are described in the DOL *Handbook*, 2006-07 edition, at 116:

Computer systems analysts solve computer problems and apply computer technology to meet the individual needs of an organization. They help an organization to realize the maximum

benefit from its investment in equipment, personnel, and business processes. Systems analysts may plan and develop new computer systems or devise ways to apply existing systems' resources to additional operations. They may design new systems, including both hardware and software, or add a new software application to harness more of the computer's power. Most systems analysts work with specific types of systems – for example, business, accounting, or financial systems, or scientific and engineering systems – that vary with the kind of organization

Systems analysts . . . use techniques such as structured analysis, data modeling, information engineering, mathematical model building, sampling, and cost accounting to plan the system. They specify the inputs to be accessed by the system, design the processing steps, and format the output to meet users' needs. They also may prepare cost-benefit and return-on-investment analyses to help management decide whether implementing the proposed technology will be financially feasible.

When a system is accepted, systems analysts determine what computer hardware and software will be needed to set the system up. 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

With respect to the educational requirements of the occupation, the *Handbook* states as follows:

[W]hile there is no universally accepted way to prepare for a job as a systems analyst, most employers place a premium on some formal college education. Relevant work experience also is very important. For more technically complex jobs, persons with graduate degrees are preferred.

Many employers seek applicants who have at least a bachelor's degree in computer science, information science, or management information systems (MIS) Employers are increasingly seeking individuals with a master's degree in business administration (MBA), with a concentration in information systems, as more firms move their business to the Internet.

Despite employers' preference for those with technical degrees, persons with degrees in a variety of majors find employment as system analysts. The level of education and type of training that employers require depend on their needs

Id. at 117. The foregoing information indicates that, while a baccalaureate or master's degree in a computer-related specialty is favored by many employers of computer systems analysts, it is not the normal minimum requirement for entry into such a position. Some companies still accept baccalaureate degrees which are not closely related to the computer field, if the individual has acquired sufficient computer knowledge through work experience, and some companies may accept relevant work experience in lieu of any baccalaureate degree. Accordingly, a computer systems analyst does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(I).

Based on the foregoing analysis, the AAO determines that the proffered position – described as a combination computer programmer and computer systems analyst – does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) because a baccalaureate or higher degree in a specific specialty or its equivalent is not the normal minimum requirement for entry into the position. If the petitioner is an employment contractor, the record does not establish the position as a specialty occupation as no job duties have been submitted from the ultimate work location.

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), there is no evidence in the record that a degree requirement is common to the petitioner's industry in parallel positions among similar organizations. Nor does the evidence of record show that the proffered position is so complex or unique that it can only be performed by an individual with a specialty degree. There is no evidence of record about the nature of the beneficiary's duties in relation to the petitioner's business. Thus, the AAO cannot conclude that the position is unique or more complex than that of a typical computer programmer and/or systems analyst, positions which the *Handbook* indicates do not normally require a degree in a computer-related specialty to perform. Accordingly, the proffered position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

With respect to the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the petitioner stated in a letter accompanying the Form I-129 that the proffered position requires a degree in a range of computer-, engineering-, or business-related disciplines, or the equivalent in education and work experience. Thus, the petitioner acknowledges that relevant work experience can substitute for a baccalaureate or higher degree, which is consistent with information in the *Handbook*, previously discussed, that relevant work experience in the computer field can substitute for a specialty degree and qualify an individual for a computer programmer and/or systems analyst position. The proffered programmer/analyst position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), therefore, because the record does not establish that the petitioner normally requires a specialty degree or its equivalent for the position.

Finally, the proffered position does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties of the position are so specialized and complex that knowledge usually associated with a baccalaureate or higher degree is required to perform them. The job duties of record, which are not described in relation to the petitioner's clientele or specific projects, have not been established as more specialized or complex than those of a typical computer programmer and/or systems analyst, positions which the *Handbook* indicates do not normally require baccalaureate level knowledge in a specific specialty. As far as the record shows, the duties of the proffered position could be performed by an individual with less than baccalaureate level knowledge in a specific specialty. If the petitioner is an employment contractor, there is no evidence from the ultimate work location establishing that baccalaureate level knowledge in a specialty is required. Accordingly, the position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated under 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

In addition, section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), provides that an alien must have the following credentials to be qualified to perform the services of a specialty occupation:

- (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.

As further explained in 8 C.F.R. § 214.2(h)(4)(iii)(C), an alien must meet one of the following criteria to qualify to perform the services of 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 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 have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Criteria (1) and (3) are inapplicable to the beneficiary in this petition. With regard to the second criterion, there is no evidence in the record, such as a report from an academic credentials evaluation service, affirming that the beneficiary's education in India – which includes a bachelor of technology (electronics and communications) from Nabarjuna University and a post graduate diploma in computer applications from the Institute of Computer Software Sciences – is equivalent to a degree in a specialty from an accredited U.S. college or university. Thus, the record does not establish that the beneficiary is qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) to perform services in a specialty occupation.

For the purpose of deciding whether the beneficiary is qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), 8 C.F.R. § 214.2(h)(4)(iii)(D) provides that the determination shall be based on one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university

which has a program for granting such credit based on an individual's training and/or work experience;

- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service [CIS] that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as: (i) Recognition of expertise in the specialty occupation by at least two recognized authorities ¹ in the same specialty occupation; (ii) Membership in a recognized foreign or United States association or society in the specialty occupation; (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers; (iv) Licensure or registration to practice the specialty occupation in a foreign country; or (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

Only the fifth criterion applies to the instant petition. As previously discussed, there is no report on the beneficiary's education from an academic credentials evaluation service analyzing its equivalence in U.S.

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

academic credit. Though the record includes the beneficiary's resume and letters from previous employers confirming that the beneficiary worked for them, none of that documentation demonstrates that the beneficiary was working with peers, supervisors, or subordinates who have at least a baccalaureate degree, or its equivalent, in a computer-related specialty. Nor is there any documentation in the record showing that the beneficiary has been recognized for his expertise in a computer-related specialty. Thus, the record does not establish that the beneficiary has any specialized work experience in the computer field that can be counted toward a degree equivalence in the specialty, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) for the beneficiary to be qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) to perform services in a specialty occupation.

For the reasons discussed above, the record fails to establish that the beneficiary is qualified to perform services in a specialty occupation under any of the criteria enumerated under 8 C.F.R. § 214.2(h)(4)(iii)(C).

Notwithstanding the previous approval of H-1B status, the current petition to continue the beneficiary's H-1B classification cannot be approved unless the record establishes current eligibility. As the director has not addressed whether the proffered position is a specialty occupation and whether the beneficiary is qualified to perform services in a specialty occupation, the petition will be remanded in order for the director to rule on these issues. The director may afford the petitioner reasonable time to provide pertinent evidence. The director shall then issue a new decision based on the evidence of record with respect to whether the programmer analyst position is a specialty occupation and whether the beneficiary is qualified to perform services in a specialty occupation. As always, the burden of proof rests with the petitioner. See section 291 of the Act 8 U.S.C. § 1361.

ORDER: The director's decision of March 14, 2005 is withdrawn. The petition is remanded to the director for entry of a new decision. If adverse to the petitioner, the decision shall be certified to the AAO for review.