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

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U.S. Citizenship and Immigration Services

[redacted]

D2

Date: **JUN 0 1 2012** Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael T. Kelly
for 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 software consulting and development firm. To employ the beneficiary in what it designates as a programmer analyst 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 on three bases. The director found that the petitioner had not established that it would employ the beneficiary in a specialty occupation position, had not established that the LCA provided to support the visa petition was valid for employment in all of the locations where the beneficiary would work, and had not provided the itinerary required by 8 C.F.R. § 214.2(h)(2)(i)(B). On appeal, the petitioner asserted that the director's bases for denial were erroneous, and contended 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 each of the bases specified in his decision. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

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 the petitioner's submissions on appeal.

The AAO will first address the specialty occupation basis of denial.

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.

The AAO notes 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. The court held that the legacy 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 387-388. 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.

With the visa petition, the petitioner provided evidence sufficient to show that the beneficiary has a bachelor's degree in biochemistry from Gujarat University in Gujarat, India; a master's degree in chemical biology from the Stevens Institute of Technology in Hoboken, New Jersey; and various certificates evincing training in computer-related subjects. Some evidence was provided pertinent to the beneficiary's nonacademic training. No evaluation of the beneficiary's education, with or without her employment experience, was submitted.

The petitioner also provided a letter, dated September 14, 2009, from its president. That letter provides the following description of the duties of the proffered position:

1. Research and analyze the processes of our clients (in both service and manufacturing sectors) and determine their process re-engineering needs, including analysis of currently existing information systems and on-going information systems enhancement projects; 15%

2. Design new process structures and information systems, program and implement software applications & packages customized to meet specific client needs; 30%

3. Analyze the communications, information, database and programming requirements of clients; plan, develop, design, test and implement appropriate information systems; 10%

4. Review existing information systems to determine compatibility with projected or identified client needs; research and select appropriate systems, including ensuring forward compatibility of exiting systems; 25%

5. Train clients on use of information systems and provide technical and de=-bugging support; 10%

6. Review, repair and modify software programs to ensure technical accuracy & reliability of programs; 10%

The petitioner's president also cited the U.S. Department of Labor's *Occupational Outlook Handbook* (*Handbook*) for the proposition that the programmer analyst positions require a minimum of a bachelor's degree or the equivalent in computer science, electronics, management information systems, engineering, or a related field. The petitioner's president stated that the beneficiary's education and training qualify her to work as a programmer analyst.

The AAO observes, initially, that the phrase "computer science, electronics, management information systems, engineering, or a related field" describes a wide array of subjects, rather than a specific specialty. To demonstrate that a position qualifies as a specialty occupation position, the petitioner must demonstrate that it requires a minimum of a bachelor's degree or the equivalent in a specific specialty, rather than a degree in any of a wide array of subjects.

Further, even if the position had required a degree in engineering, without any alternative, it would still not qualify as a specialty occupation position. This is because the field of engineering is a very broad category that covers numerous and various disciplines, some of which are only related through the basic principles of science and mathematics, e.g., petroleum engineering and aerospace engineering. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or engineering, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

Again, to prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in engineering, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

That a degree in any of a wide array of subjects would be an adequate educational qualification is sufficient reason, in itself, to find that the proffered position does not qualify as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty. That an otherwise undifferentiated degree in engineering would be a sufficient educational qualification for the proffered position is also, in itself, sufficient reason to find that the proffered position does not qualify as a specialty occupation. Either is a sufficient reason to dismiss the instant appeal and to deny the visa petition. However, the AAO will continue its analysis of the

evidence in this case in order to identify other evidentiary deficiencies that preclude approval of this petition.

On November 20, 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, the petitioner provided (1) an undated letter from the petitioner's president; (2) a letter, dated December 17, 2009, from the Vice President of [redacted] (3) Subcontractor's Agreement executed by the petitioner and [redacted] on November 11, 2009; (4) a Statement of Work (SOW) executed by the petitioner and [redacted] also on November 11, 2009; and (5) pay statements the petitioner issued to the beneficiary.

The undated letter from the petitioner's president states that the beneficiary works on a project for [redacted] It continues:

> [The beneficiary] has been providing services for [redacted] for a long time and it is reasonable to conclude that, barring unforeseen circumstances, [she] will continue to do so. As of now, the petitioner has no reason to believe that the beneficiary shall not continue to provide services at [redacted] project.

The Subcontractor's Agreement indicates that, on November 29, 2009, the petitioner and [redacted] agreed that the petitioner would provide workers for a project of [redacted]

The SOW provided indicates that, on November 29, 2009, the petitioner and [redacted] agreed that the petitioner would provide the beneficiary to [redacted] to work on a project of [redacted] for at least a year, beginning on or about December 22, 2009. The AAO observes that the fact that the beneficiary has worked for [redacted] for two months is, in itself, an insufficient basis for the petitioner's president's conclusion that she will continue to work there for more than the one year agreed upon in the SOW.

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[1] In the decision of denial, the director observed that the petitioner was misidentified as [redacted] I in the Subcontractor Agreement. The director further suggested that this might indicate that a contract pertinent to another company had been altered to be used as evidence in this proceeding. On appeal, the petitioner provided a letter from [redacted] vice president asserting that [redacted] had contracted with the petitioner and that the Subcontractor Agreement had not, in fact, been altered.

The AAO observes that the Subcontractor Agreement misidentified the parties to the agreement numerous times. The agreement states, for instance, "This agreement does not impose on [redacted] [the petitioner in the instant case] an obligation to deal exclusively with Consultant [also the instant petitioner] for services similar [to those described in the agreement]." It further states, "Consultant [the petitioner] and [redacted] [the petitioner] may modify the terms of this Agreement . . . only in a written agreement . . . ." The agreement contains at least two other instances of misidentifying the parties to the agreement. While such a sloppy document, ostensibly intended to be relied upon by the parties as to their rights and obligations, raises suspicions, the other party to the agreement has indicated that it was presented to USCIS as it was originally executed, and the AAO will not further consider the possibility of it being altered.

The AAO further observes that the requested period of intended employment stated on the visa petition is from October 1, 2009 through September 30, 2012, a period of three years.

The petitioner's president further stated, "Additionally, the petitioner has sufficient resources, clients and contacts to ensure that the beneficiary shall continue to be gainfully employed in [a] specialty occupation." The petitioner's president did not, however, identify its resources, clients, and contacts, or how they guarantee that the petitioner would have work for the beneficiary throughout the period of intended employment, nor did he divulge where the beneficiary would work, for whom, for what period, or on what project if she ceased to work for [redacted] Further, no evidence was provided from the unidentified alternative end-user of the beneficiary's services to show that her duties would qualify the alternative position as a specialty occupation position.

The December 17, 2009 letter from [redacted] vice president states that the project the beneficiary is working on is expected to last through July 2010 and is extendable to August 2011. The AAO observes that, whichever of those dates the project terminated, it would not include the entire period of intended employment stated on the visa petition.

[redacted] vice president also provided the following description of the beneficiary's duties while working on the current project:

- Defining and maintaining sequencing logic (e.g. associating a sequence to a newly created classification that uses a sequence)
- Reviewing and re-defining availability data structures and relationships
- Define and maintain data structure (include category, classification)
- Understand and absorb business rules in order to create and maintain system rules
- Define, document, code system logic (e.g. Date logic, Entity work-flow state logic, Assembly rules logic, sequencing logic etc.)
- Create, analyze, code and debug and validate system control flow diagram
- Create, analyze, code and debug system interaction diagram
- Create and validate user interface (UI) mock-ups and document and validate technical requirements for the application.

[redacted] vice president further stated that the beneficiary would work through [redacted] remote login module for deployments and testing, but did not indicate whether the beneficiary would ever be required to work at any [redacted] location, or for how long, or where that location, or those locations, would be. The AAO notes, however, that the SOW provided indicates that the beneficiary "may need to visit" [redacted] locations in New York and Jersey City, New Jersey. Finally, [redacted] vice

president stated, "[The work the beneficiary would perform for [redacted] requires] at least a bachelor's degree or foreign or experiential equivalent . . . ."

The pay statements submitted were issued by the petitioner to the beneficiary during November and December of 2009. They state that the beneficiary's home address during those months was in Edwards, Illinois.

The director denied the petition on January 22, 2010, finding, *inter alia*, 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 the Form I-290B, Notice of Appeal or Motion, the petitioner's president stated, "Please find attached letter from client. Kindly attached clarification to reconsider the H-1B petition. Kindly approve the case. We explained the situation with attached client letter and proffered position."

With that appeal, the petitioner provided (1) a letter, dated February 22, 2010, from the petitioner's president, (2) a letter, also dated February 22, 2010, from [redacted] vice president.

In his February 22, 2010 letter, the petitioner's president asserted, if the AAO understands him correctly, that the petitioner was originally planning to utilize the beneficiary's services on an in-house project at the petitioner's location in Mahwah, New Jersey, but, upon securing the SOW with [redacted] opted to utilize the beneficiary's services on [redacted] project, though still working at the petitioner's location in Mahwah, New Jersey.

[redacted] vice president's letter is dated February 22, 2010, and was notarized on February 23, 2010. That letter explains an error in the Subcontractor Agreement and asserts that [redacted] did, in fact, execute the Subcontractor Agreement and the SOW previously described. It does not otherwise address whether the beneficiary would employ specialty occupation duties.

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)(*1*), 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 *Handbook*, cited by the petitioner, 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

[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 2012 – 2013 edition, available online.

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 "Computer Systems Analysts," the *Handbook* provides the following descriptions of the duties of those positions:

> Computer systems analysts typically do the following:
>
> - Consult with managers to determine the role of the IT system in an organization
> - Research emerging technologies to decide if installing them can increase the organization's efficiency and effectiveness
> - Prepare an analysis of costs and benefits so that management can decide if computer upgrades are financially worthwhile
> - Devise ways to make existing computer systems meet new needs
> - Design and develop new systems by choosing and configuring hardware and software
> - Oversee installing and configuring the new system to customize it for the organization
> - Do tests to ensure that the systems work as expected
> - Train the system's end users and write instruction manuals, when required

The referenced section of the U.S. Dept. of Labor's Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., available at http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm (last accessed May 14, 2012).

More specifically, the same chapter of the *Handbook* states the following about programmer analyst positions:

> ***Programmer analysts*** design and update their system's software and create applications tailored to their organization's needs. They do more coding and debugging the code than other types of analysts, although they still work extensively with management to determine what business needs the applications are meant to address. Other occupations that do programming are computer programmers and software developers. For more information, see the profiles on computer programmers and software developers.

The duties of the proffered position as described in the December 17, 2009 letter from [redacted] vice president are consistent with the duties of programmer analysts as described in the *Handbook*. On the balance, the AAO finds that the proffered position is a programmer analyst position as described in the *Handbook*, at least during the period when the beneficiary would work on the [redacted] project.

The *Handbook* states the following about the educational requirements of systems analyst positions, including programmer analyst positions:

> Most computer systems analysts have a bachelor's degree in a computer-related field. Because computer systems analysts are also heavily involved in the business side of a company, it may be helpful to take business courses or major in management information systems (MIS).
>
> Some employers prefer applicants who have a Master of Business Administration (MBA) with a concentration in information systems. For more technically complex jobs, a master's degree in computer science may be more appropriate.
>
> Although many analysts have technical degrees, such a degree is not always a requirement. Many systems analysts have liberal arts degrees and have gained programming or technical expertise elsewhere.
>
> Some analysts have an associate's degree and experience in a related occupation.

That most systems analysts have a bachelor's degree in a computer –related field does not indicate that a bachelor's degree is a minimum requirement. Further, the *Handbook* explicitly states that such a degree is not always a minimum requirement, that many systems analysts have liberal arts degrees and have learned programming or technical expertise elsewhere, or have an associate's degree and related experience.

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 technical knowledge in the computer/IT field, but do not establish any particular level of formal education as minimally necessary to attain such knowledge.

Further still, the petitioner's president indicated, in his September 14, 2009 letter, that the educational requirement of the proffered position can be satisfied by a degree in any of a wide array of subjects, including any branch of engineering. As was explained above, this is inconsistent with the position requiring a minimum of a bachelor's degree or the equivalent in a specific specialty and inconsistent, therefore, with it being a specialty occupation position.

Yet further, [redacted] vice president indicated, in his December 17, 2009 letter, that the work the beneficiary would perform for [redacted] requires a bachelor's degree or the equivalent, but not that the requisite degree must be in any specific specialty.

The petitioner has not demonstrated that a baccalaureate or higher degree or its equivalent in a specific specialty 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 programmer analysts 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 systems analysts or programmer analysts 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.

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 the 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 programmer analyst 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.

The duties described by [redacted] vice president, defining and maintaining sequencing logic, reviewing and re-defining availability data structures and relationships, defining and maintaining data structure, understanding and absorbing business rules in order to create and maintain system rules, etc., appear to be complex. The record contains no evidence or explanation, however, that leads the AAO to find that they have such a degree of complexity or uniqueness that they can only be performed by a person with a minimum of a bachelor's degree or the equivalent in a specific specialty, especially given that the *Handbook* indicates that programmer analyst positions do not categorically require a minimum of a bachelor's degree or the equivalent in a specific specialty.

Further, as was explained above, the assertion that the educational requirement of the proffered position may be satisfied by a degree in any of a wide variety of subjects, including any branch of engineering, is inconsistent with it being so complex or unique that it can only be performed by an individual 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*).

The record contains no evidence pertinent to anyone else that the petitioner has ever hired to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).[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, although the duties of the proffered position, defining, documenting, and coding system logic; creating, analyzing, coding, debugging, and validating system control flow diagrams; creating, analyzing, coding and debugging system interaction diagrams; creating and validating user interface mock-ups; documenting and validating technical requirements for the application; etc., do not demonstrate that they are inherently 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. Absent evidence pertinent to the specialization and complexity of those duties, as they would be performed in the proffered position, the AAO cannot find that the petitioner has satisfied the alternative criterion of at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

Further, as was noted above, the court in *Defensor v. Meissner*, 201 F. 3d 384, recognized that where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. The petitioner has never stated where the beneficiary would work during the entire period of requested employment. The evidence appears sufficient to show that the beneficiary would work for [redacted] through July 2010. Even if the AAO found that the petitioner had demonstrated that the work for [redacted] would qualify as specialty occupation employment, however, it could not find that the petitioner would employ the beneficiary in a specialty occupation position during the balance of the qualifying period.

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[3] 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").

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary throughout the period of requested employment precludes a finding that the proffered position would be a specialty occupation position throughout the full period specified on the petition 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.

Also, at a more basic level, as reflected in this decision's discussion of the evidentiary deficiencies, the record lacks credible evidence that when the petitioner filed the petition, the petitioner had secured work of any type for the beneficiary to perform during the requested period of employment.

USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

Although the petitioner asserted, in the visa petition, that the beneficiary would work at its offices in Mahwah, New Jersey, it has provided no evidence that it has an in-house project upon which to employ the beneficiary there. For this reason also, the appeal will be dismissed and the petition denied.

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.

Another basis of the decision of denial is the director's finding that the petitioner had not demonstrated that the LCA submitted to support the visa petition is valid for all of the locations where the beneficiary would work, and has not demonstrated, therefore, that the LCA corresponds to the visa petition.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed. As this adverse determination of the specialty occupation issue is dispositive of the appeal, the AAO will not further address its affirmation of the director's denial of the petition for the petitioner's failure to establish that the LCA is valid for all of the locations where the beneficiary would work, except to note that the petitioner has never revealed where the beneficiary would work throughout the period of requested employment. Although the petitioner provided evidence that the beneficiary was working at the petitioner's office in Mahwah, New Jersey, beginning in November and December of 2009, the pay statements for those months indicate that the beneficiary then lived in Edwards, Illinois. The

petitioner's president's asserted, in his February 22, 2010 letter, "Edwards, IL is a location where [the beneficiary] was residing and she was using this address for her personal needs." That is an insufficient explanation, of course, for the beneficiary retaining an address in Illinois during two months when she was allegedly working in Mahwah, New Jersey, more than 900 miles distant. The appeal will be dismissed and the visa petition will be denied on the additional basis that the petitioner has not demonstrated that it provided an LCA that corresponds with the visa petition.

A related issue, and the final basis for the decision of denial, is the petitioner's failure to provide an itinerary of the beneficiary's projected employment. Although the petitioner has implied that the beneficiary would work at its location on the project for [redacted] throughout that period, the November 29, 2009 SOW indicates that [redacted] agreed to employ the beneficiary for the year ended December 21, 2010. Subsequently, the vice president of [redacted] stated, in his December 17, 2009 letter, that the project was only expected to continue through July 2010, but that an extension through August 2011 was possible.

The petitioner has submitted insufficient evidence to show that it has work for the beneficiary to perform, and, consequently, the specific locations where the beneficiary would work, from July 2010 through September 30, 2012. As such, the petitioner failed to provide the itinerary, required by 8 C.F.R. § 214.2(h)(2)(i)(B), for the entire period of requested employment. Therefore, even if the evidence demonstrated the employment for [redacted] to be specialty occupation employment, and if the visa petition were otherwise approvable, the visa petition could not be approved for any period after July 2010.

The record suggests an additional issue that was not addressed in the decision of denial; that is, the issue of whether the beneficiary is qualified to work in a specialty occupation position.

The AAO does not need to examine the issue of the beneficiary's qualifications in any depth, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation position. In other words, the 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 petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications further, except to note that, in any event, the combined evaluation of the beneficiary's education and work experience submitted by the petitioner is insufficient to establish that the beneficiary possesses the equivalent of a U.S. bachelor's degree in any specific specialty.

Specifically, the claimed equivalency was based in part on experience, and the evidence submitted is insufficient to show that the evaluator 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. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*). The evidence is also insufficient to show that the beneficiary has recognition of expertise in the specialty through progressively responsible positions directly related to the

specialty. *See* 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). As such, since evidence was not presented that the beneficiary has at least a U.S. bachelor's degree in any specific specialty, or its equivalent, the petition could not be approved even if eligibility for the benefit sought had been otherwise established. The appeal will be dismissed and the visa petition denied on this additional basis.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd.* 345 F.3d 683.

The director's decision will be affirmed and the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. § 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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