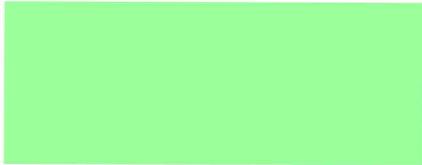


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)



**U.S. Citizenship
and Immigration
Services**



DATE: **DEC 24 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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: 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". Below the signature, the word "for" is written in smaller letters.

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 (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

On the visa petition, the petitioner describes itself as an information technology firm. To employ the beneficiary in what it designates on the visa petition as a "Systems Analyst" position, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, the petitioner asserted that the director's basis for denial was erroneous and contended that it had satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

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 RFE; (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and the petitioner's submissions on appeal.

The issue before the AAO is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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.

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.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, 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 the minimum for entry into the occupation, as required by the Act.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a systems analyst position, and that it corresponds to Standard Occupational Classification (SOC) code and title 15-1132, Software Developers, Applications, from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, the petitioner's prior counsel submitted evidence that the beneficiary received a bachelor's degree in Electronics and Communications Engineering from the [REDACTED] in India. An evaluation in the record states that the beneficiary's degree is equivalent to a U.S. bachelor's degree in electronics engineering.

Prior counsel also submitted (1) three letters from the petitioner's Vice President, Operations (VPO) dated March 26, 2013, April 4, 2013, and April 24, 2013; and (2) a description of a software development project entitled [REDACTED]

In his March 26, 2013 letter, the petitioner's VPO stated that the petitioner intends to develop and sell [REDACTED] and that it requires "certain very specific SAP technology knowledge, skills, and experience" for the project, for which it has selected the beneficiary.

The petitioner's VPO's April 4, 2013 letter is addressed to the beneficiary, and indicates that the petitioner has selected him to work on that project as a "Systems Analyst (SAP Basis Administrator)." It states the project was expected to begin on July 15, 2013 and to terminate on September 30, 2016.

In his April 24, 2013 letter, the petitioner's VPO stated:

As a Systems Analyst, [the beneficiary would] be responsible for performing SAP basis and security activities covering installation, patching, upgrades, support and

performance tuning on different operating systems. While doing normal day-to-day basis administration, he will assist with proactive monitoring and performance analysis, general basis work (client copies, creation of environments, etc). He will support the following applications as well as SAP: ECC + Biller Direct / Dispute Management SEM + BI SCM + Live Cache, + Optimizers; GRC – GTS, Access Control, and Process Control; Solution Manager; MII, NWDI; Verex (Tax); Tidal Enterprise Scheduler, Horizon and Transaction Analyzer; ARIS. He will document all testing approaches.

Nothing submitted with the visa petition states that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

On May 14, 2013, the service center issued an RFE in this matter. The service center requested, *inter alia*, additional evidence that the petitioner would employ the beneficiary in a specialty occupation. The director outlined the specific evidence to be submitted.

In response, counsel submitted (1) six vacancy announcements; (2) diplomas of people other than the beneficiary; and (3) a letter, dated June 14, 2013, signed by both prior counsel and the petitioner's VPO.

The diplomas provided show that:

1. [REDACTED] has a foreign master's degree in computer applications;
2. [REDACTED] has a foreign bachelor's degree in electrical and electronics engineering;
3. [REDACTED] has a foreign bachelor's degree in industrial and production engineering;
4. [REDACTED] has a foreign bachelor's degree in mechanical engineering;
5. [REDACTED] has a foreign master's degree in computer applications; and
6. [REDACTED] has a master's degree in electrical engineering.

That June 14, 2013 letter refers to the diplomas provided as evidence that the petitioner normally requires a bachelor's degree in a specific specialty, or its equivalent, for the proffered position and the vacancy announcements. That letter further states: "The duties of the beneficiary are so complex that they can only be accomplished on the basis of an underlying Bachelor's degree in an engineering or computer-related field."

The director denied the petition on June 28, 2013, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner submitted five additional vacancy announcements.

In the statement on appeal, the petitioner's VPO stated: "[The proffered position] clearly fits within the definition of a specialty occupation because a Bachelor's degree in engineering disciplines or equivalent is a minimum requirement for the position."

As a preliminary matter, the petitioner has repeatedly stated that an otherwise undifferentiated bachelor's degree in engineering is a sufficient educational qualification for the proffered position. The assertion that the duties of the proffered position can be performed by a person with a degree in any engineering discipline implies that the proffered position is not, in fact, a specialty occupation.

More specifically, 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. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 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 business administration or 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). The petitioner has indicated that the proffered position in the instant case does not require such a specialized degree, which indicates that it is not a specialty occupation position. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, the AAO turns next to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook*

(*Handbook*) on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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)).

The AAO will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹

The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 15-1132, Software Developers, Applications, from O*NET. The AAO observes that this assertion appears to conflict with the "Systems Analyst" job title, as systems analyst positions and software developer positions are discussed in different *Handbook* chapters and are generally recognized as different positions. An initial inquiry, in the determination of whether the proffered position is a specialty occupation position, is which type of position, if either, the proffered position actually is.

The *Handbook* states the following with regard to the duties of software developers:

What Software Developers Do

Software developers are the creative minds behind computer programs. Some develop the applications that allow people to do specific tasks on a computer or other device. Others develop the underlying systems that run the devices or control networks.

Duties

Software developers typically do the following:

- Analyze users' needs, then design, test, and develop software to meet those needs
- Recommend software upgrades for customers' existing programs and systems
- Design each piece of the application or system and plan how the pieces will work together
- Create flowcharts and other models that instruct programmers how to write the software's code

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

- Ensure that the software continues to function normally through software maintenance and testing
- Document every aspect of the application or system as a reference for future maintenance and upgrades
- Collaborate with other computer specialists to create optimum software

Software developers are in charge of the entire development process for a software program. They begin by understanding how the customer plans to use the software. They design the program and then give instructions to programmers, who write computer code and test it. If the program does not work as expected or people find it to difficult to use, software developers go back to the design process to fix the problems or improve the program. After the program is released to the customer, a developer may perform upgrades and maintenance.

Developers usually work closely with computer programmers. However, in some companies, developers write code themselves instead of giving instructions to programmers. For more information, see the profile on computer programmers.

Developers who supervise a software project from the planning stages through implementation sometimes are called IT (information technology) project managers. These workers monitor the project's progress to ensure that it meets deadlines, standards, and cost targets. IT project managers who plan and direct an organization's IT department or IT policies are included in the profile on computer and information systems managers. For more information, see the profile on computer and information systems managers.

The following are types of software developers:

Applications software developers design computer applications, such as word processors and games, for consumers. They may create custom software for a specific customer or commercial software to be sold to the general public. Some applications software developers create complex databases for organizations. They also create programs that people use over the Internet and within a company's intranet.

Systems software developers create the systems that keep computers functioning properly. These could be operating systems that are part of computers the general public buys or systems built specifically for an organization. Often, systems software developers also build the system's interface, which is what allows users to interact with the computer. Systems software developers create the operating systems that control most of the consumer electronics in use today, including those in phones or cars.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Software Developers," <http://www.bls.gov/ooh/Computer-and-Information-Technology/Software-developers.htm#tab-2> (last visited Dec. 17, 2013).

Although the LCA states that the proffered position is a Software Developer, Applications, position, the duties of the proffered position as described by the petitioner's VPO, and set out above, do not correspond to the *Handbook* description of the duties of a software developer. The duties described do not include developing software applications. Although those duties include "patching," there is no indication that the position would even include writing patches, rather than installing pre-existing patches.

The *Handbook* describes the duties of computer systems analysts as follows:

What Computer Systems Analysts Do

Computer systems analysts study an organization's current computer systems and procedures and make recommendations to management to help the organization operate more efficiently and effectively. They bring business and information technology (IT) together by understanding the needs and limitations of both.

Duties

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

Analysts use a variety of techniques to design computer systems such as data-modeling systems, which create rules for the computer to follow when presenting data, thereby allowing analysts to make faster decisions. They also do information

engineering, designing and setting up information systems to improve efficiency and communication.

Because analysts work closely with an organization's business leaders, they help the IT team understand how its computer systems can best serve the organization.

Analysts determine requirements for how much memory and speed the computer system needs, as well as other necessary features. They prepare flowcharts or diagrams for programmers or engineers to use when building the system. Analysts also work with these people to solve problems that arise after the initial system is set up.

Most systems analysts specialize in certain types of computer systems that are specific to the organization they work with. For example, an analyst might work predominantly with financial computer systems or engineering systems.

In some cases, analysts who supervise the initial installation or upgrade of IT systems from start to finish may be called IT project managers. They monitor a project's progress to ensure that deadlines, standards, and cost targets are met. IT project managers who plan and direct an organization's IT department or IT policies are included in the profile on computer and information systems managers. For more information, see the profile on computer and information systems managers.

The following are examples of types of computer system analysts.

Systems analysts specialize in developing new systems or fine-tuning existing ones to meet an organization's needs.

Systems designers or systems architects specialize in helping organizations choose a specific type of hardware and software system. They develop long-term goals for the computer systems and a plan to reach those goals. They work with management to ensure that systems are set up to best serve the organization's mission.

Software quality assurance (QA) analysts do in-depth testing of the systems they design. They run tests and diagnose problems to make sure that certain requirements are met. QA analysts write reports to management recommending ways to improve the system.

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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Computer Systems Analysts," <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-2> (last visited Dec. 17, 2013).

Although the petitioner stated, on the Form I-129 visa petition, that the proffered position is a systems analyst position, it does not appear to be a computer systems analyst position. The duties of the proffered position do not demonstrate that the beneficiary would be studying computer systems and making recommendations to enhance efficiency. The duties of the proffered position, such as installing, patching, upgrading, supporting, performance tuning of a computer system, and documenting performance testing, do not appear to be the type of duties the *Handbook* attributes to computer systems analyst positions.

However, the *Handbook* describes the duties of network and computer systems administrators as follows:

What Network and Computer Systems Administrators Do

Computer networks are critical parts of almost every organization. Network and computer systems administrators are responsible for the day-to-day operation of these networks. They organize, install, and support an organization's computer systems, including local area networks (LANs), wide area networks (WANs), network segments, intranets, and other data communication systems.

Duties

Network and computer systems administrators typically do the following:

- Determine what the organization needs in a network and computer system before it is set up
- Install all network hardware and software and make needed upgrades and repairs
- Maintain network and computer system security and ensure that all systems are operating correctly
- Collect data to evaluate the network's or system's performance and help make the system work better and faster
- Train users on the proper use of hardware and software when necessary
- Solve problems quickly when a user or an automated monitoring system lets them know about a problem

Administrators manage an organization's servers. They ensure that email and data storage networks work properly. They also make sure that employees' workstations are working efficiently and stay connected to the central computer network. Some administrators manage telecommunication networks at their organization.

In some cases, administrators help network architects who design and analyze network models. They also participate in decisions about buying future hardware or software to upgrade the organization's network. Some administrators provide technical support to computer users, and they may supervise computer support specialists who help users with computer problems.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Network and Computer Systems Administrators," <http://www.bls.gov/ooh/Computer-and-Information-Technology/Network-and-computer-systems-administrators.htm#tab-2> (last visited Dec. 17, 2013).

The description of the duties of the proffered position appears to correspond more closely to the duties of network and computer systems administrators than it does to any other position described in the *Handbook*. Installing, patching, upgrading, supporting, performance tuning of a computer system, and documenting performance testing are consistent with the description of the duties of a network and computer systems administrator. The AAO finds, by a preponderance of the evidence, that the description of the duties of the proffered position most closely corresponds to the duties of a network and computer systems administrator position as described in the *Handbook*.

The *Handbook* states the following about the educational requirements of network and computer systems administrator positions:

How to Become a Network and Computer Systems Administrator

Network and computer systems administrators must often have a bachelor's degree, although some positions require an associate's degree or professional certification along with related work experience.

Education

A bachelor's degree in fields related to computer or information science is most common. However, because administrators work with computer hardware and equipment, a degree in computer engineering or electrical engineering usually is acceptable as well. These programs usually include classes in computer programming, networking, or systems design.

Some positions require an associate's degree or a postsecondary certificate in a computer field with related work experience.

Because network technology is continually changing, administrators need to keep up with the latest developments. Many continue to take courses throughout their careers. Some businesses require that an administrator get a master's degree.

Certification

Certification is a way to show a level of competence and may provide a jobseeker with a competitive advantage. Certification programs are generally offered by product vendors or software firms. Companies may require their network and computer systems administrators to be certified in the product they use. Some of the most common certifications are offered from Microsoft, Red Hat, and Cisco.

Important Qualities

Analytical skills. Administrators need analytical skills to evaluate network and system performance and determine how changes in the environment will affect it.

Communication skills. Administrators work with many other types of workers and have to be able to describe problems and their solutions to them.

Computer skills. Administrators oversee the connections of many different types of computer equipment and must ensure that they all work together properly.

Multi-tasking skills. Administrators may have to work on many problems and tasks at the same time.

Problem-solving skills. Administrators must be able to quickly resolve problems with computer networks when they occur.

Id. at <http://www.bls.gov/ooh/Computer-and-Information-Technology/Network-and-computer-systems-administrators.htm#tab-4> (last visited Dec. 17, 2013).

Although the *Handbook* states that network and computer systems administrators must often have a bachelor's degree, it also states that some positions require only an associate's degree or professional certification along with related work experience. The *Handbook* does not indicate that network and computer systems administrator positions, as a category, require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, the AAO finds that, to the extent that they are described in the record of proceeding, the 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, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally

necessary to attain such knowledge. That the beneficiary would "be responsible for performing SAP basis and security activities," for instance, is insufficient to demonstrate that entry into the proffered position normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree in a specific specialty, or the equivalent, the petitioner has not satisfied the criterion at 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 calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, 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.

As stated earlier, in determining whether there is 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent.

Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

The petitioner did submit 11 vacancy announcements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. Specifically, the petitioner submitted advertisements for the following positions posted on the Internet:

1. SAP Systems Analyst for [REDACTED] requiring a "Bachelor's Degree in Computer Science, Engineering, or related discipline" and "2+ years' SAP applications support experience";
2. Business Process Analyst for [REDACTED] requiring a minimum of a bachelor's degree in computer science or information technology;

3. Systems Analyst – SAP e-Business requiring a minimum of a bachelor's degree in "Business Administration, Computer Science, Information Systems or related discipline" and a "[m]inimum of six years experience with technology-related projects . . . including a minimum of four years of direct system analysis and design experience";
4. Systems Analyst/Developer III – SAP/EDI for [REDACTED] requiring a "Bachelor's degree in Computer Science or related field . . . and at least six years hands-on SAP development work experience; or an equivalent combination of education and experience";
5. SAP Basis Administrator for [REDACTED] stating a "Bachelor's degree or foreign equivalent degree in Computer Science, Electronics & Telecommunication Engineering, Electronic and Communications Engineering, or a related field, and 5 years of post-baccalaureate progressive experience in the job offered or in SAP Basis Administration required";
6. SAP Business Systems Engineer for [REDACTED] requiring a bachelor's degree "in Information Systems, or relevant work experience," and "5 years' experience with Enterprise Resource Planning (ERP) SAP applications";
7. SAP Basis Consultant for an unidentified company in India requiring an unspecified degree in engineering, computer science, information systems, or computer applications and "6 to 8 years experience in administering SAP Applications";
8. Application Development Specialist for [REDACTED] requiring a bachelor's degree, preferably in engineering, and "At least 2 years experience in any one of the following skills: Java, J2EE, Web Development, SAP, ABAP, SAP Basis";
9. SAP Basis – Senior Consultant for [REDACTED] requiring an unspecified bachelor's or master's degree or an unspecified equivalent, and at least four years of experience implementing SAP Basis;
10. SAP Basis Administrator for an unidentified company requiring an unspecified college degree and "6-8 years SAP Basis Administration experience"; and
11. Senior SAP Basis Administrator for Dell requiring a "Bachelor Degree in related field," and "6-8 years of experience as a SAP Basis Analyst or Administrator."

Whether any of the firms that placed those vacancy announcements are in the petitioner's industry is unclear. For that reason, initially, their value as evidence that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to *the petitioner's industry* for positions parallel to the proffered position has not been demonstrated.

Additionally, the seventh vacancy announcement is for a position in India. The requirements of that position have no direct relevance to whether a minimum of a bachelor's degree in a specific specialty or its equivalent is required as a minimum for entry into the proffered position *in the United States*, which is the inquiry salient to section 214(i)(l) of the Act.

Further, the first, seventh, and eighth vacancy announcements indicate that an otherwise unspecified bachelor's degree in engineering would be a sufficient educational qualification for the position they

announce. As was explained above, 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. As such, those vacancy announcements do not indicate that a minimum of a bachelor's degree in a specific specialty or its equivalent is required for the positions they announce.

Similarly, the third vacancy announcement indicates that an otherwise unspecified bachelor's degree in business administration would be a sufficient educational qualification for the position it announces. Again, because a requirement of an otherwise unspecified bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent, that vacancy announcement does not indicate that the position it announces requires such a specialized degree or the equivalent.

The sixth vacancy announcement indicates that some unspecified amount of "relevant work experience" is an acceptable substitute for the otherwise requisite bachelor's degree. Whether that experience would be equivalent to a minimum of a bachelor's degree in a specific specialty is unclear.

The ninth and tenth vacancy announcements state that the positions they announce require a bachelor's degree, but do not state a requirement, or even a preference, for a degree in any specific specialty. They do not, therefore, suggest that a requirement of a bachelor's or higher degree *in a specific specialty*, or its equivalent, is common to the petitioner's industry for the positions they announce, let alone for the proffered position.

The eleventh vacancy announcement states a requirement of a bachelor's degree "in a related field," but provides no indication of the range of subjects the hiring authority might deem to be sufficiently closely related. As such, it has not been shown to require a minimum of a bachelor's degree in a specific specialty or its equivalent for the position it announces.

Further, although all of those vacancy announcements contain some description of the duties, none is sufficient to show that the positions they announce are positions parallel to the proffered position, and their job titles suggest that many, which are designated analyst and developer positions, are not parallel to the proffered position, whose duties, the AAO has found, indicate that it is a network and computer systems administrator position.

Finally, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and required a minimum of a bachelor's degree in a specific specialty or its equivalent, which has not been demonstrated by the petitioner, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from 11 announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.²

² Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these job advertisements with regard to determining

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, 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. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of preferred degrees acceptable for such positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by

the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of systems analyst positions for firms similar to and in the same industry as the petitioner required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.³

Pertinent to this criterion, the petitioner provided diplomas of the people listed above. Those diplomas were not accompanied by any evidence that the people named work for the petitioner or, if they do, that they work in the proffered position. Further, even if the petitioner employs all of those people in the proffered position, it provided no evidence that they are the *only* people the petitioner employs, or has employed, in the proffered position. Even evidence that all of those people work for the petitioner in the proffered position would only establish that *some* of the people whom the petitioner employs in the proffered position have a minimum of a bachelor's degree, not that the petitioner normally requires a minimum of a college degree for the proffered position.

Further still, the diplomas provided show that the people to whom they pertain have degrees in computer applications, electrical and electronics engineering, industrial and commercial engineering, mechanical engineering, and electrical engineering. Those various subjects do not appear to delineate a specific specialty. As such, even if the petitioner had demonstrated that the six people whose diplomas it provided all work for the petitioner in the proffered position and are the only people the petitioner has ever employed in the proffered position, that would not suggest that the petitioner normally requires a minimum of a bachelor's degree *in a specific specialty* or its equivalent for the proffered position. Even with that additional evidence, those diplomas would indicate that, to the contrary, the petitioner does not require such a specialized diploma or equivalent for the proffered position.

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 a 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").

Especially telling are the diplomas in electrical and electronics engineering, industrial and commercial engineering, mechanical engineering, and electrical engineering. They suggest that, as the petitioner conceded, a bachelor's degree in any branch of engineering would be a sufficient qualification for the proffered position. As was explained above, an educational requirement that may be satisfied by a bachelor's degree in any branch of engineering is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. That the petitioner considers a bachelor's degree in any branch of engineering to be a sufficient qualification for the proffered position makes clear that the petitioner does not normally require a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position. It is also noted that the petitioner did not submit evaluations for the degrees that were issued by foreign institutions; therefore, it is not possible to determine the equivalencies of those foreign degrees to U.S. bachelor's degrees.

For all of those reasons, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position, such as "be[ing] responsible for performing SAP basis and security activities covering installation, patching, upgrades, support and performance tuning on different operating systems"; "assist[ing] with proactive monitoring[,] performance analysis, [and] general basis work," have not been described with sufficient specificity to show that they are more specialized and complex than the duties of positions that are not so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. "[B]eing responsible for performing SAP basis and security activities," for instance, is too abstractly described to show that the duty requires a minimum of a bachelor's degree in a specific specialty or its equivalent. The petitioner has not, therefore, satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

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.