



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **AUG 01 2014** 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)

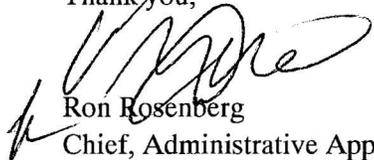
ON BEHALF OF PETITIONER:

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,


Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the California Service Center on April 8, 2013. On the Form I-129 visa petition, the petitioner is described as a software consulting and development firm with approximately 420 employees, established in 1991. In order to employ the beneficiary in a position to which it assigned the job title "Software Quality Assurance Engineer," the petitioner seeks 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 on November 15, 2013, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

The record of proceeding before us contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Notice of Appeal or Motion (Form I-290B) and supporting documentation. We reviewed the record in its entirety before issuing our decision.¹

I. FACTUAL AND PROCEDURAL HISTORY

In this matter, the petitioner indicated in the Form I-129 and supporting documentation that it seeks the beneficiary's services in a position that it designates as a Software Quality Assurance Engineer to work on a full-time basis at a salary of \$74,942 per year. In addition, the petitioner indicates that the beneficiary will be employed at [REDACTED]. The petitioner stated that the dates of intended employment are from October 1, 2013 to September 2, 2016.

Among the documents submitted with the Form I-129 is a March 28, 2013 letter of support. In the section titled, "The Position Offered," the petitioner introduces the following explanation of the duties to be performed in the proffered position:

- Identify, analyze, and document problems with program function, output or content.
- Determine appropriate procedures to recreate and isolate software defects.
- Write, update, and maintain computer programs or software systems to correct identified defects or required enhancements.
- Test system modifications to ensure that the desired results are produced.
- Coordinate with project team to prepare for release and implementation of revised code.
- Monitor bug resolution efforts and track outcomes.
- Document software defects, using a bug tracking system, and report defects to

¹ We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

test engineers and software developers.

- Write reports and create or maintain databases of known defects and resolutions.
- Review software documentation and technical design documents to ensure technical accuracy, compliance, or completeness, or to mitigate risks.

In the letter of support, the petitioner also stated that the petitioner requires "the theoretical and practical application of sophisticated technologies and principles that can only be gained through the attainment of at least a bachelor's degree or its equivalent in Computer Science, Engineering, Information Systems, or a directly related field." The petitioner provided a copy of the beneficiary's academic transcript and credential evaluation to establish that the beneficiary has earned the equivalent of a Master of Science degree in Computer Information Systems as awarded by an accredited university in the United States.

Moreover, the petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The LCA designation for the proffered position corresponds to the occupational classification of "Computer Occupations, All Other" – SOC (ONET/OES) Code 15-1799. The petitioner designated the proffered position as a Level II position. In the LCA, the petitioner indicated that the beneficiary would work at [REDACTED]. The LCA indicates that the dates of intended employment are from September 2, 2013 to September 2, 2016.

In addition, the petitioner submitted the following documents in support of the petition:

- A copy of a letter, dated March 15, 2013, from the Financial Analyst, Category Supplier Management, Global Procurement Services of [REDACTED] stating that the beneficiary is an employee of the petitioner in the position of Quality Assurance Engineer. The letter also states that "[the petitioner assures [REDACTED] that it is their intention to employ the individual in this capacity in [REDACTED] through 9/2/2016."
- A copy of four paystubs issued to the beneficiary from the petitioner.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on August 6, 2013. The RFE requested, in part, that the petitioner submit additional documentation to demonstrate that a valid employer-employee relationship will exist with the beneficiary for the duration of the requested H-1B validity period and to establish that the petitioner has the right to control the beneficiary for the duration of the requested H-1B validity period. The director provided a non-exhaustive list of items that might be used to satisfy the specialty occupation and the employer-employee requirements.

In response to the RFE, the petitioner submitted, among other things, a document entitled "Amendment to Offshore Development Agreement between [REDACTED] and [the petitioner]. The document stated that the two parties of the contract "each desire to amend the Agreement in order to revise the rates for services rendered by the [the petitioner]." Section 15 of the document also states, "This Agreement shall be renewed automatically for additional

successive one (1) year periods, unless notice of non-renewal is given to the other no later than sixty (60) days prior to the expiration of the then current renewal term." The document is not complete since the last page is marked "3" but the document only has 2 pages. The document is also missing Sections 6 -12.

The record in response also included a document entitled, "Offshore Development Agreement between [redacted] and [the petitioner]". The document stated that [redacted] wishes to engage [the petitioner] in forming an Indian offshore development team to work exclusively on hardware and/or software development projects for [redacted] and/or to implement, support and customize third-party application software for [redacted]. Although that agreement pertains predominantly to development outside the United States, it states that the petitioner shall be responsible for "ensuring that the Personnel [employed pursuant to that agreement have] the legal right to work in the United States, India, or other [redacted] offices as specified by [redacted]". As such, it also pertains, in part, to software development in the United States. The Offshore Development Agreement states that the petitioner will appoint a project manager for each project assigned to it by [redacted] and will manage its own employees. The portions of the agreement that were provided are from the beginning of the agreement through section 3.6, and from section 18.5 to section 19.2, which is the end of that agreement. Sections 3.7 through 18.4 were not provided. Although the Offshore Development Agreement references a statement of work, one is not attached to the agreement.

The petitioner also submitted the petitioner's organizational chart that indicated the beneficiary will be supervised by [redacted] Engagement Manager who is located in [redacted], CA, and a copy of the beneficiary's most recent performance appraisal prepared by the petitioner.

The director reviewed the documentation and found it insufficient to establish eligibility for the benefit sought. The director denied the petition on November 15, 2013. Counsel for the petitioner submitted an appeal of the denial of the H-1B petition and supporting documentation.

On appeal, counsel cites the evidence provided for the proposition that the petitioner, not [redacted] would assign the beneficiary's tasks and supervise his performance. Counsel asserts:

[The beneficiary] will interact with [redacted] personnel only to the degree necessary to understand the project needs to best perform his work on the system. [The beneficiary], as a member of the [petitioner's] team, will report to, be supervised daily by, and receive feedback related to work solely from [the petitioner's] supervisor.

Counsel also cites the duty description provided in the March 28, 2013 letter from the petitioner's Director and Head – U.S. Immigration & Office Administration and asserts that software quality engineer and tester positions in general, qualify as specialty occupation positions.

II. LAW AND ANALYSIS

A. Standard of Review

In light of counsel's reference to the requirement that U.S. Citizenship and Immigration Services (USCIS) apply the "preponderance of the evidence" standard, we affirm that, in the exercise of our appellate review in this matter, as in all matters that come within our purview, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010). In pertinent part, that decision states the following:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

* * *

The "preponderance of the evidence" of "truth" is made based on the factual circumstances of each individual case.

* * *

Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Id.

As footnoted above, we conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In doing so, we apply the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon our review of the present matter pursuant to that standard, however, we find that the evidence in the record of proceeding does not support counsel's contentions that the evidence of record requires that the petition at issue be approved. Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, we find that the director's determinations in this matter were correct. Upon our review of the entire record of proceeding, and with close attention and due regard to all of the evidence, separately and in the aggregate, submitted in support of this petition, we find that the petitioner has not established that its claims are "more likely than not" or "probably" true. As the evidentiary

analysis of this decision will reflect, the petitioner has not submitted relevant, probative, and credible evidence that leads us to believe that the petitioner's claims are "more likely than not" or "probably" true.

B. Failure to Establish that the Proffered Position Qualifies as a Specialty Occupation

We will now address whether the petitioner's proffered position qualifies as a specialty occupation. For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

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

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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 at 387. 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), 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.

The petitioner stated on the Form I-129 that the beneficiary would be employed as a Software Quality Assurance Engineer. The LCA designation selected by the petitioner for the Software Quality Assurance Engineer position corresponds to the occupational classification "Computer Occupations, All Other" - SOC (ONET/OES) Code 15-1799 at a Level II wage.

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 evidence in the record of proceeding establishes that performance of the particular proffered 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.

To ascertain the intent of a petitioner, USCIS must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

In this matter, the petitioner provided a broad description of the beneficiary's proposed duties. Thus, it is not possible to discern the substantive nature of the work to be performed by the beneficiary. The failure to detail the beneficiary's actual day-to-day duties, therefore, precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

The petitioner explained that the beneficiary will work off site with [REDACTED]. The petitioner submitted a document entitled "Amendment to Offshore Development Agreement between [REDACTED] and [the petitioner]". As mentioned above, the agreement is missing a page and sections 6 – 12. The petitioner does not explain why the document is missing several sections. Without the full document, it is not possible to ascertain the true nature of the relationship between the end-client and the petitioner. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

In addition, the petitioner submitted a document entitled, "Offshore Development Agreement between [REDACTED] and [the petitioner]" but as noted above, this document is also missing a number of pages. Again, without the full document, we cannot discern the true nature of the relationship between the end-client and the petitioner.

Here, the record of proceeding is devoid of sufficient information from the end-client, [REDACTED] regarding not only the specific job duties to be performed by the beneficiary for it, but also information regarding whatever specific requirements it may or may not have with regard to the educational credentials of persons to be assigned to work on projects undertaken pursuant to its agreement with the petitioner.

Assuming for the sake of argument that the proffered duties as generally described by the petitioner in its initial letter would in fact be the duties to be performed by the beneficiary, we will analyze them and the evidence of record to determine whether the proffered position as described would qualify as a specialty occupation. In that regard, we observe the petitioner attested on the required LCA that the proffered position corresponds most closely to the grouping of Computer Occupations, All Other.

To make its determination whether the proffered position qualifies as a specialty occupation, we turn to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position that is the subject of the petition.

We recognize the Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² We reviewed the chapter of the *Handbook* (2014-2015 edition) entitled "Computer Systems Analysts," including the sections regarding the typical duties and requirements for this occupational category. The *Handbook* states the following with regard to the duties of computer systems analysts:

What Computer Systems Analysts Do

Computer systems analysts study an organization's current computer systems and procedures and design information systems solutions 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 information systems and computing infrastructure upgrades are financially worthwhile
- Devise ways to add new functionality to existing computer systems

² The *Handbook*, which is available in printed form, may also be accessed on the Internet at <http://www.bls.gov/ooh/>. The references to the *Handbook* are to the 2014-2015 edition available online.

- Design and develop new systems by choosing and configuring hardware and software
- Oversee the installation and configuration of new systems to customize them for the organization
- Conduct testing to ensure that the systems work as expected
- Train the system's end users and write instruction manuals

Computer systems analysts use a variety of techniques to design computer systems such as data-modeling, which create rules for the computer to follow when presenting data, thereby allowing analysts to make faster decisions. Analysts conduct in-depth tests and analyze information and trends in the data to increase a system's performance and efficiency.

Analysts calculate requirements for how much memory and speed the computer system needs. They prepare flowcharts or other kinds of 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 analysts do some programming in the course of their work.

Most computer 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.

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

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.

Many computer systems analysts are general-purpose analysts who develop new systems or fine-tune existing ones; however, there are some specialized systems analysts. The following are examples of types of computer systems analysts:

Systems designers or *systems architects* specialize in helping organizations choose a specific type of hardware and software system. They translate the long-term business goals of an organization into technical solutions. Analysts develop a plan for the computer systems that will be able to reach those goals. They work with management to ensure that systems and the IT infrastructure 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 in order to make sure that critical 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 than other types of analysts, although they still work extensively with management and business analysts to determine what business needs the applications are meant to address. Other occupations that do programming are computer programmers and software developers.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Computer Systems Analysts," <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-2> (last visited July 30, 2014).

The duties the petitioner's Director and Head – U.S. Immigration & Office Administration attributed to the proffered position are consistent with the duties of software quality assurance analysts as described in the Computer Systems Analyst chapter of the *Handbook*. The duties described by the petitioner's Director and Head – U.S. Immigration & Office Administration, if assumed to be an accurate description of the duties the beneficiary would actually perform, demonstrate that the proffered position is a computer systems analyst position and, more particularly, a software quality assurance analyst position, as described in the *Handbook*.

The *Handbook* states the following about the educational requirements of computer systems analyst positions, including software quality assurance analyst positions:

How to Become a Computer Systems Analyst

A bachelor's degree in a computer or information science field is common, although not always a requirement. Some firms hire analysts with business or liberal arts degrees who have skills in information technology or computer programming.

Education

Most computer systems analysts have a bachelor's degree in a computer-related field. Because these analysts also are heavily involved in the business side of a company, it may be helpful to take business courses or major in management information systems.

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 computer systems analysts have technical degrees, such a degree is not always a requirement. Many analysts have liberal arts degrees and have gained programming or technical expertise elsewhere.

Many systems analysts continue to take classes throughout their careers so that they can learn about new and innovative technologies and keep their skills competitive. Technological advances come so rapidly in the computer field that continual study is necessary to remain competitive.

Systems analysts must understand the business field they are working in. For example, a hospital may want an analyst with a background or coursework in health management, and an analyst working for a bank may need to understand finance.

Advancement

With experience, systems analysts can advance to project manager and lead a team of analysts. Some can eventually become information technology (IT) directors or chief technology officers. For more information, see the profile on computer and information systems managers.

Important Qualities

Analytical skills. Analysts must interpret complex information from various sources and be able to decide the best way to move forward on a project. They must also be able to figure out how changes may affect the project.

Communication skills. Analysts work as a go-between with management and the IT department and must be able to explain complex issues in a way that both will understand.

Creativity. Because analysts are tasked with finding innovative solutions to computer problems, an ability to "think outside the box" is important.

Id. at <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-4> (last visited July 30, 2014).

The *Handbook* makes clear that computer systems analyst positions do not require as a category a minimum of a bachelor's degree in a specific specialty or the equivalent, as it indicates that many systems analysts have a liberal arts degree and programming knowledge, rather than a degree in a specific specialty directly related to systems analysis.

Where, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies this criterion by a preponderance of the evidence standard, notwithstanding the absence of the *Handbook's* support

on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. In this case, the *Handbook* does not support the proposition that the proffered position satisfies 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), and the record of proceeding does not contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in this occupational category would be sufficient in itself to establish that a bachelor's or higher degree in a specific specialty or its equivalent "is normally the minimum requirement for entry into [this] particular position."

Further, we finds that, to the extent that they are described in the record of proceeding, the duties ascribed 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.

In that regard, we observe that the petitioner's Director and Head – U.S. Immigration & Office Administration stated, in his March 28, 2013 letter, that the educational requirement of the proffered position can be satisfied by, "a bachelor's degree or its equivalent in Computer Science, Engineering, Information Systems, or a directly related field."

The assertion that an otherwise unspecified bachelor's degree in engineering is a sufficient educational preparation for the proffered position indicates that it does not require a minimum of a bachelor's degree in a specific specialty or its equivalent. 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. Therefore, besides a degree in electrical engineering, it is not readily apparent that a general degree in engineering or one of its other sub-specialties, such as chemical engineering or nuclear engineering, is closely related to computer science or that engineering or any and all engineering specialties are directly related to the duties and responsibilities of the particular position proffered in this matter.

Thus, the petitioner's assertion that an otherwise unspecified bachelor's degree in engineering would be a sufficient educational preparation for the proffered position indicates that the proffered position does not require a minimum of a bachelor's degree in a specific specialty or its equivalent. That assertion is tantamount, therefore, to an admission that the proffered position does not qualify as a specialty occupation position.

Next, the AAO will review the record of proceeding regarding 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.

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)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Thus, we incorporate by reference our previous discussion on the matter. The record of proceeding does not contain any evidence from an industry professional association to indicate that a degree in a specific discipline is a minimum entry requirement. The petitioner did not submit any letters or affidavits from firms or individuals in the industry.

We 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 shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

The petitioner in this matter provided a broad description of the duties of the proffered position. As determined above, it is not possible to ascertain what the beneficiary will actually do on a daily basis. Moreover, 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 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 a specific degree is not necessary for such positions. 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 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).³

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. We usually review the petitioner's past recruiting and hiring practices, as well as information

³ Furthermore, the LCA, which is certified for a Level II position, is at odds with any claim that the duties of the proffered position are "complex and unique," as such a position would be classified as a Level III or IV position, requiring a significantly higher prevailing wage.

regarding employees who previously held the position in order to assess this criterion.

To merit approval of the petition under this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. In the instant case, the record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent. Accordingly, the petitioner has not satisfied the requirements of this criterion.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Incorporating the discussion above, the petitioner's statements and the submitted documentation fail to support the assertion that the proffered position qualifies as a specialty occupation under this criterion of the regulations. More specifically, in the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position.

The record does not include adequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. Thus, the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

We acknowledge the petitioner's claim that the position qualifies for H-1B classification; however, an assertion without supporting evidence is insufficient for a petitioner to satisfy its burden of proof. The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). For the reasons discussed above, 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.

C. Speculative Employment

We also find that the petitioner has not established that it has specialty occupation work available for the beneficiary for the requested employment period. In that regard, we have reviewed the information in the record regarding the petitioner's consulting business. Upon review of this information, we find that the record of proceeding lacks documentation regarding the petitioner's business activities and the actual work that the beneficiary will perform to sufficiently substantiate the claim that the petitioner has H-1B caliber work for the beneficiary for the period of employment requested in the petition. That is, the record does not include sufficient work product or other documentary evidence to confirm that the petitioner has ongoing projects or actual work that the beneficiary will perform to sufficiently substantiate the claim that the petitioner has H-1B caliber work for the beneficiary for the period of employment requested in

the petition. The petitioner did not submit a statement of work indicating that the beneficiary will work for the end client until September 2, 2016. In addition, the document entitled, "Offshore Development Agreement," between [REDACTED] and the petitioner does not include a statement of work and is also missing pages and sections, thus, it is not complete. These documents may, in fact, be evidence that a business relationship exists between the petitioner and [REDACTED]. They are not, however, evidence that [REDACTED] will require the services of the petitioner on projects throughout the period of requested employment. [REDACTED] need for the petitioner's services may end prior to September 2, 2016, or there may be periods prior to that date when [REDACTED] does not require assistance from the petitioner. The record does not include any work product or other documentary evidence to confirm that the petitioner has other ongoing projects to which the beneficiary will be assigned.

The agency made clear long ago that speculative employment is not permitted in the H-1B program. For example, a 1998 proposed rule documented this position as follows:

Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. See section 214(i) of the Immigration and Nationality Act (the "Act"). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

63 Fed. Reg. 30419, 30419 - 30420 (June 4, 1998). While a petitioner is certainly permitted to change its intent with regard to non-speculative employment, e.g., a change in duties or job location, it must nonetheless document such a material change in intent through an amended or new petition in accordance with 8 C.F.R. § 214.2(h)(2)(i)(E). In this matter, even if the petitioner had established the position proffered here is a specialty occupation, which it has not, the petition must still be denied for this additional reason.

We do not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient documentation to demonstrate that the position is a specialty occupation. 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.

III. CONCLUSION

An application or petition that fails to comply with the technical requirements of the law may be denied by us 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 we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of our enumerated grounds. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.