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

U.S. Citizenship and Immigration Services

FILE: WAC 08 138 52602 Office: CALIFORNIA SERVICE CENTER Date: DEC 0 8 2009

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner avers that it provides computerized solutions for business, that it was established in 1987, that it employs 30 persons, that it has a gross annual income of $2-5.3 million, and that it has a net annual income of $3-125,000. The petitioner seeks to employ the beneficiary as a project manager. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

On August 4, 2008, the director denied the petition determining that the record did not establish that the beneficiary is qualified to perform services in a specialty occupation or that the proffered position is a specialty occupation.

On appeal, counsel for the petitioner asserts that the director failed to consider the petition consistent with Premium Processing standards, issued two requests for evidence (RFE) that asked for entirely different information, failed to consider the credible, uncontradicted evaluations prepared by three experts establishing the beneficiary's qualifications as well as the evidence submitted regarding the beneficiary's work experience, and failed to consider the evidence establishing that the proffered position is a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 with supporting documentation; (2) the director's two requests for further evidence (RFE); (3) counsel for the petitioner and the petitioner's two responses to the director' RFEs; (4) the director's denial decision; and (5) the Form I-290B, counsel's brief, and documentation submitted in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

Preliminarily, the AAO notes that it only considers the merits of the petition and the subsequently filed appeal. The AAO acknowledges counsel's implicit claim that United States Citizenship and Immigration Services (USCIS) did not properly review the evidence and as a result the petitioner was not granted premium processing. The AAO finds that the director in this matter reviewed the pertinent evidence and correctly determined that the petitioner had not established that the proffered position is a specialty occupation and that the beneficiary is not qualified to perform the duties of a specialty occupation. The AAO finds that the petitioner has not provided evidence that any claimed violation of the regulations resulted in "substantial prejudice" to them. *See e.g. De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004) (holding that an alien "must make an initial showing of substantial prejudice" to prevail on a due process challenge). A review of the record and the adverse decision indicates that the director properly applied the statute and regulations to the petitioner's case. The petitioner's primary complaint is that the director denied the petition. The AAO finds, however, that the director is prohibited from approving a petition when the record does not establish eligibility for the benefit. The AAO does not find that the director acted improperly in this matter. 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."

The AAO will first discuss whether the evidence provided establishes that the proffered position qualifies as a specialty occupation. For purposes of the H-1B adjudication, the issue of *bona fide* employment is viewed within the context of whether the petitioner has offered the beneficiary a position that is determined to be a specialty occupation. To meets its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following 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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

> An occupation which 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 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.

It is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which [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, the position must also meet one of the following criteria:

(1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its

particular position is so complex or unique that it can be performed only by an individual with a degree;

(3) The employer normally requires a degree or its equivalent for the position; or

(4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), 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 illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), United States Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions 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, to determine whether the position qualifies as a specialty occupation. *Defensor v. Meissner*, 201 F. 3d 384.

In a February 14, 2008 letter appended to the petition, the petitioner explained that it provides "complete computerized solutions to businesses of all sizes" and that the "company's expertise lies not only in the latest technology of the computer industry, but more importantly, the overall consultation for hardware and software that best suits the needs of [its] customers." The petitioner noted that it is an authorized partner with Microsoft's software solution, Navision. The petitioner indicated that the proffered position of project manager included responsibility for "implementing

the computer systems that [it] develop[s] for [its] customers and providing professional computer support service to [its] clients." The petitioner further explained:

> This includes not only the installation, training and set-up of the [redacted] software but also after sale support to deal with the technical computer support issues that arise following installation. The Project Manager is responsible for leading support teams of computer professionals. Each new system that our company sells requires the support of a team consisting of a Project Manager, a project manager [sic], a programmer, and an implementer.

The petitioner listed the beneficiary's duties as follows:

- Using his knowledge of computer systems to manage each computer professional involved in implementing the new system;
- Using his knowledge of our computer systems and his understanding of the roles of our professional support personnel and the skills of our clients' professional support staff to develop schedules[,] budgets, and documentation of all transactions with our client;
- Using his knowledge of our computer systems and his ability to use his knowledge of computer systems to understand the skill level of our customers' professional computer staff and train them in the operation of the new computer systems that we sell to them; and
- Designing and developing computer system requirements with our customers, then designing and implementing a system of computer data conversion, and support during the installation of the project.

The petitioner averred that the "Project Engineer"[1] position qualifies for H-1B classification because performance of the position requires at least a United States bachelor's degree in Computer Science, Computer Information Systems, or a closely related field, or an equivalent combination of education, training and experience. The petitioner also claimed that this level of education is required because the duties and responsibilities of the position require the application of highly specialized, technical knowledge of computers, computer languages, software design and development and application and the ability to analyze the components of computer applications.

In response to the director's first RFE, the petitioner indicated that its project managers are critical in providing the petitioner's clients "with the most powerful tools available to promote their growth and profitability and maximize their IT functionality" because it is the project managers who "oversee the systems and services implementation and monitor technical support issues that may arise after installation has been completed." The petitioner reiterated the beneficiary's duties indicating that he would be:

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[1] The AAO notes that the proffered position is for a project manager, not a project engineer. Thus, the petitioner has not provided the proffered position's requirements here.

> [R]esponsible for implementing our systems and providing follow-up support services to our customers, which involves installation, training and set-up of the Microsoft-Navision ERP software as well as fixing any problems that arise after the systems and software are installed. In performing such services, [the beneficiary] will lead a team consisting of at least one of our computer programmers and one of our software implementers in the design and development of systems requirements in accordance with our customer's needs, and in overseeing data conversation [sic] to ensure the customer's smooth transition between systems and software. As Project Manager, he will also be responsible for developing installation schedules and budgets and preparing documentation of all of our company's transactions. In addition, he will be ultimately responsible for training customers on the use of their newly installed systems and software, providing them with follow-up support when needed.

The petitioner noted that the core of the beneficiary's work would be at its offices where the beneficiary "will work with existing clients to field questions regarding software and system support questions and provide technical assistance to customers when their system malfunctions" and "will also conduct online training and engage in GAP studies and analysis to determine the functionality and fit of the system in relation to the customer's business practices and needs and gauge whether modifications to customers' current systems are needed."

In response to the director's second RFE, the petitioner provided a chart incorporating the duties initially described and expounded upon in response to the first RFE, the amount of time the beneficiary would devote to each of the duties described, and the education or work experience that would be used to perform each of the duties described. The petitioner also provided its advertisement for project managers listing many of the duties described and indicating that the individual filling the position must have, as a minimum a "college degree preferably in computer sciences."

The record also includes a number of job announcements from other organizations. The job announcements include: (1) a project manager, IT-Finance for Mindspeed Technologies, Inc. that indicates under position description, "possess a bachelor's degree in information systems, accounting, finance, business or related field or equivalent combination of education, training and experience"; (2) project managers for a computer staffing firm that lists a BA/BS degree and 3-5 or 5-10 years business/industry experience respectively for higher level positions or an equivalent combination of education and experience as required; (3) an ERP project manager for At-Tech that lists a college degree or equivalent experience but does not indicate if the degree is preferred or required; (4) a position with [redacted] that manages complex projects and acts as an overall leader of projects, among other things that requires a bachelor's degree in business, project management or information technology and prefers a master's degree; (5) a project manager for Houghton Mifflin that requires a bachelor's degree and 4-6 years in ElHi publishing; (6) a senior project manager/program manager for [redacted] that indicates that the successful candidate will have practical experience with project management tools and methodologies and 7 years project management experience in ecommerce or lead generation business and lists a bachelor's degree or equivalent experience but does not indicate if the bachelor's degree is preferred

or required; (7) an IT project/program manager for ResMed that indicates a BS in engineering or business is required and that MS/MBA is preferred; (8) a senior IT program manger for Ingram Micro Inc. that indicates a BS degree in applicable IT, business administration or a related field is required; (9) an SAP program manager for Wipro Technologies that indicates a bachelor's degree is required; (10) an associate director/ERP project manager for Stonehill College that lists a bachelor's degree and 5 years of technical and IT project management and experience but does not indicate if the bachelor's degree is required or preferred; and (11) an ERP project manager for Measured Progress that lists a bachelor's degree but does not indicate if it is preferred or required.

In a July 21, 2008 response to the director's second RFE, the petitioner noted that it employed nine project managers, all of whom possess at least a bachelor's degree. The petitioner noted that the individuals had degrees in information systems, computer information systems, business, with a concentration in management, two in business administration, business and marketing, electrical engineering, business administration with a major in accounting, and in finance.

The record further includes a position evaluation dated July 18, 2008 prepared by [redacted] opines: that the proffered "position centers on a senior/managerial-level technical orientation conforming to the standard industry profile of a professional-level position requiring advanced expertise in computing." [redacted] based his opinion on a review of the duties described by the petitioner and that the beneficiary would be responsible for supervision of a programmer and an implementer as well as functions, that the beneficiary would provide technical support and training, would work with customers, develop schedules and budgets and would have to know the petitioner's product. [redacted] opines: "[g]eneralized knowledge of information systems or computer science alone is not sufficient for a Project Manager to handle the functional requirements for the instant position." [redacted] indicates his belief that the proffered position of project manager falls within the Department of Labor's *Occupational Outlook Handbook's* (*Handbook*) classification of Computer and Information Systems Managers.

On appeal, the petitioner submits a second position evaluation dated August 25, 2008 authored by [redacted] provides his opinion, based on information in the petitioner's initial petition and in response to the director's two RFEs, that the individual filling the proffered position should have a general expertise in computer science and a well-developed understanding of [redacted] notes that the [redacted] software is used in accounting and business management functions, thus, an individual's "knowledge of accounting and business management is also critical to facilitate system installation, customize its various features, and most importantly, train the end-user how to operate the system to meet its accounting and management needs." [redacted] opines: [m]anaging projects involving the installation of complex, customer-tailored computer systems and related applications requires an individual who is familiar with theoretical and practical concepts of information technology and related subsets of that field" and that "[s]uch knowledge normally comes from either a bachelor's degree program in computer science, computer information systems, or a closely related field or experience and education equivalent to the completion of United States baccalaureate or higher degree."

On appeal, counsel for the petitioner asserts that the petitioner has consistently indicated that it "requires a Bachelor's degree or the equivalent combination of education, training and/or experience for that job." Counsel asserts on the next page of his brief that the petitioner "is not seeking to employ [a] Project Manager with 'a college degree' but rather a 'Bachelor's Degree in Computer Science, Computer Information Systems, or a closely related field, or an equivalent combination of education, training, and experience." Counsel contends that the petitioner has submitted industry and company descriptions of the project manager position, from the *Handbook*, the Department of Labor's *O*NET Online* (*O*NET*), job recruitment materials, and expert evaluations that establish the proffered position requires a Bachelor's Degree in Computer Science or a closely related field from an accredited United States college or university or an equivalent level of experience, education, and training. Counsel disagrees with the director's conclusion that the description of the project manager's position lacks sufficient detail to conclude that it is a specialty occupation. Counsel notes that the petitioner supplemented its initial description of duties with a detailed chart delineating the percentage of work time dedicated to each duty and the corresponding skills required to accomplish each task as well as correlating the duties with relevant experience, training, and college coursework. Counsel further notes that the petitioner has clearly indicated that it is a computer consultation, installation, and support service company which works directly with businesses of all sizes in addressing technology needs.

The AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*), whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. Regarding Computer and Information Systems Managers, the *Handbook* reports:

> Computer and information systems managers plan, coordinate, and direct research and facilitate the computer-related activities of firms. They help determine both technical and business goals in consultation with top management and make detailed plans for the accomplishment of these goals. This requires a strong understanding of both technology and business practices.
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> *Project managers* develop requirements, budgets, and schedules for their firms' information technology projects. They coordinate such projects from development through implementation, working with internal and external clients, vendors, consultants, and computer specialists. These managers are increasingly involved in projects that upgrade the information security of an organization.
>
> Training
>
> Computer and information systems managers are generally experienced workers who have both technical expertise and an understanding of business and management principles. A strong educational background and experience in a variety of technical fields is needed.

* * *

Education and training. A bachelor's degree usually is required for management positions, although employers often prefer a graduate degree, especially an MBA with technology as a core component. This degree differs from a traditional MBA in that there is a heavy emphasis on information technology in addition to the standard business curriculum. This preparation is becoming important because more computer and information systems managers are making important technology decisions as well as business decisions for their organizations.

Some universities offer degrees in management information systems. These degrees blend technical subjects with business, accounting, and communications courses. A few computer and information systems managers attain their positions with only an associate or trade school degree, but they must have sufficient experience and must have acquired additional skills on the job. To aid their professional advancement, many managers with an associate degree eventually earn a bachelor's or master's degree while working.

Certification and other qualifications. Computer and information systems managers need a broad range of skills. Employers look for managers who have experience with the specific software or technology used on the job, as well as a background in either consulting or business management. The expansion of electronic commerce has elevated the importance of business insight and, consequently, many computer and information systems managers are called on to make important business decisions. Managers need a keen understanding of people, management processes, and customers' needs.

Advanced technical knowledge is essential for computer and information systems managers, who must understand and guide the work of their subordinates yet also explain the work in nontechnical terms to senior managers and potential customers. Therefore, many computer and information systems managers have worked as a systems analyst, for example, or as a computer support specialist, programmer, or other information technology professional.

Although certification is not necessarily required for most computer and information systems manager positions, there is a wide variety of certifications available that may be helpful in getting a job. These certifications are often product-specific, and are generally administered by software or hardware companies rather than independent organizations.

The AAO acknowledges that the proffered position has some similarity to the description of a project manager under the *Handbook's* heading Computer and Information Systems Managers. Upon review of the totality of the *Handbook's* report, the AAO notes specifically that "computer and information systems managers plan, coordinate, and direct research and facilitate the computer-related activities of firms." Upon review of the nature of the petitioner's business and the specific position offered, the AAO does not find evidence in the record that the individual in the petitioner's

position of project manager will plan, coordinate, and direct research and facilitate the computer-related activities of the petitioner or of the petitioner's clients. Rather, the individual in the proffered position will work with the petitioner's customers to assist with the computer system requirements for the petitioner's installation and implementation of the Microsoft Navision software. In addition, the individual in the proffered position will offer technical and training support to those customers and will schedule, budget, and document these transactions with the customer. The individual in the proffered position will also supervise a programmer and an implementer in the accomplishment of these goals. Thus, although the proffered position includes elements of a project manager under this heading, the emphasis of the petitioner's business is the sale, installation, implementation, and support of a particular type of software and not on the planning, coordinating, directing research and facilitation of the client or petitioner's organization. The AAO does not find that the proffered position encompasses the senior-level decision-making emblematic of a computer and information systems manager.

The AAO also notes that the *Handbook* recognizes that bachelor degrees are usually required for management positions but also recognizes that a few computer and information systems managers attain their positions with only an associate or trade school degree, if they have sufficient experience and have acquired additional skills on the job. The AAO notes further that employers look for managers who have experience with the specific software or technology used on the job, as well as a background in either consulting or business management. These additional factors emphasize that the nature of the computer and information systems managerial occupation may require a general bachelor's degree or may call for a bachelor's degree in a variety of disciplines, or specific experience, or certifications in a particular program, in order to qualify for a position. These factors do not establish that a bachelor's degree in a specific computer-related discipline is the normal minimum requirement for entry into the particular position.

The AAO further observes that the proposed position is also similar to that of network and computer systems administrators and computer support specialists as those occupations are defined in the *Handbook*. As described in the *Handbook*, network or computer systems administrators design, install, and support an organization's LAN (local-area network), WAN (wide-area network), network segment, Internet, or intranet system; maintain network hardware and software, analyze problems, and monitor the network to ensure its availability to system users; and gather data to identify customer needs and then use that information to identify, interpret, and evaluate system and network requirements; ensure that the design of an organization's computer site allows all of the components, including computers, the network, and software, to fit together and work properly; and monitor and adjust performance of existing networks and continually survey the current computer site to determine future network needs. According to the *Handbook,* computer support specialists provide technical assistance, support, and advice to customers and other users; the occupational group includes technical support specialists and help-desk technicians that interpret problems and provide technical support for hardware, software, and systems. They also write training manuals; train computer users how to properly use new computer hardware and software; and oversee the daily performance of their company's computer systems and evaluate software programs for usefulness.

The petitioner's indication that the proposed duties of the proffered position include designing and developing computer system requirements with its customers, then designing and implementing a

system of computer data conversion, and support during the installation of the project may be compared generally to that of a computer systems administrator who gathers data to identify customer needs and then ensures that the customer's computers will fit together with the petitioner's installation of the Microsoft Navision software. The petitioner's follow-up technical support offered to its customers and training of the users of the software is comparable to that of a computer support specialist. The *Handbook* indicates that for administrator positions many employers seek applicants with bachelor's degrees, though not necessarily in a computer-related field. For a computer support specialist position some employers prefer some formal college education, others require a bachelor's degree in computer science or information systems, while others require only a computer-related associate degree. The *Handbook* also indicates that many employers are "becoming more flexible about requiring a college degree for support positions because of the explosive demand for specialists" and that "certification and practical experience demonstrating these skills will be essential for applicants without a degree." The AAO acknowledges that the petitioner's position also requires some supervision of a subordinate programmer and implementer but we do not find evidence in the record that management of two technical personnel is sufficient to elevate the position to one that requires a bachelor's or higher degree in a specific discipline.

Based on the *Handbook's* report indicating that there are a number of paths to becoming a project manager and the petitioner's description of the duties of the position, the AAO does not find that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

The AAO has reviewed the petitioner's chart and the course or particular work experience the petitioner believes assists the beneficiary in performing the duties of the position. However, it is not the beneficiary's work experience or education that establishes a position as a specialty occupation. Rather, it is the duties of the proffered position and whether those duties require the theoretical and practical application of a body of specialized knowledge commensurate with the attainment of a bachelor's or higher degree in a specific discipline. Moreover, as will be discussed later in the decision, the AAO specifically observes that the petitioner's own requirement for the proffered position is a general bachelor's degree and that the advertisements submitted from other organizations indicate that when the project manager position is to manage specific software, the primary requirement is knowledge of the software, not a bachelor's degree in a specific discipline.

The AAO has also reviewed the two opinions provided by [redacted] opines: that the proffered "position centers on a senior/managerial-level technical orientation conforming to the standard industry profile of a professional-level position requiring advanced expertise in computing." [redacted] does not substantiate his opinion that the position is a senior/managerial-level position. The AAO does not find a basis in the record to conclude that an individual who supervises one programmer and one implementer holds a senior managerial level position. In addition, [redacted] focuses on the position's provision of technical support and training and the need to know the petitioner's product, and interaction with customers. However, there is nothing to establish that the individual in the proffered position would need a bachelor's degree in a specific discipline to perform these duties. In addition, [redacted] indicates his belief that the proffered position falls within the *Handbook's* classification of a project manager under the heading Computer and Information Systems, but does not discuss what elements elevate the

proffered position from a computer support specialist with some supervisory skills to that of a computer and information systems manager that must hold a degree in a specific discipline.

The AAO has also reviewed the opinion of [redacted] who indicates that the individual filling the proffered position should have general expertise in computer science and a well-developed understanding of [redacted] The AAO does not disagree; however, a general expertise in computer science may be gained from study in an associate degree program, a technical school, or experience and an understanding of [redacted] systems may be gained through a course of undefined duration and study. The AAO does not find that certification in a particular computer system, language, or program is the equivalent of an academic course of study at a university-level in the field of computer science or management information systems. The AAO acknowledges [redacted] opinion that "[m]anaging projects involving the installation of complex, customer-tailored computer systems and related applications requires an individual who is familiar with theoretical and practical concepts of information technology and related subsets of that field" and that "[s]uch knowledge normally comes from either a bachelor's degree program in computer science, computer information systems, or a closely related field or experience and education equivalent to the completion of United States baccalaureate or higher degree." The AAO however, finds that [redacted] conclusion is not substantiated in the record. The petitioner has not provided evidence of the complexity of its software and its installation.

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The record does not establish that the proposed duties exceed the scope of a network systems administrator or a computer support specialist with some supervisory duties. The AAO does not find that either professor gave any consideration to other occupations listed in the *Handbook*, but rather based their conclusions on the title of the proffered position and duties listed in the petitioner's description that mimicked the *Handbook's* generalized statement regarding project managers. Neither professor substantiated that the proffered position when viewed through the prism of the nature of the petitioner's business actually required the theoretical and practical application of a body of highly specialized knowledge in a specific discipline evidenced by the attainment of a bachelor's or higher degree in that specific discipline.

Accordingly, the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO now turns to the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a specific degree requirement is common to the industry in parallel positions among similar organizations or shows that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. The AAO has reviewed the advertisements submitted and finds that the employers indicate generally that the successful applicant will have a bachelor's degree. The advertisers, however, do not limit the degree to a specific discipline but indicate that a college or general bachelor's degree or a bachelor's degree in a variety of disciplines will suffice for the advertised position. Several of the advertisers indicate that a bachelor's degree is preferred or do not note whether the degree is preferred or required. Several of the advertisements note that a general degree is preferred or required and then indicate that experience in a particular program or

methodology is also necessary. In addition, upon review, the AAO does not find that the petitioner has established that the advertisers' organizations are similar to the petitioner in terms of size, number of employees, or level of business. Going on the 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. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California,* 14 I&N 190 (Reg. Comm. 1972)). Moreover, the advertised positions, although generally labeled "project manager" of one kind or another, have not been established as sufficiently similar to the petitioner's proffered position. Finally, as noted above, the advertisements do not require a bachelor's or higher degree in a specific discipline in order to perform the duties of the position, a necessary requirement to establish that a position is a specialty occupation.

Neither has the petitioner established that the proffered position is more complex or unique than that of a computer support specialist with supervisory skills, a network systems administrator, or a typical project manager, positions that do not normally require a degree in a specific discipline. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The AAO has reviewed the petitioner's job posting and its employees that currently hold the position of project manager to assist in determining whether the petitioner has established the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which is that the petitioner normally requires a degree or its equivalent for the position. As explained above, for a position to be a specialty occupation, the required degree must be in a specific discipline. The petitioner's job posting lists similar duties to that found in its initial letter in support and in response to the director's RFEs. As noted above, the petitioner's minimum qualification for the position is a college degree preferably in computer sciences. Thus, the petitioner's own job posting lists a college degree as the minimum qualification and indicates a preference, not a requirement, for the degree to be in a computer science discipline. However, employer preference does not provide a basis to establish that a position is a specialty occupation. To establish that the petitioner's normal practice is to have only specialty occupation positions, the aliens who are to be employed in the occupation must possess a baccalaureate or higher degree in a specific specialty. In this matter, the petitioner does not normally employ project managers who have a degree in a specific discipline. Upon review of the individuals holding the position of project manager as provided by the petitioner, an individual may hold a degree in a variety of disciplines and successfully accomplish the tasks of the petitioner's position of project manager. Accordingly, the petitioner has not established the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is 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 discipline. Once again, the duties of the proposed position parallel the duties of a network and computer systems administrator and a computer support specialist, as well as including an element of the duties of a project manager, occupations that do not require a bachelor's degree in a specific specialty. Upon review of the petitioner's descriptions of the position's duties, the petitioner has not provided any substantiating evidence that the proffered position in this matter requires the individual in the proffered position to perform specialized and complex duties that are usually associated with

the attainment of a baccalaureate degree in a specific discipline. The record establishes that the proffered position may be performed by individuals with a range of degrees and in the case of the beneficiary without a degree at all.

The petitioner has not established that the proffered position is a specialty occupation. For this reason, the petition will be denied.

As the petition will be denied on the issue of the petitioner's failure to establish that the proffered position is a specialty occupation, the AAO will not discuss the beneficiary's qualifications to perform the duties of a specialty occupation. The AAO simply notes the inherent contradiction between the several opinions provided by individuals regarding the beneficiary's prior experience and the beneficiary's pursuit of a degree when the petition was filed. That is to say that when the petition was filed, the beneficiary was enrolled in college and had not yet obtained his degree; thus, the college he was attending had failed to award the beneficiary sufficient credit for his prior work experience to culminate in a bachelor's degree in a specific discipline. The AAO does not find that this inherent contradiction in the facts of the matter has been addressed. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has not submitted argument or documentation on appeal sufficient to overcome the director's decision on this issue.

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. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's denial of the petition.

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