

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: **DEC 30 2014**

OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE:

Petitioner:

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, and the matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as an eighteen-employee business, founded in 2002, that provides "Software Services and Software Application Development for Proprietary Web-based platform – [REDACTED]". In order to employ the beneficiary in what it designates as a "Systems Administrator" position, 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 the ground that the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

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

Upon review of the entire record of proceeding, we find that the evidence of record does not overcome the director's ground for denying this petition. Accordingly, the appeal will be dismissed and the petition will remain denied.

I. PROCEDURAL AND FACTUAL BACKGROUND

As noted above, the petitioner indicated on the Form I-129 that it was founded in 2002 and employs eighteen persons. The petitioner indicated that it provides software services and software application development for its proprietary web-based platform, [REDACTED]. The petitioner indicated that it seeks the beneficiary's services as a Systems Administrator to work on a full-time basis from January 27, 2014 to January 21, 2017.

The petitioner appended the requisite Labor Condition Application (LCA) to the petition, which indicates that the occupational classification for the position is SOC (ONET/OES) Code 15-11142, "Network and Computer Systems Administrators," at a Level I (entry level) wage. The LCA was certified for a validity period beginning January 21, 2014 to January 20, 2017.

In a letter of support dated January 17, 2014, the petitioner described its business operations as providing "technology integration services for applications and hardware; advisory services for optimizing IT investments; and outsourcing services with local, national and international capabilities." The petitioner stated that it has "solution centers in North America and offshore delivery capabilities in India." The petitioner further stated that it employs eighteen persons in the United States, and more than twenty-seven in its India offices.

With respect to the beneficiary, the petitioner stated that the beneficiary "will designated to primarily work at the [petitioner's] business premises in [REDACTED] CA on [its] internal proprietary software product suite - [REDACTED] - an online ordering tools built to address the current gaps in the Restaurant Industry [sic]." The petitioner stated that it will assign the beneficiary to "very important Systems Administrator work." Specifically, the petitioner described the beneficiary's duties as follows:

[The beneficiary] will be responsible for ensuring that server, storage, network, security needs are architected for redundancy, scalability and performance for [REDACTED], responsible for [REDACTED] Administration and management of Web Servers and App Servers; providing level I to level III support in clustered environments for [REDACTED] monitoring and health-check of infrastructure for [REDACTED] planning and implementation of multiple environments in distributed geographic locations for scalability, high availability, performance with disaster recovery centers for [REDACTED] identifying forthcoming upgrades and patches and applying them in actual non-production and production environments for [REDACTED] providing feedback and guiding development and deployment teams on standards, norms on scalability and performance for [REDACTED] implementing backup and recovery strategy for [REDACTED] Fixing issues and resolving [REDACTED] customer support issues.

In support of the petition, the petitioner submitted, *inter alia*, evidence relating to the development and deployment of the [REDACTED] product. For instance, the petitioner submitted the Product Vision/Business Plan for [REDACTED], which broadly highlights development "milestones" such as the inception of the project in May 2010, going live in July 2011, and the various releases and enhancements scheduled until May 2017. As of the date of filing, the remaining milestones to be completed are: May 2014, iOS 7.0 app release; December 2014, redesign website release; May 2015, in-store self-service KIOSK redesign release; November 2015, API release; May 2016, POS integration release; December 2016, Catering Menu release; and May 2017, Re architecture of Web release. No further explanation was provided. The Product Vision/Business Plan also lists the "Core Team" for [REDACTED] as: (1) [REDACTED], CEO & Founder; (2) [REDACTED] Engineering; (3) [REDACTED], Marketing & Operations; and (4) [REDACTED] Business Development. In addition, the petitioner submitted the [REDACTED] Product Brief, Media Kit, and print-outs from the [REDACTED] website.

The petitioner submitted a signed job offer letter and employment contract between its company and the beneficiary which reiterates the same duties as the petitioner described in its January 17, 2014 letter. The employment contract specifically states that the beneficiary's work location will be "[a]t [the petitioner's] office OR at a client premises domestically and internationally [sic]."

The director issued an RFE on February 10, 2014. The petitioner was asked to submit evidence to establish that the proffered position qualifies as a specialty occupation. In addition, the petitioner was asked to submit evidence that the petitioner has sufficient specialty occupation work for the beneficiary to perform throughout the entire requested H-1B validity period.

In response to the director's RFE, the petitioner submitted, *inter alia*, a letter dated March 4, 2014 reiterating its job offer to the beneficiary as a Systems Administrator. The petitioner reiterated that the beneficiary "will be designated to primarily work at the [petitioner's] business premises in [REDACTED] CA on [its] internal software product suite – [REDACTED]." The petitioner elaborated that while [REDACTED] is now already in use by customers, the petitioner is still engaged in "ongoing product development" and "ongoing customizations and enhancements[]" to [REDACTED] that are projected to last until 2017." Thus, the petitioner asserts that it requires "ongoing systems administrator services of the Beneficiary . . . at the Petitioner's premises on [its] internal product." The petitioner reiterated the same job duties for the proffered position as initially provided. The petitioner stated that the beneficiary will be reporting directly to [REDACTED] who is "responsible for the execution of all the strategic projects, performance review and appraisal of our engineers, developers, systems administrators and programmer analysts."

With respect to the minimum educational requirements of the position, the petitioner stated:

Due to the complexity of the duties of a Systems Administrator, the minimum qualifications in terms of education and experience to satisfactorily perform the duties of this position are a Baccalaureate degree in Computer Science, Electronics Engineering or any Engineering field and one to two years of related experience. The job requires the application of theoretical, scientific, and practical principles of computer science, math and engineering, that can only be acquired with the attainment of a Bachelor's degree in Computer Science, Electronics Engineering or any Engineering field of Engineering [sic] and a minimum and one to two years of relevant experience. The Systems Administrator exercises independent judgment in designing and developing application servers. Due to the level of independent judgment exercised by the Systems Administrator, [the petitioner] will not hire someone who does not have a minimum of a Bachelor's degree in Computer Science, Computer Applications or any Engineering field and at least one to two years of experience to perform this Specialty Occupation work.

The petitioner submitted a list of the same job duties for the proffered position as previously described in the petitioner's initial letter, with new percentages of time assigned to each duty.

The petitioner submitted vacancy announcements posted by [REDACTED]

[REDACTED] The petitioner also submitted its own vacancy announcements for Systems Administrator positions.

The petitioner submitted the Forms W-2 and foreign diplomas for two employees, [REDACTED] and [REDACTED] whom the petitioner claims it hired "in a similar occupation of Systems Administrator."

The petitioner submitted additional technical documents related to the development of [REDACTED]

[REDACTED], including a [REDACTED] document created on April 2, 2012 by the petitioner's office located in [REDACTED] India. The petitioner also provided additional print-outs from the [REDACTED] website, which bear the notations "©2011 [REDACTED] All rights reserved," "A product of [REDACTED]" and "Brought to you by [the petitioner]" at the bottom.

Further, the petitioner submitted its U.S. organizational chart dated March 2014. Although the chart states the total number of employees as eighteen, it depicts a total of twenty-one employees, not including the beneficiary, two interns, and three contractors.

Upon review, the director denied the petition determining that the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and resubmits copies of evidence previously submitted. Counsel claims that the director's denial of the petition was erroneous and contends that the evidence satisfies all four criteria at 8 C.F.R. § 214.2(h)(4)(iii).

The primary issue on appeal is whether the evidence of record establishes that the duties of the proffered position comprise a specialty occupation.

II. THE LAW

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 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

III. ANALYSIS

A. Preliminary Findings

In the instant case, we find that the evidence of record fails to establish the substantive nature of the proffered position.

In particular, the petitioner has not submitted sufficient, credible evidence to support its assertion that the beneficiary will be "primarily" working on the [REDACTED] product. While the petitioner has demonstrated that [REDACTED] is a bona fide, completed product that is currently being utilized, the petitioner has not demonstrated exactly what work remains to be performed on [REDACTED] and more specifically, what work will be performed by the beneficiary on [REDACTED].

First, the petitioner provided generalized, broad descriptions of the remaining work to be performed on [REDACTED]. For instance, the petitioner's statement that it is engaged in "ongoing product development" and "ongoing customizations and enhancements" fails to provide any clarity into the actual work to be performed. Likewise, the "milestones" described in the Product Vision/Business Plan are so broadly termed that they also fail to explain the actual work to be performed. Specifically, the Product Vision/Business Plan lists the following remaining "milestones" to be completed: May 2014, iOS 7.0 app release; December 2014, redesign website release; May 2015, in-store self-service KIOSK redesign release; November 2015, API release; May 2016, POS integration release; December 2016, Catering Menu release; and May 2017, Re architecture of Web release. However, no further explanation is provided regarding the specific tasks needed to achieve these broad milestones, and who will perform these specific tasks. We note that there is no specific mention of the beneficiary or the role of the Systems Administrator in the Product Vision/Business Plan, nor it is not readily apparent what duties the Systems Administrator would perform on a full-time basis in accomplishing goals such as releasing new apps, redesigning the website, and redesigning the kiosk. The petitioner has not explained how the beneficiary's duties correlate to the "milestones" described in the Product Vision/Business Plan.

Moreover, the petitioner's descriptions of the beneficiary's duties are too vague to convey the specific tasks to be performed with respect to the [REDACTED] project. For example, the petitioner stated that the beneficiary will be "[r]esponsible for [REDACTED] Administration." However, the petitioner did not specify what specific tasks the beneficiary will be responsible for, and how those tasks fit within the occupational classification chosen by the petitioner. As another example, the petitioner stated that the beneficiary will be involved in "planning and implementation of multiple environments in distributed geographic locations for scalability, high availability, performance with disaster recovery centers for [REDACTED]" as well as "providing feedback and guiding development and deployment teams on standards, norms on scalability and performance for [REDACTED]". The petitioner failed to explain what specific tasks constitute "planning and implementation" and "guiding development," and how those tasks fit within the occupational

classification chosen by the petitioner. The petitioner also failed to explain the "multiple environments," "distributed geographic locations," "disaster recovery centers," and "deployment teams" within the context of the petitioner's business operations.

In addition, many of the listed job duties appear duplicative, such as "providing level I to level III support" and "fixing issues and resolving [REDACTED] customer support issues." The petitioner also listed several different job duties that all support the scalability, performance, and recovery/disaster backup functions of [REDACTED].

We note that on the petitioner's U.S. organizational chart, nine individuals are highlighted in yellow and specifically identified as belonging to the [REDACTED] project, as evidenced by the [REDACTED] designation after their position title. These nine individuals fulfill the positions of Project Manager, UI Architect (contractor), UI Designer (contractor), Market Data Analyst intern, Sales Marketing intern, Jr. Graphics Designer, Marketing Assistant (contractor), Business Quality Analyst, and Application Systems Engineer. The beneficiary is not one of these highlighted individuals with an [REDACTED] designation on the U.S. organizational chart. In addition, the Product Vision/Business Plan identifies the [REDACTED] "Core Team" as consisting of the petitioner's CEO and founder, as well as individuals in Engineering, Marketing & Operations, and Business Development. We further note that the petitioner has additional employees in India who have been involved in the technical development of [REDACTED] as evidenced by at least one of the technical documents being authored in India. Considering the resources the petitioner has already dedicated to the [REDACTED] project both in the U.S. and India, the fact that [REDACTED] is a fully developed and launched product, and the generalized descriptions of the ongoing work and job duties to be performed, the evidence of record does not demonstrate: (1) what actual duties will be performed on the [REDACTED] project; and (2) what actual duties will be performed by the beneficiary on the [REDACTED] project.

In short, the petitioner has not provided a sufficient factual basis for conveying the substantive nature of the proffered position and its constituent duties. This failure to establish the substantive nature of the work to be performed by the beneficiary 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.

Accordingly, as the petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), 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.

Also, on a more basic level, the evidence of record does not demonstrate that the petitioner has a legitimate need for the beneficiary in the proffered position, and that the petitioner has non-speculative, full-time H-1B caliber work for the beneficiary for the entire period of employment requested in the petition.¹

Here, we emphasize that the petitioner repeatedly states that the beneficiary will "primarily" work at the petitioner's business premises on the [REDACTED] project. The use of the term "primarily" denotes that the beneficiary may also be assigned to perform work other than at the petitioner's business premises and/or on the [REDACTED] project. Notably, the petitioner's employment contract with the beneficiary specifically provides that the beneficiary's work location will be "[a]t [the petitioner's] office OR at a client premises domestically and internationally [*sic*]." When considered as a whole, the evidence of record lacks a complete, detailed explanation of *all* the work the beneficiary will be assigned to perform during the entire validity period requested, including the location of such work, the specific job duties to be performed, and any end-clients involved, if any.

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

¹ 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.

As another preliminary matter, the petitioner stated that its minimum educational requirement for the proffered position is a Bachelor's degree in "Computer Science, Electronics Engineering *or any Engineering field* (emphasis added)."

The issue here is that the field of engineering is a broad category that covers numerous and various specialties, some of which are only related through the basic principles of science and mathematics, e.g., nuclear 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.

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties.² Section 214(i)(1)(B) of the Act (emphasis added).

Here, the petitioner, who bears the burden of proof in this proceeding, does not establish either (1) that computer science and engineering in general are closely related fields or (2) that engineering or any and all engineering specialties are directly related to the duties and responsibilities of the proffered position. Absent this evidence, it cannot be found that the particular position proffered in this matter has a normal minimum entry requirement of a bachelor's or higher degree in a specific specialty or its equivalent under the petitioner's own standards. Accordingly, as the evidence of record does not establish a standard, minimum requirement of at least a bachelor's degree *in a specific specialty* or its equivalent for entry into the particular position, it does not support the proffered position as being a specialty occupation and, in fact, supports the opposite conclusion.

² In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Therefore, absent evidence of a direct relationship between the claimed degrees required and the duties and responsibilities of the position, it cannot be found that the proffered position requires anything more than a general bachelor's degree. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a general degree in engineering, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007). For this additional reason, the petition will be denied and the appeal dismissed.

B. Discussion of the Criteria

The material deficiencies in the evidentiary record, as discussed above, are decisive in this matter and require that the appeal be dismissed. However, we will continue our analysis in order to apprise the petitioner of additional deficiencies in that record that would also require dismissal of the appeal.

Assuming *arguendo* that the proffered duties as generally described by the petitioner 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. To make our 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. We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³

The petitioner attests in the submitted LCA that the proffered position falls under the occupational category "Network and Computer Systems Administrators."

We have reviewed the chapter of the *Handbook* entitled "Network and Computer Systems Administrators," including the section regarding the typical educational requirements for this occupational category. The subchapter of the *Handbook* entitled "How to Become a Network and Computer Systems Administrator" states, in pertinent part, the following about this occupational category:

³ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online.

Although some employers require just a postsecondary certificate, most require a bachelor's degree in a field related to computer or information science.

Education

Although some employers require just a postsecondary certificate, most require a bachelor's degree in a field related to computer or information science. However, because administrators work with computer hardware and equipment, a degree in computer engineering or electrical engineering usually is acceptable as well. Such a degree usually entails classes in computer programming, networking, or systems design.

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, Database Administrators, available at: <http://www.bls.gov/ooh/Computer-and-Information-Technology/Network-and-computer-systems-administrators.htm#tab-4> (last visited Oct. 29, 2014).

A review of the above subchapter of the *Handbook* does not indicate that the proffered position qualifies as a specialty occupation. The *Handbook* does not indicate that a Network and Computer Systems Administrator position, simply by virtue of its occupational classification, qualifies as a specialty occupation in that the *Handbook* does not state a normal minimum requirement of a U.S. bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation. See *id.* at: <http://www.bls.gov/ooh/Computer-and-Information-Technology/Network-and-computer-systems-administrators.htm#tab-4> (last visited Oct. 29, 2014). In fact, this chapter states that some employers require just a postsecondary certificate. *Id.* The record lacks sufficient evidence that the particular position being proffered here is one that requires a bachelor's degree in a field related to computer or information science.

On appeal, counsel asserts that overlooking the *Handbook's* statement that "most" employers require a bachelor's degree in a field related to computer or information sciences is erroneous and capricious. However, counsel's assertion is not persuasive. For instance, the first definition of "most" in *Webster's New College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of Network and Computer Systems Administrator positions require at least a bachelor's degree in a field related to computer or information sciences, it could be said that "most" Network and Computer Systems Administrator positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would

run contrary to the plain language of the Act, which requires in part "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." Section 214(i)(1) of the Act.

In addition, we find that the Occupational Information Network (O*NET) Summary Report, referenced by counsel, is not probative of the proffered position being a specialty occupation. While O*NET assigns the proffered position a Job Zone "Four" rating, indicating that "most" of these occupations require a four-year's bachelor's degree, the Job Zone rating does not indicate that the bachelor's degree must be in any specific specialty. A position's Job Zone rating does not, therefore, demonstrate that a position is a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

The evidence of record does not establish that the proffered position falls under an occupational category for which the *Handbook*, O*NET, or other authoritative sources indicate that the normal, minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. Thus, the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we review the record 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. at 1102).

As previously discussed, the evidence of record does not establish that the petitioner's proffered position is one for which the *Handbook*, or other authoritative sources, reports an industry-wide requirement for at least a bachelor's degree in a specific specialty, or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

The petitioner provided eight job advertisements posted by [REDACTED]

[REDACTED] However, we find the vacancy announcements insufficient to establish eligibility under the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Foremost, the petitioner provided no evidence establishing the general characteristics of the individual companies posting the advertisements. As such, the evidence of record does not establish that the petitioner is similar to these companies. For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the advertising organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

In addition, the petitioner provided no explanation as to how the vacancy announcements are for positions that are parallel to the proffered position. 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. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Further, even if all of the vacancy announcements provided were for parallel positions with organizations similar to the petitioner, seven of the eight job advertisements do not state a minimum requirement of a bachelor's degree in a specific specialty, or its equivalent. To the contrary, these seven advertisements state either that a general bachelor's degree is sufficient, or state a "preference" for a bachelor's degree in a computer-related field. As previously discussed, a requirement of a general-purpose bachelor's degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp.*, 484 F.3d at 147. Moreover, a "preference" is not a minimum "requirement." The petitioner has not explained how the submitted job advertisements support a finding that a bachelor's or higher degree in a specific specialty, or its equivalent, is a minimum requirement for the positions under the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record of proceeding contains no other evidence pertinent to this particular criterion. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We 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 the particular position proffered in this petition 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.

In this matter, the petitioner has not provided sufficient documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent. To begin with, and as discussed previously, the petitioner failed to demonstrate exactly what the beneficiary will do on a

day-to-day basis such that complexity or uniqueness can even be determined.

Nor does the petitioner provide an adequate explanation of the knowledge required to perform the daily tasks. In the petitioner's letter submitted in response to the RFE, the petitioner stated that, due to the "complexity of the duties of a Systems Administrator," the proffered position "requires the application of theoretical, scientific, and practical principles of computer science, math and engineering, that can only be acquired with the attainment of a Bachelor's degree in Computer Science, Electronics Engineering or any Engineering field of Engineering [*sic*] and a minimum and one to two years of relevant experience." However, the petitioner failed to explain what specific knowledge is required to perform what specific job duties. Simply stating that the job requires the application of principles of "computer science, math and engineering," without more, is insufficient. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a Bachelor's degree in Computer Science or Electrical Engineering and establish how such a curriculum is necessary to perform the duties it claims are so complex and unique.

Further, we observe the petitioner's assertion that due to the position's "complexity" and "level of independent judgment," the petitioner "will not hire someone who does not have a minimum of a Bachelor's degree in Computer Science, Computer Applications or any Engineering field and at least one to two years of experience to perform this Specialty Occupation work."

However, it is important to note that the petitioner designates the proffered position as a Level I (entry level) position on the LCA.⁴ The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance."⁵ A Level I wage rate is described as follows:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs.

⁴ Wage levels should be determined only after selecting the most relevant O*NET code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.

⁵ Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

Thus, in designating the proffered position at a Level I wage, the petitioner has indicated that the proffered position is a comparatively low, entry-level position relative to others within the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that he would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results. The petitioner's designation of the proffered position as a Level I (entry) position undermines the credibility of any claim as to the proffered position or the duties comprising it as being particularly complex or unique.

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).

We will next review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), to determine whether the evidence establishes that the petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the position.

In this regard, we usually review the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.⁶

⁶ While a petitioner may believe or otherwise assert that a proffered position requires a specific degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree, or its

Here, the petitioner submitted copies of its vacancy announcements for a Systems Administrator position, posted on the petitioner's website on January 15, 2014, March 1, 2014, and April 1, 2014. However, the petitioner did not provide any other relevant information and evidence with respect to these postings, such as how long these announcements were posted, how many positions were filled using these postings, and the educational qualifications of the person(s) hired under these postings, if any. Absent such explanation and evidence, these three vacancy announcements, alone, are insufficient to establish the petitioner's hiring and recruiting history for the proffered position.

Moreover, these vacancy announcements state the minimum educational requirement as a Bachelor's degree in "engineering, computer science, engineering [sic], computer systems, management systems or a related field." As discussed above, a general-purpose bachelor's degree, such as a general degree in engineering, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp.*, 484 F.3d at 147.

The petitioner also submitted the Forms W-2 and foreign diplomas for two employees the petitioner claims were hired "in a similar occupation of Systems Administrator." However, the petitioner failed to submit evidence corroborating its claim that these individuals are employed in the same position as the proffered position. The Forms W-2 and the foreign diplomas do not serve as evidence of the individuals' actual positions, and their constituent duties, within the petitioning organization. Notably, neither individual is listed on the petitioner's U.S. organizational chart. We also note that the petitioner did not provide evaluations of these individuals' foreign credentials.

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. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Based on the above, the evidence of record does not establish that the petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Therefore, the petitioner has not satisfied the third criterion of 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 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.

Upon review of the record of the proceeding, the petitioner has not provided probative evidence to satisfy this criterion of the regulations. As reflected in this decision's earlier comments and findings with regard to the generalized level at which the proposed duties are described, the petitioner has not presented the proposed duties with sufficient specificity and substantive content to even

equivalent, to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

establish relative specialization and complexity as distinguishing characteristics of those duties, let alone that they are at a level that would require knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or its equivalent. In the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position.

On appeal, counsel asserts that the nature of the duties of the proffered position is "so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree." Specifically, counsel states the following:

Please note that the proffered position is differentiated from other related 'non-specialty occupation' positions in that this occupation involves modelling, analysis, planning, and coordination between networks and communications hardware and software[] for the business needs of the organization. Very advanced technical, communication and analytical skills are required, which are not commonly achieved with anything less than a minimum of a Baccalaureate degree in a specific field of study such as computer science, business, math, information systems or engineering, as the beneficiary has to understand the technical features of the product, conduct data modelling and analysis to evaluate designs, and analyze designs and prototypes developed by software developers with the business needs of the organization.

However, counsel has not explained the specific, factual basis for why it claims the duties of "modelling, analysis, planning, and coordination between networks and communications hardware and software" are considered "[v]ery advanced," nor why 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. As such, these are conclusory statements that are not entitled to evidentiary weight.

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. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Moreover, it is not apparent how counsel's assertions relate to the actual position being offered here, in that the petitioner has never previously asserted that the minimum educational requirement of the proffered position can be satisfied by a Baccalaureate degree in business or math. 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).

Notwithstanding the above, it again must be noted that the petitioner has designated the proffered position as a Level I position on the LCA, thus indicating that it is a comparatively low, entry-level position requiring only a basic understanding of the occupation and the performance of routine tasks. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. Therefore, it is not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage.

In light of the above, 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. Accordingly, the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this additional reason.

V. 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 we conduct 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 the enumerated grounds. See *Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The director's decision will be affirmed and the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision.⁷ 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.

⁷ As these issues require dismissal of the appeal and denial of the petition, we will not address any of the additional deficiencies we have identified on appeal.