



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JAN 23 2014 OFFICE: CALIFORNIA SERVICE CENTER

IN RE:

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

On the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), the petitioner states that it is an information technology solutions provider. The petitioner indicates that it was established in 2011 and employs six full-time and seven part-time personnel. It seeks to employ the beneficiary as a SAP developer from October 1, 2013 until September 17, 2016. 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).

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

The director denied the petition, determining that the petitioner had not established that the beneficiary's degree is directly related to the proffered position.

I. Facts and Procedural History

The petitioner stated that it seeks the beneficiary's services as a "SAP Developer." The petitioner provided the requisite Labor Condition Application (LCA) in support of the instant H-1B petition which designated the proffered position as the occupational classification of "Software Developer, Applications" - SOC (ONET/OES Code) 15-1132 at a Level I (entry level) wage. The LCA was certified on March 22, 2013, for a validity period from September 17, 2013 to September 17, 2016.

The petitioner, in its March 25, 2013 letter in support of the petition, stated that it is an information technology and user experience web development services company. The petitioner noted further that its offer of employment is not speculative and that the beneficiary has all the necessary credentials and professional skills to perform the required position duties. The petitioner indicated that the beneficiary will be working at its home office in [REDACTED] Iowa, and that the duties and responsibilities of the proffered position include:

- Work with Customer Solutions analysts and business personnel to understand Project System business processes and provide the technology to support these processes;
- Based on requirements submitted by the business, develop detailed functional and technical specifications for changes to the SAP ECC system;

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

- Primary responsibility for incident management and resolution for area of responsibility;
- Understand and follow all relevant standard [REDACTED] processes and procedures;
- Perform configuration for the PS module including integrated components within MM, QM, HR, FICO, and Plant Maintenance modules as well as 3rd party solutions, such as Meridian, hand held devices;
- Work with [REDACTED] developers to provide technical specs to develop customized solutions;
- Work with other custom code developers to provide technical specs for interfaced solutions;
- Perform unit testing of changes (configuration, custom development, etc) in development and staging environments, including regression testing of functionality that may be impacted by change;
- Coordinate long chain testing where appropriate of changes (configuration, custom development, etc) in development and staging environments;
- Provide input and suggestions based on knowledge of area of responsibility;
- Provide prototypes of new functionality based on client needs;
- Investigate and resolve incidents reported by users;
- Provide support for other activities that impact the PS area, such as configuration changes to support changing business conditions, SAP ECC (Enterprise Resource Planning Central Component) upgrades, application of hot packs, project work, etc.;
- Provide ad hoc training and knowledge to business superusers as required in run and maintain activities, such as remedial training, issue resolution, etc.

The petitioner stated that it requires "[a]t least a bachelor's degree with an engineering discipline and strong experience in SAP system design and development, experience with enterprise data warehousing, and deep understanding of ERP, CRM systems" to perform the duties of the proffered position.

The initial record also included an evaluation of the beneficiary's foreign credentials noting that the beneficiary had completed a four-year undergraduate program in Vehicle Operation Engineering and had been awarded a bachelor's degree in engineering in 2002 by a university in the People's Republic of China. The credentials evaluator found that the awarded foreign degree is the equivalent of a "U.S. degree of Bachelor of Science in Mechanical Engineering (concentration: Automobile Engineering) awarded by a regionally accredited university in the United States."

Upon review, the director found the evidence insufficient to establish eligibility for the benefit sought and issued an RFE. In response, the petitioner submitted an almost verbatim position description as the one initially submitted. The petitioner changed only two elements of the initial description adding descriptors as emphasized below:

- Work with [REDACTED] customer solutions analysts and business personnel to understand **Supply Chain Project System** business processes and provide the technology to support these processes;
- Based on requirements submitted by the business, develop detailed functional and technical specifications for changes to the **SAP WM Supply Chain** system[.]

The petitioner indicated: "SAP developers should be familiar with software development life cycle, software development project management, as well as specific domain knowledge according to different industry/projects they are working on, such as finance, supply chain, retail, etc." The petitioner reiterated that the "SAP Developer position requires the specialty services of a professional holding a bachelor or higher degree with engineering discipline" and added that "Logistic Engineering/Supply Chain Management domain is highly preferable." The petitioner identified the beneficiary's degree as a bachelor's of science degree in "Logistic/Vehicle Operation Engineering" and referenced the evaluation of the foreign degree as showing the beneficiary holds the U.S. equivalent of a bachelor's of science degree in mechanical engineering (concentration: Automobile Engineering).

The petitioner also emphasized that the beneficiary had been working as a SAP developer for more than seven years. The petitioner included work verification letters and copies of the beneficiary's professional references. One letter, on the letterhead of a company identified as [REDACTED] located in China, confirmed that the beneficiary had worked with a SAP Lead Developer at the company and noted the beneficiary's reliability and knowledge as a SAP Developer. In an undated letter on the letterhead of [REDACTED], the Director, Human Resources, confirmed that the beneficiary had been working for the company as a lead SAP developer since October 2011. The Human Resources Director also listed the beneficiary's responsibilities working as a SAP developer in different business modules. In an accompanying letter, also undated and on [REDACTED] letterhead, a SAP Project Manager noted the beneficiary's experience in SD, MM, PP, etc., SAP modules, and her knowledge of whole supply chain business processes together with SAP implementation technology.

The director denied the petition in a decision dated June 4, 2013. In her decision, the director determined that the proffered position corresponded to the duties of a software developer. The director referenced the Department of Labor's *Occupational Outlook Handbook (Handbook)* when finding that the occupation of software developers requires at least a bachelor's degree in computer science or software engineering. The director acknowledged that the beneficiary's transcript showed she had completed three computer-based courses, including C Language, Computer Science and Technology, and Principles of Microcomputers. The director determined, however, that these three courses are insufficient to establish that the beneficiary's degree is a bachelor's degree in computer science, software engineering, or a related field.

The director also reviewed the beneficiary's work history. The director found that the [REDACTED] letter did not include the dates of the beneficiary's employment with the company or sufficient details regarding the beneficiary's actual duties, responsibilities, or supervisory roles as a SAP developer. The director also found that the letter did not establish that the beneficiary's work

experience included the theoretical and practical application of complex specialized knowledge required by a specialty occupation or that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in a specialty occupation. The director found that while the [REDACTED] letters provided more details regarding the beneficiary's duties, responsibilities, or supervisory role while at the company, the beneficiary's employment since October 2011, was insufficient to establish that the beneficiary's training and work experience qualified as the equivalent of a baccalaureate level of education or higher. The director also noted that the [REDACTED] letters were insufficient in establishing that the beneficiary's work experience included the theoretical and practical application of complex specialized knowledge required by a specialty occupation or that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in a specialty occupation. The director determined that the petitioner had not established that the beneficiary is qualified to perform the services of the specialty occupation based on her education, training and/or employment experience; that is the petitioner had not established the beneficiary's education, training, and/or work experience is equivalent to a bachelor's degree in the specific discipline related to the specialty occupation.

On appeal, counsel for the petitioner notes that the *Handbook*, while indicating that many software developers hold degrees in computer programming, also reports that other degrees qualify an individual for a software developer position. Counsel also references O*NET Online which indicates that a software developer is educated in standard science, technology, engineering, and mathematics (STEM) disciplines, such as computer science or engineering. Counsel explains that a SAP application developer works in SAP development suites and they are not programming themselves; thus, other types of knowledge are required to tailor software to the clients' needs. Counsel asserts that considering the versatility of the proffered position, a nexus exists between a degree in mechanical engineering and the proffered position of software developer. Counsel contends that the proffered position does not require deep training in software development, but practical hands-on type of work experience, which is more appropriate and relevant to the beneficiary's educational background in mechanical engineering.

Counsel also submits five job postings which he asserts show that a degree requirement in the standard STEM areas is commonly required in the industry. Counsel also contends that mechanical engineering is one of the broadest engineering disciplines. In support of this contention, counsel references an excerpt from the [REDACTED] website which indicates that mechanical engineering is one of the most versatile of the engineering professions. Counsel also references the [REDACTED] website which indicates that a bachelor's of science degree in mechanical engineering has a diverse set of theoretical and practical knowledge, specifically in mathematics, engineering, physics, and computer applications. To contrast the knowledge acquired as a student in the mechanical engineering field, counsel references the [REDACTED] computer science website. Counsel notes that according to this website a typical computer science major is also trained with extensive theoretical knowledge paralleling similar coursework, but has less practical application skills. Counsel asserts that the beneficiary's coursework provides sound theoretical knowledge in mathematics, engineering, physics and computer science. Counsel claims that due to extensive training in STEM areas and the theoretical and practical knowledge of computer applications,

mechanical engineers are highly desirable in a multitude of fields and that a degree in mechanical engineering is widely accepted as a qualification for work in software development, particularly for a SAP software developer. Counsel avers that the proffered position is not a coding position and that the beneficiary will work through a programming suite which requires a background in the STEM fields, a variety of engineering skills, and a familiarity with engineering concepts. Counsel asserts the beneficiary is qualified to perform the duties of the proffered position.

II. Law and Analysis

A. Specialty Occupation

As a preliminary matter, the AAO will discuss whether the proffered position qualifies as a specialty occupation. U.S. Citizenship and Immigration Services (USCIS) is required to follow long-standing legal standards and determine first, whether the proffered position is a specialty occupation, and second, whether an alien beneficiary is qualified for the position at the time the nonimmigrant visa petition is filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation]."). In this matter, however, it appears the director did not analyze the proffered position to determine whether it met the definition of a specialty occupation. Therefore, the AAO will first determine whether the proffered position is a specialty occupation.

To meet its burden of proof, the petitioner must establish that the employment 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 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, supra*. To avoid this 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), USCIS consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position fairly

represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

The petitioner in this matter provided a broad overview of the actual duties to be performed in the proffered position. While the duties generally describe the duties of a SAP developer, the petitioner did not provide sufficient information regarding the beneficiary's actual day-to-day duties to establish that the beneficiary would be performing the duties of a software developer. The 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.

Nevertheless, assuming, *arguendo*, that the proffered duties as described by the petitioner would in fact be the duties to be performed by the beneficiary, the AAO will analyze them and the evidence of record to determine whether the proffered position as described would qualify as a specialty occupation. To that end and to make its determination as to whether the employment described above qualifies as a specialty occupation, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). In this matter, the petitioner describes general duties associated with amending SAP modules for business clients and does not establish how these duties correspond to the duties of a software developer. When determining whether there is a common degree requirement for a particular position, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In the chapter on software developers, the *Handbook* reports:

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

Software developers typically do the following:

- Analyze users' needs, then design, test, and develop software to meet those needs
- Recommend software upgrades for customers' existing programs and systems

- Design each piece of the application or system and plan how the pieces will work together
- Create flowcharts and other models that instruct programmers how to write the software's code
- Ensure that the software continues to function normally through software maintenance and testing
- Document every aspect of the application or system as a reference for future maintenance and upgrades
- Collaborate with other computer specialists to create optimum software

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-2013 ed., "Software Developers," <http://www.bls.gov/ooh/Computer-and-Information-Technology/Software-developers.htm#tab-2> (last visited January 7, 2014).²

However, the *Handbook* also provides the following report on the duties of computer systems analysts:

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-2013 ed., "Computer Systems Analysts," <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-2> (last visited January 7, 2014).

The *Handbook* adds that computer systems analysts:

- Consult with managers to determine the role of the IT system in an organization
- Research emerging technologies to decide if installing them can increase the organization's efficiency and effectiveness
- Prepare an analysis of costs and benefits so that management can decide if computer upgrades are financially worthwhile

² All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/oco/>.

- Devise ways to make existing computer systems meet new needs
- Design and develop new systems by choosing and configuring hardware and software
- Oversee installing and configuring the new system to customize it for the organization
- Do tests to ensure that the systems work as expected
- Train the system's end users and write instruction manuals, when required.

Id.

The *Handbook* also reports that a variety of paths are available to enter into the occupation of a computer systems analyst. See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-2013 ed., "Computer Systems Analysts," <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-4> (last visited January 7, 2014). A computer systems analyst may have a degree in a computer-related field, may take business courses or major in management information systems (MIS), and many have liberal arts degrees and have gained programming or technical expertise elsewhere. Some analysts may only have an associate's degree and experience in a related occupation. A computer systems analyst position is thus not required to have a bachelor's degree in the specific field of computer science or in a specific engineering discipline or other liberal arts discipline. The *Handbook* indicates at most that a bachelor's or higher degree in computer science, information systems, or management information systems may be a common preference, but not a standard occupational, entry requirement. The *Handbook's* report does not establish that a computer systems analyst position requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act.

The petitioner's broad description of the proposed duties of the proffered position is insufficient to establish that the proffered position is a software developer position and not a computer systems analyst position. Moreover, when analyzing the petitioner's requirements to perform the duties of the proffered position as well as counsel's assertions on appeal regarding the general background needed to perform the duties of the position, the position appears more closely aligned with that of a computer systems analyst. The petitioner does not claim that the beneficiary must have a degree in computer science or software engineering or even mathematics. The petitioner does not indicate that the beneficiary must have completed specific and precise courses in order to perform the duties of a software developer. Absent evidence of a direct relationship between the claimed degree 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 degree in business administration, 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). Based upon the record of proceeding, the petitioner has failed to establish eligibility under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

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

Here, and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports a standard, industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions. Furthermore and for the reasons discussed below, the petitioner's reliance upon the job vacancy advertisements it submitted is misplaced.

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 an 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 and counsel to simply claim that an organization is similar and in the same industry without providing a legitimate basis for and sufficient corroborating evidence to support such an assertion. 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. 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner submitted copies of five job postings. The five job postings submitted on appeal to establish that a variety of degrees are possible to perform the duties of the proffered position undermine any claim that the proffered position is a specialty occupation. The job postings provided include: (1) a software developer III which requires typically a technical bachelor's or master's degree in computer science or

relevant engineering field; (2) a SAP Developer which requires a bachelor's degree or equivalent experience in IT or a related field; (3) a SAP Developer which requires a bachelor's degree or equivalent experience in information technology or related field; (4) a senior business integration analyst which requires a bachelor's degree in an appropriate discipline; and (5) a SAP Developer which requires a bachelor's degree in IT, IS Computer Science or related degree. These advertisements generally confirm that a SAP developer position requires only a bachelor's degree or experience in some form of information technology or otherwise appropriate degree.

The only advertisement included for the position of software developer does not identify any duty or responsibility associated with SAP software modules, thus it does not describe parallel job duties. The other four advertisements show that a variety of educational paths are available to perform the duties of a SAP developer. Thus, the advertisements do not establish that a SAP developer position is a specialty occupation. Moreover, the petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers' recruiting history for the type of jobs advertised. Further, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices. It must also be noted that even if all of the job postings indicated that a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these few advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Further, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." The petitioner failed to credibly demonstrate exactly what the beneficiary will do on a day-to-day basis such that complexity or uniqueness can even be determined. Furthermore, the petitioner fails to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of its SAP developer. The AAO observes that the petitioner has indicated that the beneficiary's educational background and work experience will assist her in carrying out the duties of the proffered position. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. Counsel does not explain or clarify at any time in the record which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. The petitioner has thus failed to establish the proffered position as satisfying either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not provide evidence that it previously employed other individuals in the position of SAP developer, thus the record does not include information establishing the petitioner's normal hiring practices for the proffered position. Moreover, while a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). Here, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

Finally, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. Again, the relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than a SAP developer position that is not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.³

Beyond the decision of the director, the petitioner has not established that the proffered position is a specialty occupation. The current record does not establish that the petitioner has satisfied the statutory requirement for a specialty occupation found at section 214(i)(1) of the Act and further has failed to satisfy any of the additional, supplemental requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

³ The petitioner in this matter has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. *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. 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).

B. Beneficiary Qualifications

Even if the petitioner had established that the proffered position qualifies as a specialty occupation, which it has not, the director correctly determined that the beneficiary is not qualified to perform the duties of such a specialty occupation. The statutory and regulatory framework that the AAO must apply in its consideration of the evidence of the beneficiary's qualification to serve in a specialty occupation follows below.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In addition, 8 C.F.R. § 214.2(h)(4)(v)(A) states:

General. If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary possesses the requisite license or, if none is required, that he or she has completed a degree in the specialty that the occupation requires. Alternatively, if a license is not required and if the beneficiary does not possess the required U.S. degree or its foreign degree equivalent, the petitioner must show that the beneficiary possesses both (1) education, specialized training, and/or progressively responsible experience in the specialty equivalent to the completion of such degree, and (2) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree, the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;⁴
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience

⁴ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not training and/or work experience.

In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5):

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

It is always worth noting that, by its very terms, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) is a matter strictly for USCIS application and determination, and that, also by the clear terms of the rule, experience will merit a positive determination only to the extent that the record of proceeding establishes all of the qualifying elements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) – including, but not limited to, a type of recognition of expertise in the specialty occupation.

The petitioner stated that it seeks the beneficiary's services as a "SAP Developer." Assuming for the sake of argument that the proffered position is a specialty occupation, based on the job description provided by the petitioner, it appears that the specific specialty required is one that would be in a computer science field. The record shows that the beneficiary holds a four-year foreign degree in Vehicle Operation Engineering. An academic credentials evaluation prepared by an unnamed consultant with [REDACTED] equates the beneficiary's four-year foreign degree to a four-year U.S. bachelors of science degree in mechanical engineering (concentration: Automobile Engineering). The record does not demonstrate that the proffered position requires specific knowledge regarding vehicle operation engineering. In addition, the petitioner initially specified that the proffered position requires "[a]t least a bachelor's degree with an engineering discipline and strong experience in SAP system design and development,

experience with enterprise data warehousing, and deep understanding of ERP, CRM systems." Thus, the petitioner's initial academic requirement for the proffered position is only an unspecified engineering discipline.⁵ Furthermore, the requirements to actually perform the duties of the proffered position require work experience related to SAP system design and development, enterprise data warehousing, and deep understanding of ERP, CRM systems, not a specific academic background. The record does not include evidence that the work experience required by the petitioner to perform the duties of the proffered position was obtained through the beneficiary's academic training and coursework.

In response to the director's RFE, the petitioner again noted that the "SAP Developer position requires the specialty services of a professional holding a bachelor or higher degree with engineering discipline" and added "Logistic Engineering/Supply Chain Management domain is highly preferable." The petitioner also identified the beneficiary's degree as a bachelor's of science degree in "Logistic/Vehicle Operation Engineering" in contrast to the credentials evaluator's identification of the beneficiary's foreign degree as a bachelor's degree in mechanical engineering with an automobile engineering concentration. That is, the petitioner added that the beneficiary's degree encompassed academic preparation in a Logistics major. 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). Aside from this material discrepancy, even if the petitioner's claim that the beneficiary possesses a logistics engineering degree is considered, the petitioner failed to identify which courses in the beneficiary's transcript, if any, contributed to such a logistics engineering degree. Moreover, the petitioner noted only that a logistic engineering/supply chain management domain is preferable and not required. Again, the petitioner does not identify a specific engineering discipline for the proffered position, but rather acknowledges that a general engineering background is sufficient to perform the duties of the proffered position.

Counsel adds on appeal that it is the practical application of knowledge taught in mechanical engineering courses that satisfies the knowledge requirements of the proffered position. Counsel asserts that the proffered position is not a coding position but one that requires a background in the STEM fields, a variety of engineering skills, and a familiarity with engineering concepts and that when considering the versatility of the proffered position a nexus exists between a degree in mechanical engineering and the proffered position of software developer.

First, if a background in the STEM fields, a variety of engineering skills, and a familiarity with engineering concepts are the only requirements to perform the duties of the proffered position,

⁵ 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. It is not readily apparent that a general degree in engineering or one of its other sub-specialties, such as mechanical 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.

the position is not a specialty occupation. The record must demonstrate that the duties of the position can only be performed by an individual with a bachelor's or higher degree in a specific discipline. 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. Counsel appears to acknowledge there are a variety of engineering disciplines while claiming that courses in the standard science, technology, engineering and background courses are sufficient to establish a specific degree major. As noted above, it is not readily apparent that a general degree in engineering or one of its other sub-specialties, such as mechanical 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. While mechanical engineering, computer science, and mathematics disciplines may all contain some similar basic STEM courses, the record does not establish that a bachelor's degree in mechanical engineering is the same as a bachelor's degree in computer science or mathematics.

Consequently, the petitioner has not established that the beneficiary's education evaluated to be the equivalent of a bachelor's degree in mechanical engineering is a foreign degree equivalent to a specific United States baccalaureate or higher degree that is specifically related and required by the proffered position which for the purpose of this discussion has been assumed to be a specialty occupation. 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). The record is simply deficient in this regard. Neither the evaluation nor counsel's assertions establish that a degree in mechanical engineering, without more, satisfies the educational criteria to perform the duties of the proffered position. Moreover, as observed above, the petitioner in this matter requires only a general engineering degree, a degree that also fails to satisfy the educational criteria for a specialty occupation. Therefore, absent (1) an actual U.S. bachelor's or higher degree from an accredited college or university, (2) a foreign degree determined to be equivalent to such a degree, or (3) a pertinent license, the only remaining avenue for the beneficiary to qualify for the proffered position is pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

As the record does not satisfy any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1)-(4), the AAO will next perform a Service evaluation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). That is, the AAO will examine the beneficiary's work experience to determine if her work experience coupled with her foreign degree establishes the necessary qualifications. In other words, the beneficiary who holds the foreign equivalent of a U.S. mechanical engineering degree, may qualify to perform the duties of the proffered position, even though her degree is not directly related to the position, if the petitioner establishes that the beneficiary's work experience is sufficient pursuant to the requirements set out at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Again, when USCIS considers an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), "three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks."

The record in this matter contains the beneficiary's academic transcripts, an academic credentials evaluation, and two employment verification letters for the beneficiary. As the director noted, the [REDACTED] letter did not include: the dates the beneficiary worked for the company as a SAP developer; the duties the beneficiary performed as a SAP developer; and information regarding

the academic background of her peers, subordinates, or supervisors. Thus, the [REDACTED] letter cannot establish that the beneficiary: had training or work experience that included the theoretical and practical application of specialized knowledge required by the specialty occupation; that her experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that she has recognition of expertise in the specialty. The undated [REDACTED] letters only establish that the beneficiary began her employment with [REDACTED] in October 2011. Thus, these letters are insufficient to establish that the beneficiary had three years of specialized training and/or work experience at [REDACTED]. Moreover, although the [REDACTED] letters provided some information regarding the beneficiary's duties while employed as a Lead SAP Developer, the duties did not evidence that the beneficiary's work experience included the theoretical and practical application of specialized knowledge required by the assumed specialty occupation or that the experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation and that the beneficiary had recognition of expertise in the specialty. In addition to the unknown amount of time that the beneficiary was employed as a SAP developer, the record does not include evidence that the beneficiary has recognition of expertise in the industry, membership in a recognized association in the assumed specialty occupation, or published material by or about the beneficiary.

Thus, absent corroborating evidence as outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge in a field related to the proffered position, that the experience was gained while working with peers, supervisor's or subordinates who have a degree or equivalent in the specialty occupation, or that the beneficiary has recognition of expertise in the industry. Accordingly, the petitioner cannot use the beneficiary's past work experience to establish that she is qualified to perform the duties of the proffered position.

Therefore, the petitioner fails to demonstrate how the beneficiary, by virtue of holding the equivalent of a U.S. bachelor's degree in mechanical engineering with a concentration in automobile engineering, is qualified to perform the duties of the proffered position.

For the reasons related in the preceding discussion, the AAO affirms the director's decision that the beneficiary is not qualified to perform the duties of a specialty occupation requiring a bachelor's or higher degree in a specific specialty, or its equivalent.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. 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.