



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **JUL 07 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

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

## I. PROCEDURAL AND FACTUAL BACKGROUND

On the Form I-129 visa petition, the petitioner describes itself as an "Information Technology and Management Support Provider" established in 2005. In order to employ the beneficiary in what it designates as a computer programmer/analyst 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, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous.

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

We base our decision upon our review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

## II. THE LAW

The issue before us is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. 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.

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

### III. EVIDENCE

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a computer programmer/analyst position, and that it corresponds to Standard Occupational Classification (SOC) code and title 15-1131, Computer Programmers, from the Occupational Information Network (O\*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, counsel submitted evidence that the beneficiary received a bachelor of engineering degree in computer science and engineering from [REDACTED]. An evaluation in the record states that the beneficiary's degree is equivalent to a U.S. bachelor's degree in computer engineering.

Counsel also submitted a letter, dated March 28, 2013, from the petitioner's President/CEO, who stated:

We propose to employ [the beneficiary] as a Computer Programmer/Analyst, working at our company headquarters located in [REDACTED] Michigan. In this role, he will be responsible for working on software development as it relates to the Healthcare field. He will be responsible for working with clients to gather requirements, technical information, and work flow from hospital management and IT staff. He wil [sic] also be responsible for using an HL7 application and technologies to interconnect different medical applications such as practice management, billing, [REDACTED] and [REDACTED]. [The beneficiary] will oversee testing of applications and interfaces during development and user acceptance for production implementation. This will require



him to communicate with clients and end users to gather, document, and track known issues and work with the development staff to resolve the identified issues. [The beneficiary] will be working with clients and end users to gather and document additional issues encountered during production testing as well. Additional job duties will include application documentation, review and approval as well as working with clients to review application management change requirements. This is a professional assignment, requiring the maturity and experience normally associated only with attainment of at least a Bachelor's degree in a related technical field of study and some experience with computer programming.

[The beneficiary] is well qualified to fill this position. He earned a Bachelor's degree in Computer Science and Engineering from [REDACTED] in his home country of [REDACTED] and boasts several years of ongoing technical training and practical work experience. As a Computer Programmer/Analyst with [the petitioner], [the beneficiary] will be compensated at an initial base salary rate of \$60,000 per year, along with all the usual company benefits. However, both [the petitioner and the beneficiary] understand the temporary nature of his employment and his status as an at-will employee.

On August 1, 2013, the service center issued an RFE in this matter. Observing that the petitioner claims that it would employ the beneficiary at its own location, the service center requested that the petitioner demonstrate that it has sufficient specialty occupation work to assign to the beneficiary throughout the period of requested employment.

In response, counsel submitted, *inter alia*, (1) a description of the proffered position; (2) a copy of an employment letter, dated September 1, 2013, addressed by the petitioner to the beneficiary; and (3) a letter, dated October 1, 2013, from the finance director of [REDACTED]

The description of the proffered position includes a duty description similar to the description contained in the petitioner's president/CEO's March 28, 2013 letter. It also states:

**Daily Job Duties:**

- Gather HL7 specification and expected data values from [REDACTED] coding, and billing software vendors;
- Gather patient data to be provided in HL7 specified format from hospitals;
- If hospitals do not provide patient data in HL7 specification, review hospital output files to determine repeated format to create a parser utility to extract data into HL7 format;
- Setup HL7 patient demographic, patient reports, patient results interfaces in HL7 engine server;
- Program map HL7 data from hospitals to HL7 fields per software vendor specifications;
- Program to normalize all data between hospitals, vendors, and clients;

Discuss variables and exceptions to create a Variable & Exception list to review with clients, hospitals, & software vendors;  
Discuss & create a testing plan with clients & software vendors;  
Gather list of issues encountered during testing and address with programming team, hospitals, software vendors, or client;  
Discuss & create timeline to go live with clients;  
Collaborate with vendors to review message flow to/from interfaces;  
Discuss critical HL7 message flow issues with clients;  
Monitor HL7 interfaces for message flow and correct as necessary;  
Review & maintain HL7 data for integrity; [and]  
Review & maintain data backups[.]

The September 1, 2013 employment offer confirms that the petitioner is offering the beneficiary full-time employment as a computer programmer at the petitioner's location for a \$60,000 annual salary.

The October 1, 2013 letter from [REDACTED] finance director indicates that company has used the petitioner's services for HL7 programming since 2009 and anticipates continuing to do so. It does not indicate that the HL7 programming it assigns to the petitioner necessarily requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

The director denied the petition on November 7, 2013, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director stated:

[N]one of the client documentation provided describes, in detail, the work to be performed by the beneficiary or specifies the qualifications that are required to perform the job duties.

[and]

Neither does the evidence submitted establish the availability of specialty occupation work for the duration of the requested validity period.

On appeal, counsel provided invoices and an organizational chart of the petitioner's operations. Counsel asserted that the decision of denial "appears to be premised on a misinterpretation of the nature of [the petitioner's] business." Counsel stated that the beneficiary would not be sent to work at remote locations, but would work at the petitioner's offices. Counsel asserts that the evidence is sufficient to show that the petitioner would employ the beneficiary in a specialty occupation position and would have sufficient specialty occupation duties to fully employ the beneficiary throughout the period of requested employment.



#### IV. ANALYSIS

Initially, we observe that counsel is correct that the decision of denial states that the petitioner would assign the beneficiary to work at other companies' locations, and that such a finding is not supported by the evidence. We will not rely on that finding.

Further, the decision of denial relied, in part, on a finding that the petitioner had not demonstrated that it had sufficient specialty occupation work to which it could assign the beneficiary and employ him throughout the period of requested employment. We also choose not to rely on that finding, although it has been imperfectly addressed.<sup>1</sup> We will instead rely upon the issue of whether the petitioner has demonstrated that the duties to which it would assign the beneficiary qualify as specialty occupation duties by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

To determine whether the proffered position qualifies as a specialty occupation position, we turn first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors we consider when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which we routinely rely for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

We will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree 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.<sup>2</sup> The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 15-1131, Computer Programmers, from O\*NET. The *Handbook* describes the occupation of "Computer Programmers" as follows:

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<sup>1</sup> That is, although the invoices provided indicate that the petitioner has historically had more than enough work to employ one person, the organizational chart provided shows that the petitioner now employs a helpdesk intern, an IT generalist, seven systems field support engineers, and another programmer. The invoices do not demonstrate what portion of the available work would be appropriately assigned to the beneficiary, consistent with the duty description provided.

<sup>2</sup> 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.



## What Computer Programmers Do

Computer programmers write code to create software programs. They turn the program designs created by software developers and engineers into instructions that a computer can follow. Programmers must debug the programs—that is, test them to ensure that they produce the expected results. If a program does not work correctly, they check the code for mistakes and fix them.

## Duties

Computer programmers typically do the following:

- Write programs in a variety of computer languages, such as C++ and Java
- Update and expand existing programs
- Debug programs by testing for and fixing errors
- Build and use computer-assisted software engineering (CASE) tools to automate the writing of some code
- Use code libraries, which are collections of independent lines of code, to simplify the writing

Programmers work closely with software developers, and in some businesses, their duties overlap. When this happens, programmers can do work that is typical of developers, such as designing the program. This entails initially planning the software, creating models and flowcharts detailing how the code is to be written, writing and debugging code, and designing an application or systems interface.

Some programs are relatively simple and usually take a few days to write, such as creating mobile applications for cell phones. Other programs, like computer operating systems, are more complex and can take a year or more to complete.

Software-as-a-service (SaaS), which consists of applications provided through the Internet, is a growing field. Although programmers typically need to rewrite their programs to work on different systems platforms such as Windows or OS X, applications created using SaaS work on all platforms. That is why programmers writing for software-as-a-service applications may not have to update as much code as other programmers and can instead spend more time writing new programs.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Computer Programmers," <http://www.bls.gov/ooh/computer-and-information-technology/computer-programmers.htm#tab-2> (last visited June 18, 2014).

We observe that the *Handbook's* description of the duties of computer programmers is almost entirely limited to actual coding of computer programs. The descriptions of the duties of the proffered position provided by the petitioner, however, include gathering information pertinent to the requirements of the software to be produced and planning how to accomplish the desired outcome. We note that the *Handbook* describes the occupation of "Computer Systems Analysts" as follows:

### **What Computer Systems Analysts Do**

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

### **Duties**

Computer systems analysts typically do the following:

- Consult with managers to determine the role of the IT system in an organization
- Research emerging technologies to decide if installing them can increase the organization's efficiency and effectiveness
- Prepare an analysis of costs and benefits so that management can decide if information systems and computing infrastructure upgrades are financially worthwhile
- Devise ways to add new functionality to existing computer systems
- Design and develop new systems by choosing and configuring hardware and software
- Oversee the installation and configuration of new systems to customize them for the organization
- Conduct testing to ensure that the systems work as expected
- Train the system's end users and write instruction manuals

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

Analysts calculate requirements for how much memory and speed the computer system needs. They prepare flowcharts or other kinds of diagrams for programmers or engineers to use when building the system. Analysts also work with these people to solve problems that arise after the initial system is set up. Most analysts do some programming in the course of their work.

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

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

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

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

**Systems designers** or **systems architects** specialize in helping organizations choose a specific type of hardware and software system. They translate the long-term business goals of an organization into technical solutions. Analysts develop a plan for the computer systems that will be able to reach those goals. They work with management to ensure that systems and the IT infrastructure are set up to best serve the organization's mission.

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

**Programmer analysts** design and update their system's software and create applications tailored to their organization's needs. They do more coding and debugging than other types of analysts, although they still work extensively with management and business analysts to determine what business needs the applications are meant to address. Other occupations that do programming are computer programmers and software developers.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Computer Systems Analysts," <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-2> (last visited June 18, 2014).



The duties of a programmer analyst, as described in the *Handbook* chapter pertinent to computer systems analysts encompass both the duties of a systems analyst and the duties of a programmer. That is, they encompass determining the requirements of the software to be developed, designing the desired software, and the actual coding. As such, the *Handbook* description of a computer systems analyst and, more particularly, the duties of a programmer analyst as described in that chapter, more accurately reflect the duties of the proffered position as described in the record. We find that the proffered position is a computer systems analyst position and, more precisely, a programmer analyst position, as described in the *Handbook*.<sup>3</sup>

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

### **How to Become a Computer Systems Analyst**

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

### **Education**

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

Some employers prefer applicants who have a master's degree in business administration (MBA) with a concentration in information systems. For more technically complex jobs, a master's degree in computer science may be more appropriate.

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

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

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<sup>3</sup> We observe that the finding that the proffered position is a computer systems analyst position is not outcome-determinative. Even if the proffered position could otherwise be analyzed as a computer programmer position, the *Handbook* does not indicate that computer programmer positions, as a category, require a minimum of a bachelor's degree in a specific specialty or its equivalent.

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

### **Advancement**

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

### **Important Qualities**

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

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

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

*Id.* at <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-4> (last visited June 18, 2014).

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

Where, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies this criterion by a preponderance of the evidence standard, notwithstanding the absence of the *Handbook's* support on the issue. In such a case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that “[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation.” In this case, the *Handbook* does not support the proposition that the proffered position satisfies 8 C.F.R.



§ 214.2(h)(4)(iii)(A)(I), and the record of proceeding does not contain persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in this occupational category would be sufficient in itself to establish that a bachelor's or higher degree in a specific specialty or its equivalent "is normally the minimum requirement for entry into [this] particular position."

Further still, we find that, to the extent that they are described in the record of proceeding, the duties ascribed to the proffered position indicate a need for a range of technical knowledge in the computer/IT field, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

Next, we find 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 (1) to the petitioner's industry; and (2) for positions within that industry that are both: (a) parallel to the proffered position, and (b) located in organizations that are similar to the petitioner.

In determining whether there is a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

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

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

Thus, the evidence of record does not 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. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The evidence of record also does not 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." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties that comprise the proffered position entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

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

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that various degrees are acceptable for such positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

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<sup>4</sup> While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a specific specialty or its equivalent. See *Defensor v. Meissner*,

that the petitioner employs another HL7 computer programmer, the petitioner did not reveal that person's educational qualifications. Further, the visa petition indicates that the petitioner was established in 2005. During the ensuing nine years, the petitioner may have employed other people in the proffered position. Whether it did is not revealed. If it employed such other people, their educational credentials were also not specified. The record contains no evidence pertinent to the educational credentials of anyone that the petitioner has ever previously hired to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position, such as gathering requirements, using an HL7 application and technologies to interconnect different medical applications, overseeing testing of applications and interfaces, etc., clearly require technical knowledge of computers, but have not been shown to be of a nature so specialized and complex that they require knowledge usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of systems analyst positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. Therefore, the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

## V. CONCLUSION

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.

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201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").