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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE:
JUN 06 2014

OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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 (AAO) 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 a Software Consulting and Development firm. In order to employ the beneficiary in what it designates as a Software Quality Assurance Engineer 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 and contended that the petitioner satisfied all evidentiary requirements.

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.

We note that, as recognized by the court in *Defensor, supra*, where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. *See Defensor v. Meissner*, 201 F.3d at 387-388. The court held that the former Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. *Id.* at 384. Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

III. EVIDENCE

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a software quality assurance engineer, and that it corresponds to Standard Occupational Classification (SOC) code and title 15-1799, Computer Occupations, All Other from the Occupational Information Network (O*NET). We observe that Computer Occupations, All Other have recently been assigned a new SOC code, 15-1199, and that a summary report at 15-1199.01 addresses Software Quality Assurance Engineer and Tester positions more specifically. The LCA further states that the proffered position is a Level II position.

With the visa petition, counsel submitted evidence that the beneficiary received a three-year bachelor's degree in mathematics and physics from [REDACTED] in India. Statements of Marks show that the beneficiary also studied computer applications in a "non-semester" course offered by the Directorate of Distance Education at [REDACTED] also in India, but do not indicate whether the beneficiary received any degree pursuant to that study. An evaluation in

the record states, "The [beneficiary] has 4+ years work experience in Computer Information Systems." It further states:

Given the recommendations of the computer science professor, the Bachelor of Science Degree, the number of college credits earned, and the caliber and reputation of the employer(s), it is my considered opinion that [the beneficiary] has met and exceeded the requirements of the equivalent of a Bachelor of Science degree in Computer Information Systems.

We observe that the record does not contain a recommendation of the beneficiary by a computer science professor, nor does it contain evidence from any previous employers of the beneficiary.

Counsel also provided (1) a letter, dated March 28, 2013, from the petitioner's Director and Head – U.S. Immigration & Office Administration; and (2) a letter, dated March 16, 2013, from a Finance Analyst at [REDACTED]

The March 28, 2013 letter from the petitioner's Director and Head – U.S. Immigration & Office Administration states that, although the beneficiary will work at [REDACTED]'s location throughout the period of requested employment and will be on a team of the petitioner's employees to which [REDACTED] assigns projects, his duties will be directed, controlled and supervised by [REDACTED] an employee of the petitioner who will work at [REDACTED]'s site.

That letter states the following as the duties of the proffered position:

- Identify, analyze, and document problems with program function, output, or content.
- Determine appropriate procedures to recreate and isolate software defects.
- Write, update, and maintain computer programs or software systems to correct identified defects or required enhancements.
- Test system modifications to ensure that the desired results are produced.
- Coordinate with project team to prepare for release and implementation of revised code.
- Monitor bug resolution efforts and track outcomes.
- Document software defects, using a bug tracking system, and report defects to test engineers and software developers.
- Write reports and create or maintain databases of known defects and resolutions.
- Review software documentation and technical design documents to ensure technical accuracy, compliance, or completeness, or to mitigate risks.

As to the educational qualifications required by the proffered position, the March 28, 2013 letter states:

The [proffered position] requires the theoretical and practical application of sophisticated technologies and principles that can only be gained through the attainment of at least a bachelor's degree or its equivalent in Computer Science, Engineering, Information Systems, or a directly related field.

That letter further states, as to the term of the beneficiary's employment at the [redacted] site:

[redacted] creates Statements of Work (SOW) governed by the Master Services Agreement in quarterly increments, but the end date of a given SWO does not imply that there is not further work to be completed (even on the same project). [redacted]'s issuance of SOWs in quarterly increments is due to its internal accounting practices, not whether work on a project remains to be completed. That is, even when projects are designed to be multi-year engagements, SOWs are issued in quarterly increments. Under the Master Services Agreement, it is presently anticipated that [the petitioner] will continue to have ongoing SOWs with [redacted] through at least 2016.

In his March 16, 2013 letter, the [redacted] Finance Analyst stated that the petitioner will supervise the beneficiary while he works at the [redacted] location. He further stated, "[The petitioner] assures [redacted] that it is their intention to employ the [beneficiary] in this capacity at [the [redacted] location] through 9/2/2016."

On August 29, 2013, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner have an employer-employee relationship with the beneficiary. The service center provided a non-exhaustive list of items that might be used to satisfy the specialty occupation and the employer-employee requirements."

In response, counsel submitted: (1) portions of an Offshore Development Agreement, dated September 1, 2003; (2) an Amendment to Offshore Development Agreement; (3) an SOW; and (4) counsel's own letter, dated October 2, 2013.

The September 1, 2003 Offshore Development Agreement was executed by the petitioner and [redacted], and references a prior agreement, dated September 1, 2002, between the parties. That agreement contains terms pursuant to which the petitioner may engage in designing, developing, and supporting hardware and software for [redacted]'s projects. Although that agreement pertains predominantly to development outside the United States, it states that the petitioner shall be responsible for "ensuring that the Personnel [employed pursuant to that agreement have] the legal right to work in the United States, India, or other [redacted] offices as specified by [redacted]" As such, it also pertains, in part, to software development in the United States. The Offshore Development Agreement states that the petitioner will appoint a project manager for each project assigned to it by [redacted] and will manage its own employees. The portions of the agreement that were provided are from the beginning of the agreement through section 3.6, and from section 18.5 to section 19.2, which is the end of that agreement. Sections 3.7 through 18.4 were not provided.

The amendment to the Offshore Development Agreement was signed by the petitioner's representative on November 1, 2007 and ratified by [REDACTED] on November 12, 2007. It amends, *inter alia*, the renewal of that agreement, stating that it will renew automatically every year until one party gives notice that it will not renew.

The SOW provided is for IT/Engineering work to be performed in the United States on a project entitled, "Q20 – MVDC Resiliency – Q20 Functional – ZENSAR – Q1FY14." The term of that SOW is from July 28, 2013 to October 26, 2013. The maximum budget for that SOW is \$36,920.

In his October 2, 2013 letter, counsel cited the Offshore Development Agreement and the March 16, 2013 letter from [REDACTED] as evidence that, if the visa petition were approved, the petitioner would control the beneficiary's work. Counsel also cited the Offshore Development Agreement and other documents submitted as evidence of the long-term relationship between the petitioner and [REDACTED]

The director denied the petition on October 31, 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. That decision appears to be predicated on the finding that the petitioner would provide the beneficiary to [REDACTED] and that [REDACTED] would assign work to the beneficiary. As the documentation from [REDACTED] did not describe, in any detail, the work to which the beneficiary would be assigned, the director found that the work had not been demonstrated to be specialty occupation work.

On appeal, counsel again cited the evidence provided for the proposition that the petitioner, not [REDACTED] would assign the beneficiary's tasks and supervise his performance. Counsel stated:

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

Counsel also cited the duty description provided in the March 28, 2013 letter from the petitioner's Director and Head – U.S. Immigration & Office Administration and information from the O*Net Internet site as evidence that the proffered position, and software quality engineer and tester positions in general, qualify as specialty occupation positions.

IV. SPECIALTY OCCUPATION ANALYSIS

As a preliminary matter, we observe that the petitioner has never alleged that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. That is, the petitioner's Director and Head – U.S. Immigration & Office Administration stated, in his March 28, 2013 letter, that the educational requirement of the proffered position can be satisfied by, "a bachelor's degree or its equivalent in Computer Science, Engineering, Information Systems, or a directly related field."

The assertion that an otherwise unspecified bachelor's degree in engineering is a sufficient educational preparation for the proffered position indicates that it does not require a minimum of a bachelor's degree in a specific specialty or its equivalent. This is because the field of engineering is a very broad category that covers numerous and various disciplines, some of which are only related through the basic principles of science and mathematics, e.g., petroleum engineering and aerospace engineering. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or engineering, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

The petitioner's assertion that an otherwise unspecified bachelor's degree in engineering would be a sufficient educational preparation for the proffered position indicates that the proffered position does not require a minimum of a bachelor's degree in a specific specialty or its equivalent. That assertion is tantamount, therefore, to an admission that the proffered position does not qualify as a specialty occupation position. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we turn next 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 considered by us 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.¹

¹ 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.

The petitioner stated on the visa petition that the proffered position is a Software Quality Assurance Engineer position. We reviewed the chapter of the *Handbook* (2014-2015 edition) entitled "Computer Systems Analysts," including the sections regarding the typical duties and requirements for this occupational category. The *Handbook* states the following with regard to the duties of computer systems analysts:

What Computer Systems Analysts Do

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

Duties

Computer systems analysts typically do the following:

- Consult with managers to determine the role of the IT system in an organization
- Research emerging technologies to decide if installing them can increase the organization's efficiency and effectiveness
- Prepare an analysis of costs and benefits so that management can decide if information systems and computing infrastructure upgrades are financially worthwhile
- Devise ways to add new functionality to existing computer systems
- 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 May 28, 2014).

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

Counsel cited O*NET information pertinent to Software Quality Assurance Engineers and Testers as evidence that the proffered position qualifies as a specialty occupation position.

On May 28, 2014, we accessed the pertinent section of the O*NET Internet site, which addresses Software Quality Assurance Engineers and Testers under the Department of Labor's Standard Occupational Classification code of 15-1199.01. O*NET does not state a requirement for a bachelor's degree. Rather, it assigns Software Quality Assurance Engineers and Testers a Job Zone "Four" rating, which groups them among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, the O*NET does not indicate that the four-year bachelor's degrees that may be required by some Job Zone Four occupations must be in a specific specialty closely related to the requirements of that occupation. Therefore, the O*NET information is not probative of the proffered position's being a specialty occupation.

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

How to Become a Computer Systems Analyst

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

Education

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

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

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

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

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

Advancement

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

Important Qualities

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

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

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

Id. at <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-4> (last visited May 28, 2014).

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

Where, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide

persuasive evidence that the proffered position otherwise satisfies this criterion by a preponderance of the evidence standard, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. 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 any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in this occupational category would be sufficient in itself to establish that a bachelor's or higher degree in a specific specialty or its equivalent "is normally the minimum requirement for entry into [this] particular position."

Further, we 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 related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

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

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.²

In his March 28, 2013 letter, the petitioner's Director and Head – U.S. Immigration & Office Administration stated that the proffered position requires "at least a bachelor's degree or its equivalent in Computer Science, Engineering, Information Systems, or a directly related field." He further stated, "[the petitioner's] policy is to hire only persons who meet this requirement."

The petitioner did not provide any evidence pertinent to anyone it has ever hired to fill the proffered position. However, the petitioner's Director and Head – U.S. Immigration & Office Administration made clear that an otherwise unspecified bachelor's degree in engineering would be a sufficient educational qualification for the proffered position. As was explained above, an educational requirement that may be satisfied by an otherwise unspecified bachelor's degree in engineering is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. The petitioner has made clear that it does not require a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position. The petitioner has not, therefore, satisfied the alternative 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, identifying and addressing problems in software, have not been described with sufficient specificity to show that they are more specialized and complex than the duties of computer systems analyst positions, including other software QA analyst positions, that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

² 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*, 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").

For the reasons discussed above, 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.

We observe, further, that although the petitioner has asserted that the beneficiary will work at [REDACTED]'s location throughout the period requested employment, no evidence in the record corroborates the assertion that the beneficiary's anticipated work there will continue to the end of that period.

That is, the Offshore Development Agreement, its November 2007 amendment, and the March 16, 2013 letter from [REDACTED]'s Finance Analyst contain no indication of how long the project or projects with [REDACTED] are expected to continue. Counsel asserted, in his October 2, 2013 letter, that those documents are evidence of a long-term relationship between the petitioner and [REDACTED]. They are, in fact, evidence that a business relationship exists between the petitioner and [REDACTED] began no later than 2002. They are not, however, evidence that [REDACTED] will require the services of the petitioner on projects throughout the period of requested employment. [REDACTED]'s need for the petitioner's services may end prior to September 2, 2016, or there may be periods prior to that date when [REDACTED] does not require assistance from the petitioner.

The SOW provided shows that [REDACTED] agreed to use the petitioner's services from July 28, 2013 to October 26, 2013. The extension for three months is consistent with the statement in the March 28, 2013 letter from the petitioner's Director and Head – U.S. Immigration & Office Administration, that [REDACTED] renews work commitments quarterly. We acknowledge that this indicates that [REDACTED] may, prior to the conclusion of that SOW, issue another SOW for an additional three months. However, that assertion does not demonstrate that [REDACTED] will continue to issue SOWs so that the beneficiary is able to work, without interruption, at [REDACTED]'s location throughout the entire period of requested employment, nor even during any particular part of it, other than from July 28, 2013 to October 26, 2013.

The March 16, 2013 letter from [REDACTED]'s Finance Analyst stated that the petitioner intends to employ the beneficiary at [REDACTED]'s location throughout the period of requested employment. However, she did not state that the work for the petitioner at [REDACTED]'s location would last, without interruption, through the end of that period.

Thus, the petitioner has not demonstrated that it had work for the beneficiary to perform at the [REDACTED] location after October 26, 2013, and if the visa petition were otherwise approvable, it could not be approved for any period after October 26, 2013.

V. ADDITIONAL ISSUE

The record suggests an additional issue that was not addressed in the decision of denial but that, nonetheless, also precludes approval of this visa petition.

As was noted above, the record contains an evaluation that indicates that the beneficiary's education and work experience, considered together, are equivalent to a U.S. bachelor's degree in computer information systems.

The petitioner is required to demonstrate that the beneficiary is qualified for the proffered position pursuant to, *inter alia*, 8 C.F.R. § 214.2(h)(4)(iii)(C). In the event that the petitioner will show that the beneficiary is qualified based on a combination of education and employment experience, the petitioner is obliged, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), to provide an evaluation of the beneficiary's education and employment experience prepared by an evaluator who has authority to grant college-level credit for employment experience in the appropriate specialty at an accredited college or university which has a program for granting such credit based on an individual's work experience. The record contains no evidence that the evaluator who prepared the evaluation in the record has such authority. As such, although the beneficiary has been shown to have some foreign education and experience, they have not been shown to be equivalent to a minimum of a bachelor's degree in a specific specialty or its equivalent. Therefore, the beneficiary has not been shown to be qualified to work in any specialty occupation. The petition must be denied for this additional reason.

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of our enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

VI. CONCLUSION

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