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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 30 2014**

OFFICE: CALIFORNIA SERVICE CENTER FILE

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 Director, California Service Center ("the director"), denied the nonimmigrant visa petition and the Administrative Appeals Office dismissed the subsequent appeal. The matter is again before us on a motion to reopen and reconsider. The motion to reopen will be granted. The appeal will be dismissed and the underlying petition will remain denied.

In the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a 70-employee clothing manufacturer established in 1989. In order to employ the beneficiary in what it designates as a part-time computer systems analyst position at a salary of \$30,160 per year, the petitioner seeks to extend his nonimmigrant classification as a 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 requisite Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for use with a job prospect within the occupational classification of "Computer Systems Analysts," SOC (O*NET/OES) Code 15-1121. The petitioner attested on the LCA that the appropriate prevailing wage level for the certified position is a Level I (entry-level) wage, the lowest of the four assignable wage-rates.

The director denied the petition, concluding that the evidence in the record of proceeding failed to establish that the proffered position qualifies for classification as an H-1B specialty occupation.

In a 29-page decision we affirmed the director's decision. We determined that the petitioner had not satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), and accordingly the petitioner had not established the proffered position as a specialty occupation.

The matter is now before us on a combined motion to reopen and reconsider. As indicated by the check mark at Box F of Part 2 of the Form I-290B, Notice of Appeal or Motion (Form I-290B), counsel for the petitioner elected to file both a motion to reopen and a motion to reconsider.

I. MOTION REQUIREMENTS

The provision at 8 C.F.R. § 103.5(a)(1)(i) includes the following statement limiting a USCIS officer's authority to reopen the proceeding or reconsider the decision to instances where "proper cause" has been shown for such action:

[T]he official having jurisdiction may, for proper cause shown, reopen the proceeding or reconsider the prior decision.

Thus, to merit reopening or reconsideration, the submission must not only meet the formal requirements for filing (such as, for instance, submission of a Form I-290B that is properly completed and signed, and accompanied by the correct fee), but the petitioner must also show proper cause for granting the motion. As stated in the provision at 8 C.F.R. § 103.5(a)(4),

"Processing motions in proceedings before the Service," "[a] motion that does not meet applicable requirements shall be dismissed."

A. Requirements for a Motion to Reopen

The regulation at 8 C.F.R. § 103.5(a)(2), "*Requirements for motion to reopen*," states:

A motion to reopen must [(1)] state the new facts to be provided in the reopened proceeding and [(2)] be supported by affidavits or other documentary evidence. . .

This provision is supplemented by the related instruction at Part 3 of the Form I-290B, which states:¹

Motion to Reopen: The motion must state new facts and must be supported by affidavits and/or documentary evidence.

Further, the new facts must possess such significance that, "if proceedings . . . were reopened, with all the attendant delays, the new evidence offered would likely change the result in the case." *Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992); see also *Maatougui v. Holder*, 738 F.3d 1230, 1239-40 (10th Cir. 2013).

B. Requirements for a Motion to Reconsider

The regulation at 8 C.F.R. § 103.5(a)(3), "*Requirements for motion to reconsider*," states:

A motion to reconsider must [(1)] state the reasons for reconsideration and [(2)] be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must [(3)], [(a)] when filed, also [(b)] establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

These provisions are augmented by the related instruction at Part 3 of the Form I-290B, which states:

Motion to Reconsider: The motion must be supported by citations to appropriate statutes, regulations, or precedent decisions.

¹ The regulation at 8 C.F.R. § 103.2(a)(1) states in pertinent part :

Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary, such instructions are incorporated into the regulations requiring its submission.

A motion to reconsider contests the correctness of the prior decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new facts. Compare 8 C.F.R. § 103.5(a)(3) and 8 C.F.R. § 103.5(a)(2).

A motion to reconsider should not be used to raise a legal argument that could have been raised earlier in the proceedings. See *Matter of Medrano*, 20 I&N Dec. 216, 219 (BIA 1990, 1991) ("Arguments for consideration on appeal should all be submitted at one time, rather than in piecemeal fashion."). Rather, any "arguments" that are raised in a motion to reconsider should flow from new law or a *de novo* legal determination that could not have been addressed by the affected party. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (examining motions to reconsider under a similar scheme provided at 8 C.F.R. § 1003.2(b)); see also *Martinez-Lopez v. Holder*, 704 F.3d 169, 171-72 (1st Cir. 2013). Further, the reiteration of previous arguments or general allegations of error in the prior decision will not suffice. Instead, the affected party must state the specific factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision. See *Matter of O-S-G-*, 24 I&N Dec. at 60.

II. DISCUSSION AND ANALYSIS

On motion, counsel submits a brief, and the following documentation:

- An Internet printout of Title 8 of the Code of Federal Regulations Part 214;
- An Internet printout of the Foreign Labor Certification Data Center Online Wage Library – Education and Training Codes for Professional Occupations;
- An Internet printout of the Foreign Labor Certification Data Center Online Wage Library – FLC Wage Results for Computer Systems Analysts in the Los Angeles-Long Beach-Glendale, CA Metropolitan Division;
- Internet printouts from the Merriam-Webster Dictionary, defining several different terms;
- An Internet printout from the Department of Labor's *Occupational Outlook Handbook (Handbook)* 2012-2013 edition's chapter on Computer Systems Analysts;
- A previously submitted letter, dated March 12, 2013, prepared by the petitioner;
- A digital presentation on the petitioner's business, previously submitted; and
- Two revised opinions regarding the position of Computer Systems Analyst.²

Counsel asserts that the two opinions, as well as the Department of Labor's *Occupational Outlook Handbook (Handbook)* and the Foreign Labor Certification Data Center Online Wage Library – Education and Training Codes for Professional Occupations (O*NET), demonstrate

² The petitioner previously submitted opinions from the same two individuals which were addressed in detail in our November 5, 2013 decision.

that the minimum requirement for entry into the position of computer systems analyst is a bachelor's degree.

Despite checking Box F on Form I-290B, the petitioner does not explicitly claim that there are two motions made in the alternative, nor does the petitioner cite to any regulation that would clarify the intended motion. Although counsel for the petitioner elected to submit a combined Motion to Reopen and Reconsider, upon review of counsel's brief, counsel does not state any reasons for reconsideration nor cite any precedent decisions in support of a motion to reconsider. Counsel does not submit persuasive argument that our decision was based on an incorrect application of law or Service policy; therefore, the petitioner's motion will be dismissed.

Upon review of the evidence submitted in support of the Form I-290B, we find that the two revised opinions are sufficient as a basis to reopen this matter.³

Turning to counsel's assertion on motion that the *Handbook* and the O*NET demonstrate that the minimum requirement for entry into the position of computer systems analyst is a bachelor's degree we reiterate our detailed discussion in our November 5, 2013 decision. To emphasize, 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.

Thus, as a threshold issue, 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

³ The purpose of a motion to reopen is different from the purpose of an appeal. While the AAO conducts a comprehensive, *de novo* review of the entire record on appeal, a review in the case of a motion to reopen is strictly limited to an examination of any new facts, which must be supported by affidavits and documentary evidence. As such, the AAO's review in this matter is limited to the narrow issue of whether the petitioner has presented and documented new facts to warrant the re-opening of our decision issued on November 5, 2013. Upon review of the two new opinions, one with additional background information regarding the opinion writer, we find the new opinion evidence sufficient to reopen the matter.

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.

To further reiterate, the petitioner must establish that the proffered 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. [Emphasis added.] To further emphasize our discussion in the November 5, 2013 decision, we repeat that while we found that the particular position here proffered corresponds to the occupation of a computer systems analyst and requires the application of computer-related knowledge, we also found that the evidence of record does not establish that the proffered position would require the practical and theoretical application of at least a bachelor's-degree level of a body of highly specialized knowledge in a computer-related specialty.

In that regard, we referenced the *Handbook*, as an authoritative source of information about the duties and educational requirements of the occupational groups that it addresses, and noted that the *Handbook* indicates that members of the Computer Systems Analysts occupational group include not only persons with a bachelor's or higher degree in a computer-related specialty, but also persons with bachelor's degrees in liberal arts and persons with less than a bachelor's degree. In addition, we observe that counsel's reference to the Occupational Information Network (O*NET) Summary Reports, on motion, are insufficient to establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor's degree or its equivalent in a specific specialty. On June 28, 2014, we again accessed the pertinent section of the O*NET OnLine Internet site relevant to 15-1121.00 – Computer Systems Analysts. However, we found that O*NET OnLine does not state a requirement for a bachelor's degree. Rather, it assigns this occupation a Job Zone "Four" rating, which groups it among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, O*NET OnLine does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty directly related to the occupation. As the petitioner must establish that the position proffered here requires a bachelor's degree in a specific specialty directly related to the occupation, information not provided by O*NET OnLine, this source also is not probative of the proffered position being a specialty occupation.

The only evidence remaining on motion to review and discuss are the two revised opinions submitted by counsel. Counsel asserts that these two opinions provide evidence sufficient to establish, not only that a bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the position, but also that the degree requirement is common to the industry in parallel positions among similar organizations, that the petitioner's particular position

is so complex or unique that it can only be performed by an individual with a degree, and that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree. See 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2) and (4).

In our previous decision, we discussed a set of documents including a four-page December 20, 2012 letter and an attached curriculum vitae, from Dr. [REDACTED]. We noted that Dr. [REDACTED] identified himself as an Associate Professor of Computer Applications and Information Systems at the [REDACTED] and that his December 20, 2012 letter described the subject of the letter as "Academic Degree Requirements for the position of Computer Systems Analyst for [the Petitioner] and classification of the position as a USCIS Specialty Occupation." Dr. [REDACTED] four-page curriculum vitae is divided into sections entitled, in order of appearance: Education; Professional Employment; Publications and Presentations; Conferences Attended; Consulting Clients; Honorary Societies; and Community Service.

The second document-set submitted for consideration as an expert opinion consisted of: (1) a document entitled "Expert Opinion Evaluation," dated December 19, 2012, and authored by Dr. [REDACTED], who is identified in his curriculum vitae as an Associate Professor at the [REDACTED]; (2) a March 22, 2012 letter from [REDACTED] attesting, generally, that Dr. [REDACTED] is authorized to award [REDACTED] credit to students on the basis of their "professional experience;" (3) a document from the Office of the University Registrar at [REDACTED] discussing the avenues an [REDACTED] student may take to apply for award of [REDACTED] academic credit based upon "prior professional, military, and other life experiences;" and (4) a seven-page curriculum vitae, summarizing Dr. [REDACTED] credentials in terms of Education, Professional Experience, Research Interests, Teaching Interests, Professional Affiliations, Research Grants/Contracts, Service, and Referred Publications in Journals and Proceedings.

Upon review of these documents, we found that both Dr. [REDACTED] and Dr. [REDACTED] based their opinions upon the generalized and relatively abstract descriptions of functions that could relate to computer systems analyst positions in general and without regard to actual educational requirements. We found, that neither Dr. [REDACTED] nor Dr. [REDACTED] provided evidence that they had published, conducted research, run surveys, or engaged in any enterprise, pursuit, or employment - academic or otherwise - so structured as to provide them with such special knowledge in the particular area upon which they opine which equips them to render an opinion that we should regard as authoritative or expert in that particular area. We noted specifically that neither individual articulated exactly how their respective backgrounds attributed to their knowledge of H-1B specialty occupation requirements or of the minimum educational requirements for computer systems analysts.

We note here that neither Dr. [REDACTED] nor Dr. [REDACTED] indicated whether they had visited the petitioner's business premises or had spoken with anyone affiliated with the petitioner. Nor did either author specify or discuss any relevant research, studies, surveys, or other authoritative publications as part of their review and/or as a foundation for their opinions. Moreover, the documents submitted by the opining professors did not include evidence that either professor has

expertise or has been recognized as an authority in the area of the minimum educational requirements for particular computer systems analyst positions or in the area of a position's qualification for H-1B specialty occupation recognition in accordance with the governing statutes and USCIS regulations. Neither professor discussed the occupational information provided in the *Handbook* and attempted to differentiate the position proffered here from those computer systems analyst position that the *Handbook* reported are performed by persons who lack a baccalaureate or higher degree at all or who have attained only bachelor's degrees in liberal arts. We found that the contents of the professors' opinions indicated no more than a cursory and superficial review of the proffered position.

Finally, we noted that neither Dr. [REDACTED] nor Dr. [REDACTED] discussed the fact that the petitioner submitted an LCA certified for a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation, which signifies that the beneficiary is only expected to possess a basic understanding of the occupation.⁴ We found that the authors' omission of any discussion of such a material and significant characterization of the position by the petitioner severely diminished the evidentiary value of their opinions.

As observed above, counsel submitted two opinions prepared by the same two authors on motion.

Turning to the revised opinion letter prepared by Dr. [REDACTED] dated November 27, 2013, we observe that Dr. [REDACTED] updated the duties of the proffered position to include the duties the

⁴ The *Prevailing Wage Determination Policy Guidance* (available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf) issued by DOL states the following with regard to Level I wage rates:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered [emphasis in original].

The proposed duties' level of complexity, uniqueness, and specialization, as well as the level of independent judgment and occupational understanding required to perform them, are questionable, as the petitioner submitted an LCA certified for a Level I, entry-level position. The LCA's wage-level indicates that the proffered position is actually a low-level, entry position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to possess a basic understanding of the occupation; that he will be expected to perform routine tasks requiring limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results.

petitioner had provided on appeal. Dr. [REDACTED] repeated that he keeps abreast of industry requirements for this type of position because employers with openings for computer systems analysts and similar position recruit at his campus. Dr. [REDACTED] however, revised his opinion regarding recruiting employers to indicate that "they always seek graduates with the minimum of a Bachelor's Degree in a computer-related field" an opinion different from his initial opinion that these employers are "always seeking graduates with the minimum of a Bachelor's Degree."

Dr. [REDACTED] adds five new paragraphs to his opinion. He specifically finds that the "duties described above are not those of a lower level employee" performing the tasks of a computer technician but rather that the petitioner's computer systems analyst "has the supervisory role of implementing and maintaining the entire company's systems according to his/her discretion, from overseeing maintenance activities to the developing and executing content across different platforms and projects." Dr. [REDACTED] further opines: "duties such as determining the IT needs of the organization and preparing technical specifications to meet these needs which are required of the Computer Systems Analyst for [the petitioner], could only be performed by a candidate with at least a Bachelor's Degree in Computer Science, Computer Information Systems, or a related area." Dr. [REDACTED] goes on to list specific computer courses and describe what a student might learn in those courses.

Dr. [REDACTED] also discusses the *Handbook's* chapter on computer systems analysts and asserts that the position proffered here is that of a computer systems analyst. Dr. [REDACTED] contends that the *Handbook* reports that that a bachelor's degree is the entry-level education for a computer systems analyst, and that most have a bachelor's degree in a computer-related field. Dr. [REDACTED] further references the O*NET and claims that the "O*NET states that most Computer Systems Analyst positions require a four year Bachelor's Degree and may require a background in Computer Science specifically."

Dr. [REDACTED] offers his opinion that while the *Handbook* and O*NET both appear to leave the possibility open for a minority of Computer Systems Analyst positions to require less than a bachelor's degree in a computer-related field, the petitioner's Computer Systems Analyst position "would clearly be among the majority of Computer Systems Analyst positions which would absolutely require Bachelor's-level preparation in a computer-related field at a minimum." Dr. [REDACTED] further opines that the "entire operations of the company depend on the expertise of the Computer Systems Analyst to keep systems functional and optimized" and "[a]s such [the petitioner] is among the employers that cannot afford to hire a candidate without at least a Bachelor's Degree in a computer-related field to safeguard its systems."

Dr. [REDACTED] then concludes his revised opinion with the same paragraphs in the previously submitted opinion.

As we emphasized above, to establish that a position is a specialty occupation, the petitioner must establish that the proffered position requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States. Section 214(i)(1) of the Immigration and Nationality Act (the Act) defining the term

"specialty occupation." To reiterate, once more, 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"). As set out in the *Handbook*, "[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."⁵

See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-2015 ed., "Computer Systems Analysts," <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-4> (last visited June 27, 2014).

As pointed out in our previous decision, it is the *Handbook's* report that members of the Computer Systems Analysts occupational group include not only persons with a bachelor's or higher degree in a computer-related specialty, but also persons with bachelor's degrees in liberal arts and persons with less than a bachelor's degree. Accordingly, the *Handbook's* report does not establish that computer systems analysts as a category fall within the parameters of a specialty occupation. Here, Dr. [REDACTED] appears to recognize and acknowledge that the *Handbook* does not place all Computer Systems Analyst positions in an occupation that requires at a minimum an entry-level bachelor's degree in a specific discipline. Dr. [REDACTED] however, then states that the petitioner's Computer Systems Analyst position "would clearly be among the majority of Computer Systems Analyst positions which would absolutely require Bachelor's-level preparation in a computer-related field at a minimum." As we observed in our previous decision, Dr. [REDACTED] does not state the full content of whatever documentation and/or oral transmissions upon which he bases this opinion. Again, the record does not indicate whether he visited the petitioner's business premises or spoke with anyone affiliated with the petitioner. The record on motion does not include the foundational evidence upon which Dr. [REDACTED] can claim to know that the petitioner's Computer Systems Analyst position "would absolutely require Bachelor's-level preparation in a computer-related field at a minimum."

Next, Dr. [REDACTED] does not discuss any relevant research, studies, surveys, or other authoritative publications, other than the *Handbook* and O*NET as part of his review or as a foundation for his opinion. Most significantly, Dr. [REDACTED] appears unaware that the petitioner in this matter has attested that the position proffered here is a Level I (entry-level) position, that requires only a basic understanding of the occupation. Thus, the proposed duties' level of complexity, uniqueness, and specialization, as well as the level of independent judgment and occupational understanding required to perform them, are questionable, as the petitioner submitted an LCA certified for a Level I, entry-level position. The LCA's wage-level indicates that the proffered position is actually a low-level, entry position relative to others within the Computer Systems Analyst occupation, contrary to Dr. [REDACTED] apparent understanding of the position proffered here.

⁵ The AAO references to the *Handbook*, are references to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

Given that the LCA submitted in support of the petition is for a Level I wage, it must be concluded that either (1) the position is a low-level, entry position relative to other Computer Systems Analyst positions and, thus, based on the findings of the *Handbook*, the proffered position is not a specialty occupation; or (2) the LCA does not correspond to the petition.⁶ In other words, even if it were determined that the proffered position requires at least a bachelor's degree in a specific specialty or its equivalent, such that it would qualify as a specialty occupation, the petition could still not be approved due to the petitioner's failure to submit an LCA that corresponds to a Level III (experienced) or Level IV (fully competent) wage level position.⁷ 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.

In this matter, it is not clear that Dr. [REDACTED] was aware that the petitioner designated the proffered position as requiring only an entry-level wage as he does not discuss this inherent inconsistency with the nature of the duties the beneficiary will allegedly perform for the petitioner. The petitioner must choose a wage-level that is commensurate with the duties and responsibilities of a particular position. In this matter, the petitioner's decision to pay the beneficiary a Level I wage is a strong indication that the position does not require a bachelor's degree in a specific discipline and thus is not a specialty occupation.

⁶ As the *Handbook* reports that Computer Systems Analyst positions do not normally require at least a bachelor's degree in a specific specialty, or the equivalent, for entry, it is not credible that a position involving limited, if any, exercise of independent judgment, close supervision and monitoring, receipt of specific instructions on required tasks and expected results, and close review *would* contain such a requirement. It is noted that the petitioner would have been required to offer a significantly higher wage to the beneficiary in order to employ him at a Level II (qualified), a Level III (experienced), or a Level IV (fully competent) level. U.S. Dep't of Labor, Foreign Labor Certification Data Center, Online Wage Library, FLC Quick Search, "Computer Systems Analysts," <http://www.flcdatcenter.com/OesQuickResults.aspx?code=15-1121&area=36084&year=12&source=1> (last visited June 27, 2014).

⁷ While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the U.S. Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. See 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary.

The failure to resolve the significant deficiencies in the initial opinion letter again requires that this revised opinion, offered without foundation and without reference or explanation regarding the low-level wage paid by the petitioner to perform the duties to have, be given little probative value.

Turning to the revised opinion letter prepared Dr. [REDACTED] dated November 27, 2013, we observe that it contains a verbatim account of his previously prepared December 19, 2012 letter. He supplements the December 19, 2012 letter by adding one paragraph where he asserts:

The entry requirements of the position are further outlined by multiple respected sources which all indicate that the position[,] Computer Systems Analyst[,] requires a Bachelor's degree. According to the *Occupational Outlook Handbook* the Computer Systems Analyst position requires the entry-level education of a Bachelor's degree. It must also be noted that when this case was originally files [sic], the FLC Online Wage Library indicated that the position of Computer Systems Analyst required a Bachelor's degree. At the time this letter was originally submitted in 2012 the requirements of the position were clearly stated as a Bachelor's degree in multiple sites regulated by the United States Department of Labor. The position calls for candidates to study an organization's current computer systems and procedures and make recommendations to management to help the organization operate more effectively. Candidates in such positions bring businesses and information technology together and utilize skills that can only be learned through the successful enrollment and completion of Bachelor's level coursework. It must also be noted that based on the size of the petitioning company and the relative company structure and growth, the position requires a candidate with experience in Programming, Network Programming, Computer Network Theory and Experiment, Circuit Theory, Computer System Design, and Artificial Intelligence, all of which were key courses completed by [the beneficiary] during his undergraduate program at [REDACTED]. Therefore, it is clear that the position is a specialty occupation which requires a Bachelor's degree as an entry requirement for the position and based off of the coursework completed, [the beneficiary] is uniquely qualified to execute the duties of the position.

Dr. [REDACTED] concludes by repeating his opinion that the position of Computer Systems Analyst is clearly a specialty position, and requires the services of someone with advanced training through a Bachelor's program in Computer Science or a closely related field. Dr. [REDACTED] attached a letter, dated November 18, 2013, signed by [REDACTED] Chief Executive Officer of [REDACTED]. In the letter Mr. [REDACTED] states that Professor [REDACTED] (1) has been employed in a variety of computer science-related education and research positions since 1990; (2) has conducted basic and applied research in computer science-related fields, most often AI and distributed systems since 1995; and (3) has published 36 papers in national and international computer science journals and has technical presentations in over 50 academic, government and industry seminars. Mr. [REDACTED] asserts that Professor [REDACTED] based on this background, "can

be an authority in determining if positions require degrees in the fields of Computer Science, Information Security, Information Technology, and other related areas." We note however, that Mr. [REDACTED] did not attest that Mr. [REDACTED] had conducted research or prepared and analyzed surveys on the employment of individuals in the occupation of computer systems analysts or in any other particular occupation.

On motion, Dr. [REDACTED] references the petitioner's size, structure, and growth, as the only basis for the position to require a candidate with experience in Programming, Network Programming, Computer Network Theory and Experiment, Circuit Theory, Computer System Design, and Artificial Intelligence. Although Dr. [REDACTED] notes that the beneficiary completed these courses, 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. USCIS is required to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether an alien beneficiary was qualified for the position at the time the nonimmigrant visa petition was 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]."). Moreover, Dr. [REDACTED] does not provide any analysis explaining why the petitioner's size, structure, and growth require the candidate for the position proffered here to have experience in the courses he lists. Conclusory statements without a foundation are insufficient to establish the petitioner's burden of proof.

Moreover, Dr. [REDACTED] references the *Handbook* and notes in a cursory manner that the *Handbook* requires the entry-level education of a Bachelor's degree for a Computer Systems Analyst position. While we do not completely disagree with Dr. [REDACTED] reference, we find that a requirement of a general bachelor's degree does not establish a position as a specialty occupation. Dr. [REDACTED] also references the O*NET Summary Reports on Computer Systems Analysts and mistakenly finds that the O*NET requires a Bachelor's degree. However, as explained above, the O*NET does not state a requirement for a bachelor's degree but rather assigns the Computer Systems Analyst occupation a Job Zone 4 rating, which again groups the Computer Systems Analyst occupation among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, as we previously discussed, O*NET does identify specific disciplines of study for any of the Job Zone 4 occupations it addresses.

Furthermore, the addition of the above cited paragraph to Dr. [REDACTED] opinion letter does not resolve the deficiencies of the initial opinion letter first pointed out in our November 5, 2013 decision. For example, neither Dr. [REDACTED] nor Mr. [REDACTED] attests that Dr. [REDACTED] has conducted research or prepared and analyzed surveys on the employment of individuals in the occupation of computer systems analysts or in any other particular occupation. Moreover, as noted above in the analysis of Dr. [REDACTED] revised opinion, the failure to note and explain the petitioner's decision to accord the position proffered here only a low-level wage relative to other Computer Systems Analyst positions, undermines any claim that the proffered position is a specialty occupation requiring the performance of complex, specialized, or unique duties.

Upon review of the evidence submitted in support of the motion to reopen, the evidence is insufficient to overcome our previous decision. The petitioner has not established that the position proffered here is a specialty occupation. Accordingly, the director's decision and our previous decision will not be disturbed.

III. CONCLUSION

The petitioner should note that, unless USCIS directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

Again, in visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. § 291 of the Act, 8 U.S.C. § 1361. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The motion is granted. The underlying petition remains denied.