



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **OCT 24 2014** OFFICE: VERMONT 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 a 21-employee "IT Consulting" firm established in 2005. In order to employ the beneficiary in what it designates as a "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, when it filed the visa petition, it had available specialty occupation work as a programmer analyst to which it could have assigned the beneficiary. 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 his decision to deny the petition on the basis specified in his decision. 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, when it filed the visa petition, it had available specialty occupation work as a programmer analyst, as it claimed, to which it could assign the beneficiary.

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 period of employment requested on the visa petition is from October 1, 2013 to September 12, 2016. At Part 5. Basic Information About the Proposed Employment and Employer, in answer to question 5, "Will the beneficiary work off-site?," the petitioner responded by marking the check box labeled, "No." In answer to question 4, "Is an itinerary included with the petition?," the petitioner responded by checking the box labeled "No." No itinerary was provided with the visa petition.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a 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's degree in mathematics, physics, and chemistry from [REDACTED] in India. Counsel also submitted a copy of the beneficiary's résumé, which contains claims of previous employment experience. To corroborate the beneficiary's employment claims, counsel submitted letters from the beneficiary's previous employers. An evaluation in the record states that the beneficiary's degree, considered together with his employment experience, is equivalent to a U.S. bachelor's degree in mathematics with an additional major in computer science.

In a letter dated March 25, 2013, the petitioner's director provided the following description of the duties of the proffered position:

- Providing solutions for coding requirements for the project involving C++, SQL, and Java frameworks. This will include system-wide testing and debugging the programming for use in the [petitioner's] IT database – 30% of [the beneficiary's] time
- Writing and reviewing technical specifications for web technologies (HTML, XML, JSP, and JavaScript) as well as modifying programming code to correct errors in the aforementioned technologies – 25%
- Development of new user specifications for IT databases, communication systems, hardware, Oracle network security, storage and software CRM configurations – 25%
- Design and develop data file interfaces based on hardware analysis documents and enhance user operational feasibility of programming by providing coding documentation for both the company and end-clients. – 20%

The petitioner's director also stated that the proffered position requires a bachelor's degree in computer science or a related field, and cited unpublished 2000 AAO cases from 1993 and 2000 for the proposition that positions similar to the proffered position are specialty occupation positions.

On July 18, 2013, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner had specialty occupation work available for the entire period of requested employment. The service center provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements.

In response, counsel submitted (1) two additional duty descriptions; (2) a description of [REDACTED] an application the petitioner purports to be developing; (3) a document headed In House Project Details, [REDACTED]; (4) an "Agreement for Services" dated March 1, 2007; (5) a "Statement of Work" (SOW), also dated March 1, 2007; (6) an "Agreement" dated July 21, 2011; (7) a "Sub-Vendor Agreement" dated September 22, 2011; (8) a "Master Services Agreement," dated July 23, 2013; (9) a "Project Description" and

"Work Order," both executed on August 8, 2013; and (10) an additional evaluation, dated October 10, 2013.

It is noted that the two additional duty descriptions provided do not indicate who generated them or that they relate to the position proffered in the instant case. Further, in his cover letter, counsel listed the evidence provided in response to the RFE, but did not include those duty descriptions.

The description of the petitioner's [REDACTED] project contains no indication of when or whether development had begun or how long the petitioner anticipated development of that an application would require. The description of the [REDACTED] project also contains no such information, but states that the beneficiary's anticipated responsibilities on that project are the same as those stated in the second additional duty description set out immediately above.

The March 1, 2007 "Agreement for Services" was executed by the petitioner and [REDACTED] and sets out general terms pursuant to which the petitioner would supply "consulting and related services" to [REDACTED]. The March 1, 2007 SOW delineates, more specifically, consulting services that were to be performed pertinent to a [REDACTED] project. It states that the term of that SOW is "1 year based on need," and that the SOW was effective on March 1, 2007 and would expire on April 30, 2008 or when the services were completed.

The July 21, 2011 "Agreement" was executed by the petitioner and [REDACTED] and sets out general terms pursuant to which the petitioner would provide services to be specifically described in Work Orders to be executed by [REDACTED]. The record contains no such work orders from [REDACTED]. Although that agreement contains spaces in which its commencement and termination dates were to be provided, those spaces were left blank.

The September 22, 2011 "Sub-Vendor Agreement" was executed by the petitioner and [REDACTED] and sets out general terms pursuant to which the petitioner may provide workers to provide services on an engagement with a customer of [REDACTED]. The assignments of the petitioner's workers would be pursuant to work order issued by [REDACTED] upon approval of a worker for a particular project. The record contains no such work orders from [REDACTED].

The July 23, 2013 "Master Services Agreement," was executed by the petitioner and [REDACTED] and sets out general terms pursuant to which the petitioner would supply workers to provide services to be described more particularly in Purchase Requisition/Purchase Orders. The August 18, 2013 "Project Description" and "Work Order," indicate that [REDACTED] requested five of the petitioner's employees, including the instant beneficiary, to work at the petitioner's location on a project named, "[REDACTED]" beginning October 1, 2013 and continuing for a term described as "3 years + extendable."

The October 10, 2013 evaluation of the beneficiary's qualifications asserts that the beneficiary's "three years of university study" and employment experience, considered together, are equivalent to a U.S. bachelor's degree in mathematics with an additional major in computer science.



The director denied the petition on January 28, 2014, finding, as was noted above, that the petitioner had not demonstrated that it had specialty occupation employment to which it was able to assign the beneficiary when it filed the instant visa petition.

The body of the appeal filed in this matter states, in its entirety:

This case was denied as the Service wrongly concluded that there was no work available to the beneficiary at the time of filing. However, this case was filed as part of the FY2014 quota, and the start date of the approval would have been October 1, 2013. The adjudicating officer stated that the work order for the in house project was date August 8, 2013 and thus, completely disregarded it. However, the Petitioner's client knew that the beneficiary could not begin working until October 1, 2013, so he could not file it any earlier than that, although he had verbally agreed to have business dealings with the Petitioner. We find it grossly unfair for the Service to refuse a case based on the contract being signed several months before work was supposed to begin. We would like to request that the Service give us another chance to provide a letter from the client which clearly explains that this work was available. We kindly ask, therefore, that you approve this case on appeal. We will be submitting the information within 30 days.

No other information, argument, or documentation was provided, either with that appeal, or subsequently.

#### IV. ANALYSIS OF THE ISSUE ON APPEAL

When the petitioner filed the instant visa petition, on April 1, 2013, it indicated that it would employ the beneficiary at its own location. When asked for evidence that it had work for the beneficiary, the petitioner provided a short description of a [REDACTED] project. It provided insufficient evidence of the existence of that project and, in any event, appears to assert that the beneficiary will work on a different project, [REDACTED], which it will ostensibly develop for [REDACTED].

The evidence pertinent to [REDACTED] consists of the July 23, 2013 Master Services Agreement and the August 8, 2013 "Project Description" and "Work Order." Neither of them is evidence that, when the petitioner filed the instant visa petition, on April 1, 2013, it had work available to which it could assign the beneficiary.

The other evidence of work the petitioner has had in IT projects, which includes the March 1, 2007 "Agreement for Services," the March 1, 2007 SOW, the July 21, 2011 Agreement, and the September 22, 2011 "Sub-Vendor Agreement" contain no indication that the petitioner has had any work pursuant to them since the visa petition was filed on April 1, 2013.



In short, the evidence is insufficient to show that, when it filed the visa petition on April 1, 2013, the petitioner had work available to which it could assign the beneficiary.

On appeal, counsel implied that an oral agreement between the petitioner and [REDACTED] to employ the beneficiary on the [REDACTED] project actually predates the filing date. Counsel stated that he would provide evidence of that previous agreement within 30 days. However, counsel provided no such evidence and the record contains none.

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

Counsel also argued, apparently in the alternative, that it is unfair to deny the visa petition based on the petitioner's not having work for the beneficiary prior to October 1, 2013, the first day of the period of requested employment.

The petitioner is obliged to show that, when it filed the visa petition on April 1, 2013, it had already secured work to which to assign the beneficiary beginning on October 1, 2013. The record contains insufficient evidence to support that proposition. Absent sufficient, corroborating evidence in the record that demonstrates that actual, non-speculative employment for the beneficiary had been secured when the petitioner filed the visa petition, the visa petition may not be approved. The appeal will be dismissed and the visa petition denied on this basis.

## V. ADDITIONAL BASES

The record suggests additional issues that were not addressed in the decision of denial but that, nonetheless, also preclude approval of this visa petition.

### A. SPECIALTY OCCUPATION ANALYSIS

As was noted above, the petitioner's director cited unpublished AAO cases for the proposition that the proffered position qualifies as a specialty occupation position. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. Further, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Counsel and the petitioner are free, of course, to note the basis for the decisions in those cases, to urge that the facts of the instant case are substantially similar, and to urge that the reasoning of those cases should be extended and applied to this case. However, the record contains no argument based on the reasoning of those cases, and they have no influence as precedent.

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)(I): 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>1</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:

### **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

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<sup>1</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.



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 Oct. 22, 2014).

Most of the duties the petitioner's president attributed to the proffered position in his March 25, 2013 letter are consistent with the duties of computer programmers as described in the *Handbook*. On the balance, we find that the proffered position is a computer programmer position as described in the *Handbook*.

The *Handbook* states the following about the educational requirements of computer programmer positions:

### **How to Become a Computer Programmer**

Most computer programmers have a bachelor's degree in computer science or a related subject; however, some employers hire workers with an associate's degree. Most programmers specialize in a few programming languages.

### **Education**

Most computer programmers have a bachelor's degree; however, some employers hire workers who have an associate's degree. Most programmers get a degree in computer science or a related subject. Programmers who work in specific fields, such as healthcare or accounting, may take classes in that field to supplement their degree in computer programming. In addition, employers value experience, which many students gain through internships.



Most programmers learn only a few computer languages while in school. However, a computer science degree gives students the skills needed to learn new computer languages easily. During their classes, students receive hands-on experience writing code, debugging programs, and doing many other tasks that they will perform on the job.

To keep up with changing technology, computer programmers may take continuing education and professional development seminars to learn new programming languages or about upgrades to programming languages they already know.

### **Licenses, Certifications, and Registrations**

Programmers can become certified in specific programming languages or for vendor-specific programming products. Some companies may require their computer programmers to be certified in the products they use.

### **Other Experience**

Many students gain experience in computer programming by completing an internship at a software company while in college.

### **Advancement**

Programmers who have general business experience may become computer systems analysts. With experience, some programmers may become software developers. They may also be promoted to managerial positions. For more information, see the profiles on computer systems analysts, software developers, and computer and information systems managers.

### **Important Qualities**

**Analytical skills.** Computer programmers must understand complex instructions in order to create computer code.

**Concentration.** Programmers must be able to work at a computer, writing lines of code for long periods of time.

**Detail oriented.** Computer programmers must closely examine the code they write because a small mistake can affect the entire computer program.

**Troubleshooting skills.** An important part of a programmer's job is to check the code for errors and fix any they find.

*Id.* at <http://www.bls.gov/ooh/computer-and-information-technology/computer-programmers.htm#tab-4> (last visited Oct. 22, 2014).

The *Handbook* makes clear that computer programmer positions as a category do not require a minimum of a bachelor's degree or the equivalent, as it indicates that an associate's degree may suffice for some positions. Further, even as to those computer programmer positions that may require a bachelor's degree, the *Handbook* does not indicate that the degree must be in any specific specialty. The *Handbook* states that "most" computer programmers have degrees in computer science or a related subject, which implies that others do not.

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." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. 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)(1), 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 and of 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 numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge in the computer/IT field, but do not establish any particular level of formal, post-secondary 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)(1).

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 for positions



that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) 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 positions that are (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner, and does not satisfy 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.



Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a Level I computer programmer, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of computer programming. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree, especially as the *Handbook* suggests that some computer programmer positions do not require such a degree.

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 there is a spectrum of degrees acceptable for such positions, including degrees that are less than a bachelor's degree. 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>2</sup>

The petitioner's director stated that the petitioner requires "a Bachelor's Degree in Computer Science or a related field" for the proffered position, but did not list the fields that the petitioner would consider to be sufficiently closely related to a degree in computer science that they would qualify an applicant for the proffered position.

Further, although the petitioner described itself as an "IT Consulting" firm with 21 employees that was established in 2005, and did not indicate that the proffered position is a new position, the record contains no evidence pertinent to anyone the petitioner has ever previously hired to fill the proffered

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<sup>2</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*, 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").

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), and has not, therefore, satisfied that criterion.

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 coding, testing, and debugging computer applications have not been shown to be of a nature so specialized and complex that they require knowledge usually associated with a minimum of a bachelor's 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 computer programmer positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Further, as was noted above, the petitioner filed the instant visa petition for a Level I computer programmer position, a position for a beginning-level employee with only a basic understanding of computer programming. This does not support the proposition that the nature of the specific duties of the proffered position is so specialized and complex that their performance is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, directly related to computer programming, especially as the *Handbook* indicates that some computer programmer positions require no such degree.

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 petition must be denied for this additional reason.

#### B. BENEFICIARY QUALIFICATIONS

We need not closely examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. That is, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it requires a minimum of a bachelor's degree in a specific specialty or its equivalent. Therefore, the issue of whether the beneficiary is qualified for the proffered position is moot.



Therefore, we need not and will not address the beneficiary's qualifications further, except to note that the combined evaluations of the beneficiary's education and work experience submitted by the petitioner are insufficient to establish that the beneficiary possesses the equivalent of a U.S. bachelor's degree in *any* specific specialty. Specifically, the claimed equivalence was based in part on experience and there is no evidence that the evaluator has authority to grant college-level credit for training and/or experience in any specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. See 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and (D)(1). As such, since evidence was not presented that the beneficiary has at least a U.S. bachelor's degree in any specific specialty, or its equivalent, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

## VI. CONCLUSION

An application or petition that fails to comply with the technical requirements of the law may be denied by us even if the service center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that we conduct appellate review on a *de novo* basis).

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

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