



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF A-, INC.

DATE: MAY 16, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a 27-employee software development and computer programming services company, seeks to temporarily employ the Beneficiary as a "computer programmer analyst" under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director of the California Service Center denied the petition, concluding that the Petitioner had not established that the proffered position is a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred in her findings.

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

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) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

- (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.

8 C.F.R. § 214.2(h)(4)(iii)(A). We have consistently interpreted the term “degree” to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed 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”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

II. PROFFERED POSITION

In response to the Director’s request for evidence (RFE), the Petitioner submitted the following description of the Beneficiary’s duties:

Time spen[t] on duties – 40%

- Design, Analysis, Development, Testing, Deployment, Monitoring and Supporting of enterprise applications.
- High-level design documentation, requirements gathering, business analysis, software installation, software configuration and application development and maintenance activities.
- Designs and develops new software products or major enhancements.
- Responsible to deliver high quality software solutions while working with client’s delivery and output schedules with high performance and maintenance.
- Review, repair and modify software systems to ensure technical accuracy & reliability of programs using scientific analysis and mathematical models.
- Develop and maintain data and process models.
- Designs, develops, enhances, debugs, and implements software solutions.

Time spen[t] on duties – 40%

- Validating and testing models to ensure adequacy and reformulate models.

- Analyzing technology, resource needs, market demand to plan and assess the feasibility of project
- Correct errors by making appropriate changes and rechecking the program to ensure that the desired results are produced.
- Conduct trial runs of programs and software applications to be sure they will produce the desired information and that the instructions are correct.
- Review the existing applications design to suggest best practice development techniques to reduce the throughput of the applications and also configuration changes for high availability of applications.
- Responsible for end-to-end development of services which create innovative solutions and tools which match client specifications while maintaining a high level of client satisfaction.
- Resolves problems with software and responds to suggestions for improvements.

Time spent on duties – 20%

- Test applications and enhancements to the already existing applications/software as necessary
- Employ contemporary testing methods to ensure applications function properly and without error.
- Provide input regarding technical standards and customer requirements.
- Consult with hardware engineers and other engineering staff to evaluate interface between hardware and software and operational and performance requirements of overall system.
- Consult with customer concerning maintenance of software systems. May be required to co-ordinate installation of software system.
- Train on use of information systems and provide technical and de-bugging support.
- Perform systems analysis and problem resolution.

The Petitioner stated that the minimum education required for the performance of the position is a "Bachelor's Degree in Computer Science, Computer Information Systems, or Engineering."

III. ANALYSIS

The Petitioner has not demonstrated that it would employ the Beneficiary in a specialty occupation. Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.¹

¹ The Petitioner submitted documentation in support of the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

In denying the petition, the Director stated that the Petitioner did not establish that the proffered position qualifies as a specialty occupation and that the Petitioner has sufficient work for the requested period of employment. The Director focused on the viability of the Petitioner's business plans related to the Beneficiary's asserted work on the company's [Petitioner name] [REDACTED] software. However, we decline to analyze whether the Petitioner's business plans will succeed, but will focus on whether the proffered position qualifies as a specialty occupation.

As a preliminary matter, the Petitioner has not established the duration of the Beneficiary's employment for the entire requested period. On the Form I-129, the Petitioner requested that the Beneficiary be granted H-1B classification from September 6, 2016, to September 5, 2019. However, the Petitioner submitted an offer letter to the Beneficiary dated September 1, 2016, stating "[the Beneficiary's] employment is for a fixed term of two (2) years from the date you report to the Company and begin working for the Company." The offer letter further indicated that the Beneficiary's start date was September 6, 2016. As such, this evidence does not support the Petitioner's assertion that the Beneficiary will be employed for the entire three year requested period. The Petitioner has not resolved these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

We find that the Petitioner has not established non-speculative work for the Beneficiary at the time of the petition's filing for the entire period requested. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the Petitioner or Beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978).²

² The agency made clear long ago that speculative employment is not permitted in the H-1B program. For example, a 1998 proposed rule documented this position as follows:

Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. See section 214(i) of the Immigration and Nationality Act (the "Act"). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

Petitioning Requirements for the H Nonimmigrant Classification, 63 Fed. Reg. 30,419, 30,419-20 (proposed June 4, 1998) (to be codified at 8 C.F.R. pt. 214). While a petitioner is certainly permitted to change its intent with regard to non-speculative employment, e.g., a change in duties or job location, it must nonetheless document such a material change in intent through an amended or new petition in accordance with 8 C.F.R. § 214.2(h)(2)(i)(E).

Further, we will perform a complete specialty occupation analysis under each of the four alternative criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) for the occupation of computer programmer, the occupation certified on the LCA.

A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. To inform this inquiry, we recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³

On the LCA submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Computer Programmers" corresponding to the Standard Occupational Classification code 15-1131.⁴

The subchapter of the *Handbook* entitled "How to Become a Computer Programmer" states the following:

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

³ All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and we regularly review the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

⁴ The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). We will consider this selection in our analysis of the position. The "Prevailing Wage Determination Policy Guidance" issued by the DOL provides a description of the wage levels. A Level I wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. This wage rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that she will be closely supervised and her work closely monitored and reviewed for accuracy; and (3) that she will receive specific instructions on required tasks and expected results. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf. A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner's job opportunity. *Id.*

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 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, testing programs, fixing errors, 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.

Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Computer Programmers (2016-17 ed.).

According to the *Handbook*, the requirements to perform the duties of the computer programmer occupation incorporate a wide spectrum of educational credentials, including less than a bachelor's degree in a specific specialty. For example, the *Handbook* states that some employers hire workers who have an associate's degree. Furthermore, while the *Handbook's* narrative indicates that most computer programmers obtain a degree (either a bachelor's or associate's degree) in computer science or a related field, the *Handbook* does not report that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

In addition, the Occupational Information Network (O*NET) Summary Reports, referenced by the Petitioner, are also insufficient to establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor's degree in a specific specialty, or its equivalent. O*NET OnLine does not state a requirement for a bachelor's degree for this occupation. Rather, it assigns this occupation a Job Zone "Four" rating, which groups it among occupations for which "most . . . require a four-year bachelor's degree, but some do not." O*NET OnLine Summary Report for "15-1131.00 – Computer Programmers," <http://www.onetonline.org/link/summary/15-1131.00> (last visited May 15, 2017); O*NET OnLine Help – Job Zones, <http://www.onetonline.org/help/online/zones> (last visited May 15, 2017). 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. Therefore, O*NET OnLine information is not probative of the proffered position being a specialty occupation.

In this case, the Petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or another authoritative source, indicates that normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

B. Second Criterion

The second criterion presents two alternative prongs: “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[.]” 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong concentrates upon the common industry practice, while the alternative prong narrows its focus to the Petitioner’s specific position.

1. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the “degree requirement” (i.e., a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

When determining whether there is such a common degree requirement, factors often considered include: whether the *Handbook* reports that the industry requires a degree; whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms “routinely employ and recruit only degreed individuals.” See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative sources) reports an industry-wide requirement for at least a bachelor’s degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry’s professional association indicating that it has made a degree a minimum entry requirement.

As noted, the Petitioner asserts that a bachelor’s degree in computer science, computer information systems, or engineering is minimally required to perform the duties of the position. In response to the Director’s RFE, the Petitioner provided six job announcements for positions with other companies. In addition, on appeal, the Petitioner provides eleven job advertisements for programmer analysts with other information technology companies.

However, we are unable to determine that these companies are similar to the Petitioner. With respect to the job announcements submitted in response to the RFE, the Petitioner indicates the number of employees working for each of these companies, but it does not articulate how this demonstrates their similarity to the Petitioner, particularly since the number of employees working for these companies varies from four to 48.⁵ Most of the announcements do not indicate the industry in which the prospective employer operates, whereas two others operate in dissimilar industries such as educational materials and emergency medicine. Further, although the eleven job announcements

⁵ The Petitioner indicates in the Form I-129 that it employs 27 individuals.

provided on appeal appear to be in the information technology field, the postings vaguely state that these companies employ "1-50 employees." The job announcements submitted on appeal do not include duties for these computer programmer analyst positions and eight of the eleven job advertisements reflect that two or more years of experience is required for the position, as opposed to the Beneficiary's position at the Level I wage level indicating that little or no experience is required. Therefore, it is not clear that these positions can be considered parallel to the Beneficiary's proffered position, nor that these companies can be considered similar to the Petitioner. The job advertisements do not establish that organizations similar to the Petitioner routinely employ individuals with degrees in a specific specialty, in parallel positions in the Petitioner's industry.

Moreover, the job announcements provided in response to the RFE state that a bachelor's degree in computer science or a related field is commonly required, while there is no mention of bachelor's degrees in computer information systems or engineering, other degrees the Beneficiary contends would be sufficient. Further, consistent with the *Handbook*, one job announcement states that an associate's degree and prior experience would suffice. In contrast, some of the eleven job posting submitted on appeal reference degrees in computer information systems and engineering, but there are no references to associates degrees being sufficient. This difference in the nature of the job announcements submitted from the RFE to this appeal leaves question as to whether the Beneficiary has merely selected chosen postings it believes fits with its stated specialty degree requirement and which are not reflective of a common specific bachelor's degree requirement for the position among similar organizations. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

As the record does not include probative evidence that a "degree requirement" (i.e., a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

2. Second Prong

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the Petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

In this matter, the evidence of record does not distinguish the proffered position as unique from or more complex than other computer programmer positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

We have reviewed the position evaluation prepared by [REDACTED] Ph.D., an associate professor of computer applications and information systems in the [REDACTED] at the [REDACTED] [REDACTED] paraphrased the Beneficiary's job responsibilities and opines that a bachelor's

degree in information systems or a related area, or the equivalent, is the minimum requirement to perform the duties of the proffered position. We find this evaluation insufficient to establish the proffered position is a specialty occupation. [REDACTED] does not demonstrate in-depth knowledge of the Petitioner's specific business operations, and what duties the Beneficiary would perform in the context of the Petitioner's business. Further, [REDACTED] states that "employers with openings for Computer Program Analysts and similar professional positions have recruited on our campus, always seeking graduates with the minimum of a Bachelor's Degree" and elsewhere indicates that IT services companies typically require that computer programmer analysts hold a "Bachelor's degree in Information Systems." It is noteworthy that he first suggests that a bachelor's degree alone is sufficient, and later that a bachelor's degree in information systems is required, thereby leaving question as to his assertions. Further, [REDACTED] provides little basis for his conclusions. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will give an opinion less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* In this instance, [REDACTED] opinion has little probative value in establishing the proffered position as a specialty occupation.

The Petitioner has designated the proffered position as a Level I position on the LCA, indicating that it is a position for an employee who has only a basic understanding of the occupation and who will perform routine tasks that require limited, if any, exercise of judgment. See U.S. Dep't of Labor, Emp't & Training Admin., *supra*. Therefore, it does not appear that the position is one with complex or unique duties, as such a higher-level position classified as a Level III (experienced) or Level IV (fully competent) wage level, requiring a significantly higher prevailing wage.

We note that while a few related courses may be beneficial in performing certain duties of the position, the Petitioner has not demonstrated 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 proffered position. Upon review, the record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

The Petitioner claims that the Beneficiary is well-qualified for the position, and references his education and experience as evidence that the proffered position is a specialty occupation. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position, and it did not identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. Thus, 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).

C. Third Criterion

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position.

To satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. We must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor*, 201 F.3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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, or its equivalent, as the minimum for entry into the occupation as required by section 214(i)(1) of the Act. According to the Court in *Defensor*, "To interpret the regulations any other way would lead to an absurd result." *Id.* at 388. If we were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position – and without consideration of how a beneficiary is to be specifically employed – then any beneficiary with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.*

In response to the Director's RFE, the Petitioner stated that it has "Five (5) individuals performing services in the capacity of a Computer Programmer Analyst." The Petitioner listed their names, titles, education levels, and provided supporting payroll and IRS W-2 Wage and Tax Statements confirming their employment. The list identified that these employees hold the equivalent of Bachelor's of Science and Master's degrees in mechanical engineering, electrical engineering, and computer science.

However, a list provided by the Petitioner reflects that only three of the five employees act in the capacity of "computer programmer analyst," while the other two employees are identified as "programmer analysts." The Petitioner has not explained or documented the difference between these positions and their duties and responsibilities.⁶ Absent this evidence, we cannot conclude that all of the listed positions are the same as the proffered position. Further, the provided organizational chart reflects that the Petitioner employs eight computer programmer analysts. The Petitioner has not resolved these inconsistencies with independent, objective evidence pointing to where the truth lies. *Ho*, 19 I&N Dec. at 582, 591-92. As such, it appears that we have only been provided educational credentials for three of the company's eight computer programmer analysts. The

⁶ An organizational chart submitted by the Petitioner also indicates there are positions titled "computer programmer analysts" and "programmer analysts."

Petitioner also did not submit information as to the duties and responsibilities of these three employees.

Therefore, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

D. Fourth Criterion

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

The Petitioner asserts that the job duties of the proffered position are specialized and complex. Although the Petitioner generally refers to the Beneficiary's duties as "specialized," we find that the Petitioner has not sufficiently developed relative specialization and complexity as an aspect of the proffered position. The Petitioner only provides a generic description of duties and responsibilities, including familiarity and experience with different technological platforms and applications it expects from the Beneficiary. The proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than other computer programmer positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. We also incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the position in the LCA as a Level I position, and not as the higher Level III (referring to "special skills or knowledge") or Level IV (referring to "complex or unusual problems") wage levels.

The Petitioner has not provided sufficient evidence that the duties, as generally described, require more than technical proficiency in the information technology field. The Petitioner has not demonstrated that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation. The appeal will be dismissed for this reason.

IV. CONCLUSION

The appeal is dismissed because the Petitioner has not established the proffered position is a specialty occupation.

ORDER: The appeal is dismissed.

Cite as *Matter of A-, Inc.*, ID# 400824 (AAO May 16, 2017)