



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

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

MATTER OF I-G-, INC.

DATE: SEPT. 27, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an importer and seller of diamonds, seeks to extend the Beneficiary's temporary employment as a "software systems 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 Vermont Service Center denied the petition, concluding that the Petitioner had not established that the proffered position is a specialty occupation. In its appeal, the Petitioner 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

The Petitioner states that it imports diamonds and other precious stones, and manufactures jewelry “in-house and through contractors abroad.” In a letter in response to the Director’s request for evidence, the duties of the proffered position were explained as follows:

- **Analyzes the company’s current accounting, inventory, store management, customer management and sales processes. Strategizes appropriate upgrades/extensions – 40%**
  - The beneficiary liaises with company management to determine the company’s current needs with regard to such processes, and provide expert guidance on how best to address these needs through technology.
  - Examples include the company’s need for regular reports relating to credit invoices (monthly and annually), account history, outstanding balances, overdue balances, inventory control and client purchase history, as well as the company’s need to develop its website to allow for greater communication with clients. As [the Petitioner] functions within an incredibly competitive industry, it is crucial that its technological capabilities are optimal to allow for the best customer experience, and to allow the company to be able to quickly access data regarding its customers.
  - Customizes features within existing technology in order to satisfy management needs;
  - Performs regular testing to ensure processes work as required;
- **Chooses and configures the appropriate hardware and software, oversees the installation and configuration and customize[s] it for the company’s needs.**

**Evaluates the ongoing need for and effectiveness of new computer and network technologies and provide cost/benefit analyses to management as needed to assist in decision-making regarding financial worth of upgrades; – 30%**

- Upon instruction by management, the beneficiary performs research on latest offerings within the jewelry industry technology field;
  - Performs cost/benefit analyses of offered software systems, taking into account price, intended use/users, reliability, usability of software, and ability to integrate with existing systems;
  - Liaises with management to determine required system capabilities;
  - Liaises with outside software developers to design custom tailored systems;
  - Calculates requirements for how much memory and speed computer systems require, and analyze compatibility with existing systems/software.
  - Researches systems capabilities of offered hardware and software systems to ensure seamless integration with existing technologies;
  - Installs, configures and customizes new hardware and software systems and trains end users to adequately handle system upgrades and improvements;
  - Performs regular analysis of ongoing need for effectiveness of new computer and network technologies.
- **Analyze the company's hosting, connectivity, and security needs – 5%**
    - Provides guidance on current hosting, connectivity and security needs, and recommends changes when necessary based on knowledge of existing system capabilities and market offerings;
    - Serves as key company liaison with hosting, connectivity and security providers.
  - **Documents all operational computer activities; 5%**
    - Records, organizes and tracks all requests using a reliable system;
    - Creates procedures, safeguards and disaster recovery plans for data.
  - **Continues to develop the company's website with a view to increasing accessibility for customers and suppliers; 15%**
    - Develops system capabilities for online ordering, instantaneous 'chat' services and customer account maintenance.
  - **Keeps abreast of emerging technologies to advise management how their implementation/installation may improve accounting, inventory, customer management, and sales processes, enable greater efficiency, help to increase competitiveness and expand the business. 5%**
    - Researches emerging technologies within the jewelry industry (including CAD services, 3-D printing, new accounting technologies etc.)

- Assists management in development of expansion plans to further increase technology capabilities.

The Petitioner indicated that the position could not be performed “without the knowledge gained through a Bachelor’s degree or its equivalent in Information Technology, Computer Science, Information Science or a related discipline.”

### III. ANALYSIS

We determine that the Petitioner has not demonstrated that the proffered position qualifies as 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.<sup>1</sup>

The submitted evidence relevant to the Petitioner’s business operations undermines its assertion that it has employed, and will employ, a full-time computer systems analyst. The Petitioner indicated in the Form I-129, Petition for a Nonimmigrant Worker, that it employs five individuals, including the Beneficiary.<sup>2</sup> The Petitioner stated that its other four employees are a president; an executive vice president of operations, sales, and marketing; a bookkeeper/invoice associate; and a shipping associate. The Petitioner also explained that it designs and manufactures 1,200 pieces of custom jewelry per year and performs “many functions in-house,” including coordinating with customers on design, selecting metals and gems, and setting these materials. However, none of the Petitioner’s employees are shown to perform these operational tasks central to the business. This discrepancy leaves significant question as to whether the company’s employees are performing their stated functions, so as to relieve the Beneficiary from performing non-computer related duties.<sup>3</sup> The Petitioner must resolve discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Further, the Beneficiary’s duties and the supporting evidence indicate that a significant portion of the Beneficiary’s time will likely be devoted to non-qualifying duties not associated with a computer systems analyst. For instance, the Beneficiary’s duties reflect that, at minimum, 15% of his time will be devoted to developing the company’s website, a duty not discussed in the U.S. Department of Labor’s (DOL) *Occupational Outlook Handbook* (*Handbook*) chapter, or Occupational Information Network (O\*NET) summary report, on the “Computer Systems Analysts” occupation. These

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<sup>1</sup> The Petitioner submitted documentation to support 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.

<sup>2</sup> The Petitioner indicated on the Form I-129 that it is seeking a change in the Beneficiary’s previously approved employment, and elsewhere explained that it is seeking to change the Beneficiary’s previously approved part-time position to a full-time position.

<sup>3</sup> It is reasonable to assume that the size of an employer’s business has or could have an impact on the claimed duties of a particular position. See *EG Enters., Inc. v. Dep’t of Homeland Sec.*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). The size of a petitioner may be considered as a component of the nature of the petitioner’s business, as the size impacts upon the actual duties of a particular position.

objective sources, copies of which were submitted for the record, both describe “Computer Systems Analysts” positions as analyzing a company’s technological needs and designing information systems solutions to meet those needs, but not as developing a company’s website.

The Petitioner has not submitted sufficient evidence to demonstrate that the Beneficiary has been, and will be, performing the stated job duties. For instance, the Petitioner states that its “technology infrastructure” and “computer systems” are two desktop computers and a laptop. Moreover, the supporting documentation reflects that the Beneficiary’s “development” work is related to two software applications which have been specially designed for the jewelry industry, including the [REDACTED] application provided by [REDACTED] and a CAD software application provided by an “outside CAD vendor.” The Petitioner has not provided sufficient evidence to demonstrate that there is significant work involved in the implementation and use of these applications necessary to employ a full-time computer systems analyst for the next three years (e.g., designing, program writing, analysis of systems requirements, and building of computer systems). In contrast, the evidence indicates that the Petitioner already receives regular technical support from the companies that developed or license these out-of-the-box software applications specifically designed for the industry; indicating they would likely require little additional customization from a full-time computer systems analyst.

Further, the Petitioner has not provided evidence to indicate that it spends a significant amount on the development of computer systems necessary to support the duties of the proffered position. Indeed, the provided evidence reflects that the Petitioner’s only significant cost outlay related to information technology is the \$3,000<sup>4</sup> it spends annually for maintenance and support of the [REDACTED] software, leaving further question as to the actual duties of the Beneficiary. In sum, the submitted evidence suggests that the Beneficiary will not likely perform the stated duties in the stated percentages of time, but instead, will likely devote a significant portion of his time to duties inconsistent with the position’s classification as a computer systems analyst.

While no provision in the law for specialty occupations permits the performance of non-qualifying duties, we will view the performance of duties that are incidental<sup>5</sup> to the primary duties of the proffered position as acceptable when they are unpredictable, intermittent, and of a minor nature. Anything beyond such incidental duties, however, e.g., predictable, recurring, and substantive job responsibilities, must be specialty occupation duties or the proffered position as a whole cannot be approved as a specialty occupation.

While these deficiencies preclude approval of the petition, for the purpose of providing a comprehensive analysis, we will perform a more complete specialty occupation analysis under each

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<sup>4</sup> In contrast to the Petitioner’s statement that it spends \$4,000 annually for [REDACTED] software services, the contractual agreement between the parties reflects that the Petitioner pays \$3,000 annually for these services.

<sup>5</sup> The two definitions of “incidental” in *Webster’s New College Dictionary* are “1. Occurring or apt to occur as an unpredictable or minor concomitant . . . [and] 2. Of a minor, casual, or subordinate nature . . .” *Incidental, Webster’s New College Dictionary* (3rd ed. 2008).

of the four, alternative criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) assuming that the Beneficiary will be employed in a position located under the occupational title “Computer Systems Analysts,” corresponding to the Standard Occupational Classification code 15-1121 at a Level I wage rate, as certified on the labor condition application (LCA).<sup>6</sup>

#### A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), 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 *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>7</sup>

The *Handbook*’s subchapter entitled “How to Become a Computer Systems Analyst” states that “[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.”<sup>8</sup> The *Handbook* also states that “[a]lthough many computer systems analysts have technical degrees, such a degree is not always a requirement. Many analysts have liberal arts degrees and have gained programming or technical expertise elsewhere.”<sup>9</sup>

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<sup>6</sup> The Petitioner is required to submit a certified LCA to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the “area of employment” or the actual wage paid by the employer to other employees with similar experience and qualifications who are performing the same services. See *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542, 545-546 (AAO 2015).

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 he will be closely supervised and his work closely monitored and reviewed for accuracy; and (3) that he 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](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.*

<sup>7</sup> 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.

<sup>8</sup> Bureau of Labor Statistics, U.S. Dep’t of Labor, *Occupational Outlook Handbook*, Computer Systems Analysts (2016-17 ed.).

<sup>9</sup> *Id.*

The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty or its equivalent, is normally the minimum requirement for these positions. As noted, the *Handbook* states that a bachelor's degree in a computer-related field is "not always a requirement." Rather, the *Handbook* states that many computer systems analysts may only have liberal arts degrees and programming or technical experience, but it does not further specify the amount of experience needed. It also notes that many analysts have technical degrees, but does not specify a degree level (e.g., associate's degree) for these degrees, and indicates that such a technical degree is not always a requirement. Thus, the *Handbook* reports that there are several paths for entry into the occupation.<sup>10</sup>

Further, the O\*NET Summary Report for SOC Code 15-1121 – "Computer Systems Analysts," referenced by the Petitioner, is insufficient to establish that the position qualifies as a specialty occupation normally requiring at least a bachelor's degree in information technology, computer science, information science or a related discipline. A designation of Job Zone Four indicates that a position requires considerable preparation. It does not, however, demonstrate that a bachelor's degree in any specific specialty is required, and does not, therefore, demonstrate that a position so designated is in a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). See also O\*NET OnLine Help – Job Zones, <http://www.onetonline.org/help/online/zones> (last visited Sept. 26, 2017) (explaining that a Job Zone Four designation signifies only that most but not all of the occupations within it require a bachelor's degree, but does not indicate specific requirements for particular majors or academic concentrations). Therefore, despite the Petitioner's assertions to the contrary, the O\*NET information is not probative to demonstrating that the proffered position qualifies as a specialty occupation.

The Petitioner also submits information from several career websites asserting that these support a conclusion that computer systems analyst positions typically require a bachelor's degree in information technology. Although we acknowledge that the submitted information from career websites generally reflects that an information technology degree is held by those working as computer system analysts, we do not find that this establishes that a bachelor's degree in a specific specialty degree is *required* for the position. In fact, one of the career websites states that a specific bachelor's degree is not required, indicating that a degree in "liberal arts . . . with a heavy course load of programming or technical classes can also be an option." Another states that "[e]ven a degree in business or liberal arts can be a starting point for this career path, as long as the student

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<sup>10</sup> In addition, the *Handbook* indicates that baccalaureate degrees in various fields (e.g. computer or information science, or liberal arts) may be adequate for entry into this occupation. In general, provided the specialties are closely related (e.g., chemistry and biochemistry), a minimum of a bachelor's of higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same.

Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in disparate fields would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(b) of the Act. The Petitioner has not done so here.

also cultivates some computer programming or information technology skills.” Further, the Petitioner does not explain why the websites are considered objective or reliable sources as to the educational requirements of computer systems analyst positions, particularly when the *Handbook* and O\*NET are not reflective of their assertions regarding the minimum entry requirements for the position.

The Petitioner submits on appeal an opinion letter from [REDACTED] an associate professor of computer systems technology, stating that the position requires “the prior attainment of at least a bachelor’s-level degree in Computer Science, Information Systems, Information Technology, or closely related field.” We carefully evaluated [REDACTED] assertions, but for the following reasons, determined his opinions lent little probative value.

[REDACTED] states that his assessment is based upon a job description provided by the Petitioner. However, as we have stated previously, the Petitioner has not sufficiently supported that the Beneficiary will perform the duties of a computer systems analyst. [REDACTED] states that the position involves “extensive technical engagement in application software analysis, design, development, and implementation.” However, as we have discussed, these duties are not reflected in the Petitioner’s assertions and the evidence provided, which indicates that the Beneficiary will spend, at least, 15% of his time on managing the company’s website and a significant portion working with software already custom designed for its jewelry business. As such, we do not agree with [REDACTED] that the evidence indicates “extensive technical engagement in application software analysis, design, development, and implementation.” In fact, [REDACTED] appears to acknowledge that the Beneficiary will act substantially as something other than a computer systems analyst, stating that the Beneficiary will “in many ways [be] similar to an organization-wide role such as [an] enterprise architect or chief technology officer that entails analyzing and addressing all the company’s IT needs.”

Further, [REDACTED] opinion letter does not cite specific instances in which his past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that he has conducted any research or studies pertinent to the educational requirements for such positions (or parallel positions) in the Petitioner’s industry for similar organizations, and no indication of recognition by professional organizations that he is an authority on those specific requirements. His curriculum vitae does not reflect that he has published any works on the academic/experience requirements for computer systems analysts or other similar positions (or related issues).

Even assuming [REDACTED] is an expert on degree requirements for computer systems analysts, his letter testimony does not substantiate his conclusions, such that we can conclude that the Petitioner has shouldered its burden of proof. [REDACTED] does not reference, cite, or discuss any studies, surveys, industry publications, authoritative publications, or other sources of empirical information which he may have consulted to complete his evaluation.

In addition, the record does not indicate whether [REDACTED] was aware that, as indicated by the Level I wage on the LCA, the Petitioner considered the proffered position to be an entry-level



computer systems analyst position for an employee who has only a basic understanding of the occupation. We again recall [REDACTED] comparison of the proffered position to an “enterprise architect or chief technology officer” position, a conclusion inconsistent with the position’s Level I wage rate designation under the “Computer Systems Analysts” occupational category. In other words, the Petitioner has not demonstrated that [REDACTED] possessed the requisite information to adequately assess the nature of the position and appropriately determine parallel positions based upon the job duties and level of responsibilities.

As such, we find that [REDACTED] opinion letter lends little probative value. *Matter of Caron Int’l*, 19 I&N Dec. 791, 795 (Comm’r 1988) (providing that an adjudicator is not required to accept, or may give less weight to, an advisory opinion when it is “not in accord with other information or is in any way questionable.”).

The Petitioner has not provided sufficient documentation to substantiate its assertion regarding the minimum requirement for entry into this particular position. The Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

#### 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.

We generally consider the following sources of evidence to determine if there is such a common degree requirement: 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 establish 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) (considering these “factors” to inform the commonality of a degree requirement)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or another authoritative source, reports a requirement for at least a bachelor’s degree

in a specific specialty, or its equivalent. We incorporate by reference the previous discussion on the matter.

In support of this criterion, the Petitioner submits several job advertisements for computer systems analysts and other information technology positions meant to demonstrate that there is a minimum bachelor's degree requirement for the proffered position. However, we are unable to determine that these companies are similar to the Petitioner or that the submitted positions are parallel to the proffered position. The Petitioner does not articulate or support how these companies are similar and some of the companies appear to operate in differing industries such as information technology consulting, finance, and the technical instruments sector. Indeed, the Petitioner acknowledges on appeal that "[t]hese job listings represent a wide array of companies of varying sizes and specialties."

We acknowledge that the Petitioner did provide a job announcement from a jewelry design and manufacturing company; however, the posted position is for an "Information Technology Business Analyst/Application Developer," a position differing from that proffered. Likewise, on appeal, the Petitioner submits a job advertisement for an "IT Application Project Analyst" with a large international jewelry retailer. Therefore, to the extent the Petitioner provides job postings apparently more relevant to its industry, these postings are not for similar computer systems analysts positions and are of little probative value.

Further, it is not clear from the provided job advertisements that a bachelor's degree in information technology, computer science, information science or a related discipline is required for computer systems analyst positions. For instance, one announcement for a computer systems analyst indicates that a bachelor's degree "with Information Technology experience or equivalent combination of education and experience" would suffice, while three other advertisements state that a bachelor's degree in business administration or a "business related field" would be adequate for the positions. Therefore, the submitted job advertisements suggest that a number of bachelor's degrees could suffice for the position, including a general business or business administration degree. To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, we interpret the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *Royal Siam Corp.*, 484 F.3d at 147.

In addition, the Petitioner provided letters from three companies involved in the import and export of diamonds and jewelry. The letters addressed the typical educational requirements of computer systems analysts employed in the industry. However, although these letters state that the companies employ, or have employed, computer systems analysts, they do not indicate that these employees

had bachelor's degrees in a specific specialty, but only generally state that these employees had bachelor's degrees. Further, the letters do not corroborate their assertions with supporting documentation to demonstrate that they commonly employ computer systems analysts with bachelor's degrees in information technology, computer science, information science, or related disciplines. As such, we do not find the conclusions of these letters probative and credible, as they do not explain and support how they reached their conclusions.

Otherwise, the record does not include any other 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. As such, 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 support of its assertion that the proffered position qualifies as a specialty occupation, the Petitioner submitted a job description for the proffered position and information regarding its business operations. However, 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.

Moreover, the Petitioner's designation of the proffered position as a Level I entry-level position within the "Computer Systems Analyst" occupational category does not support its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Therefore, it does not appear that the position is one with complex or unique duties relative to other computer systems analyst positions requiring a significantly higher prevailing wage, as such a Level III (experienced) or Level IV (fully competent) wage level.<sup>11</sup>

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

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<sup>11</sup> The Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, unique, and specialized compared to other positions *within the same occupation*. Nevertheless, a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I, entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty, or its equivalent. That is, a position's wage level designation may be a relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

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 than other computer systems analyst 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 has not 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. The Petitioner did not submit any evidence of previous or current employees in the same position as the Beneficiary's proffered position. 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 job description submitted by the Petitioner does not establish that the duties are more specialized and complex than positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. We refer to our earlier comments and findings with regard to the implication of the Petitioner's designation of the proffered position in the LCA as a Level I wage, and hence one not likely distinguishable by relatively specialized and complex duties. 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.

#### IV. PRIOR APPROVALS

The Petitioner noted that the Director approved its prior petition filed on behalf of the Beneficiary and that no changes are being requested in this extension petition, except for changing the Beneficiary to full-time status. Nevertheless, we are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987). Furthermore, we are not bound to follow a contradictory decision of a service center. *La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at \*2 (E.D. La. 2000).

Finally, we withdraw all of the Director's statements suggesting that computer systems analysts occupations generally qualify as a specialty occupation. The Director has not provided any persuasive reasoning nor cited to any authoritative sources to support such a conclusion.

#### V. CONCLUSION

The Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.

**ORDER:** The appeal is dismissed.

Cite as *Matter of I-G-, Inc.*, ID# 687727 (AAO Sept. 27, 2017)