

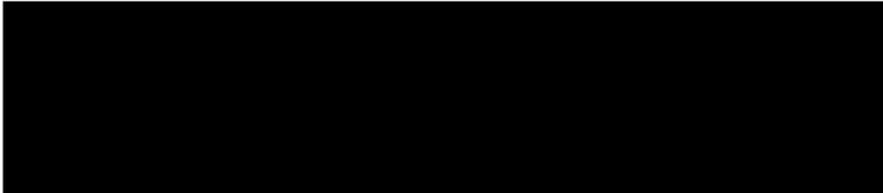
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U.S. Department of Homeland Security
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U.S. Citizenship
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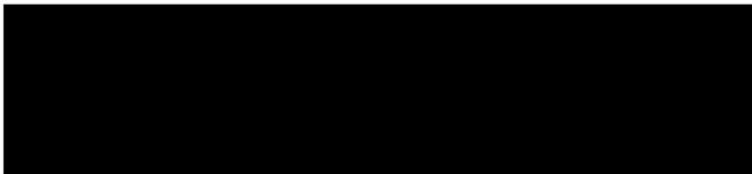
Date: NOV 02 2006

IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a real estate company that owns and operates three rental buildings and also provides integrated property management, construction, and design services in the New York City area. In order to employ the beneficiary as its information system administrator, the petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis that the petitioner had failed to establish that the proffered position met the requirements of a specialty occupation. The director commented, in part, that the proffered position is not as complex as web base development or database administrator jobs that would qualify as specialty occupation positions.

On appeal, counsel asserts that the director has not adequately assessed the proffered position. Counsel submits additional documents to support his contention that the proffered position requires at least a bachelor's degree, or its equivalent, in computer science, information management, or a related field.

The director's decision to deny the petition was correct. The AAO bases its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's request for additional evidence (RFE); (3) the materials submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, counsel's July 3, 2003 brief on appeal, entitled "Request for Motion to Reopen," and the documents enclosed with the brief.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a 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, the position must 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.

Citizenship and Immigration Services (CIS) has consistently interpreted 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. Applying this standard, CIS 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 professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

In its April 21, 2003 letter of support submitted with the Form I-129 (Petition for Nonimmigrant Worker), the petitioner described itself as “a professional real estate company” that “provides integrated property management, construction, and design services in the New York City area,” “owns and operates three rental buildings in Manhattan . . . which generate a combined annual income of approximately USD 700,000.00,” and “relies heavily on its website . . . for providing services and valuable information to our current and prospective tenants and our network of real estate brokers with whom we work.” The website is “updated on a daily basis to provide information on the latest news related to the buildings we own and manage.”

In its April 21, 2003 letter of support and in its May 16, 2003 letter of response to the RFE, the petitioner provided this description of the proposed duties, all of which were to be performed for a single entity, the petitioner:

1. Installation, configuration, and upgradation of [the petitioner's] on-line database.
2. Implementing new features of various software to maintain and operate website and installing patches as and when released.
3. Physical and logical designing of Hydra Building's databases.
4. Setting up and testing disaster recovery plans.
5. Monitoring databases for 24 x 7 availability.
6. Database security administration.
7. Optimization of databases.
8. Performance tuning of databases of optimal thru put.
9. Strategic evaluation of back up and recovery plans.
10. Database migration.
11. Setting up replication/standby/parallel server databases.
12. Integrating third party software tools to work with [the petitioner's] databases.
13. Shell scripting day-to-day activities/jobs conducted on [the petitioner's] online database.

The RFE reply letter also included the following information. Currently, 129 tenants and approximately 40 brokerage firms access the petitioner's website for various types of information, and, pursuant to plans to assume the management of seven more buildings, the petitioner expects to expand the database to include approximately 165 more living units and 300 more tenants. The petitioner's online database "contains individualized information regarding each of the tenants," and "individualized accounts are created on their behalf." The tenants may access their accounts on a "24 X 7 basis via our website and obtain information regarding any outstanding charges and credits, lease period, maintenance issues, etc." The online database also "contains individualized information regarding each of the brokerage firms." The brokerage firms use the petitioner's website to obtain information about the apartments currently owned and managed by the petitioner, and the online system "contains a broker e-mail alert newsletter notifying the brokerage firms of vacancy updates." **The online database "must be managed and maintained."** The website "receives approximately 1,000 hits during off-season and 20,000 hits during high-season," and the person in the proffered position "will be in charge of administering the in-flow and out-flow of information from those hits." The RFE letter asserts that, although it only employs three people, the petitioner needs a full-time

information system manager because it has “an enormous database which will increase dramatically in size in the near future which must be administered, managed, and maintained.”

The petitioner’s July 3, 2003 letter in support of the appeal also states that the beneficiary’s proposed “installation, configuration, and upgradation” duties for the petitioner itself includes:

- Ongoing development of the [petitioner’s] website (front end technologies) and back-end technologies relating to database management, database reporting, and work request forms processing.
- Development of [the petitioner’s] property management client websites (front end technologies) and their database management and reporting (back end technologies).
- Development and management of [the petitioner’s] corporate intranet, used for managing tenant work requests, building maintenance activities, and supply ordering; soon to have inventory management, phone call log center, tenant profiles, and marketing materials database.
- Using [the petitioner’s] technology systems to provide property management clients with reports on accounting, supplies, renovation work, web traffic, vacancy promotion, and more.
- Providing analysis for the use, integration, and development of the technology with actual business practices to reduce operational costs and increase productivity and profitability.

The AAO will first address aspects of the evidence of record that bear on the application of the specialty occupation criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal the petitioner attempts to materially expand the duties previously described so as to include services not previously mentioned and not usually associated with the duties previously described. Also on appeal, the petitioner attempts to add business entities for which the beneficiary would perform services. As discussed below, these attempts are unsuccessful because they exceed the latitude accorded a petitioner on appeal.

For the first time in the proceeding, the appellate brief mentions that the beneficiary would provide “communication, marketing, accounting, human resource and general operational support to the [petitioner] in its recent expansion activities that have resulted in the recent purchase of a commercial real estate building in Shanghai, China.” The petitioner’s letter in support of the appeal is the first time that the petitioner mentions that it will require the beneficiary’s fluency in Chinese, and that this capability is “essential to the development of our future system across global channels and enabling transmission both in Chinese and English formats.” The letter on appeal is also the first mention of “International Expansion” as a duty.

Also the appeal is the first time that the petitioner contends that the proffered position qualifies as a specialty occupation on the basis of the totality of duties that the beneficiary would perform not only for the petitioner, Hydra Buildings, but also for two “affiliated companies,” namely, (1) Hydra Ventures (described as “a recent Hydra Buildings investment”) that has a “web-application product, *WebRent*,” that will be sold to the petitioner’s property management clients and will also be used as a tool for obtaining new clients; and (2) Hydra Worldwide Wash (described as “a dry-cleaning start-up company with an investment of over \$1,000,000 from Hydra Building” that was seeking sufficient venture-capital financing to “launch by Spring 2004”). This combination of duties is reflected in the following outline of duties, from pages 4 and 5 of the July 3, 2003 letter that the petitioner submits in support of the appeal:

For Hydra Buildings (80% of total [duty time])

- Database research, planning, installation, configuration, upgradation & development (50%)
- Website planning (15%)
- Intranet development (10%)
- International Expansion (5%)
- Analysis of new software & hardware (5%)
- Database maintenance & data entry (1%)
- Human Resources (1%)
- Accounting (1%)
- Sales (1%)

For Hydra Ventures (15% of total [duty time])

- Database management & development (40%)
- Website planning (40%)
- Administrative (20%)

For Hydra Worldwide Wash (5% of total [duty time])

- Technology research (75%)

- Vendor evaluation (20%)
- Venture capital presentation preparation (5%)

The AAO shall not consider the information about expanded duties that were presented for the first time on appeal. This includes newly asserted duties that the beneficiary would perform for the petitioner, namely, “communication, marketing, accounting, human resource and general operational support to the [petitioner] in its recent expansion activities that have resulted in the recent purchase of a commercial real estate building in Shanghai”; International Expansion; Human Resources; Sales; and duties identified on appeal as requiring fluency in the Chinese language. The AAO shall not consider the asserted duties with regard to Hydra Ventures, Hydra Wash Worldwide, support of a newly acquired building in China, which also are material additions to the duties of the proffered position as presented for the director’s decision. On appeal, or when responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position’s title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits the visa classification sought. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). To have significant changes to the content of a petition considered, a petitioner must file a new petition, with fee, that incorporates those changes.

Next, the AAO accords no significant evidentiary weight to the opinion letter from the professor who identifies himself as an Industry Associate Professor of Management, Associate Dean, and Program Director of the MS Management Degree Program at Polytechnic University in Brooklyn, New York (Brooklyn Polytechnic). After repeating the list of 13 duties from the petitioner’s letter of response to the RFE, the professor opines as follows that the petitioner is proffering a specialty occupation position:

Mr. [Named], Managing Partner of [the petitioner], states that the “Information System Administrator” position requires the services of someone with at least a Bachelor’s Degree in Computer Science, Information Management or a related field or the equivalent in professional experience with database administration or management. Further, he states that he would never retain an individual with lesser qualification for this or similar professional positions.

Based on this statement and my knowledge of industry and academia, it is my opinion that the *Information System Administrator* position with the above duties is clearly a “specialty position” requiring the services of someone with at least a bachelor’s degree in Computer Science, Information Management or a related field or the equivalent in professional experience with database administration or management.

According to his letter, the professor based his opinion on two factors: (1) statements by the petitioner’s managing partner, and (2) the professor’s “knowledge of the industry and academia.” The deficiency of each factor is discussed below.

The professor partly relies on statements of the petitioner's managing partner that, in the professor's words, "the position requires the services of someone with at least a Bachelor's Degree in Computer Science, Information Management or a related field or the equivalent in professional experience with database administration or management," and that "[the managing partner] would never retain an individual with lesser qualification for this or similar professional positions." The professor cites no factual basis for the managing partner's statements. A petitioner's unsubstantiated assertions with regard to the merits of its own petition is not probative evidence on that issue. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972): a petitioner's going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. Furthermore, the professor has provided no indication that he has observed the petitioner's business operations, reviewed any of the business matters which would engage the petitioner, or otherwise obtained facts that would support the managing partner's contention that the proffered position requires at least a bachelor's degree in a specific specialty.

The professor provides no analysis regarding the other basis for his opinion, which is described as "my knowledge of industry and academia." He does not identify the elements of such knowledge that he may have applied in reaching his conclusion. He fails to correlate specific duties of the proffered position to specific coursework that amounts to at least a bachelor's degree in computer science, information management, or a related degree.

In short, the professor has not provided a factual basis by which CIS may reasonably conclude that his opinion is well founded and reliable. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). As a reasonable exercise of its discretion the AAO discounts the professor's opinion as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, there is no evidence in the record that the either the actual or the anticipated increase in the size of the petitioner's database correlates with a need for the application of at least a bachelor's degree level of highly specialized knowledge in computer science, information management, a related field, or any specific specialty. Therefore, the petitioner's reliance upon the current or projected larger database is not justified. 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. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). For reasons already discussed, the AAO will not consider any evidence presented with regard to the two affiliates, with regard to which no duties were presented until appeal.

Finally, the information submitted from the DOL's Online Wage Library (OWL) on Database Administrators does not establish that this occupational category is characterized by a requirement for at least a bachelor's degree in a specific specialty. The Job Zone code "Four" places Database Administrators among a group of occupations of which most, but not all, require a bachelor's degree. Further, neither the Job Zone, the SVP

Range, nor any other OWL information submitted into the record identifies a requirement for at least a bachelor's degree, or the equivalent, in a specific specialty.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

The AAO recognizes the DOL's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations. The AAO finds that, to the extent it is described in the record, the proffered position comports with general duties that the 2006-2007 edition of the *Handbook* aligns with the occupational categories of database administrator and network and computer systems administrator.¹

The *Handbook's* section on database administrators includes these comments about usual duties:

With the Internet and electronic business generating large volumes of data, there is a growing need to be able to store, manage, and extract data effectively. *Database administrators* work with database management systems software and determine ways to organize and store data. They identify user requirements, set up computer databases, and test and coordinate modifications to the computer database systems. An organization's database administrator ensures the performance of the system, understands the platform on which the database runs, and adds new users to the system. Because they also may design and implement system security, database administrators often plan and coordinate security measures. With the volume of sensitive data generated every second growing rapidly, data integrity, backup systems, and database security have become increasingly important aspects of the job of database administrators.

With regard to network and computer systems administrators, the *Handbook* states, in part:

Network administrators and *computer systems administrators* design, install, and support an organization's local-area network (LAN), wide-area network (WAN), network segment, Internet, or intranet system. They provide day-to-day onsite administrative support for software users in a variety of work environments, including professional offices, small businesses, government, and large corporations. They maintain network hardware and software, analyze problems, and monitor the network to ensure its availability to system users. These workers gather data to identify customer needs and then use the information to identify, interpret, and evaluate system and network requirements. Administrators also may plan, coordinate, and implement network security measures.

Systems administrators are the information technology employees responsible for the efficient use of networks by organizations. They ensure that the design of an organization's

¹ The Internet version of the *Handbook* may be accessed at <http://stats.bls.gov/oco/>.

computer site allows all of the components, including computers, the network, and software, to fit together and work properly. Furthermore, they monitor and adjust the performance of existing networks and continually survey the current computer site to determine future network needs. Administrators also troubleshoot problems reported by users and by automated network monitoring systems and make recommendations for enhancements in the implementation of future servers and networks.

The *Handbook* notes that some employers prefer a technical degree for database administrator positions. However, as reflected in the excerpts below, the *Handbook* indicates that a bachelor's degree or the equivalent in a specific specialty is neither inherently required by the general subject matter upon which database administrators work nor a normal minimum hiring requirement for the occupation:

Rapidly changing technology requires an increasing level of skill and education on the part of employees. Companies look for professionals with an ever-broader background and range of skills, including not only technical knowledge, but also communication and other interpersonal skills. While there is no universally accepted way to prepare for a job as a . . . database administrator, most employers place a premium on some formal college education. A bachelor's degree is a prerequisite for many jobs; however, some jobs may require only a 2-year degree. Relevant work experience also is very important. For more technically complex jobs, persons with graduate degrees are preferred.

For database administrator positions, many employers seek applicants who have a bachelor's degree in computer science, information science, or management information systems (MIS). MIS programs usually are part of the business school or college and differ considerably from computer science programs, emphasizing business and management-oriented coursework and business computing courses. Employers increasingly seek individuals with a master's degree in business administration (MBA), with a concentration in information systems, as more firms move their business to the Internet. For some network systems and data communication analysts, such as webmasters, an associate degree or certificate is sufficient, although more advanced positions might require a computer-related bachelor's degree. For computer and information scientists, a doctoral degree generally is required because of the highly technical nature of their work.

Despite employers' preference for those with technical degrees, persons with degrees in a variety of majors find employment in these occupations. The level of education and the type of training that employers require depend on their needs. One factor affecting these needs is changes in technology. Employers often scramble to find workers capable of implementing new technologies. Workers with formal education or experience in information security, for example, are in demand because of the growing need for their skills and services. Employers also look for workers skilled in wireless technologies as wireless networks and applications have spread into many firms and organizations.

Most community colleges and many independent technical institutes and proprietary schools offer an associate's degree in computer science or a related information technology field. Many of these programs may be geared more toward meeting the needs of local businesses and are more occupation specific than are 4-year degree programs. Some jobs may be better suited to the level of training that such programs offer. Employers usually look for people who have broad knowledge and experience related to computer systems and technologies, strong problem-solving and analytical skills, and good interpersonal skills. Courses in computer science or systems design offer good preparation for a job in these computer occupations. For jobs in a business environment, employers usually want systems analysts to have business management or closely related skills, while a background in the physical sciences, applied mathematics, or engineering is preferred for work in scientifically oriented organizations. Art or graphic design skills may be desirable for webmasters or Web developers.

Jobseekers can enhance their employment opportunities by participating in internship or co-op programs offered through their schools. Because many people develop advanced computer skills in a noncomputer occupation and then transfer those skills to a computer occupation, a background in the industry in which the person's job is located, such as financial services, banking, or accounting, can be important. Others have taken computer science courses to supplement their study in fields such as accounting, inventory control, or other business areas.

Technological advances come so rapidly in the computer field that continuous study is necessary to keep one's skills up to date. Employers, hardware and software vendors, colleges and universities, and private training institutions offer continuing education. Additional training may come from professional development seminars offered by professional computing societies.

Certification is a way to demonstrate a level of competence in a particular field. Some product vendors or software firms offer certification and require professionals who work with their products to be certified. Many employers regard these certifications as the industry standard. For example, one method of acquiring enough knowledge to get a job as a database administrator is to become certified in a specific type of database management. Voluntary certification also is available through various organizations associated with computer specialists. Professional certification may afford a jobseeker a competitive advantage.

As indicated in the following excerpt, the *Handbook* does not indicate that a bachelor's degree or its equivalent in a specific specialty is normally a minimum entry requirement for the computer systems administrator occupation:

Due to the wide range of skills required, there are many paths of entry to a job as a computer support specialist or systems administrator. . . . For systems administrators, many employers seek applicants with bachelor's degrees, although not necessarily in a computer-related field.

A number of companies are becoming more flexible about requiring a college degree for support positions because of the explosive demand for specialists. However, certification and practical experience demonstrating these skills will be essential for applicants without a degree. The completion of a certification training program, offered by a variety of vendors and product makers, may help some people to qualify for entry-level positions. Relevant computer experience may substitute for formal education.

As neither the professor's opinion nor any other evidence of record refutes the relevant information from the *Handbook*, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has not established that the proffered position satisfies the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that is, by demonstrating that positions in the petitioner's industry that are both (1) parallel to the proffered position and (2) located in organizations similar to the petitioner commonly require at least a bachelor's degree in a specific specialty.

In determining whether there is such a common degree requirement, factors often considered by CIS 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)).

As discussed above, the petitioner has not established that the proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty.

The petitioner has not submitted attestations from other persons or firms in the industry or from a professional association that the position is one for which there is a routine practice of recruiting and hiring only persons with at least a bachelor's degree in a specific specialty. For the reasons already discussed, the professor's opinion is not probative.

The criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) is not a factor: as the position is being offered for the first time, and the petitioner has not presented evidence of a prior history of recruiting and hiring only persons with at least a bachelor's degree in a specific specialty.

The evidence of record does not establish either that this particular position is so complex or unique that it can be performed only by an individual with a degree (so as to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2)), or that the specific duties are so specialized and complex that their performance requires knowledge usually associated with at least a baccalaureate degree in a specific specialty (so as to satisfy the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)).

The petitioner has described the duties of the proffered position in general functional terms that comport with the general duties of a database and network and computer systems administrator. As already discussed, the *Handbook* establishes that a bachelor's or higher degree in a specific specialty is not normally a minimum requirement for entry into these occupations. However, the evidence of record does not develop the proffered position or its duties with specificity that distinguishes them by uniqueness, specialization, or complexity from database administrator and network and computer systems administrator positions for which the *Handbook* indicates neither a necessity for nor a usual association with a bachelor's or higher degree in a specific specialty. Upon review of all the evidence that counsel and the petitioner have presented about the proffered position and its proposed duties, the AAO finds that the petitioner has not established where the proffered position lies on the educational-requirement continuum. The evidence of record does not convey that the position is so complex or unique as to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Likewise, the evidence does not convey that the duties of the proffered position are so specialized and complex as to be usually associated with a bachelor's degree in a specific specialty, rather than with lesser educational credentials that the *Handbook* indicates have equipped many people to work as database and network and computer systems administrators. Therefore, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) has not been satisfied.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition is denied.