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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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**U.S. Citizenship
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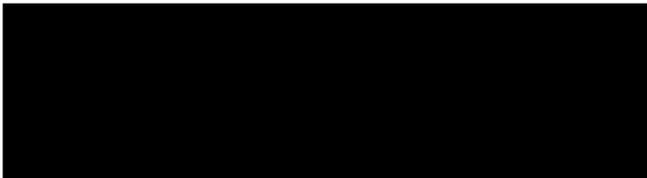
FILE: WAC 08 101 50257 Office: CALIFORNIA SERVICE CENTER Date:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director 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 corporation that provides consulting, technical support, and services to the Information Technology (IT) industry. To employ the beneficiary as a programmer analyst, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on four independent grounds, namely, her findings that the evidence of record failed to establish: (1) that the petitioner is qualified to file an H-1B petition, that is, as either (a) a United States employer as that term is defined at 8 C.F.R. § 214.2(h)(4)(ii), or (b) a U.S. agent, in accordance with the regulation at 8 C.F.R. § 214.2(h)(2)(i)(F); (2) that the Labor Condition Application (LCA) filed with the petition is valid for all locations where the beneficiary will work; (3) that the proffered position qualifies as a specialty occupation, and (4) that “it is credible and sufficient to establish that the petitioner has complied with the terms and conditions of employment.”

The AAO will first address and concentrate solely upon the specialty occupation issue, which is crucial in the adjudication of any H-1B petition. The AAO analyzes this issue according to the statutory and regulatory framework below.

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.

Consistent 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000) (hereinafter referred to as *Defensor*). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

Based upon its review of the entire record including the matters submitted on appeal, the AAO concludes that the petitioner failed to establish that the beneficiary would perform specialty occupation services for the period sought in the petition. As will be discussed below, the AAO bases this conclusion on its evaluation of the evidence of record related to the proposed duties and the knowledge required to perform them. The AAO finds this evidence insufficient to satisfy any of the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A), that is, as either (a) a particular position for which the normal minimum requirement for entry would be at least a bachelor's degree, or its equivalent, in a specific specialty (criterion 1); (b) one parallel to those for which organizations in the petitioner's industry that are similar to the petitioner commonly require at least a bachelor's degree, or its equivalent, in a specific specialty (the first alternative prong of criterion 2); (c) a particular position shown to be so complex or unique that it can be performed only by an individual with a degree (the second alternative prong of criterion 2); (d) one for which the employer normally requires at least a bachelor's degree, or its equivalent, in a specific specialty (criterion 3); or (e) one with specific duties so specialized and complex that their performance requires knowledge usually associated with the attainment at least a bachelor's degree in a specific specialty (criterion 4).

As will now be discussed, the fatal defect in this record of proceeding is its lack of evidence documenting the substantive nature of the services that the beneficiary would perform if this petition were approved. Regarding the proffered position and the duties comprising it, the record is limited to submissions from the petitioner and its immediate client that describe the proffered position by generalized functions that do not distinguish the proffered position from programmer analyst positions whose performance neither requires nor is usually associated with at least a bachelor's degree in a specific specialty directly related to the proffered position.

The Form I-129 identifies the beneficiary's work location as [REDACTED] [hereinafter referred to as [REDACTED]]

In its February 8, 2008 letter submitted with the Form I-129, the petitioner describes itself as a firm that "provides consulting, technical support and services to the Information Technology (IT) industry," and "provides a full range of information technology services in systems evaluation, design, development and integration, working for both small and Fortune 500 companies." It is in this context that this letter in support of the petition provides the following description of the proffered position:

The Programmer Analyst analyzes the data processing requirements to determine the computer software, which will best serve those needs. Thereafter, he will design a computer system using that software, which will process the data in the most timely and inexpensive manner, and implements [sic] that design by overseeing the installation of the necessary system software, and its customization to client's unique requirements. The actual computer programming will be performed with the assistance of programmers.

Throughout this process, the Programmer Analyst must constantly interact with the management, explaining to it each phase of the system development process, responding to its questions, comments, and criticisms, and modify the system so the concerns raised are adequately addressed. Consequently, the Programmer Analyst must constantly revise and revamp the system as it is being created to respond to unanticipated software anomalies heretofore undiscovered, to the extent that occasionally the system finally created bears seemingly little resemblance to that which was initially proposed.

[The beneficiary] will be involved in the systems analysis, design and development of the application. . . .

This letter submitted with the Form I-129 also provides a table that lists the following items as the six phases that will be involved in the beneficiary's "development of the systems": (1) analysis of the existing system and user needs; (2) communication and interaction with current system users; (3) design and development of a new computerized system; (4) writing and testing of newly designed programs; (5) implementation of the newly developed system; and (6) providing] technical support after system implementation. The letter also provides a table dividing the beneficiary's day-to-day responsibilities into the following components and related percentages of worktime devoted to them: (1) analysis of software requirements – 25%; (2) evaluation of interface feasibility between hardware and software – 10%; (3) software system design (using scientific analysis and mathematical models to predict and measure design consequences and outcome) – 20%; (4) programming – 10% ; (5) unit and integration testing – 25%; (6) system installation – 5% ; and systems maintenance – 5%.

At the letter's "Agreement with [the Beneficiary]" section, the petitioner states that the RHI address cited in the Form I-129 is the only location anticipated for the beneficiary's work. It is noteworthy that this letter submitted in support of the petition provides no substantive information about the particular project or projects upon which the beneficiary would work and that it portrays the proffered position in generalized and generic terms that do not distinguish it from the any other programmer analyst position.

The documents submitted with Form I-129 also include a February 18, 2008 letter on RHI letterhead (hereinafter referred to as the first RHI letter), which is signed on behalf of [REDACTED], and by [REDACTED], on behalf of the petitioner. Addressed "To Whom It May Concern," the letter states:

Please be advised that [RHI] has contracted with [the petitioner] [to] provide programming, networking, consulting and engineering related services at [RHI's] facility . . . for various projects. We have selected [the beneficiary] to work on a project at our facility as a Programmer Analyst. This project is on an At-Will basis (terminable without cause) and the term of these projects is on-going in duration and expected to exceed three years.

The Programmer Analyst analyzes the data processing requirements to determine the computer software which will best serve those needs. Thereafter, he will design a computer system using that software which will process the data in the most timely and inexpensive manner, and implements [sic] that design by overseeing the installation of the necessary system software and its customization to the client's unique requirements. The actual computer programming may be performed with the assistance of the programmers.

Throughout this process, the Programmer Analyst must constantly interact with the management, explaining to it each phase of the system development process, responding to its questions, comments, and criticisms, and modify the system so that the concerns raised are adequately addressed. Consequently, the Programmer Analyst must constantly revise and revamp the systems [sic] as it is being created to respond to unanticipated software anomalies here to fore [sic] undiscovered. The Programmer Analyst duties will also include: analysis of software requirements, evaluation of interface feasibility between hardware and software, software system design (using scientific analysis and mathematical models to predict and measure design consequences and outcome), unit and integration testing, [and] systems installation and maintenance.

[The beneficiary] is not an employee of [RHI]. He will be operating at all times under the control of his H-1B employer. All activities, including managerial supervision and hiring and firing decisions, as well as performance evaluations[,] are controlled by his H-1B employer.

The AAO notes that this RHI letter also limits its discussion of the proffered position to generalized and generic terms that do not identify aspects distinguishing it from other programmer analyst positions. It is also noteworthy that the letter does not identify the project upon which the beneficiary would work or provide any specific information about it.

On February 28, 2008, the service center issued a request for additional evidence (RFE) which, in pertinent part, under the heading "H-1B Specialty Occupation," requested the following documentation with regard to contracts under which the beneficiary would be assigned to perform services for a client:

- **Consultants and Staffing Agencies:** If the petitioner is, in any way, engaged in the business of consulting, employment staffing, or job placement that contracts short-term employment for workers who are traditionally self-employed, submit evidence that a specialty occupation exists for the beneficiary.

Regardless of whether the beneficiary will be working within the employment contractor's operation on projects for the client or at the end-client's place of business – USCIS must

examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. Please clarify the petitioner's employer-employee relationship with the beneficiary and, if not already provided, submit the following evidence:

- copies of signed contracts between the petitioner and [the beneficiary];

* * *

- copies of signed contractual agreements, statements of work, work orders, service agreements, and letters written between the petitioner and the authorized officials of the ultimate end-client companies where the work will actually be performed that specifically lists [the beneficiary] on the contract and provides a detailed description of the duties the beneficiary will perform, the qualifications that are required to perform the job duties, salaries or wages paid, hours worked, benefits, a brief description of who will supervise the beneficiary and their duties, and any other related evidence.

NOTE: The evidence must show specialty occupation work for the beneficiary with the actual end-client company where the work will ultimately be performed. Merely providing contracts between the petitioner and other companies or employment agencies that provide consulting or staffing services to other companies may not be sufficient. There must be a clear contractual path shown from the petitioner, through any other consultants or staffing companies, to an ultimate end-client.

The only document submitted in response to the above quoted RFE request for contractual documents is a second letter from the petitioner and RHI (hereinafter referred to as the second RHI letter). Printed on Robert Half Technology letterhead and dated February 22, 2008, this letter is cosigned by [REDACTED] for [REDACTED], for the petitioner. This second RHI letter is substantially the same as the first except for the addition of the following two paragraphs, which are quoted verbatim and with the emphasis that appears in the original:

The Technical Environment used will be **SAP-IS Retail** Software Package and the **SAP** development language **ABAP** (Advanced Business Application Programming) for the development of the Business specific executable Software code and applications, Testing and deployment of the Applications.

The Project scope includes the Support and Maintenance of the Existing version of SAP software and involved in the Upgrade of SAP Software version of 4.6C to ECC version 6.0 and Identifying Technical Solutions for Custom Business needs, developing and implementing those Software applications.

The AAO notes that the record of proceeding contains no documentary evidence correlating the above referenced technical tools with the attainment of any level of formal education, or its equivalent, in a specific specialty.

On appeal, counsel states, that RHI “does not provide contracts with their clients as this is confidential information.” “As such,” counsel states, he submits three pages printed from the Internet site of Robert Half Technology on April 3, 2008, as providing “a view of the size and scope” of RHI’s business.” The AAO notes that counsel’s referral to Internet pages is immediately preceded by the following section of his appellate brief, where counsel insists that the director erred in faulting the petitioner for failing to provide contracts between RHI and its clients that relate to the services that the beneficiary would perform on assignment to RHI:

The Service indicates in its denial that the Petitioner did not submit contracts between [RHI] and the third party end[-] client that will ultimately use the beneficiary’s services.

Please note that there is no third party. How much clearer can the Petitioner be on this point!

[Emphasis omitted.]

The AAO notes, however, that the record’s Robert Half Technology Internet pages indicate that this firm’s work is generated by its own clients. For instance, the Company Overview section, on the page with the overhead title “Robert Half Technology – About Us,” starts with this paragraph:

Robert Half Technology offers flexible staffing solutions to premier organizations worldwide that require technical expertise on demand. Projects range from complex e-business and web development initiatives to enterprise[-]wide application and technical system support. The technology professionals we deploy, on either a contract, contract-to-hire or full-time basis, include software developers, project managers, data base specialists, networking and internetworking specialists, and helpdesk support professionals.

Likewise, the section appearing under the Services section on the copy of the Internet page with the overhead title “Robert Half Technology – Services – Information Technology Consultants” describes RHT as “a leading provider of skilled IT professionals on a project and full-time basis,” upon whom “[f]irms of all sizes have come to rely” for “consultants for projects ranging from network design and security to Internet-based applications development and technical support.”

Thus, despite counsel’s assertions to the contrary, the record of proceeding suggests that (1) the petitioner would be assigning the beneficiary to perform services on projects for RHI; (2) the projects would be generated by RHI clients; and (3) RHI would likely “deploy” the beneficiary to work at its clients’ worksites. Thus, despite the petitioner’s contrary assertion, it appears that there

are third-party end-clients, who are clients of the petitioner's client RHI. It also appears that these third-party clients would ultimately decide the nature and location(s) of the specific projects upon which the beneficiary would work.

The AAO recognizes the Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. The Programmer Analyst occupational category is discussed in the *Handbook* chapters entitled "Computer Programmers" and "Computer Systems Analysts." These chapters do not support the petitioner's contention that programmer analyst positions categorically qualify as specialty occupation positions.

The "Computer Programmers" chapter states, "In some organizations, workers known as *programmer-analysts* are responsible for both the systems analysis and programming." This chapter describes the programmer component of the occupation as follows:

Computer programmers often are grouped into two broad types—applications programmers and systems programmers. *Applications programmers* write programs to handle a specific job, such as a program to track inventory within an organization. They also may revise existing packaged software or customize generic applications purchased from vendors. *Systems programmers*, in contrast, write programs to maintain and control computer systems software for operating systems, networked systems, and database systems. These workers make changes in the instructions that determine how the network, workstations, and central processing unit of a system handle the various jobs they have been given, and how they communicate with peripheral equipment such as terminals, printers, and disk drives. Because of their knowledge of the entire computer system, systems programmers often help applications programmers determine the source of problems that may occur with their programs.

The "Training, Other Qualifications, and Advancement" section of the *Handbook's* chapter on computer programmers opens with statements that "a bachelor's commonly is required for computer programming jobs, although a two-year degree or certificate may be adequate for some positions"; that employers "favor applicants who already have relevant programming skills and experience"; and that "skilled workers who keep up to date with the latest technology usually have good opportunities for advancement." The AAO here quotes the "Education and Training" section of the *Handbook's* "Computer Programmers" chapter in full in order to show that this occupation accommodates a wide variety of educational credentials short of a U.S. bachelor's degree, or its equivalent, in a specific specialty closely related to programming:

Education and training. Most programmers have a bachelor's degree, but a two-year degree or certificate may be adequate for some jobs. Some computer programmers hold a college degree in computer science, mathematics, or information systems, whereas others have taken special courses in computer programming to supplement

their degree in a field such as accounting, finance, or another area of business. In 2006, more than 68 percent of computer programmers had a bachelor's degree or higher, but as the level of education and training required by employers continues to rise, this proportion is expected to increase.

Employers who use computers for scientific or engineering applications usually prefer college graduates who have a degree in computer or information science, mathematics, engineering, or the physical sciences. Employers who use computers for business applications prefer to hire people who have had college courses in management information systems and business, and who possess strong programming skills. A graduate degree in a related field is required for some jobs.

Most systems programmers hold a four-year degree in computer science. Extensive knowledge of a variety of operating systems is essential for such workers. This includes being able to configure an operating system to work with different types of hardware and being able to adapt the operating system to best meet the needs of a particular organization. Systems programmers also must be able to work with database systems, such as DB2, Oracle, or Sybase.

In addition to educational attainment, employers highly value relevant programming skills, as well as experience. Although knowledge of traditional programming languages still is important, employers are placing an emphasis on newer, object-oriented languages and tools such as C++ and Java. Additionally, employers seek people familiar with fourth- and fifth-generation languages that involve graphic user interface and systems programming. College graduates who are interested in changing careers or developing an area of expertise may return to a two-year community college or technical school for specialized training. In the absence of a degree, substantial specialized experience or expertise may be needed.

Entry-level or junior programmers may work alone on simple assignments after some initial instruction, or they may be assigned to work on a team with more experienced programmers. Either way, beginning programmers generally must work under close supervision.

Because technology changes so rapidly, programmers must continuously update their knowledge and skills by taking courses sponsored by their employer or by software vendors, or offered through local community colleges and universities.

The AAO notes that the employer preferences noted above do not equate to a normal hiring requirement. The AAO also notes that the wide range of educational attainment shared by computer programmers is reflected in the following two bullet statements from the "Significant Points" section which opens the *Handbook's* chapter on computer programmers:

- Almost 8 out of 10 computer programmers held an associate's degree or higher in 2006; nearly half held a bachelor's degree, and 2 out of 10 held a graduate degree.

- Job prospects will be best for applicants with a bachelor's degree and experience with a variety of programming languages and tools.

The AAO notes not only the wide range of degrees indicated above, but also that the best prospects are not limited to holders of bachelor's degrees in a specific specialty or range of closely related specialties.

The *Handbook's* "Computer Systems Analysts" chapter describes the programmer analyst occupation as follows:

In some organizations, *programmer-analysts* design and update the software that runs a computer. They also create custom applications tailored to their organization's tasks. Because they are responsible for both programming and systems analysis, these workers must be proficient in both areas. . . . As this dual proficiency becomes more common, analysts are increasingly working with databases, object-oriented programming languages, client-server applications, and multimedia and Internet technology.

The information on educational requirements in the *Handbook's* "Computer Systems Analysts" chapter indicates a bachelor's or higher degree in computer science, information systems, or management information systems is a general preference, but not an occupational requirement, among employers of computer systems analysts. That this occupation accommodates a wide spectrum of educational credentials is reflected in the following paragraph that opens the "Training, Other Qualifications, and Advancement" section of the *Handbook's* "Computer Systems Analysts" chapter:

Training requirements for computer systems analysts vary depending on the job, but many employers prefer applicants who have a bachelor's degree. Relevant work experience also is very important. Advancement opportunities are good for those with the necessary skills and experience.

The AAO notes that the paragraph's statement that "many employers prefer applicant's who have a bachelor's degree" is not indicative of a pervasive requirement for a specific major or academic concentration. As such, the preference noted by the *Handbook* is not an endorsement of the occupation as one for which all of its included jobs qualify as a specialty occupation positions. The "Education and Training" subsection of the *Handbook's* "Computer Systems Analyst" chapter continues this theme. It states:

Education and Training. When hiring computer systems analysts, employers usually prefer applicants who have at least a bachelor's degree. For more technically complex jobs, people with graduate degrees are preferred.

The level and type of education that employers require reflects changes in technology. Employers often scramble to find workers capable of implementing the newest technologies. Workers with formal education or experience in information security, for example, are currently in demand because of the growing use of computer networks, which must be protected from threats.

For jobs in a technical or scientific environment, employers often seek applicants who have at least a bachelor's degree in a technical field, such as computer science, information science, applied mathematics, engineering, or the physical sciences. For jobs in a business environment, employers often seek applicants with at least a bachelor's degree in a business-related field such as management information systems (MIS). Increasingly, employers are seeking individuals who have a master's degree in business administration (MBA) with a concentration in information systems.

Despite the preference for technical degrees, however, people who have degrees in other majors may find employment as systems analysts if they also have technical skills. Courses in computer science or related subjects combined with practical experience can qualify people for some jobs in the occupation.

Employers generally look for people with expertise relevant to the job. For example, systems analysts who wish to work for a bank should have some expertise in finance, and systems analysts who wish to work for a hospital should have some knowledge of health management.

Technological advances come so rapidly in the computer field that continuous study is necessary to remain competitive. Employers, hardware and software vendors, colleges and universities, and private training institutions offer continuing education to help workers attain the latest skills. Additional training may come from professional development seminars offered by professional computing societies.

With regard to educational requirements, the *Handbook's* "Computer Systems Analyst" chapter indicates that, while employers prefer applicants with a bachelor's degree and often seek applicants who have at least a bachelor's degree in a technical field, their employment practices have not established a bachelor's degree in a specific specialty as the norm for hiring.

Neither the "Computer Programmers" chapter nor the "Computer Systems Analysts" chapter indicate that Programmer Analysts constitute an occupational category characterized by a requirement for at least a bachelor's degree, or the equivalent, in a specific specialty.

In light of the range of educational credentials indicated by the *Handbook*, it is incumbent on the petitioner to provide sufficient evidence to establish not only that the beneficiary would perform the services of a programmer analyst, but that he would do so at a level that requires the theoretical and

practical application of at least a bachelor's degree level of knowledge in a computer-related specialty. This the petitioner has failed to do.

Not only does the *Handbook* not support the programmer-analyst occupation as one that normally requires at least a bachelor's degree in a specific specialty, but the evidence about the duties that the beneficiary would perform is insufficient to satisfy any specialty-occupation criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

To determine whether a particular job qualifies as a specialty occupation, the AAO does not simply rely on the position's title or the extent to which the petitioner's descriptions of the position and its underlying duties correspond to occupational descriptions in the *Handbook*. Critical factors for consideration are the record's evidence about specific duties of the proffered position and the particular business matters upon which the duties are to be performed. In this pursuit, the AAO must examine the evidence about the substantive work that the alien will likely perform for the entity or entities ultimately determining the work's content. In the present petition, the petitioner's business is providing IT services for clients contracting for those services. In this context, the clients of RHI are the entities generating the projects upon which the beneficiary will work and determining the actual content of the beneficiary's work.

As recognized by the court in *Defensor*, evidence of the client companies' job requirements is critical where, as here, the work is to be performed for entities other than the petitioner. The court held that the legacy Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services.

Such evidence must be sufficiently detailed and explained as to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work. The record of proceedings lacks such substantive evidence from the end-user entities, whose IT needs directly determine what the beneficiary would actually do on a day-to-day basis. In the present petition, the business entities who would determine the substantive nature of the beneficiary's work have not provided evidence delineating the specific components of the work that the beneficiary would perform for them. Therefore, the AAO is unable to determine whether the proffered position incorporates the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree, or its equivalent, in the specific specialty as the minimum for entry into the occupation as required by the Act. Accordingly, the petitioner has not established that the proffered position is a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) or that the beneficiary would be coming temporarily to the United States to perform the duties of a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(1)(B)(1).

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), 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 record's descriptions of the duties comprising the proffered position generally comport with the Programmer Analyst occupational category as discussed in the 2008-2009 edition of the *Handbook*. However, neither those descriptions nor any other evidence of record distinguish the proffered position from those programmer analyst positions which do not require at least a bachelor's degree or the equivalent in a specific specialty closely related to their duties. Given the lack of evidence about the particular client projects designated for the beneficiary and the actual performance requirements of those projects, the petitioner has failed to establish both the substantive nature of the actual services that the beneficiary would perform and the nature and educational level of knowledge required to perform them.

As the evidence of record does not indicate that this petition's particular position is one that normally requires at least a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status to a proffered position whose asserted requirement for at least a bachelor's degree in a specific specialty is common to positions in the petitioner's industry that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

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

The AAO here reiterates that the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a U.S bachelor's or higher degree, but such a degree in a specific specialty that is directly related to the specialty occupation claimed in the petition. As reflected in this decision's earlier comments, the *Handbook* does not indicate that a programmer analyst position as so generally described in this petition would require at least a bachelor's degree in a specific specialty. Thus, the *Handbook* does not support a favorable finding under the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The AAO also notes that the record does not include submissions from a professional association or from individuals or other firms in the petitioner's industry attesting to routine employment and recruiting practices.

As the evidence of record does not establish a bachelor's degree or higher in a specific specialty as an industry-wide requirement for positions substantially similar to the one proffered in this petition, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." The evidence of record does not develop relative complexity or uniqueness as an aspect of the proffered position. The information about the position and the duties comprising it is limited to generalized functional descriptions (such as "analysis," "communication and interaction," and "design and development"). This generalized information is not supplemented by documentation identifying specific projects in which the duties would be applied, describing the particular components of those projects that are so complex or unique as to satisfy this criterion, and explaining why those components are so complex or unique that their performance necessitates a person with at least a bachelors degree in a specific specialty.

Next, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), by establishing that the employer normally requires a degree or its equivalent for the position. To merit approval of the petition under this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency in its prior recruiting and hiring for the position. This petition's record of proceeding does not contain such evidence.¹

¹ It is important to note that, to satisfy this criterion, the record must also establish that a petitioner's historical imposition of a degree requirement in its recruiting and hiring is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. This requirement resides in section 214(i)(1) of the Act, 8 U.S.C. § 1184 (i)(1), which defines the term "specialty occupation" as requiring both "(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 petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor*, 201 F. 3d at 387-388. The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. To satisfy this third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) in the context of the present petition, which involves the beneficiary's performing work on client projects, the petitioner must establish that performance of those projects

As noted earlier in this decision, the petitioner has limited the record's duty descriptions to generalized and generic terms. They lack the specificity necessary to establish whatever level of specialization and complexity resides in the proposed duties. Consequently, the AAO can reasonably determine no more than that the claimed duties of the proffered position generally comport with those of the programmer analyst occupation as described in the *Handbook*. The educational requirements for positions in this occupation are so varied, as noted in this decision's earlier discussion of the relevant *Handbook* observations, and the record's duty descriptions are so generalized and non-specific, that there is no basis for the AAO to find the degree association required by this criterion.

For the reasons discussed above, 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).

As this adverse determination of the specialty occupation issue is dispositive of the appeal, the AAO will not further address its affirmance of the director's denial of the petition for the petitioner's failure to establish (1) its standing to file this petition as either a U.S. employer as defined at 8 C.F.R. § 214.2(h)(4)(ii), or (b) a U.S. agent, in accordance with the regulation at 8 C.F.R. § 214.2(h)(2)(i)(F), (2) that the submitted LCA will correspond to the actual work location where the beneficiary will be placed, and (3) that the petitioner has and will comply with the terms and conditions of employment with regard to all of its sponsored H-1B employees.

The appeal will be dismissed, and the petition will be denied. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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

requires the theoretical and practical application of at least a bachelor's degree level of knowledge in a particular specialty.