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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: **JUL 06 2011** Office: CALIFORNIA SERVICE CENTER FILE:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. 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 an electrical/electronic parts manufacturer and seeks to employ the beneficiary as a computer systems engineer. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition, finding that the position was not a specialty occupation.

On appeal, counsel for the petitioner submits a brief and additional evidence and contends that, contrary to the director's findings, the proffered position is a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 with supporting documentation; (2) the director's request for further evidence (RFE); (3) the petitioner's response to the director's RFE; (4) the director's denial decision; and (5) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires [1] 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 requires [2] 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 also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this 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. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

In a March 29, 2009 letter, counsel for the petitioner explained that the petitioner, a circuit board manufacturer in [REDACTED], requires the services of a computer systems engineer/architect. Regarding the duties of the proffered position, counsel stated:

[The beneficiary] will be responsible for all IT related tasks and responsibilities. These include troubleshooting and installation of hardware and software packages for users in our office environment. He will provide advice on project costs, design concepts, or design changes. [The beneficiary] will coordinate network access with our overseas partners. He will document design specifications, installation instructions, and other system-related information. [The beneficiary] will verify stability, interoperability, and other system-related information. He will collaborate with engineers and software developers to select appropriate design solutions or ensure the compatibility of system components. He will be responsible for tech related aspects of MFG equipment from setup to troubleshooting and monitoring system operation to detect potential problems. He will also be responsible for network architecture & ensuring that data is backed up and reliable.

Counsel further contended that performance of the duties of the position requires the attainment of a bachelor's degree in computer engineering or a related discipline and that the beneficiary is qualified for the position by virtue of his bachelor's degree in computer engineering.

In a May 5, 2009 RFE, the director requested additional information. Specifically, the director requested more detailed evidence demonstrating that the proffered position is a specialty occupation, including but not limited to a more detailed description of the proffered position and information pertaining to the petitioner's business, its hiring practices, and its organizational chart.

In response, counsel for the petitioner addressed the director's queries in a response dated June 15, 2009 and provided the following updated description of duties of the proffered position:

Verify stability, interoperability, portability, security or scalability of system architecture (34%). (Software Development and Intranet Web Maintenance)[.] He will develop software applications to meet evolving corporate and manufacturing needs where necessary. This includes development of automated

real-time inventory and job tracking systems, software modules to interface with existing systems and streamline or automate critical processes. He will be responsible for conversion of paper-based systems making them digital and computer-based. He will handle on-going development of central internal corporate website () that provides quick access to relevant data and company information. He will provide guidelines for providing general updates to external corporate website when and where necessary.

Communicate with staff or clients to understand specific system requirements (33%) (Provide hands-on technical support to corporate users/Vendor relationship management). He will serve as a point of contact for both current and aspiring hardware and software solutions vendors regarding corporate phone services, server hardware software solutions, computer-related manufacturing equipment etc. This includes the documentation and management of license and contract agreements and technical problem resolution. He must be able to critically review and recommend service proposals to corporate directors as well as collaborate with service provider on installation and implementation of solution. He will provide end-user software installs when and where necessary and troubleshoot computer malfunctions in the event of hardware/software failure, or virus intrusion etc. He will set-up new and recycled user workstations. He will respond to end-user technical guidance or support for the development or troubleshooting of systems.

Provide advice on project costs, design concepts, or design changes (33%)
He will identify system data, hardware, or software components required to meet user needs. He will recommend new hardware and software to expand and/or support existing systems. He will evaluate current or emerging technologies to consider factors such as cost, portability, compatibility, or usability.

The petitioner also submitted a letter dated June 15, 2009 from for the petitioner, which discussed the petitioner's hiring history and practices with regard to the proffered position as well as a copy of the petitioner's organizational chart.

On August 10, 2009, the director denied the petition, determining that the petitioner had failed to establish that the proffered position was a specialty occupation. The director found that, contrary to the assertions of the petitioner and counsel, the proffered position was more akin to the occupation of a Computer Support Specialist and System Administrator than to the claimed occupation of Computer Systems Engineer/Architect.

On appeal, counsel contends that the director's findings were erroneous and argues that the description of duties of the proffered position equates to those of a computer systems engineer. Counsel submits an expert opinion evaluation from , in support of this contention.

In reviewing the record, the AAO observes that 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 make its determination as to whether the employment described above qualifies as a specialty occupation, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Factors considered by the AAO when determining this criterion include whether the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty.

The petitioner claims that the proffered position is that of a computer systems engineer/architect. The director, however, concluded that the proffered position was actually that of a computer support specialist. To determine whether the duties of the proffered position support the petitioner's characterization of its proposed employment, the AAO first turns to the 2010-2011 online edition of the *Handbook* for its discussion of computer support specialists. As stated by the *Handbook*, this occupational category is described as follows:

Computer support specialists provide technical assistance, support, and advice to individuals and organizations that depend on information technology. They work within organizations that use computer systems, for computer hardware or software vendors, or for third-party organizations that provide support services on a contract basis, such as help-desk service firms. Support specialists are usually differentiated between *technical support specialists* and *help-desk technicians*.

Technical support specialists respond to inquiries from their organizations' computer users and may run automatic diagnostics programs to resolve problems. In addition, they may write training manuals and train computer users in the use of new computer hardware and software. These workers also oversee the daily performance of their company's computer systems, resolving technical problems with Local Area Networks (LAN), Wide Area Networks (WAN), and other systems.

Help-desk technicians respond to telephone calls and e-mail messages from customers looking for help with computer problems. In responding to these inquiries, help-desk technicians must listen carefully to the customer, ask questions to diagnose the nature of the problem, and then patiently walk the customer through the problem-solving steps. They also install, modify, clean, and repair computer hardware and software. Many computer support specialists start out at the help desk.

Help-desk technicians deal directly with customer issues, and their employers value them as a source of feedback on their products and services. They are consulted for information about what gives customers the most trouble, as well as other customer concerns.

Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos306.htm> (last accessed June 28, 2011).

The director concluded that this occupational category was most akin to that of the proffered position, yet did not state the basis upon which this conclusion was based. Instead, the director merely presented the relevant parts of the *Handbook's* description of this occupational category and concluded that, since a bachelor's degree in a specific specialty was not required for this occupation, the proffered position was not a specialty occupation.

Upon review, the AAO disagrees with the director's conclusions. While the record indicates that the beneficiary would be responsible for all IT related tasks, including troubleshooting, installation of software and hardware, and responding to end-user help desk requests, the record also indicates that, in addition to providing technical support, the beneficiary will be responsible for software development, identifying components to meet user needs, and recommending new hardware and software to expand and/or support existing systems. These duties, which comprise the majority of the duties of the proffered position, are directly akin to those of computer systems analysts as contended by counsel on appeal. Specifically, the *Handbook's* section pertaining to this occupational category states as follows:

Nearly all organizations rely on computer and information technology (IT) to conduct business and operate efficiently. *Computer systems analysts* use IT tools to help enterprises of all sizes achieve their goals. They may design and develop new computer systems by choosing and configuring hardware and software, or they may devise ways to apply existing systems' resources to additional tasks.

Most systems analysts work with specific types of computer systems—for example, business, accounting, and financial systems or scientific and engineering systems—that vary with the kind of organization. Analysts who specialize in helping an organization select the proper system hardware and software are often called *system architects* or *system designers*. Analysts who specialize in developing and fine-tuning systems often have the more general title of *systems analysts*.

To begin an assignment, systems analysts consult with an organization's managers and users to define the goals of the system and then design a system to meet those goals. They specify the inputs that the system will access, decide how the inputs will be processed, and format the output to meet users' needs. Analysts use techniques such as structured analysis, data modeling, information engineering, mathematical model building, sampling, and a variety of accounting principles to ensure their plans are efficient and complete. They also may prepare cost-benefit and return-on-

investment analyses to help management decide whether implementing the proposed technology would be financially feasible.

When a system is approved, systems analysts oversee the implementation of the required hardware and software components. They coordinate tests and observe the initial use of the system to ensure that it performs as planned. They prepare specifications, flow charts, and process diagrams for computer programmers to follow; then they work with programmers to “debug,” or eliminate errors, from the system. Systems analysts who do more in-depth testing may be called *software quality assurance analysts*. In addition to running tests, these workers diagnose problems, recommend solutions, and determine whether program requirements have been met. After the system has been implemented, tested, and debugged, computer systems analysts may train its users and write instruction manuals.

Handbook, 2010-11 ed., available at <http://www.bls.gov/oco/ocos287.htm> (last accessed June 28, 2011).

The AAO takes particular note of the following sentence: “Analysts who specialize in helping an organization select the proper system hardware and software are often called *system architects* or *system designers*.” *Id.* Noting that the proffered position is jointly titled as a computer systems engineer and *architect* by the petitioner, and noting that the duties of the proffered position require the beneficiary to identify user needs and make recommendations regarding system hardware and software, it appears that the proffered position is most akin to the class of occupations described under the heading of computer systems analysts.

Consequently, while the AAO agrees with counsel’s assertions on appeal regarding the occupational classification of the proffered position, the occupations included under the classification of computer systems analysts do not comprise an occupational group which categorically includes only positions that normally require a baccalaureate or higher degree, or its equivalent, in a specific specialty. Thus, the proffered position’s inclusion within this group is not sufficient in itself to establish the position as a specialty occupation by application of the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). In this regard, the *Handbook’s* section pertaining to the educational requirements for computer systems analysts states:

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.

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. 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 areas 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.

Handbook, 2010-11 ed., available at <http://www.bls.gov/oco/ocos306.htm> (last accessed June 28, 2011).

The *Handbook* does not indicate that a bachelor's degree or higher in a specific specialty or its equivalent is the normal minimum requirement for entry into the position. While the *Handbook* indicates that a bachelor's degree is preferred by many employers, no specific specialty is identified as the area in which the degree must be obtained. *See id.* Therefore, while the AAO concurs with counsel's contention on appeal that the proffered position should be classified under the heading of computer systems analysts, the proffered position is not considered a specialty occupation according to the *Handbook*. *See id.*

When a job, like that of a computer systems analyst, can be performed by a range of degrees, without further specification, the position does not qualify as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of 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. USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(A)(1) to require a degree in a specific specialty that is directly related to the proffered position. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558.

On appeal, counsel submits an expert evaluation from [REDACTED] in support of the contention that the proffered position is a specialty occupation. [REDACTED] concludes that the duties of the proffered position require the incumbent to possess at least a bachelor's degree in computer science or a related field. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). In this matter, [REDACTED] fails to specifically discuss the basis for his conclusion that the proffered position requires a bachelor's degree or its equivalent in computer science, which is significant since the statistics-based information in the *Handbook* indicates that a variety of degrees in technical fields such as physical sciences and applied

mathematics would qualify an individual to perform the duties associated with positions in this occupational category. Moreover, the *Handbook* indicates that such degrees are only a preference, not a minimum entry requirement for the occupation. Consequently, the AAO affords little to no weight to this evaluation.

The petitioner has therefore failed to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the position of a computer systems engineer/architect as described in the record of proceeding. Accordingly, the petitioner has not established the 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). This prong alternatively requires a petitioner to establish that at least a bachelor's degree in a specific specialty or its equivalent is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner. Factors often considered by USCIS when determining the industry standard include: whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The petitioner submits no evidence to demonstrate that that a bachelor's or higher degree in a specific specialty or its equivalent is common to the petitioner's industry in positions that are parallel to the proffered position and located in organizations that are similar to the petitioner. Therefore, the petitioner has failed to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may submit evidence to establish that the duties of the position are so complex or unique that only an individual with at least a bachelor's degree in a specific specialty or its equivalent can perform the duties associated with the position. The AAO observes that the petitioner has indicated that the beneficiary's educational background and experience in the industry will assist him in carrying out the duties of the proffered position; however, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. The petitioner does not explain or clarify which of the duties, if any, of the proffered position are so complex or unique as to be distinguishable from those of similar but non-baccalaureate, non-specialty employment. The petitioner has thus failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position. In response to the RFE, counsel claims that the petitioner's company has grown over the past 35 years and, in order to maintain both internal and external software and network

operations, it requires a full-time computer systems engineer/architect. Counsel submits a letter dated June 15, 2009 from [REDACTED] for the petitioner, which states that [REDACTED] has hired degreed computer programmers for the purpose of managing our I.T. related functions in the past.” He further states that the “gentleman” who held the position prior to the beneficiary held a bachelor’s degree from a school in Zacatecas, Mexico. However, neither counsel nor the petitioner provided any evidence to support these contentions. Moreover, there is no indication that the prior gentleman’s degree was in a specific specialty related to the proffered position. 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)).

The record, therefore, does not document that the duties of the proffered position require a baccalaureate or higher level of education to perform them. The AAO notes that while a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree in a specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. The duties of the position described encompass routine duties associated with computer systems analysis. While the petitioner claims that the duties of the proffered position are sufficiently complex, the record does not contain explanations or clarifying data sufficient to elevate the position to one that is so specialized and complex that the knowledge to perform these additional tasks is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The AAO notes that the duties as described in the record of proceeding are broad and numerous and appear to span a variety of computer functions, including technology support duties as noted by the director. The AAO finds that, to the extent that they are described, the duties do not convey either the need for the beneficiary to apply a particular body of highly specialized knowledge in a specific specialty, or a usual association between such knowledge and the attainment of a particular educational level in a specific specialty. As the petitioner has not established that the proffered position’s specific duties require the application of specialized and complex knowledge usually associated with the attainment of a baccalaureate or higher degree in a specific discipline or its equivalent, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Based on the record of proceeding, the AAO determines that the petitioner has not established that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.