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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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MAR 06 2012

Date:

Office: VERMONT 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
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.

On the Form I-129 visa petition the petitioner stated that it is a pharmacy. To employ the beneficiary in what it designates as a computer programmer analyst position, 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, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements. In support of these contentions, counsel submitted a brief and additional evidence.

The AAO bases its decision upon its review of the entire record of proceedings, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief and attached exhibits in support of the appeal.

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. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would be employing the beneficiary in a specialty occupation position.

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 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, 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 a particular position 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.

With the visa petition, counsel submitted a letter, dated February 6, 2009, from the petitioner's vice president. That letter states the duties of the proffered position as follows:

[The beneficiary] will develop customized M.A.R. (Medication Administration Records), sales tracking, sample tracking and marketing systems. Working with Surescripts, ProxyMed, WebMD and RxNT to establish a secure electronic communications network with physicians to safely exchange prescription information. Maintaining QS/1's on demand software-as-a-service (SaaS) and QS/1's prescription processing claims switch which processes all prescription claims to Medicare, Medicaid and all other insurance companies.

The petitioner's president did not, in that letter, assert that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty. The petitioner's vice president did not demonstrate that the proffered position qualifies as a position in a specialty occupation by virtue of those duties requiring a minimum of a bachelor's degree or the equivalent in a specific specialty closely related to those duties. The petitioner provided no other indication with the visa petition that the proffered position qualifies as a specialty occupation by virtue of the beneficiary's duties requiring a minimum of a bachelor's degree or the equivalent in a specific specialty.

On March 5, 2009 the service center, issued an RFE in this matter. As to the proffered position, the service center requested, *inter alia*, (1) documentation demonstrating that the petitioner's business enterprise requires the services of an employee with a minimum of a bachelor's degree or the equivalent in a specific specialty in the proffered position; and (2) a more detailed description of the duties of the proffered position. The service center further requested the petitioner to explain why, if it had never required an employee to fill the proffered position in the past, it requires one now, or, if it had employed people in the proffered position in the past, it enumerate them, state which ones had a minimum of a bachelor's degree or the equivalent in a specific specialty directly related to the position, and provide evidence pertinent to those degrees or equivalents.

In response, counsel submitted another letter, dated March 16, 2009, from the petitioner's vice president. The petitioner's vice president stated that the proffered position is a new position, and the petitioner has never employed anyone else in the position, but that during 2008 the petitioner filled an average of 2,200 to 2,400 prescriptions per week, and that the petitioner is obliged to migrate to new software to accommodate that volume. The petitioner's president did not state how many prescriptions it had previously filled, for which its previous software was apparently adequate.

The vice president further stated that it required an in-house employee to maintain and upgrade its website, because, although it had previously outsourced that work, customers are using its website more and more to order medicine, check order status, and shop. The vice president did not explain how increased web volume precludes continuing to outsource that work. The vice president further stated that, because the proffered position requires a strong background in mathematics, science,

engineering, or computer science, the proffered position requires a bachelor's degree in one of those fields.

The petitioner also provided the following revised description of the duties of the proffered position:

QS/1 NRx Data Systems (40%)

- Write Data Conversion Scripts
- Map the Data Elements and migrate the data from Freedom Data System to QS1 Data System
- Design the custom Graphical User Interface (GUI) screen for each application.
- Design and develop custom reports, queries, and filters.
- Fix programmatically day to day insurance billing issues

DELL PowerEdge 2900 Server: (30%)

- Install Windows Server®2003, Standard Edition operating system.
- Install Anti-Virus Software
- Hard Drive Configuration: Configure Hard Drive by Integrated SAS/SATA RAID 5, PERC 5/I controller.
- Backup Configuration: Configure Removable Disk (RD1000) and Tape Backup
- OS Partitions: Configure OS Partitioning which allows to divide the hard drive into isolated sections
- Ethernet: Install Dual Embedded Broadcom® NetXtreme II 5708 Gigabit Ethernet NIC
- Performance tuning of QS1 Data System environment and database. Provide system Backup Recovery Strategy and Resource Management

Enhancement functionalities: (20%)

- NRx Enhancement,
- PrimeCare Enhancement,
- SIGIS Update,
- IVR/QDM/WebRx System,
- Workflow/Autofill,
- RxCare Plus Enhancements,
- SystemOne Enhancements,
- Point-of-Sale,
- Handheld Units, and
- Multi-site Management (MSM).

Networking: (10%)

- Installs and maintains computer systems or other infrastructure; provides technical support.
- Interprets and resolves software errors and develops software utilities. Performs systems analysis.
- Installs, configures, manages and troubleshoots the LAN communication equipment for networked facilities.
- Identifies and resolves technical, functional and user problems. The LAN Specialist provides the overall network and end-user support to include:
- Setup, maintenance and administration of LAN, desktop & portable PCs, file & backup server computer systems hardware, peripherals, software, Email, and User accounts.

As illustrated by the excerpt language above, and by this decision's earlier quotation from counsel's letter of February 6, 2009, the petitioner describes the proffered position in terms of generic functions and related, but only generally referenced, computer systems, servers, operations and applications. The AAO finds that information does not convey a necessary correlation between the proffered position and a particular minimum level of formal education, or the equivalent, in a specific specialty.

The director denied the visa petition on April 15, 2009 finding, as was noted above, that the petitioner had failed to demonstrate that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty closely related to its duties.

With the appeal, counsel submitted an evaluation of the proffered position by an associate professor of computer science at Nova Southeastern University in Fort Lauderdale, Florida. Based on the description of the duties of the proffered position posited by the petitioner's vice president, the associate professor stated:

Only a person with at least a Bachelor's degree in a relevant field, or more specifically with a Bachelor degree in Computer Science or in Computer Information Systems, has the necessary knowledge, specialization, and skills to hold this position.

The associate professor further stated that this requirement would apply to such a position with either a small or medium-size firm.

The record contains vacancy announcements, some of which were submitted in response to the RFE and some of which were submitted on appeal.

One of those vacancy announcements is for a Software Systems Analyst to work at the University of Maryland's College Park campus. The AAO notes that the University of Maryland is a large university system. That announcement states that the position requires a bachelor's degree in Information Systems Management or a related field.

Another vacancy announcement was placed by a job placement service and is for a Systems Analyst to work under contract in Cincinnati, Ohio for an unidentified end-user in an unidentified industry. The size of that unidentified end-user is unknown to the AAO. That announcement states that the position requires a bachelor's degree in Computer Science or a related field.

Another announcement was placed by Poudre Valley Health System of Ft. Collins, Colorado for a Systems Analyst – Information Services. The size of that health system is unknown to the AAO. That announcement states that the position requires a bachelor's degree related to Information Services or "functional area of support."

Another vacancy announcement is for a Pharmacy Information System Application Analyst to work at the Kenmore Mercy Hospital in Kenmore, New York. Although the size of that institution is unstated, the announcement indicates that the position would support pharmacy information systems and related applications in several different facilities, which suggests that it is a larger organization than the petitioner. That announcement states that the position requires a bachelor's degree in computer science, business, or a related field.

Another announcement was placed by MultiCare Health System of Tacoma, Washington, for a System Administrator III. The size of that health care company is unknown to the AAO. That announcement states, "Bachelor's degree in business, healthcare, or Information Technology preferred," but not that any such degree is required.

Another vacancy announcement was placed by Meijer, a very large retailer, for a Systems Coordinator – IT/E Commerce Department, to work at its Grand Rapids, Michigan headquarters location. That announcement states that the position requires a bachelor's degree in computer science.

Another announcement was placed by Axelon Services for a LAN Administrator/Web Administrator to work in one of several listed New York locations. The size of Axelon Services is unknown to the AAO, as is its industry. That announcement states that the position requires a bachelor's degree, but not that the degree must be in any specific specialty.

Another vacancy announcement was placed by Synacor of Buffalo, New York for a Systems Administrator. The size of Synacor is unknown to the AAO, as is its industry. That announcement states, "Bachelor's Degree in Computer Science or related field preferred," but not that such a degree is required.

Another announcement appears to have been placed by Walgreen for a Lead Programmer Analyst to work at its Lincolnshire, Illinois distribution center. The AAO notes that Walgreen is a large

retailer. That announcement states that the position requires a bachelor's degree in computer science or information systems.

The last vacancy announcement was placed by Prosoftgroup LLC for a Systems Administrator to work at its Menomonee Falls, Wisconsin location. The size of Prosoftgroup is unknown to the AAO. The industry of that organization is also unknown to the AAO, although its name suggests that its industry is related to software development. That announcement states that the position requires a bachelor's degree, but not that the degree must be in any specific specialty closely related to the position's duties.

With the appeal, counsel also provided copies of two vacancy announcements placed by the petitioner itself, ostensibly in an attempt to fill the proffered position. One of those advertisements states that the position requires a bachelor's degree in computer science or engineering. The other states that the position requires a bachelor's degree, but not that it must be in any specific specialty or group of specialties.

In a brief submitted on appeal, counsel argued that the associate professor's letter and the vacancy announcements demonstrate that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty and qualifies as a position in a specialty occupation.

The AAO observes, initially, that in his March 16, 2009 letter, the petitioner's vice president stated that the proffered position requires a bachelor's degree in mathematics, science, engineering, or computer science. Mathematics, science, engineering, or computer science does not constitute a specific specialty. If a degree in any one of those fields fulfills the educational requirement of the proffered position, then the proffered position is clearly not a position in a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the alleged requirement of a degree in any one of four disparate fields does not establish the position as a specialty occupation. *See* § 214(i)(1) of the Act (requiring in pertinent part the "application of *a* body of highly specialized knowledge" and "attainment of a bachelor's or higher degree in *the* specific specialty" (emphasis added)); *cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of *a* body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in one specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in the specific specialty or its equivalent that is directly related to the proposed position.

Again, the petitioner's vice president asserted that the duties of the proffered position can be performed by an individual with a bachelor's degree in mathematics, science, engineering, or computer science. As these four dissimilar fields of study fail to delineate a specific specialty or its equivalent, this assertion is tantamount to an admission that the proffered position is not in fact a

specialty occupation. Therefore, the director's decision could be affirmed and the petition denied on this basis alone.

However, notwithstanding that the vice president's letter demonstrated, at the outset, that the visa petition must be denied, the AAO will continue its analysis of the specialty occupation issue, in order to identify other evidentiary deficiencies that preclude approval of this petition.

The AAO will now discuss the application of the various criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

We will first address the supplemental, alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is satisfied if the petitioner demonstrates that the normal minimum entry requirement for the proffered position is a bachelor's or higher degree in a specific specialty or its equivalent. In this instance, the petitioner may be able to meet this criterion by establishing (1) the occupational classification under which the proffered position should be classified and (2) providing evidence that the *Handbook* supports the conclusion that this occupational classification normally requires a bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation in the United States.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹ The *Handbook* addresses the duties of programmer analysts in the section entitled Computer Systems Analysts. The description of the duties of a programmer analyst in that section is consistent with the descriptions provided of the duties of the proffered position. The *Handbook* describes the educational requirements of those positions as follows:

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.

That employers usually prefer applicants with bachelor's degrees does not indicate that a bachelor's degree is normally a minimum requirement for such positions, and that passage further does not

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2010 – 2011 edition available online, accessed December 27, 2011.

indicate that such positions require, or even necessitate a preference for, a minimum of a bachelor's degree or the equivalent *in a specific specialty* related to the duties of the position.

Neither the *Handbook* nor any of the evidence submitted demonstrates that programmer analyst positions categorically require a minimum of a bachelor's degree or the equivalent in a specific specialty. Accordingly, inclusion of the proffered position in the programmer analyst occupational category is not sufficient to establish that position as a specialty occupation position. Therefore, the petitioner has not demonstrated that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of 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 a bachelor's degree, in a specific specialty, 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.

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)).

As was observed above, the *Handbook* provides no support for the proposition that the petitioner's industry, or any other, requires programmer analysts to possess a minimum of a bachelor's degree or the equivalent in a specific specialty. The record contains no evidence pertinent to a professional association of programmer analysts that requires a minimum of a bachelor's degree or the equivalent in a specific specialty as a condition of entry. The record contains no letters or affidavits from others in the petitioner's industry.

As to the vacancy announcements provided, some were placed by organizations in other industries. Further, some of the organizations that placed those vacancy announcements appear to be very different from the petitioner in size. Some of the vacancy announcements do not require a bachelor's degree, and of those who do, some do not require that the degree be in any specific specialty. None of the vacancy announcements provided has been demonstrated to have been placed by an organization that is in the petitioner's industry and otherwise similar to the petitioner for a position parallel to the proffered position and to require a minimum of a bachelor's degree or the equivalent in computer science or in any other specific specialty closely related to the proffered position.

Further, even if all ten of those announcements were for parallel positions with similar organizations in the petitioner's industry, which they are not, and required a minimum of a bachelor's degree or

the equivalent in computer science or some other specific specialty closely related to the duties of the positions announced, which they do not, they would still not demonstrate an industry-wide requirement of a minimum of a bachelor's degree or the equivalent in a specific specialty, as ten vacancy announcements would be insufficient for that purpose.²

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of the first clause of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner demonstrates that, notwithstanding that other programmer analyst positions in the petitioner's industry may not require a minimum of a bachelor's degree or the equivalent in a specific specialty, the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with such a degree.

The descriptions provided of the duties of the proffered position do not support the proposition that the proffered position is so complex or unique that the knowledge it requires can only be performed by a person with a minimum of a bachelor's degree or the equivalent in a specific specialty.

The petitioner has provided no evidence to establish that developing customized M.A.R., sales tracking, sample tracking and marketing systems; working with Surescripts, ProxyMed, WebMD and RxNT; maintaining QS/1's on demand software-as-a-service (SaaS) and QS/1's prescription processing claims switch, etc., are so complex and unique that they require knowledge associated with a minimum of a bachelor's degree or the equivalent in a specific specialty, especially when compared to the duties of other programmer analyst positions, some of which, the *Handbook* indicates, may not require a specialized degree or the equivalent.

² Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from less than a dozen job postings with regard to determining the common educational requirements for entry into parallel positions in similar religious organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of director of religious activities and education for a two-person religious organization required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

The petitioner has not demonstrated that the particular position proffered is so complex or unique that it can be performed only by an individual with a degree; and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, the AAO will address the alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which is satisfied if the petitioner demonstrates that it normally requires a degree or its equivalent for the position.

One of the announcements of the proffered position placed by the petitioner indicates that it requires a bachelor's degree, but not that the degree must be in any specific field. That is not evidence that the proffered position qualifies as a position in a specialty occupation. The other announcement indicates that the proffered position requires a degree in computer science or engineering.

That an engineering degree, without further specification, would be a sufficient educational qualification for the proffered position demonstrates that it is not a position in a specialty occupation. This is true because the field of engineering is a very broad category that covers numerous and various disciplines, some of which are only related through the basic principles of science and mathematics, e.g., petroleum engineering and aerospace engineering. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or engineering, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

Again, 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. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

The petitioner's own vacancy announcements do not support the proposition that the proffered position qualifies as a specialty occupation by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty closely related to the duties of the position. Further, the petitioner's vice president admitted, in his March 16, 2009 letter, that the proffered position is a new position and petitioner has never previously employed anyone in that position other than the beneficiary. The petitioner has not, therefore demonstrated that the proffered position qualifies as a position in a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO will address the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner demonstrates that 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, or its equivalent.

However, the petitioner has relied upon statements of duties with no indication of inherent educational requirements.

Writing data conversion scripts, mapping data elements, migrating data from one system to another, designing custom GUI screens for applications, installing software, configuring hard drives, installing Ethernet, NRx Enhancement, PrimeCare Enhancement, SIGIS Updates, etc., require esoteric knowledge. Those duties contain no indication, however, that they require any particular level of education.

Counsel provided the associate professor's April 27, 2009 evaluation to support the proposition that the proffered position requires a bachelor's degree in computer science. However, the record of proceeding contains no evidence supporting the professor's uncorroborated assertion that her educational, research, and professional background has accorded her expertise in determining the educational requirements for the particular position that is the subject of this petition.

The record does not demonstrate that the associate professor has observed the petitioner's business operations and its computer systems, or the extent to which the migration and other duties would require innovative programming and analysis, rather than mere computer technician duties. Further, the professor described the beneficiary's duties in terms that reveal nothing substantive about the actual work that the beneficiary would perform within the context of this particular petitioner's business; and the professor does not demonstrate knowledge of the petitioner's particular business operations. She does not relate any personal observations of those operations or of the work that the beneficiary would perform, nor does she state that she has reviewed any projects or work products related to the proffered position. Although she stated that the duties of the proffered position require a bachelor's degree in computer science, she did not state which of those duties could not be performed by a computer technician with less than a bachelor's degree in computer science.

Further, the associate professor's opinions are conclusory: she does not cite studies, treatises, surveys, or any other factual basis for them, but only her own asserted expertise. The associate professor's conclusory opinion is not as reliable or compelling as the *Handbook's* information which is based upon the DOL's extensive labor market research. USCIS 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, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The petitioner has not demonstrated that 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. The petitioner has not, therefore, demonstrated that the proffered

position qualifies as a position in a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO finds that the director was correct in his determination that the record before him failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds that the evidence and argument submitted on appeal have not remedied that failure. Accordingly, the appeal will be dismissed and the petition denied on this basis.

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. The appeal will be dismissed and the petition denied.

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