

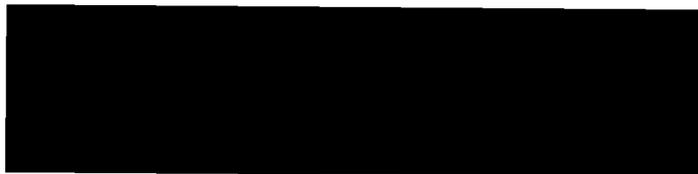
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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

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Date: **MAR 07 2012** 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 service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner states that it is a financial services company with 102 employees and a gross annual income of \$736,456. It seeks to employ the beneficiary as a computer software programmer and to classify her 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 the grounds that the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation.

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

The primary issue for consideration is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment 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 regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

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 [(2)] which 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, a proposed 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.

In the petitioner’s support letter dated March 12, 2010, the petitioner states that the beneficiary will work as a computer software programmer. As stated by the petitioner, the proffered position’s duties would require the beneficiary to:

- Code, test and troubleshoot programs utilizing the appropriate hardware, database and

- programming technology;
- Write new program code using prescribed specifications;
- Write and maintain programming documentation;
- Analyze performance of programs and take action to correct deficiencies based on consultation with users and approval of supervisor;
- Refine data and format final product;
- Maintain and modify programs, make approved changes by amending flow charts, develop detailed programming logic, and coding changes;
- Test and develop programming modifications;
- Evaluate simple inter-relationships between programs such as whether a contemplated change in one part of a program would cause unwanted results in a related part;
- Document programming problems and resolutions for future reference;
- Confer with users to gain understanding of needed changes or modifications of existing programs;
- Resolve questions of program intent, data input, output requirements, and inclusion of internal checks and controls;
- Analyze NT client/server and micro-computer based software resolutions compatibility with company requirements;
- Maintain confidentiality with regard to the information being processed, stored or accessed;
- Assist personnel of other departments as a computer resource;
- Get backup from database and ability to restore it; and
- Get backup from attached files and source files.

The petitioner also states that the minimum requirement for the proffered position is a bachelor's degree or foreign equivalent in software or computer engineering, or a related field.

The petitioner submitted copies of the beneficiary's foreign bachelor's degree and college transcripts, as well as a credential evaluation indicating that the beneficiary possesses the equivalent of a U.S. bachelor's degree in computer engineering.

On May 25, 2010, the director issued an RFE requesting the petitioner to submit, *inter alia*, (1) a more detailed description of the work to be performed by the beneficiary; (2) a line-and-block organizational chart showing the petitioner's hierarchy and staffing levels; (3) job listings or advertisements evidencing that the need for the proffered position is regularly required by similarly sized businesses with similar annual incomes; and (4) evidence to establish that the petitioner has a past practice of hiring persons with a baccalaureate or higher degree in a specific specialty to perform the duties of the proffered position.

In response to the director's RFE, the petitioner broke down the day-to-day responsibilities of the proffered position as follows:

- 20% = Use analytical skills to understand and interpret business processes, object and process models[,] and troubleshoot/maintain existing applications
- 20% = Build and/or maintain interfaces to third party components or other systems
- 10% = Create and executes [sic] unit test plans
- 10% = Ensure applications are constructed using standardized methodologies and coded

to meet high-availability, fault-tolerant requirements, leveraging best-practice techniques to deliver high-quality products and services for cross-functional information technology projects

- 5% = Analyze performance of programs and applications
- 5% = Develop high-quality business applications and application interfaces
- 5% = Code, test and troubleshoot programs utilizing the appropriate hardware, database and programming technology
- 5% = Develop and test programming modifications
- 5% = Repair, modify and expand existing programs
- 5% = Assist in the creation of technical specifications using formalized development methodologies
- 5% = Effectively assess, evaluate, mitigate, manage, and communicate risks throughout the life cycle of projects
- 5% = Participate with cross-functional teams for strategic planning

In addition, counsel for the petitioner claimed that the Online Wage Library – FLC Wage Search Results, the Occupational Information Network (hereinafter *O*NET*), and the U.S. Department of Labor’s (DOL’s) *Occupational Outlook Handbook* (hereinafter the *Handbook*) demonstrate that a bachelor’s degree is common for computer programmers such as the proffered position. Counsel also submitted 10 job vacancy advertisements.

The director denied the petition on July 12, 2010.

On appeal, counsel for the petitioner argues that the petitioner satisfied more than one of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore has established that the proffered position is a specialty occupation. Counsel claims that most computer programmer positions are specialty occupations and cites the legacy U.S. Immigration and Naturalization Services (INS) memorandum from the Nebraska Service Center Director, Terry Way, and *Matter of Precision Programming, Inc.*, EAC 90 202 51006 (AAU April 22, 1993). Counsel further claims that prior to the creation of the proffered position, the petitioner only hired independent contractors or consultants that had at a minimum a bachelor’s degree in computer programming or computer science.

In addition, for the first time on appeal, counsel contends that the beneficiary has additional duties and indicates that the beneficiary will work on the petitioner’s Client Accounting Efficiency Project and Debt Manager Software Project. Counsel submits the beneficiary’s duties for the Client Accounting Efficiency Project.

The AAO notes that no mention of these projects was made prior to the adjudication of the petition despite the director’s request for a more detailed description of the work to be performed by the beneficiary for the entire requested period of validity in the RFE.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(8) and (12). The failure to submit requested

evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted it in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the previously requested evidence submitted for the first time on appeal.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO first turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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 will first address the legacy INS memorandum from the Nebraska Service Center Director cited by counsel.¹ Counsel indicates that the legacy INS memorandum states that past unpublished decisions of the AAO have generally held that where the position of programmer involves providing clients with customized analysis and problem resolution to unique problems,

¹ It is noted that the legacy memorandum cited by counsel does not bear a "P" designation. According to the Adjudicator's Field Manual (AFM) § 3.4, "correspondence is advisory in nature, intended only to convey the author's point of view. . . ." AFM § 3.4 goes on to note that examples of correspondence include letters, memoranda not bearing the "P" designation, unpublished AAO decisions, USCIS and DHS General Counsel Opinions, et cetera.

Furthermore, USCIS memoranda merely articulate internal guidelines for USCIS personnel; they do not establish judicially enforceable rights. An agency's internal personnel guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely." *Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000) (quoting *Fano v. O'Neill*, 806 F.2d 1262, 1264 (5th Cir. 1987)).

Finally, the Nebraska Service Center no longer adjudicates H-1B petitions. Therefore, the memorandum is not followed by any USCIS officers even as a matter of internal, service center guidance.

the position would require a person with at least a baccalaureate degree in computer science. The AAO finds that there is no evidence in the record to support this statement. Counsel cites *Matter of Precision Programming, Inc.*, EAC 92 202 51006 (AAU April 22, 1993) as an example of such a decision from the AAO. However, counsel does not submit a copy of *Matter of Precision Programming, Inc.* with its brief and, as such, there is no evidence that the facts of the instant petition are analogous to those in the unpublished decision. More importantly, however, *Matter of Precision Programming, Inc.* is not a precedent decision. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Counsel further points out that the memorandum states:

In accordance with the above guidelines and in light of the fact that in 1998, 60% of the universe of programmers had a bachelor's degree or higher, we will generally consider the position of programmer to qualify as a specialty occupation. This will especially be true if the position involves providing clients with programming analysis, custom designs, modification, and/or problem solving of software. Positions such as these are usually associated with consulting firms.

There are several issues with this statement. For instance, according to the 2000-2001 edition of the *Handbook*, it is actually 58.7% of programmers that had a bachelor's degree or higher in 1998. This does not indicate that a bachelor's or higher degree is a normal minimum entry requirement for computer programmer positions. It only indicates that "most" or the "majority" of programmers have a bachelor's degree or higher. However, "most" is not indicative that a computer programmer position normally requires at least a bachelor's degree, or its equivalent, in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)), or that a computer programmer position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)).² More importantly, however, the statement does not indicate that the programmers had a bachelor's degree or higher in a *specific specialty*. Therefore, the memorandum fails to demonstrate how computer programmer positions, such as the one proffered here qualifies as a specialty occupation based on the plain language of the statutory and regulatory definition of that term, necessitating in part that the proffered position have a

² The first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of computer programmer positions require at least a bachelor's degree in computer science or a closely related field, it could be said that "most" computer programmer positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist.

minimum entry requirement of a U.S. bachelor's or higher degree *in a specific specialty*. See section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii).

The AAO will now look at the *Handbook*, an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³ The AAO finds that the duties described by the petitioner reflect the duties of a computer programmer, and not a computer support specialist as indicated by the director. The “Computer Software Engineers and Computer Programmers” chapter at the 2010-2011 edition of the *Handbook* describes the duties of a computer programmer, in part, as follows:

Computer programmers write programs. After computer software engineers and systems analysts design software programs, the programmer converts that design into a logical series of instructions that the computer can follow. The programmer codes these instructions in any of a number of programming languages, depending on the need. The most common languages are C++ and Python.

Computer programmers also update, repair, modify, and expand existing programs. Some, especially those working on large projects that involve many programmers, use computer-assisted software engineering (CASE) tools to automate much of the coding process. These tools enable a programmer to concentrate on writing the unique parts of a program. Programmers working on smaller projects often use “programmer environments,” applications that increase productivity by combining compiling, code walk-through, code generation, test data generation, and debugging functions. Programmers also use libraries of basic code that can be modified or customized for a specific application. This approach yields more reliable and consistent programs and increases programmers' productivity by eliminating some routine steps.

As software design has continued to advance, and some programming functions have become automated, programmers have begun to assume some of the responsibilities that were once performed only by software engineers. As a result, some computer programmers now assist software engineers in identifying user needs and designing certain parts of computer programs, as well as other functions.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 Ed., at <http://www.bls.gov/oco/ocos303.htm> (accessed Feb. 22, 2012). Under the section on “Training, Other Qualifications, and Advancement,” the *Handbook* states that:

A bachelor's degree commonly is required for software engineering jobs,

³ 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.

although a master's degree is preferred for some positions. A bachelor's degree also is required for many computer programming jobs, although a 2-year degree or certificate may be adequate in some cases. Employers favor applicants who already have relevant skills and experience. Workers who keep up to date with the latest technology usually have good opportunities for advancement.

* * *

Many programmers require a bachelor's degree, but a 2-year degree or certificate may be adequate for some positions. 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.

Id. Because the *Handbook* indicates that working as a computer programmer does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation, the *Handbook* does not support the proffered position as being a specialty occupation.

The AAO notes that the *O*NET* Summary Report for 15-1021.00 – Computer Programmers, referenced in the FLC Data Center's Online Wage Library (OWL) cited by counsel in response to the RFE, is also insufficient to establish that the position qualifies as a specialty occupation normally requiring at least a bachelor's degree in computer science or its equivalent. A designation of Job Zone 4 -- Education and Training Code: 5 indicates that a position requires considerable preparation. It does not, however, demonstrate that a bachelor's degree in any specific specialty is required, and does not, therefore, demonstrate that a position so designated qualifies as a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). More specifically, the OWL statement is a condensed version of what the O*Net actually states about its Job Zone 4 designation. See the *O*NET* Online Help Center, at <http://www.onetonline.org/help/online/zones> (explaining that Job Zone 4 signifies only that *most* but not all of the occupations within it require a bachelor's degree). Further, the Help Center's discussion confirms that Job Zone 4 does not indicate any requirements for particular majors or academic concentrations. Therefore, despite counsel's assertions to the contrary, the OWL and *O*NET* information is not probative of the proffered position qualifying as a specialty occupation.

As the evidence of record does not establish that the particular position here proffered is one 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 petitioner has not satisfied 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 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.

As stated earlier, 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions. Finally, for the reasons discussed in greater detail below, the petitioner's reliance upon the job vacancy advertisements is misplaced.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner submitted copies of 10 advertisements as evidence that its degree requirement is standard amongst its peer organizations for parallel positions in the financial services industry. The advertisements provided, however, establish at best that a bachelor's degree is generally required for most of the positions posted, but a bachelor's degree or the equivalent in a *specific specialty* is not. In addition, even if all of the job postings indicated that a bachelor's or higher degree in a specific specialty or its equivalent were required, the petitioner fails to establish that the submitted advertisements are relevant in that the posted job announcements are not for parallel positions in similar organizations in the same industry. For instance, seven of the advertisements are for positions in different industries and dissimilar organizations and, thus, they cannot be found to be parallel positions. Moreover, while two of the advertisements are for positions in the financial services industry, they appear to be for a large multi-million company and, therefore, they cannot be found to be parallel positions in similar organizations. As a result, the petitioner has not established that similar companies in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.⁴

⁴ 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 just 10 job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar financial services companies. *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 computer programmer

Furthermore, the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of computer programmer. As such, 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."

Specifically, even though the petitioner and its counsel claim that the proffered position's duties are so complex and unique that a bachelor's degree is required, the petitioner failed to demonstrate how the computer programmer's duties, as described, require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it claims are so complex and unique. While one or two courses in programming may be beneficial in performing certain duties of a computer programmer position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree or its equivalent in computer science, or a closely related field are required to perform the duties of the particular position here proffered.

Therefore, the evidence of record does not establish that this position is significantly different from other computer programmer positions such that it refutes the *Handbook's* information to the effect that a bachelor's degree is not required in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than computer programmer positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. Consequently, as the petitioner fails to demonstrate how the proffered position of computer programmer is so complex or unique relative to other computer programmer positions that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Although counsel claimed that the petitioner previously hired contractors and consultants that had at a minimum a bachelor's degree in computer programming or computer science in the proffered position, counsel did not submit supporting, corroborating evidence that the workers performed the same duties proffered here or that the workers had at least a bachelor's degree or the equivalent in a specific specialty. Again, 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190). As the record has not established a prior history of hiring for the proffered position

for a 102-person financial services company 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.

only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).⁵

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than computer programmer positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Therefore, the petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient documentation to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. § 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.

⁵ 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 claimed 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 artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F.3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").