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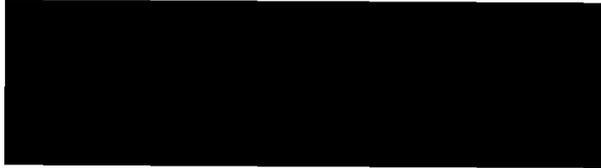
U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090

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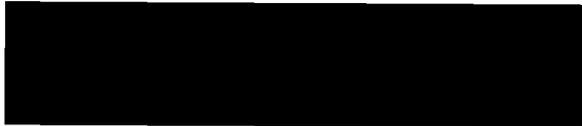
Petitioner:

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,

Michael T. Kelly
for Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, then reopened the matter and denied the visa petition again. 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 computer consulting firm. To employ the beneficiary in what it designates as a computer consultant 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, and failed to establish that it qualifies as the beneficiary's employer within the meaning of section 101(a)(15)(H)(i)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii) or as an agent within the meaning of 8 C.F.R. § 214.2(h)(2)(i)(F).

On appeal, counsel asserted that the director's bases for denial were erroneous, and contended that the petitioner satisfied all evidentiary requirements. In support of these contentions, counsel submitted a brief and additional evidence.

Upon review of the entire record of proceeding, the AAO first concludes that the petitioner has established that, to the extent, if any that the beneficiary would work if this petition were approved, he more likely than not would be employed by the petitioner. The petitioner has consistently maintained that it would employ the beneficiary at its offices, and the evidence submitted with regard to the petitioner's business relationships with its clients indicates that it is more likely than not that the petitioner maintains primary control over the nature and extent of the work that its workers perform for its clients, which appears to be chiefly in the area of network monitoring, maintenance, and support. Accordingly, the AAO finds that the petitioner appears to have standing to file this petition as a U.S. employer. Therefore, the AAO withdraws the director's contrary determination as a basis for denying the petition, that is, the director's conclusion that the petitioner is not a U.S. employer. e to the contrary is, at best, sparse. The AAO withdraws the finding that the beneficiary has not demonstrated that it would be the beneficiary's employer within the meaning of section 101(a)(15)(H)(i)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

The remaining issue is whether the petitioner has demonstrated that it would employ the beneficiary in a specialty occupation position. The duties described and attributed to the proffered position include analysis of existing and proposed networks; network design, implementation and management; executing test plans; working on wireless access and website design and maintenance projects; software development; programming in java; trouble shooting; and client support.

As will be discussed below, the AAO finds that the petitioner has failed to establish that the beneficiary would be employed in a specialty occupation as that term is defined in the Act and the related USCIS regulations.

The AAO bases its decision upon its review of the entire record of proceeding, 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.

In this position, [the beneficiary] will perform business analysis of existing and proposed networks to make recommendations for changes and improvements based on client requirements. [The beneficiary] will be responsible for network design, implementation and management to meet specific customer needs. He will develop testing and quality assurance plans and execute test plans to ensure satisfaction of specific functional and technical requirements. He will also work on projects such as

wireless access and website design and maintenance, as well as software development, programming in java. As a Computer Consultant, [the beneficiary] will also provide trouble shooting services and on-going client support.

The petitioner's president added, "The position of Computer Consultant requires, at a minimum, a Bachelor's Degree in Computer Science, Electrical Engineering, Information Technology or a related field."

On May 4, 2009, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation and evidence that the petitioner qualifies as either the beneficiary's employer or his agent within the meaning of the pertinent statutes and regulations. The service center requested specific evidence pertinent to where the beneficiary would perform his duties. The service center also specifically requested work orders, statements of work (SOW) and service agreements detailing the work the beneficiary would perform for the petitioner's customers.

In response, counsel submitted a letter from the petitioner's president and "Professional Service Agreement" (PSA) documents that the petitioner has executed with its customers.

The petitioner's president stated that the beneficiary would provide off-site assistance to the petitioner's customers at the petitioner's location, and indicated that the beneficiary might also provide very short-term on-site assistance at the customers' locations. The petitioner also stated that some of the petitioner's customers that the beneficiary was servicing were [REDACTED]

Counsel also provided copies of PSAs between the petitioner and nine clients, [REDACTED]

Prior to addressing the PSAs individually, the AAO here states its finding that, as will be evident in the comments below about each of these documents, none of the PSAs constitutes a contractual commitment by any of the petitioner's clients to use the beneficiary in any particular project. Further, the PSAs do not specify services to be performed that are shown to require the theoretical and practical application of at least a bachelor's degree level of a body of knowledge in a specific specialty, and the PSA's are not supplemented by any annexes, appendices, exhibits, work orders, statements of work, or any other documentation establishing such a requirement.

In its PSA, [REDACTED] agreed to pay the petitioner \$85 per month for web hosting, e-mail accounts, and one hour of technical support. It states that the term of the contract would commence on December 27, 2005 and continue until terminated by either party with 30 days notice. The AAO notes that the petitioner does not establish why that "web hosting, e-mail accounts, and one hour of technical support" would require at least a bachelor's degree, or the equivalent, in a specific specialty.

The PSA with [REDACTED] states that the petitioner would provide services as specified on work orders to be executed by [REDACTED] and the petitioner. It states that the term of the contract would begin on September 25, 2002 and continue until terminated by either party with 30 days notice. The AAO notes that no such work orders have been provided, and, that therefore, this PSA is not probative of the particular nature, performance requirements, and associated educational requirements of any work to be performed under it.

The [REDACTED] also states that the petitioner would provide “services on Work Orders which are executed from time to time” by [REDACTED] and the petitioner. It states that the term of the contract would begin on June 27, 2002 and continue until terminated by either party with 30 days notice. Here too, no work orders were provided. This PSA is also is not probative of the particular nature, performance requirements, and associated educational requirements of any work to be performed under it.

The PSA with [REDACTED] commits this client to pay the petitioner \$175 per month “for a service contract that which will include web hosting, e-mail accounts, and 2 (Two) hours of technical support (telephone support as well as on-site visits.)” It states that the term of the contract would begin on December 20, 2005 and continue until terminated by either party with 30 days notice. The AAO finds that the generalized types of services identified in this PSA are not indicative of the need for at least a bachelor’s degree, or the equivalent, in a specific specialty, and the AAO further finds that the petitioner has not submitted any supplementary evidence to document such a need.

The PSA with [REDACTED] indicates that he agreed “to pay [the petitioner] for those services and at such rates shown on Exhibit A, Services, attached hereto.” As no such Exhibit A was submitted into the record of proceeding, the petitioner has failed to establish the specific nature of any work to be performed under the PSA. Accordingly, this document carries no probative weight towards establishing that this client had contracted for specialty occupation work.

In its PSA, [REDACTED] states it agreed “to pay [the petitioner] for those services and at such rates shown on Exhibit A, Services, attached hereto.” No such Exhibit A was provided with that contract. While this document, like the [REDACTED] PSA above, states a commencement date and notice-of-termination requirement, it also fails to establish the specific nature of any work to be performed under the PSA. Accordingly, this document also lacks probative value pertinent to the specialty occupation issue.

According to its PSA with the petitioner, [REDACTED] states that it agreed “to pay [the petitioner] for those services and at such rates shown on Exhibit A, Services, attached hereto.” No such Exhibit A was provided with that PSA, however. Consequently, this document is also incomplete and fails to establish the substantive nature of any services that would be provided under its terms.

PSA also suffers the evidentiary deficiency and negative impact as the earlier mentioned PSAs that are not accompanied by their Exhibit A. Here the petitioner's client agreed "to pay [the petitioner] for those services and at such rates shown on Exhibit A, Services, attached hereto." As no such Exhibit A was provided with that contract, the fact that the PSA states that its term would commence on June 9, 2008 and continue until terminated by either party with 60 days' notice throws no light on the substantive nature of the services to be performed.

The petitioner's PSA with [REDACTED] does reference work to be performed under it. This PSA states that [REDACTED] agrees to pay the petitioner \$519 per month "to manage service and support two Servers, [a] Switch, [a] Firewall, 3 laptops, and 4 workstations." This PSA also states that the petitioner "agrees to provide the following services":

- System Monitoring 24/7 to ensure the network (server, switch, firewall, workstations) is secure and properly functioning.
- Security updates and patch management applied to server and computers to keep [Apprize Technology's] network up-to-date with all necessary Microsoft and other related security patches.
- Monthly online monitoring reports.
- Backup Management – test, monitor and resolve all backup issues.
- Monitor and manage event log files.
- Strategic planning of your technology plan to support company goals.
- Document network with a network diagram, hardware inventory and configuration notes.
- Unlimited technical onsite/offsite support for the devices mentioned above.

That PSA states, further, that its term would commence on November 1, 2007 and continue until terminated by either party with 30 days notice.

The AAO finds that, while it is self-evident that the services to be provided under the [REDACTED] would require some level of specialized computer-related knowledge, it is not evident that such knowledge must be on at least a bachelor's degree level of a body of highly specialized knowledge, and the petitioner has not provided independent evidence establishing such a requirement.

The petitioner provided no work orders, without which, the evidence does not demonstrate that [REDACTED] agreed to purchase any services at all from the petitioner. Further, the petitioner provided no "Exhibit A, Services," without which, the nature of the services the petitioner was to provide to [REDACTED] and [REDACTED], if any, are unknown to the AAO. Further still, the AAO is unable to determine, from the terms of any of the related PSAs, whether any remain in effect. Further, whether they evince any work to which the petitioner might assign the beneficiary during the period of requested employment is entirely unclear. Consequently, those documents are not probative evidence for the proposition that the petitioner has specialty occupation work to which to assign to the beneficiary.

The director denied the petition on July 21, 2009. The director subsequently withdrew that decision and denied the petition again on August 1, 2009. As was noted above, the second decision of denial, from which the instant appeal was taken, found that the petitioner had failed to demonstrate that it would employ the beneficiary in a specialty occupation position and had failed to demonstrate that it has standing to file the visa petition as the petitioner's employer or agent. The director noted that the petitioner had failed to provide statements of work or work orders demonstrating that the petitioner performed any substantial amount of work pursuant to the contracts submitted, or that it would in the future.

On the I-290B appeal form, counsel stated that the decision to deny the visa petition was "based upon the failure to provide non-existent work orders." In the appeal brief, counsel stated, "[The conclusion that the petitioner is not the beneficiary's actual employer] appeared to be based on the failure to provide work orders (which the petitioner does not use) . . ." Elsewhere in the brief, counsel stated, "Occasionally work orders are used, as noted in some of the contracts, but these are used for the client company to request specific or additional services from [the petitioner]."

The AAO notes, again, that the PSAs that the petitioner executed with [REDACTED] make clear that all services the petitioner was to perform for [REDACTED] would be evidenced by a work order. Specifically, both of those contracts state, "[The petitioner] agrees to perform the services described on Work Order(s) which are executed from time to time by authorized representatives of both parties and which reference this agreement." Those PSAs makes no reference to any monthly service arrangement or any other arrangement pursuant to which [REDACTED] would commission work from the petitioner except pursuant to a work order. [REDACTED] are two of the four companies that the petitioner's president identified as companies to whom the beneficiary provides services.

With the appeal, counsel provided letters from two of the petitioner's clients, Accord Benefit [REDACTED]. Those letters, both of which purport to have been signed on September 1, 2009, are almost identical. Both companies state that they pay a monthly fee to the petitioner for network maintenance, service, and support. Both say that the majority of the work is done off-site. Both say that they do not issue work orders to the petitioner for the work it performs. The petitioner's president did not indicate that the beneficiary provides any services to those companies. Further, the AAO finds, there is no evidence in the record of proceeding that establishes that whatever particular services are provided pursuant to the aforementioned network maintenance, service, and support arrangements would require the theoretical and practical application of at least a bachelor's degree level of attainment of a body of highly specialized knowledge in a specific specialty.

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* describes the duties of various computer related positions. In the chapter entitled *Computer Network, Systems, and Database Administrators*, the *Handbook* describes the duties of network and computer systems administrators as follows:

Network and computer systems administrators design, install, and support an organization's computer systems. They are responsible for LANs, WANs, network segments, and Internet and intranet systems. They work in a variety of environments, including large corporations, small businesses, and government organizations. They install and maintain network hardware and software, analyze problems, and monitor networks to ensure their availability to users. These workers gather data to evaluate a system's performance, identify user needs, and determine system and network requirements.

Systems administrators are responsible for maintaining system efficiency. They ensure that the design of an organization's computer system allows all of the components, including computers, the network, and software, to work properly together. Administrators also troubleshoot problems reported by users and by automated network monitoring systems and make recommendations for future system upgrades. Many of these workers are also responsible for maintaining network and system security.

The referenced section of the U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos305.htm> (last accessed February 21, 2012).

Although they are very abstractly stated, the duties attributed to the proffered position are consistent with the *Handbook* description of the duties of network and computer systems administrators contained in the *Handbook*. On the balance, the AAO finds that the proffered position is a network and computer systems administrator as described in the *Handbook*.

The AAO will now address the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO will first address the alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied if the petitioner establishes that the proffered position is one for which the normal minimum requirement for entry is a baccalaureate degree, or its equivalent, in a specific specialty.

The *Handbook* describes the educational requirements of network and computer systems administrators as follows:

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.

Network and computer systems administrators often are required to have a bachelor's degree, although an associate degree or professional certification, along with related work experience, may be adequate for some positions. Most of these workers begin as computer support specialists before advancing into network or systems administration positions. (Computer support specialists are covered elsewhere in the *Handbook*.) Common majors for network and systems administrators are computer science, information science, and management information systems (MIS), but a degree in any field, supplemented with computer courses and experience, may be adequate. A bachelor's degree in a computer-related field generally takes 4 years to complete and includes courses in computer science, computer programming, computer engineering, mathematics, and statistics. Most programs also include general education courses such as English and communications. MIS programs usually are part of the business school or college and contain courses such as finance, marketing, accounting, and management, as well as systems design, networking, database management, and systems security.

That chapter of the *Handbook* makes clear that network and computer systems administrators do not categorically require a bachelor's degree. It also makes explicit that even those network and computer systems administrator positions that do require a bachelor's degree may not require a degree in any specific specialty. As such, network and systems administrator positions are not categorically specialty occupation positions.

The record contains no other evidence pertinent to the educational requirements of network and computer systems administrator positions. The petitioner has not, therefore, 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 will consider 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 network and computer systems administrators 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 network and computer systems administrators 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 asserting that they require their network and computer systems administrators to have a minimum of a bachelor's degree or the equivalent in a specific specialty.

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 alternative prong 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 network and computer systems administrator 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 description provided of the duties of the proffered position is very abstract. However, to the extent they are described, they do not demonstrate that the proffered position is more complex or unique than other network and computer systems administrator positions. Analyzing networks; network design, implementation, and management; testing systems; etc., all appear to be well within the ordinary duties that the *Handbook* attributes to network and computer systems administrator positions, some of which positions, the *Handbook* indicates, do not require a minimum of a bachelor's degree or the equivalent in a specific specialty.

Further, one of the contracts submitted contains some details of the services the petitioner would provide pursuant to that contract. Installing security updates, monitoring the system and producing monthly monitoring reports, backup management, providing technical support, etc., do not contain any indication of extraordinary complexity or uniqueness. Some of the remaining contracts refer to web hosting and "providing technical support," but without any indication that the duties of web hosting and technical support provided would be complex or unique. Other contracts refer, for a description of the work to be performed, to a Schedule A, which was not provided. Those contracts cannot, therefore, be used to demonstrate that the petitioner has any complex or unique work to which it could assign the beneficiary.

Not only does the description of the duties of the proffered position contain no indication that those duties are complex or unique, but none of the evidence provided suggests that any of the work the petitioner has available to assign to any of its 15 employees is sufficiently complex or unique that it requires a minimum of a bachelor's degree or the equivalent in a specific specialty.

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).

The record contains no evidence of a previous history of recruiting and hiring to fill the proffered position, and 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.

As was observed above, the description provided of the duties of the proffered position is so abstract that a detailed analysis of the education required by those duties is not possible. To the extent that they are described, however, those duties contain no indication of complexity or specialization that would require knowledge usually associated with a bachelor's degree. Network analysis, design, implementation, and management; testing systems; installing and maintaining wireless access and websites; developing and programming in Java; trouble shooting; client support; etc., contain no indication of such complexity and specialization.

The record contains no other evidence 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 her determination that the record before her 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.