

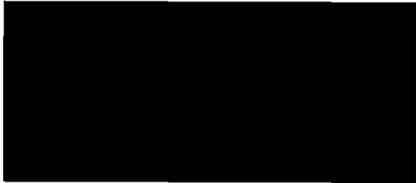
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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Date: **MAR 09 2012** 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:

SELF-REPRESENTED

INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the Vermont Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner claims to have five employees and to operate retail businesses including convenience stores. It seeks to employ the beneficiary as a computer system analyst 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 concluding that the petitioner has not established that the proposed position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's requests for additional evidence (RFEs); (3) the petitioner's responses to the director's RFEs; (4) the director's denial decision; and (5) the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

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

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

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

An occupation which requires [(1)] theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires [(2)] the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also meet one of the following criteria:

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

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

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

In this matter, the petitioner seeks the beneficiary’s services as a computer system analyst. The petitioner’s support letter submitted with the initial filing indicates the proffered position would require the beneficiary to perform the following duties:

Design, analysis[sic] and development of Web and intranet applications with focus on e-commerce solutions. Design and develop online B2C and B2B system to conduct purchase and other transactions via secure HTTP. To improve our inventory management system.

Access and analyze existing computer and database systems and carry out BPR (Business Process Review) information of our company, plan requirements of the company and model a computerized financial system based on the requirements analysis. Design Forms and Reports using relational database software package to upgrade business information systems. Write relational database to create stored procedures and functions to assist in automating our accounting and purchasing process. Also design and set up our local area network.

The support letter goes on to state that the position of computer systems analyst is a professional level one and that performance of the above mentioned duties requires an individual with advanced education and experience in the computer field. The letter refers to the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* (2002-2003 Edition, Page 180) and claims that the occupation of systems analyst 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. The submitted job posting for the proffered position states that it requires a bachelor of science degree or its equivalent in computer science. The petitioner submitted an undated credential evaluation from [REDACTED] which concludes that the beneficiary holds the equivalent of an individual with a bachelor of engineering degree in computer science from an accredited institution in the United States based on his diploma from the Technical Examinations Board for the three-year course of study and examination in the field of civil engineering combined with his additional two-year computer training certificate from Tirupati Computer Center in India. The record contains the beneficiary's diploma and transcripts from Technicla Examinations Board of Gujarat State and a certificate from Tirupati Computer Center for completion of the A.D.C.A. course.

The submitted Labor Condition Application (LCA) was certified for a "Computer System Analyst" to work at the petitioner's office in Ocala, Florida. The LCA also shows that the petitioner classified the proffered position at a Level I prevailing wage of \$18.28 per hour under OES/SOC Code 15-1051, Computer Systems Analyst, for Ocala, FL MSA area.

On October 14, 2009 and February 19, 2010, the director requested additional information from the petitioner to establish that the proffered position is a specialty occupation and that the petitioner is a bona fide employer and an ongoing business entity.

In response to the director's RFEs, the petitioner submitted a more detailed description of the duties for the proffered position with the percentage of time the beneficiary would spend performing each particular function on a daily basis and indicating specific tasks that require the expertise of someone who holds a baccalaureate degree.

The director determined that the petitioner did not establish that the proposed position qualifies for classification as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner contends that its responses to the director's RFEs established how the occupation of computer system analyst meets all four of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). In particular, the petitioner claims that it has shown 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.

To make its determination whether the proffered position, as described in the initial petition and in the petitioner's responses to the RFEs, qualifies as a specialty occupation, the AAO turns first 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)).

As noted above, the petitioner referenced the *Handbook*'s chapter on "Computer Systems Analysts" to support its assertion that a computer system analyst is a specialty occupation. As previously noted, the LCA was certified for a Level I computer systems analyst (SOC/O*NET code: 15-1151.00).

The *Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos287.htm> (last accessed March 8, 2012) describes "Computer Systems Analysts" as follows (emphasis added):

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

Most systems analysts work with specific types of computer systems—for example, business, accounting, and financial systems or scientific and engineering systems—that vary with the kind of organization. Analysts who specialize in helping an organization select the proper system hardware and software are often called system

architects or system designers. Analysts who specialize in developing and fine-tuning systems often have the more general title of systems analysts.

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

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

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

One challenge created by expanding computer use is the need for different computer systems to communicate with each other. Many systems analysts are involved with "networking," connecting all the computers within an organization or across organizations, as when setting up e-commerce networks to facilitate business between companies.

Although the petitioner provided some non-system analyzing duties for the proffered position, the proposed duties as quoted above are basically covered by the duties described in the Computer Systems Analysts section of the *Handbook*. In other words, duties set forth by the petitioner for the proffered position most closely resemble that of the position described in the Computer Systems Analysts section of the *Handbook*.

The petitioner stated in its supporting letter that the “[o]ccupation of systems analyst 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.” The petitioner submitted a copy of the *Handbook*, 2002-2003 Edition, page 180 as a reference in support of this assertion. While the submitted page 180 of the *Handbook* contains the parts entitled “Significant Points” and “Nature of the Work” for “Systems Analysts, Computer Scientists, and Database Administrators,” it does not show the edition and, more importantly, it does not contain the education and training requirements section. With respect to education and training requirements for “Computer Systems Analysts”, the *Handbook*, 2010-11 ed., states as follows:

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

Education and training. When hiring computer systems analysts, *employers usually prefer applicants who have at least a bachelor's degree. For more technically complex jobs, people with graduate degrees are preferred. For jobs in a technical or scientific environment, employers often seek applicants who have at least a bachelor's degree in a technical field, such as computer science, information science, applied mathematics, engineering, or the physical sciences. For jobs in a business environment, employers often seek applicants with at least a bachelor's degree in a business-related field such as management information systems (MIS). Increasingly, employers are seeking individuals who have a master's degree in business administration (MBA) with a concentration in information systems.*

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

Id. (emphasis added).

The petitioner has set forth the duties for the proffered position based on the description of duties for computer systems analysts generally described in the *Handbook*. The description of the duties of the proffered position shows that the proffered position is a computer systems analyst position and the beneficiary will perform the duties as a computer systems analyst for the petitioner. In this regard, the AAO has considered all of the assertions of the petitioner in support of the requirements of the position, but finds that they are not supported by the *Handbook* or other documentation in the record.

In short, the descriptions provided in the *Handbook* do not clearly show that Computer Systems Analysts are positions for which a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum entry requirement. While the *Handbook* states that when hiring computer systems analysts, employers usually prefer applicants who have at least a bachelor’s

degree, it does not indicate that a baccalaureate or higher degree in a specific specialty or its equivalent is required for entry into the occupation of computer systems analysts. Employers prefer but do not require a bachelor's degree and, more importantly, they do not even prefer a degree in a specific specialty according to the *Handbook*.

Although the *Handbook* also states that 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, it does not state that a baccalaureate or higher degree in a specific specialty is *normally* the minimum entry requirement. The term "often seek" cannot be interpreted as normally required. 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.

Furthermore, even if the *Handbook* were interpreted as stating an entry requirement of at least a bachelor's degree in one of the fields listed here, the AAO notes that such a statement, i.e., that the duties of the proffered position can be performed by a person with a degree in any one of those disciplines, implies that the proffered position is not, in fact, a specialty occupation. More specifically and by way of example, 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'r 1988).

In addition, the AAO notes that the *O*Net* Summary Reports are insufficient to establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor's degree or its equivalent in a specific specialty. On March 8, 2012, the AAO accessed the pertinent sections of the *O*Net Online* Internet site, which address 15-1121.00 – Computer Systems Analysts. *O*Net Online* does not state a requirement for a bachelor's degree. Rather, it assigns this occupation a Job Zone "Four" rating, which groups it among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, the *O*Net Online* does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty closely related to the requirements of that occupation. Further, the *O*Net* Education section indicates that 41 percent of computer systems analyst respondents require an associate's degree, 26 percentage require a bachelor's degree and 16 percentage require a master's degree, indicating that a majority of respondents do not even possess a bachelor's degree.

The record's descriptions of the proposed duties are limited to generic and generalized functions which are normally performed by computer systems analysts pursuant to descriptions in the *Handbook* and *O*Net*. Based on the fact that the *Handbook* and *O*Net* do not indicate that at least a bachelor's degree in a specific specialty or its equivalent is a minimum entry requirement for this

occupation, it cannot be found that the petitioner has satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

Again, 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).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty, and the petitioner failed to demonstrate that parallel computer systems analyst positions for organizations that are similar to the petitioner require a college degree in a specific specialty for entry into the occupation. Therefore, the petitioner failed to demonstrate that it meets the requirements of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has 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, evidence of record does not refute the *Handbook's* information to the effect that a bachelor's degree is not required in a specific specialty. The petitioner has not provided evidence to distinguish the proffered position as unique from or more complex than computer systems analyst positions, such as those as described in the *Handbook*, that can be performed by persons without a specialty degree or its equivalent.

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) -- the employer normally requires a degree or its equivalent for the position. In response to the director's RFE, the petitioner submitted copies of the degree and paystubs for [REDACTED]. However, the petitioner did not indicate the employee's position within the company. While the submitted copies show that [REDACTED] holds a master's degree in computer science and was paid at the level of \$4,200 monthly in September and October 2009, the record does not contain any information about the petitioner's normal education requirements for the proffered position. As the record has not established a prior history of hiring for the proffered position 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).¹

¹ 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

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. The petitioner argues that the proffered position is very complex requiring that they can only be performed by an individual with a degree and provides a list of duties to be performed along with the claimed theoretical and practical principles to be applied as well as the claimed theoretical and practical software systems principles needed to perform these duties. However, relative complexity is not sufficiently developed by the petitioner and, absent evidence to the contrary, the duties of the proposed position are not so specialized and complex relative to other, general computer systems analysts, as described by the *Handbook*, as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty.

It is further noted that the LCA provided in support of the instant petition lists a Level I prevailing wage level for computer systems analysts in the Ocala, FL MSA area. Given that the LCA submitted in support of the petition is for a Level I wage, it must be concluded that either (1) the position is a low-level, entry position relative to other computer systems analysts, and thus, the proposed duties for the proffered position are not more specialized and complex than those of other computer systems analysts; or (2) the LCA does not correspond to the petition. If the LCA were found to not correspond to the petition in that it was not certified for the correct higher level prevailing wage, the petition could still not be approved due to the petitioner's failure to submit an LCA that corresponds to that specialized and complex level position. With such an entry-level prevailing wage, however, the AAO cannot find that the proposed duties contain any parts that are more specialized and complex than that of computer systems analysts as described in the *Handbook*, and therefore, concludes that the proffered position does not meet the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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 evidence 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

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").

not establish that the proffered position 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 cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications further, except to note that, in any event, the petitioner did not submit (1) an evaluation of the beneficiary's foreign degree evidencing that it is the equivalent of a U.S. bachelor's degree in a specific specialty or (2) sufficient evidence to establish that the beneficiary has education, specialized training, and/or progressively responsible experience that are equivalent to completion of a United States baccalaureate or higher degree in a specialty occupation as well as recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Specifically, the evaluation from [REDACTED] concluding that the combination of the beneficiary's three year diploma program from Technical Examinations Board and two year course certificate from Tirupati Computer Center is evaluated as the equivalent of a bachelor of engineering degree in computer science from an accredited institution in the United States, is insufficient. As the evaluation relies on a combination of education and training in equating the beneficiary's credentials to a U.S. bachelor's degree, the evaluator must therefore establish that he is "an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience." 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). In any case, even if the evaluation satisfied 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), as the beneficiary does not possess a U.S. bachelor's or higher degree in a specific specialty, or its foreign equivalent, the petitioner would still be required to establish that the beneficiary has "recognition of expertise in the specialty through progressively responsible positions directly related to the specialty." 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). This is the petitioner has failed to do.

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). As such, since evidence was not presented that the beneficiary has at least a U.S. bachelor's degree or the equivalent in a specific specialty, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

Beyond the decision of the director, the AAO will enter an additional basis for denial, i.e., the petitioner's failure to demonstrate that the petitioner's offer of employment to the beneficiary is *bona fide*.

The petitioner claims that it is a management, operations & development-retail company on the petition and further claims that it is a management and development retail business. However, the petitioner's tax return in the record show that its business activity is under the North American Industry Classification Systems (NAICS) Code 447100 which is for gasoline stations. See http://www.naics.com/naicsfiles/2012_NAICS_Changes.pdf (last accessed March 8, 2012). The petitioner claims on the petition that it had five employees when the petition was filed on September 3, 2009. The record does not contain the petitioner's tax return for 2009 or any of its payroll records. However, the petitioner's tax return for 2008 shows that the petitioner paid a total of

\$18,320 for compensation of officers and wages and salaries that year which was barely sufficient to employ an individual full-time in Florida at the then minimum wage of \$6.79 per hour. The petitioner's net income for 2008 was negative \$23,046 which is not sufficient to pay a single additional employee. Therefore, the petitioner did not demonstrate that it could credibly pay the prevailing wage for any additional H-1B employee when the instant petition was filed. The petitioner did not submit any documentary evidence showing its business necessity for a small gas station with five employees to hire a computer systems analyst as a specialty occupation working 30-40 hours per week. Therefore, the AAO finds that the petitioner's business was not of the financial scope to credibly offer a position of a computer systems analyst at the time of filing the instant petition.

In response to the director's request for evidence to establish the nature and scope of the petitioner's business and explain how the proffered position of computer systems analyst is needed within the

petitioner also submitted tax returns for some of these businesses and asserted that these are well established businesses, e.g., [REDACTED] has scales of close to \$1 million. The record contains copies of the first page of Form 1065, U.S. Return of Partnership Income, filed by [REDACTED] for 2008 and Form 1120S, U.S. Income Tax Return for an S Corporation, filed by [REDACTED] for 2008.

The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). The petitioner did not claim its eligibility based on this multiple stores operation or management assertions but made changes to the petition in an effort to make a deficient petition conform to the director's requirements. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). If the instant petition was not approvable at the time of filing because it failed to establish the petitioner's proffer to the beneficiary was a *bona fide* offer, the visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

Furthermore, the petitioner did not submit any evidence that these additional stores or businesses are owned by or are part of the petitioner, or that the petitioner purchased these four additional stores before or at the time of filing the instant petition. On March 8, 2012, this office accessed the Florida Department of State Division of Corporations official database website at <http://ccfcorp.dos.state.fl.us/scripts/cordet.exe?action>. Each of the five entities, [REDACTED] doing business under name of [REDACTED] doing business under the name of [REDACTED] [REDACTED] doing business under name of [REDACTED] is established under the laws of Florida as an independent corporation or limited liability company filing its own tax return and responsible for its own liability. Therefore, any business activities of these five entities cannot be considered as part of the proposed duties to be performed by the petitioner's expected employee.

The petitioner also failed to submit any management agreements with these entities to provide management services to them. Since all of these companies are independent, separate business entities from the petitioner, the petitioner must provide management/operation service agreements with them to prove that operation/management of these five other businesses is part of the petitioner's routine business such that it raises the business necessity for the petitioner to seek to employ the beneficiary in the proffered position of computer system analyst.

Even if the beneficiary were assigned to work at all these locations, pursuant to the regulation at 8 C.F.R. § 214.2(h)(2)(i)(B), the petitioner would be required to submit an itinerary with dates and locations. In the instant case, the petitioner did not submit any itinerary required by 8 C.F.R. § 214.2(h)(2)(i)(B).

For reasons related in the preceding discussion, the petitioner has failed to establish that it was capable of making a *bona fide* job offer to the beneficiary to perform the duties of a computer system analyst as described in the petition as of the date the petition was filed in this matter. Accordingly, the appeal must be dismissed and the petition denied for this additional reason alone.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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