

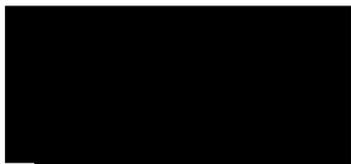
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
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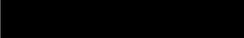
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Office: CALIFORNIA SERVICE CENTER

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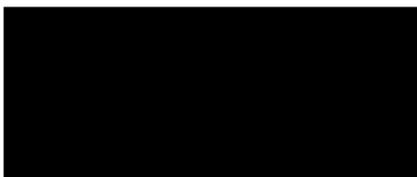
IN RE:

Petitioner: 

Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the California 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 be a custom sign production company with two employees and a stated gross annual income of \$236,000. It seeks to employ the beneficiary as a business systems 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 failed to establish that the proffered position is a specialty occupation.

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

The primary issue before the AAO is whether the 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 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 regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

Specialty occupation means 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, 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 this matter, the petitioner seeks the beneficiary’s services as a business systems analyst. In the petitioner’s letter dated December 2, 2009, the petitioner states that the beneficiary will be responsible for the following:

25%: Updating the business system software processes that enables[sic] a smooth flow of customer and order information within the database of the organization.

25%: Organizing the processing steps, structural analysis, and data modeling for optimal data collection and collation.

25%: Producing output records to reflect customer account information, inventory, credit and shipping records.

15%: Assisting with all organizational implementations, including technological hardware and software support.

10%: Troubleshooting and assisting users.

In its support letter, the petitioner indicates that it is virtually impossible for anyone without at least a bachelor's degree or the working equivalent to perform this job with any competence, and therefore, the right person for this position must possess a bachelor's degree in the area of computer science or information services. The petitioner also submitted copies of the beneficiary's bachelor of science in business administration with option in accounting and transcripts from California State University, Los Angeles.

The submitted Labor Condition Application (LCA) was certified for a "Business Systems Analyst" under SOC code 13-1199.99 Business Operations Specialists, All Other, to work at the petitioner's location at [REDACTED] at a wage of \$19.12 per hour.¹

On December 23, 2009, the director requested additional information from the petitioner to demonstrate that the proffered position is a specialty occupation.

In response to the RFE, counsel for the petitioner reiterated the duties described by the petitioner for the business systems analyst position and submitted with the initial filing. Counsel argues that the proffered position qualifies as a specialty occupation upon the description for "Computer Systems Analysts" in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, the description of "Systems Analyst" in the *Dictionary of Occupational Titles (DOT)* at 030-167-014 and the description of "Computer Systems Analysts" in the *O*NET* at 15-1051.00.

Counsel also submitted the petitioner's organizational chart, federal income tax returns for 2007 and 2008, business license, W-2 and W-3 Wage and Tax Statements for 2007 and 2008, and the company's profile.

The director denied the petition, finding that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, had not established that the proposed position qualifies for classification as a specialty occupation.

¹ This is the prevailing wage at Level I of Business Operations Specialists, All Other (SOC code: 13-1199) in Los Angeles-Long Beach-Glendale, CA Metropolitan Division for 7/2009 - 6/2010. See <http://www.flcdatacenter.com/OesQuickResults.aspx?code=13-1199&area=31084&year=10&source=1> (last accessed March 29, 2012).

On appeal, counsel for the petitioner argues that the proffered position of business systems analyst is most similar to Computer Systems Analysts or Systems Analysts described in the *Handbook* and according to the *Handbook*, both computer systems analyst and systems analyst are professional specialty occupation as described by regulations, case law and independent standards of measure. Counsel further claims that the director clearly made an error in applying the law and, therefore, the denial must be overturned.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO 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)).

Although the job description includes non-computer systems analyzing duties, the AAO agrees with counsel that the proffered position most closely resembles the position of computer systems analyst as generally described in the *O*NET* based on the main duties described by the petitioner. Nevertheless and for the reasons discussed in greater detail *infra*, the AAO finds that the position of computer systems analyst as covered in the *Handbook's* chapter on Computer Systems Analysts and in the *O*NET* at 15-1051.00 does not categorically qualify as a specialty occupation.

Here and in accordance with the *Handbook's* description of computer systems analysts, available at <http://www.bls.gov/oco/ocos287.htm> (last accessed March 29, 2012), the record's description of the proposed duties are limited to generic and generalized functions which, even when read in the context of the evidence submitted in support of the petition, do not convey the educational level of any body of highly specialized knowledge that the beneficiary would apply theoretically and practically. The Training, Other Qualifications, and Advancement section of the *Handbook* states the following:

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). Therefore, while the *Handbook* indicates that “many employers prefer applicants who have a bachelor’s degree,” and that “employers usually prefer applicants who have at least a bachelor’s degree,” it does not state that computer systems analysts require the minimum of a baccalaureate or higher degree. Furthermore, the *Handbook* states that despite the preference for technical degrees, people who have degrees in other areas may find employment as systems analysts if they also have technical skills. In short, the *Handbook* does not state that a bachelor’s degree is in fact the minimum, entry requirement for such positions, or more importantly, that such a degree must be in a specific specialty.

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, 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).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed supra, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

Second, the AAO notes that the *O*NET* Summary Report for 15-1120.00 – Computer Systems Analysts, cited by counsel in response to the RFE and on appeal, is insufficient to establish that the position qualifies as a specialty occupation normally requiring at least a bachelor's degree in

a specific specialty or its equivalent in a specific specialty. A designation of Job Zone 4 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 is in a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). See the *O*NET* Online Help Center, at www.online.onetcenter.org/help/online/zones, for a discussion of Job Zone 4, which explains that this Zone 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 *O*NET* information is not probative of the proffered position qualifying as a specialty occupation.

Furthermore, counsel's claim that the proffered position most closely resembles that of computer systems analysts under the SOC code 15-1051 Computer Systems Analysts is inconsistent with the submitted LCA in this matter. As previously noted, the LCA was certified for the proffered position under SOC code 13-1199.99 Business Operations Specialists, All Other. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record does not contain such independent objective evidence to resolve the inconsistency. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel claims that the proffered position meets the first criterion of 8 C.F.R. 214.2(h)(4)(iii)(A), as a position for which a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the occupation in the United States. In response to the director's RFE, counsel also claimed that the *DOT* at 030.167-014 lists systems analyst as SVP 7 and includes the following:

030.167-014 SYSTEMS ANALYST (profess. & kin.)

Analyzes user requirements, procedures, and problems to automate processing or to improve existing computer system: Confers with personnel of organizational units involved to analyze current operational procedures, identify problems, and learn specific input and output requirements, such as forms of data input, how data is to be summarized, and formats for reports. Writes detailed description of user needs, program functions, and steps required to develop or modify computer program. Reviews computer system capabilities, workflow, and scheduling limitations to determine if requested program or program change is possible within existing system. Studies existing information processing systems to evaluate effectiveness and develops new systems to improve production or workflow as required. Prepares workflow charts and diagrams to specify in detail operations to be performed by equipment and computer programs and operations

to be performed by personnel in system. Conducts studies pertaining to development of new information systems to meet current and projected needs. Plans and prepares technical reports, memoranda, and instructional manuals as documentation of program development. Upgrades system and corrects errors to maintain system after implementation. May assist COMPUTER PROGRAMMER (profess. & kin.) 030.162-010 in resolution of work problems related to flow charts, project specifications, or programming. May prepare time and cost estimates for completing projects. May direct and coordinate work of others to develop, test, install, and modify programs.

GOE: 11.01.01 STRENGTH: S GED: R5 M4 L5 SVP: 7 DLU: 90

DOT (4th Ed., Rev. 1991), available at <http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOT01B.HTM> (last accessed March 29, 2012). The AAO finds that the *DOT* does not support the assertion that assignment of an SVP rating of 7 is indicative of a specialty occupation. This is obvious upon reading Section II of the *DOT*'s Appendix C, Components of the Definition Trailer, which addresses the Specialized Vocational Preparation (SVP) rating system.² The section reads:

II. SPECIFIC VOCATIONAL PREPARATION (SVP)

Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

Specific vocational training includes training given in any of the following circumstances:

- a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);
- b. Apprenticeship training (for apprenticeable jobs only);
- c. In-plant training (organized classroom study provided by an employer);

² The Appendix can be found at the following Internet website: <http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM>.

- d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);
- e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

Level	Time
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month
3	Over 1 month up to and including 3 months
4	Over 3 months up to and including 6 months
5	Over 6 months up to and including 1 year
6	Over 1 year up to and including 2 years
7	Over 2 years up to and including 4 years
8	Over 4 years up to and including 10 years
9	Over 10 years

Note: The levels of this scale are mutually exclusive and do not overlap.

Thus, an SVP rating of 7 does not indicate that at least a four-year bachelor's degree is required, or more importantly, that such a degree must be in a specific specialty closely related to the requirements of that occupation. Therefore, the *DOT* information is not probative of the proffered position being a specialty occupation.

The record's description of the proposed duties are limited to generic and generalized functions which are normally performed by computer systems analysts pursuant to description in the *Handbook*, *O*NET* and *DOT*, and based on the fact that neither the *Handbook*, *O*NET* nor *DOT* indicate that at least a bachelor's degree in a specific specialty or its equivalent is the 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). The director's decision must be affirmed and the petition denied on this basis alone.

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 reflected in this decision's discussion regarding the *Handbook's* information, 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. The petitioner submitted copies of four advertisements for business systems analysts as evidence that its degree requirement is standard amongst its peer organizations for parallel positions in the sign production industry. The advertisements provided, however, establish at best that a bachelor's degree is generally required, but not at least a bachelor's degree in a specific specialty or the equivalent. 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. Therefore, these four positions 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.³

For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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." The evidence of record does not refute the *Handbook's* information to the effect that a bachelor's degree in a specific specialty is not required for entry into the occupation. The record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than computer systems analyst positions that require the application of computer systems analyzing principles, but that are not at a level that require the degree of highly

³ 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 four job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the sign production industry. 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 business systems analyst for a sign production 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.

specialized knowledge in computer systems that is attained through at least a bachelor's degree, or the equivalent, in computer systems.

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. The record shows that the petitioning business currently employs two employees when the instant petition was filed. The record does not contain any evidence showing that the petitioner has employed a business systems analyst before. The petitioner did not submit any information regarding its other workers, if any, who fill or previously filled positions similar to the one proffered in this petition. As the record has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty or its equivalent, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).⁴

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. Although the petitioner asserts that the duties of the proffered position are very specialized that they require extensive training, education and often experience in order for them to be done well, the record does not contain any evidence to distinguish the proffered position as unique from or more complex than computer systems analyst positions, such as those described in the *Handbook*, that can be performed by persons without a specialty degree or its equivalent. To the extent that they are depicted in the record, the duties of the proposed position do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Furthermore, the fact that the proffered position was classified as a Level I, or entry-level position, on the submitted LCA draws into question the credibility of any of the petitioner's claims regarding the complexity or specialization of the proffered position. The AAO, therefore, concludes that the petitioner has not established that it meets 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.

⁴ 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").

Beyond the decision of the director, the petition would also have to be denied due to the petitioner's failure to provide a certified LCA that corresponds to the petition. Specifically, although the job title on the LCA submitted with the petition reads "Business Systems Analyst," it was certified for SOC (O*NET/OES) Code 13-1199.99 or "Business Operations Specialists, All Other." The job as titled and as described by the petitioner, however, is classified under SOC (O*NET/OES) Code 15-1051 or "Computer Systems Analysts." As such, the petitioner was required to provide at the time of filing an LCA certified for SOC (O*NET/OES) Code 15-1051, not SOC (O*NET/OES) Code 13-1199.99, in order for it to be found to correspond to the petition.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.*

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a valid LCA that has been certified for the proper occupational classification, and the petition would have to be denied for this additional reason if the basis for appeal had been otherwise sustained.

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 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 further, except to note that, even if the petitioner had established that the proffered position is a specialty occupation, the beneficiary would still not qualify for the proffered position because the beneficiary's bachelor's degree in business administration is not sufficient to establish that the beneficiary qualifies for the proffered position. More specifically, the beneficiary's claimed bachelor's degree in "business administration" is inadequate to establish that the beneficiary is qualified for the proffered position as a specialty occupation since the proffered position, if it were in fact a specialty occupation, would require a bachelor's or higher degree in computer science or a

closely related field. Therefore, the petition would have to be denied on this basis even if the petitioner had established that the proffered position qualified as a specialty occupation.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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. § 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.