

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



D2

Date **MAY 08 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:



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,

for Michael T. Kelly

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition the petitioner stated that it is a "Book Keeping [sic] and Tax Returns" firm with two employees. To employ the beneficiary in what it designates as a computer systems analyst position, the petitioner endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in his decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

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 submissions on 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 employ 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.

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 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 a particular position meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

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

equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

With the visa petition, counsel provided evidence sufficient to show that the beneficiary received a bachelor of commerce degree from Osmania University in India and a master of computer applications degree, also from Osmania University. Counsel also provided evidence pertinent to the beneficiary's employment experience, showing that she has five years of experience as a senior technical associate.

Counsel also provided a letter, dated November 11, 2009, from the petitioner's director. It states that the beneficiary's education meets the petitioner's minimum requirements for the proffered position, but does not state what those minimum requirements are. It further states the duties of the proffered position as follows, "Responsible for researching, planning, coordinating and recommending software and system choices to meet [the petitioner's] requirements." A separate document, addressed "To whomever it concerns," and signed by the petitioner's president on November 18, 2009, reiterates that duty description.

On January 22, 2010, the service center issued an RFE in this matter. The service center requested, *inter alia*, (1) a more detailed list of the duties of the proffered position; (2) that the petitioner reveal how many other people it employs or has employed in the proffered position, how many of those hold at least a bachelor' degree, and in what field of study; and (3) evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, counsel submitted a position description, an employee list, vacancy announcements, and the employment contract between the petitioner and the beneficiary.

The position description contains no indication of who prepared it. It contains the following description of the duties of the proffered position:

Systems analyst is responsible for researching, planning, coordinating, and recommending software and system choices to meet an organization's business requirements. The systems analyst plays a vital role in the systems development process. Analytical skills enable systems analysts to understand the organization and its functions, which helps him/her to identify opportunities and to analyze and solve problems. Technical skills help systems analysts understand the potential and the limitations of information technology.

Provide ongoing support for continued operation of existing systems. Also provide User support for customers and internal system users in regional languages.

Documenting and creating Billing activities and the additional components necessary to create the billing rules governing existing products and services.

Anticipating risks and opportunities, analyzing them, and presenting effective ways of mitigating the risks and opportunities

Interact with users to determine system problems and provide support in remediation efforts to address those problems.

The position description provides another, more succinct duty description, along with the percentages of time the beneficiary would spend on those duties. According to that duty description, the beneficiary would spend 30% of her time "Analyzing and preparing research documents;" 30% of her time "Planning, Documenting and Coordinating the deployment;" and 40% of her time "Maintaining and Supporting Systems."

The employee list provided indicates that the petitioner employs two CPAs, six senior accountants, four seasonal accountants, two directors, two AR/Internal Accounting Staff, four marketing employees, two programmer analysts, and a systems analyst, for a total of 23 workers. The AAO observes that, on the Form I-129 visa petition, the petitioner stated that it has two employees.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record with independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* At 591-592.

Only the programmer analyst positions and the systems analyst position are directly related to computers and information technology. The list states that the two programmer analysts have post graduate degrees in computer applications and five years' experience, and that its systems analyst has a master's degree in computer applications and five years of experience. However, it does not indicate what the petitioner's minimum requirements are for those positions. Because the beneficiary has the same education and experience as that list attributes to the petitioner's systems analyst, and because the record contains a 2009 Form W-2 Wage and Tax Statement the petitioner issued to the beneficiary, the single systems analyst shown on the employee list appears to be the beneficiary. In any event, the petitioner has not established that it has employed anyone other than the beneficiary as a computer systems analyst.¹

The AAO observes that, in addition to the vacancy announcements submitted in response to the RFE, some vacancy announcements were provided on appeal. All of the vacancy announcements submitted will be addressed below.

¹ If the petitioner has ever employed any other systems analyst, then it failed to respond to request for a list of people who have held the proffered position, which request was contained in the January 22, 2010 RFE, and was relevant to the material issue of whether the petitioner normally requires a minimum of a bachelor's degree or the equivalent in a specific specialty for the proffered position. In that event, the petitioner would have failed to provide requested evidence, thus precluding a material line of inquiry, and the visa petition would be deniable pursuant to 8 C.F.R. § 103.2(b)(14).

The employment contract states that, in the event that the petitioner dismisses the beneficiary, it would be responsible only for his back wages. The AAO observes that this is contrary to section 214(c)(5) of the Act, which, in that event, would make the petitioner responsible for the reasonable costs of return transportation of the alien abroad. That employment contract also reiterates the following duties of the proffered position:

- Provide ongoing support for continued operation of existing systems. Also provide User support for customers and internal system users in regional languages.
- Documenting and creating Billing activities and the additional components necessary to create the billing rules governing existing and products and services. [sic]
- Interact with users to determine system problems and provide support in the remediation efforts to address those problems.
- Anticipating risks and opportunities, analyzing them, and presenting effective ways of mitigating the risks and opportunities.

The AAO observes that none of the information provided with the Form I-129 visa petition or in response to the RFE stated that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty, or stated any other minimum educational requirement for the proffered position. This was sufficient reason, in itself, for the director to find that the petitioner has not demonstrated that the proffered position is a specialty occupation position, and sufficient reason, in itself, to deny the visa petition.

The director denied the petition on June 23, 2010, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty.

On appeal, counsel provided additional vacancy announcements and a letter, dated July 19, 2010, from the petitioner's director. The vacancy announcements, as was stated above, will be addressed below.

In his July 19, 2010 letter, the petitioner's director stated that the proffered position requires a bachelor's degree. He did not state that it requires a bachelor's degree in any specific specialty.

The petitioner's director also stated that the employee list provided included contract workers. Counsel provided printouts purporting to show that the petitioner paid amounts ranging from \$1,271.30 to \$22,468.43 to 15 people during some unidentified period. The AAO observes that the provision of evidence pertinent to 15 people does not explain why the petitioner initially claimed to have two employees, then subsequently stated that it had 23 employees. The AAO further observes

that the evidence pertinent to those 15 people, even if it explained that discrepancy, would not be the independent, objective evidence required by *Matter of Ho*.

On the Form I-290B appeal, counsel asserted that the evidence provided shows that the proffered position qualifies as a specialty occupation, but did not state that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty, which is the *sine qua non* of a specialty occupation.

Neither counsel nor the petitioner has ever asserted that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty, or, if it does, what that specific specialty might be. As such, they have not even effectively alleged that the proffered position is a specialty occupation position. The director's decision could, therefore, be affirmed and the petition denied on this basis alone. However, the AAO will continue its analysis of the specialty occupation issue, in order to identify other evidentiary deficiencies that preclude approval of this petition.

Some of the duties described are so abstract that their meanings are entirely unclear. Whether "Analyzing and preparing research documents," "Anticipating risks and opportunities, analyzing them, and presenting effective ways of mitigating risks and opportunities," etc. are systems analyst duties is impossible to determine, as is whether those duties are even peripherally related to computers, or require any specific level of education.

The duty of "researching, planning, coordinating and recommending software and system choices" was stated twice in the petitioner's director's November 11, 2009 letter, then repeated in the duty description submitted on appeal. That duty, too, contains no indication of whether it requires a systems analyst, or whether it requires a minimum of a bachelor's degree or the equivalent in a specific specialty.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Even assuming, *arguendo*, that the proffered position is a systems analyst position, the evidence would not demonstrate that it is a specialty occupation position pursuant to the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A).

We will first address the supplemental, alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied if the petitioner demonstrates that the normal minimum entry requirement for the proffered position is a bachelor's or higher degree in a specific specialty or its equivalent.

The AAO recognizes the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² In this instance, the petitioner would meet this criterion by (1) establishing the occupational classification under which the proffered position should be classified and (2) providing evidence that the *Handbook* supports the conclusion that this occupational classification normally requires a bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation in the United States.

As stated above, the AAO is assuming, for the sake of analysis, that the petitioner demonstrated that the proffered position is a systems analyst position. The *Handbook* states the following about the educational requirements of computer systems analyst positions:

Most computer systems analysts have a bachelor's degree in a computer-related field. Because computer systems analysts are also heavily involved in the business side of a company, it may be helpful to take business courses or major in management information systems (MIS).

Some employers prefer applicants who have a Master of Business Administration (MBA) with a concentration in information systems. For more technically complex jobs, a master's degree in computer science may be more appropriate.

Although many analysts have technical degrees, such a degree is not always a requirement. Many systems analysts have liberal arts degrees and have gained programming or technical expertise elsewhere.

Some analysts have an associate's degree and experience in a related occupation.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Computer Systems Analysts, <http://www.bls.gov/ooh/Computer-and-Information-Technology/Computer-systems-analysts.htm#tab-4> (last visited April 23, 2012).

That "*most* systems analysts have a bachelor's degree in a computer-related field" [Emphasis supplied.] does not suggest that it is a minimum requirement. To the contrary, it suggests that some computer systems analysts do not have such a degree. The *Handbook* further states that "many systems analysts have liberal arts degrees" combined with programming knowledge or technical expertise, and that some analysts have only an associate's degree and experience. The *Handbook* offers no support for the proposition that the proffered position categorically qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty.

² 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.

Further, the AAO finds that, to the extent that they are described in the record of proceeding, some of the duties that the petitioner's director ascribes to the proffered position suggest a need for some knowledge in the computer/IT field, but do not establish any particular level of formal education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

The petitioner has not demonstrated that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position and has not, therefore, satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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

Counsel did submit eight vacancy announcements. They are for positions designated, Systems Analyst, Senior Systems Analyst, Business Systems Analyst, Financial Systems Analyst, Business Systems Analyst Ecommerce, and Financial Systems Analyst/Senior Analyst.

One of those vacancy announcements lists no educational requirement. One states that the position requires a bachelor's degree, but not that it should be in any specific specialty. Clearly, those announcements do not state a requirement of a minimum of a bachelor's degree or the equivalent in a specific specialty.

One announcement states that the position requires a bachelor's degree, and that a degree in computer science or information services is preferred. A preference is not a minimum requirement. As such, that announcement does not state a requirement of a minimum of a bachelor's degree or the equivalent in a specific specialty.

One vacancy announcement states that the position announced "typically requires" a bachelor's degree, and that a degree in an engineering discipline is preferred. That a position *typically* requires a bachelor's degree does not indicate unequivocally that such a degree is a minimum requirement.

One vacancy announcement states that the position announced requires a bachelor's degree in electrical engineering, physics, or computer science. Electrical engineering, physics, and computer science do not delineate a specific academic specialty. As such, that announcement does not require a minimum of a bachelor's degree or the equivalent in a specific specialty, and the position it announces does not appear to be a specialty occupation position.

One vacancy announcement requires a bachelor's degree in business administration or information services. That an otherwise undifferentiated degree in business administration would qualify one for the position indicates that it is not a specialty occupation position. This is because business administration is a general term including both professional and nonprofessional activities. A degree in business administration alone is, consequently, insufficient to qualify the holder as a member of the professions unless the academic courses pursued and the knowledge gained are realistic prerequisites to a particular occupation within the broad field of business administration and unless that person is engaged, or intends to engage, in that occupation. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968).

The final vacancy announcement states that the position announced requires a bachelor's degree in computer science or a related field. That position is with a health care service provider.

The AAO finds that the job announcements provided do not reflect an industry-wide practice of requiring at least a bachelor's degree in a specific specialty. Moreover, of the vacancy announcements submitted has been shown to be for a position parallel to the proffered position in the petitioner's industry in an organization otherwise similar to the petitioner. Further, however, even if all eight positions were demonstrated to be for parallel positions in the petitioner's industry with organizations similar to the petitioner and unequivocally required a minimum of a bachelor's degree or the equivalent in a specific specialty, the submission of the eight announcements is statistically insufficient to demonstrate an industry-wide requirement.³ The record contains no independent

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 eight job postings with regard to determining the common educational requirements for entry into parallel positions in similar business services organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

evidence that the announcements are representative of common recruiting and hiring practices for the proffered position in the business services industry.

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, satisfied 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 establishes that, notwithstanding that other computer systems analyst positions in the business services 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 credentials.

As was observed above, however, the descriptions of the duties of the proffered position are so abstract that whether they describe a systems analyst position cannot be determined, let alone whether they describe a systems analyst position so complex or unique that it can only be performed by a person with a specialized degree. The petitioner has not, therefore, satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The evidence suggests that the petitioner has never hired anyone other than the beneficiary for the proffered position. Further, there is no evidence pertinent to any attempted recruitment for the proffered position. In any event, the evidence of record does not demonstrate an established history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty. The petitioner has not, therefore, provided any evidence for analysis under the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).⁴

As such, even if the job announcements supported the finding that the position of computer systems analyst for a two-person business services company required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that may 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 may not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

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").

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree, or the equivalent, in a specific specialty.

As was observed above, however, the duties of the proffered position have been very abstractly described. Whether they are so specialized and complex that they require knowledge usually associated with attainment of a minimum of a bachelor's degree or the equivalent in a specific specialty is unclear.

The duties of the proffered position have been described as including: researching, planning, coordinating, and recommending software and system choices; analyzing and solving problems; provide technical support; documenting and creating billing activities; anticipating risks and opportunities, analyzing them, and presenting effective ways of mitigating the risks and opportunities; interacting with users to determine system problems and provide support; analyzing and preparing research documents; planning, documenting and coordinating the deployment; and maintaining and supporting systems, etc.⁵ Under the most favorable light, those duties are the routine duties associated with computer systems analyst positions in general. While counsel and the petitioner's director claim that the duties of the proffered position are sufficiently complex, the record does not contain explanations or clarifying data sufficient to elevate the position to one that is so specialized and complex that the knowledge to perform these additional tasks is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. This generalized description of generic duties contains no indication of complexity and specialization that would require knowledge usually associated with at least a bachelor's degree or the equivalent in a specific specialty, especially relative to other computer systems analyst positions that, according to the *Handbook*, may not normally have such a minimum entry requirement. As such, the petitioner has not satisfied the criterion 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 record suggests an additional issue that was not addressed in the decision of denial. The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g., Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

⁵ In fact, providing technical support would typically be the duty of a somewhat lower level computer worker, such as a computer support specialist, a technical support specialist, or a help-desk technician.

As was noted above, section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires:

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

The degree referenced by section 214(i)(1)(B) of the Act, 8 U.S.C. § 1184(i)(1)(B), means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

- (4) Have [a] education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and [b] have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require one or more of the following:

- (1) An evaluation from 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;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;⁶
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . . .

Whether the petitioner is asserting that the beneficiary's education alone is equivalent to a minimum of a U.S. bachelor's degree in a specific specialty, or whether the petitioner is asserting that her education coupled with her experience and non-academic training forms that equivalent, has never been made clear in the instant case.

If the petitioner is claiming that the beneficiary's education alone is equivalent to a U.S. bachelor's degree in the requisite specialty, then the petitioner should have provided the evaluation required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). No evaluation was provided.

⁶ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.

If the petitioner is asserting that the beneficiary's education coupled with her employment experience and/or non-academic training is equivalent to a U.S. bachelor's degree in the requisite specialty, then the beneficiary could be shown to qualify pursuant to either 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) or (5). As was noted above, the record contains no evaluation. As such, the beneficiary has not been shown to qualify to work in a specialty occupation position pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

Further, the record contains no previous determination by USCIS pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), and the evidence in the record does not dispose the AAO to make such a determination.

The beneficiary has not been shown to qualify to work in any specialty occupation position. The appeal will be dismissed and the visa petition will be denied for this additional reason.

The appeal will be dismissed and the visa petition will be denied on both of the bases described above, with each considered as an independent and alternative basis for the decision. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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