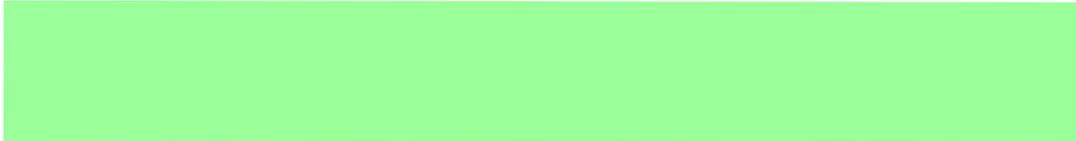


(b)(6)

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



U.S. Citizenship
and Immigration
Services



Date: **AUG 12 2013** Office: CALIFORNIA SERVICE CENTER

FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner on the Form I-129, Petition for a Nonimmigrant Worker, describes its type of business as "IS/IT Consultancy Services." The petitioner also indicates that it was established in 1995, currently employs 370 personnel in the United States and 4,000 personnel worldwide. It seeks to employ the beneficiary as a systems analyst and to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition determining that the petitioner had not provided evidence sufficient to establish that the proffered position is a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, Notice of Appeal or Motion, stamped as received on February 7, 2013. Although the petitioner checked the box on the Form I-290B, indicating that a brief and/or additional evidence would be submitted to the AAO within 30 days, no briefs or further evidence have been submitted to date. Accordingly, the record is considered complete as currently constituted.

The petitioner states on the Form I-290B that it disagrees with the director's opinion that the proffered position is not a specialty occupation. The petitioner asserts that it "requires the beneficiary to have obtained theoretical and practical application of a body of highly specialized knowledge and an obtainment of a bachelor's degree or higher degree in a computer related field as a minimum requirement for entry into the position of Systems Analyst in the United States." The petitioner continues by stating: "[i]t is our opinion that to qualify for this position we have required the beneficiary to have a minimum of a bachelor's degree or equivalent." The petitioner adds that these degree requirements are common to the industry in parallel positions amongst similar organizations.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

The petitioner's claim on appeal that it requires the beneficiary to have a bachelor's or higher degree in a computer-related field is at odds with its initial statement in support of the petition. In a letter appended to the petition, the petitioner stated it required "at a minimum, the functional equivalent of a four year Bachelor of Computer Science, Engineering, Management Information Systems, Computer Information Systems or related field." For example, one of the general fields of study initially listed as acceptable to perform the duties of the proffered position is engineering. Engineering is a broad category that covers numerous and various specialties, some of which are only related through the basic principles of science and mathematics, e.g., nuclear engineering and aerospace engineering. Therefore, absent sufficient evidence to support the petitioner's claims, it is not readily apparent that a general degree in engineering or one of its

other sub-specialties, such as chemical engineering or nuclear engineering, is closely related to computer science or information technology or that engineering or any and all engineering specialties are directly related to the duties and responsibilities of the particular position proffered in this matter. The petitioner has not provided a consistent requirement regarding the educational requirements for the proffered position. 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).

Moreover, the petitioner asserts further on appeal its opinion that a requirement of a bachelor's degree or its equivalent is sufficient to perform the duties of the proffered position.¹ 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. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular 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 directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

¹ 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 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 providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation. As such, accepting a myriad number of degrees that have not been established as being directly related to the proffered position or acknowledging general degrees with no specific concentrated course of study as suitable to perform a particular occupation does not establish a position as a specialty occupation. Further, asserting such acceptance is tantamount to an admission that the proffered position is not in fact a specialty occupation.

Additionally, we observe that the petitioner's unsupported opinion of the requirements for the proffered position is insufficient to establish a position as a specialty occupation. While a petitioner may believe or otherwise assert that a proffered position requires a bachelor's degree or a bachelor's degree in a specific specialty, 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").

Further, the petitioner's assertion that a bachelor's degree requirement is common to the industry in parallel positions amongst similar organizations is not supported in the record. Even if a general bachelor's degree was sufficient to establish a position as a specialty occupation, which it is not, the petitioner did not provide evidence on appeal supporting the claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

In this matter, the petitioner generally disagrees with the director's decision on appeal but fails to provide further information or argument to resolve the deficiencies in the record identified by the director. As the petitioner does not specifically identify an erroneous conclusion of law or statement of fact in the director's denial, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

The appeal will be dismissed for the above stated reason. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is summarily dismissed.