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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: AUG 3 0 2013 OFFICE: CALIFORNIA 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 (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,

for
Ron Rosenberg
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 describes itself as a "System Integration & Information Technology Related Services" firm. To employ the beneficiary in what it designates as a Business Systems Analyst position, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish (1) that it would employ the beneficiary in a specialty occupation position, (2) that it has standing to file the visa petition as the beneficiary's prospective employer; and (3) that a reasonable and credible offer of employment has been made in this case. On appeal, the petitioner asserts that the director's bases for denial are erroneous and contends that the petitioner satisfied all evidentiary requirements.

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 notice of intent to deny (NOID); (3) the petitioner's response to the NOID; (4) the director's denial letter; and (5) the Form I-290B and the petitioner's submissions on appeal.

Based upon its review of the entire record of proceeding, the AAO finds that the petitioner has overcome two bases of the director's decision of denial. As the totality of the evidence presented in this particular record of proceeding establishes that the petitioner has standing to file the instant visa petition as the beneficiary's prospective employer, and has made a reasonable and credible offer of employment, those bases of the decision of denial is withdrawn.

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

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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 regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

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

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, 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 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 and 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.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a business systems analyst position, and that it corresponds to Standard Occupational Classification (SOC) code and title 15-1121, Computer Systems Analysts from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level II position. Both the LCA and the visa petition state that the beneficiary would work at the petitioner's location at

With the visa petition, the petitioner submitted evidence that the beneficiary received a bachelor of engineering degree in mechanical engineering from and a master's degree in business administration from also in An evaluation in the record states that the beneficiary's degrees are equivalent to a U.S. bachelor's degree in engineering and a U.S. master's degree in business administration, respectively.

The petitioner also submitted a letter, dated May 18, 2012, from the petitioner's Legal Analyst, which lists the following job duties:

- Responsible for client interaction and positioning of our developed products in specified industry segments and expand or modify system to serve new purposes or improve work flow.
- Formulate and define product scope
- Develop, analyze, and maintain current and future business processes

- Strategic planning and GAP analysis for existing for future projects.
- Manage expectations related to the performance of the proposed solution, usability, business workflow implications, risk assessment, and system functionality
- Impact analysis of current allocations based on change management within existing projects
- Financial/Budgeting skills
- Understand both short and long term business strategy for
- Implications in terms of required talent as well as the range of viable economic, business and impact priorities
- Responsible for client interaction and positioning of our developed products in specified industry segments and expand or modify system to serve new purpose or improve work flow pertaining to
- Conducted business meeting for the projecting the developed product with its usage and demonstrating its technical importance and help in development, documentation and revision of system design procedures, test procedures, and quality standards.
- Participated in coordination with offshore team on changes requested from the business users
- Involved in UAT testing, maintain, and monitor computer programs and systems, including coordinating the installation of computer programs and systems on production level environment pertaining to and associated content migration and content integration.
- Research and identify buying centers within targeted organizations
- Reach out to specific development center to acknowledge and develop relationship to generate business
- Liaison with internal team to build proposal and plan joint calls pertaining to
- Report on daily basis to Executive Vice President on activities performed and submit status on technical values of the product developed

The petitioner's Legal Analyst stated that the petitioner's business consists of providing Systems Integrations services. He did not state that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent, or, if it does, what that specific specialty would be.

On October 30, 2012, the service center issued a NOID in this matter. The service center advised the petitioner of the following:

> USCIS was made aware of derogatory information which could result in an adverse decision. USCIS is in possession of information that indicates that in another pending petition, you altered an end client letter, concealed the fact that the beneficiary in that petition is being placed by one or more vendors not mentioned in the respective record, and requested a validity period beyond that intended by the

respective end client. This determination is based on the following information and evidence:

> In an email received from the signatory of the end client, indicated that the beneficiary ended his assignment with that company on April 13, 2012. Mr. also stated, "The document I signed was accurate, but the attached itinerary does not seem at all consistent with our intentions. We certainly would not keep a contractor on for the duration they have specified."

Additionally, in relation to another of your pending cases, the following derogatory information has been received:

> On April 27, 2012, signatory of the end-client, was contacted regarding the support letter submitted to sustain the petition. Mr. confirmed that he knew the beneficiary and had signed a support letter on her behalf; however, the letter he signed was not for a three-year period. A copy of this letter was subsequently e-mailed to Mr. for review. Mr. responded indicating that this was not the support letter that he signed and the intended project was only proffered for one year.
>
> Additionally, Mr. stated that the beneficiary had indicated that a minimum of four mid-vendors are involved in the proposed project. He went on to say that the itinerary submitted in support of the petition had been authored by the beneficiary.

The service center also informed the petitioner that the evidence submitted was insufficient to establish that (1) a valid employer-employee relationship exists, (2) the petitioner has sufficient specialty occupation work immediately available upon the beneficiary's entry into the United States, (3) the beneficiary is qualified to perform the services of a specialty occupation, and (4) a credible offer of employment exists.

In response, the petitioner provided various documents, including: (1) a copy of the petitioner's lease; (2) evidence pertinent to an application the petitioner claims to be developing; (3) copies of contracts between the petitioner and other companies, pertinent to work the petitioner has agreed to perform; and (4) a copy of an employment contract, dated May 1, 2012, executed by the petitioner and the beneficiary.

The petitioner also provided a letter, dated November 28, 2012, from the petitioner's president and CEO, who stated:

> Petitioner would like to bring the attention of USCIS that a response was submitted on 08/31/2012 to USCIS addressing the claimed derogatory information on the petitions ([redacted] and [redacted]. We respectfully request that UCIS consider this response in adjudicating the current I-129 Petition for Non-Immigrant Workers. As stated in the response, Petitioner strongly asserts that it did not knowingly misrepresent a material fact or knowingly submitted [sic] an I129 Petition for Non-Immigrant Worker that contained inaccuracies. Petitioner had no intent of submitting a client letter that was not true and accurate nor concealing any mid-vendors. Petitioner strongly asserts that we did not have any knowledge that the letter submitted in support of our I129 Petition had been altered and has taken further steps in subsequent cases to verify the client letters are true and accurate with the contact person at end client locations.

The petitioner's president and CEO also asserted, *inter alia*, that the beneficiary would be working on "in-house projects" and that (1) the beneficiary is qualified to perform the services of a specialty occupation, and (2) the petitioner's offer of employment to the beneficiary is "authentic."

The director denied the petition on December 10, 2012, finding, *inter alia*, 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 in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner provided, *inter alia*, the following: (1) a letter, dated January 3, 2013, from the petitioner's Legal Analyst; (2) a copy of an e-mail; and (3) copies of the beneficiary's performance reviews.

As a preliminary matter, the AAO observes that the petitioner has never asserted that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. The petitioner has never stated, in any of the submissions, that the proffered position requires any college degree or the equivalent, let alone a minimum of a bachelor's degree in a specific specialty or its equivalent. 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.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, the AAO turns next 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 normally the 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 U.S. Department of Labor's *Occupational Outlook Handbook* (*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)).

The AAO will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.[1]

The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 15-1121, Computer Systems Analysts from O*NET. The AAO reviewed the chapter of the *Handbook* (2012-2013 edition) entitled "Computer Systems Analysts," including the sections regarding the typical duties and requirements for this occupational category. The *Handbook* states the following with regard to the duties of market research analysts:

> **What Computer Systems Analysts Do**
>
> Computer systems analysts study an organization's current computer systems and procedures and make recommendations to management to help the organization operate more efficiently and effectively. They bring business and information technology (IT) together by understanding the needs and limitations of both.
>
> **Duties**
>
> Computer systems analysts typically do the following:
>
> - Consult with managers to determine the role of the IT system in an organization
> - Research emerging technologies to decide if installing them can increase the organization's efficiency and effectiveness
> - Prepare an analysis of costs and benefits so that management can decide if computer upgrades are financially worthwhile
> - Devise ways to make existing computer systems meet new needs

[1] The *Handbook,* which is available in printed form, may also be accessed on the Internet, at http://www.bls.gov/oco/. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

- Design and develop new systems by choosing and configuring hardware and software
- Oversee installing and configuring the new system to customize it for the organization
- Do tests to ensure that the systems work as expected
- Train the system's end users and write instruction manuals, when required

Analysts use a variety of techniques to design computer systems such as data-modeling systems, which create rules for the computer to follow when presenting data, thereby allowing analysts to make faster decisions. They also do information engineering, designing and setting up information systems to improve efficiency and communication.

Because analysts work closely with an organization's business leaders, they help the IT team understand how its computer systems can best serve the organization.

Analysts determine requirements for how much memory and speed the computer system needs, as well as other necessary features. They prepare flowcharts or diagrams for programmers or engineers to use when building the system. Analysts also work with these people to solve problems that arise after the initial system is set up.

Most systems analysts specialize in certain types of computer systems that are specific to the organization they work with. For example, an analyst might work predominantly with financial computer systems or engineering systems.
In some cases, analysts who supervise the initial installation or upgrade of IT systems from start to finish may be called IT project managers. They monitor a project's progress to ensure that deadlines, standards, and cost targets are met. IT project managers who plan and direct an organization's IT department or IT policies are included in the profile on computer and information systems managers. For more information, see the profile on computer and information systems managers.

The following are examples of types of computer system analysts.

Systems analysts specialize in developing new systems or fine-tuning existing ones to meet an organization's needs.
Systems designers or systems architects specialize in helping organizations choose a specific type of hardware and software system. They develop long-term goals for the computer systems and a plan to reach those goals. They work with management to ensure that systems are set up to best serve the organization's mission.
Software quality assurance (QA) analysts do in-depth testing of the systems they design. They run tests and diagnose problems to make sure that certain requirements

are met. QA analysts write reports to management recommending ways to improve the system.

Programmer analysts design and update their system's software and create applications tailored to their organization's needs. They do more coding and debugging the code than other types of analysts, although they still work extensively with management to determine what business needs the applications are meant to address. Other occupations that do programming are computer programmers and software developers. For more information, see the profiles on computer programmers and software developers.

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 (last visited August 27, 2013).

Most of the duties the petitioner's Legal Analyst attributed to the proffered position, when considered in the context of the petitioner's business of providing Systems Integration services, are consistent with the duties of computer systems analysts as described in the *Handbook.* On the balance, the AAO finds that the proffered position is a computer systems analyst position as described in the *Handbook.*

The *Handbook* states the following about the educational requirements of computer systems analyst positions:

How to Become a Computer Systems Analyst

A bachelor's degree in a computer or information science field is common, although not always a requirement. Some firms hire analysts with business or liberal arts degrees who know how to write computer programs.

Education

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.

Many systems analysts continue to take classes throughout their careers so that they can learn about new and innovative technologies and keep their skills competitive. Technological advances come so rapidly in the computer field that continual study is necessary to remain competitive.

Systems analysts must also understand the business field they are working in. For example, a hospital may want an analyst with a background or coursework in health management. An analyst working for a bank may need to understand finance.

Advancement

With experience, systems analysts can advance to project manager and lead a team of analysts. Some can eventually become information technology (IT) directors or chief technology officers. For more information, see the profile on computer and information systems managers.
Important Qualities

Analytical skills. Analysts must interpret complex information from various sources and be able to decide the best way to move forward on a project. They must also be able to predict how changes may affect the project.

Communication skills. Analysts work as a go-between with management and the IT department and must be able to explain complex issues in a way that both will understand.

Creativity. Because analysts are tasked with finding innovative solutions to computer problems, an ability to "think outside the box" is important.

Teamwork. The projects that computer systems analysts work on usually require them to collaborate and coordinate with others.

Id. at http://www.bls.gov/ooh/Computer-and-Information-Technology/computer-systems-analysts.htm#tab-4 (last visited August 27, 2013).

Although the *Handbook* indicates that most computer systems analysts have a bachelor's degree in a field related to computers, it also indicates that some systems analyst positions are available to people with a degree in business or liberal arts who know how to write computer programs. Clearly, computer systems analyst positions do not, as a category, require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, the petitioner has designated the proffered position as a Level II position on the submitted LCA, indicating that it is a position for an employee who performs moderately complex tasks that require limited judgment. *See* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), *available at* http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. The classification of the proffered position as a Level II position would not support an assertion[2] that it is a position that cannot be performed without a minimum of a bachelor's degree in a specific specialty or its equivalent, especially as the *Handbook* suggests that some computer systems analyst positions do not require such a degree.

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

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 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 calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, 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 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.

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of 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

[2] Again, such an assertion was never made by the petitioner.

are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, 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. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The petitioner also has not satisfied 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." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of preferred degrees acceptable for such positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The AAO will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.[3]

The record contains insufficient evidence that the petitioner has ever previously hired anyone to fill the proffered position. Further, the petitioner has not even claimed to require a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position. The petitioner has not, therefore, satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).

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 in a specific specialty or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position, such as formulating and defining product scope; developing, analyzing, and maintaining current and future business processes; understanding short and long term strategies for participating in coordination with offshore team on changes requested from the business users; testing, maintaining, and monitoring computer programs and systems; and reporting to the petitioner's Executive Vice President contain no indication of a nature so specialized and complex that they require a minimum of a bachelor's degree in a specific specialty or its equivalent. This is especially so given that, as was observed above, the petitioner designated the proffered position a Level II position, indicating that its duties are only moderately complex tasks and require limited judgment.

For the reasons discussed above, 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.

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[3] 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 a 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").

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.