



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **AUG 30 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:

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,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner is a telecommunication technology company and seeks to employ the beneficiary in what it designates as "Technical Assistance Center Engineer Senior." Thus, the petitioner endeavors to classify the beneficiary 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).

In denying the petition, the director determined that the beneficiary was not qualified to perform the duties of a specialty occupation. Specifically, the director found that the beneficiary did not qualify to perform the duties of the proffered position through a combination of education and experience. On appeal, counsel for the petitioner contends that the director's conclusion was erroneous, and additional evidence in support of the beneficiary's qualifications is submitted.

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 petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

As a preliminary matter, the AAO is required to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether the beneficiary is qualified for the position at the time the nonimmigrant visa petition is filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].").

Accordingly and beyond the decision of the director, the AAO will first analyze whether the petitioner has met its burden and established by a preponderance of the evidence that the proffered position qualifies as a specialty occupation. With respect to the preponderance of the evidence standard, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010), states in pertinent part the following:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

* * *

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case.

* * *

Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Under the preponderance of the evidence standard, the petitioner must thereby establish that it has satisfied the following statutory and regulatory requirements pertinent to the "Technical Assistance Center Engineer Senior" position proffered to the beneficiary to qualify said position as a specialty occupation.

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 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 in support of the visa petition classifies the proffered position under "Software Developers, Applications," which corresponds to Standard Occupational Classification (SOC) code 15-1132.00. In addition, the certified LCA does not list a wage level for the proffered position; instead, the petitioner indicated that the wage level section was not applicable.¹

With the visa petition, the petitioner submitted a letter dated April 6, 2013 which provided the following list of the duties of the proffered position:

As Technical Assistance Center Engineer Senior with [the petitioner], [the beneficiary] will be responsible for the delivery of communication solutions for businesses, including contact center software, small/medium business telephony and IP address management software serving customers worldwide. His specific duties will include: handling customer converged (voice/data) networking product issues by opening cases within [the petitioner's] case tracking database and detailing Customer's issues/questions; resolving Customer product issues through research using appropriate user guides, manuals, product release notes, troubleshooting guides and other members of [the petitioner's] technical support engineering team; and duplicating customer product issues in the Customer Service Lab by replicating the customer product configuration across hardware and software.

The petitioner further stated that the proffered position "requires an individual with at least a Bachelor's degree or equivalent in Computer Science or a related field."

¹ The certified LCA indicates a prevailing wage of \$77,002 will be paid annually to the beneficiary, and that this wage is based on the 2012 Radford Global Technology Survey.

The petitioner also submitted a total of three credentials evaluations (prior to adjudication and on appeal) in support of its contention that the beneficiary is qualified to perform the duties of the proffered position, which will be addressed later in this decision.

The AAO will now discuss the application of the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

The AAO will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is satisfied if a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position.

The AAO recognizes DOL'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 the "Software Developers" chapter, the *Handbook* provides the following description of the duties of those positions:

What Software Developers Do

Software developers are the creative minds behind computer programs. Some develop the applications that allow people to do specific tasks on a computer or other device. Others develop the underlying systems that run the devices or control networks.

Duties

Software developers typically do the following:

- Analyze users' needs, then design, test, and develop software to meet those needs
- Recommend software upgrades for customers' existing programs and systems
- Design each piece of the application or system and plan how the pieces will work together
- Create flowcharts and other models that instruct programmers how to write the software's code
- Ensure that the software continues to function normally through software maintenance and testing

² 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.

- Document every aspect of the application or system as a reference for future maintenance and upgrades
- Collaborate with other computer specialists to create optimum software

Software developers are in charge of the entire development process for a software program. They begin by understanding how the customer plans to use the software. They design the program and then give instructions to programmers, who write computer code and test it. If the program does not work as expected or people find it too difficult to use, software developers go back to the design process to fix the problems or improve the program. After the program is released to the customer, a developer may perform upgrades and maintenance.

Developers usually work closely with computer programmers. However, in some companies, developers write code themselves instead of giving instructions to programmers. For more information, see the profile on computer programmers.

Developers who supervise a software project from the planning stages through implementation sometimes are called IT (information technology) project managers. These workers monitor the project's progress to ensure that it meets deadlines, standards, and cost targets. 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 types of software developers:

Applications software developers design computer applications, such as word processors and games, for consumers. They may create custom software for a specific customer or commercial software to be sold to the general public. Some applications software developers create complex databases for organizations. They also create programs that people use over the Internet and within a company's intranet.

Systems software developers create the systems that keep computers functioning properly. These could be operating systems that are part of computers the general public buys or systems built specifically for an organization. Often, systems software developers also build the system's interface, which is what allows users to interact with the computer. Systems software developers create the operating systems that control most of the consumer electronics in use today, including those in phones or cars.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Software Developers," <http://www.bls.gov/ooh/Computer-and-Information-Technology/Software-developers.htm#tab-2> (last visited August 27, 2013).

The petitioner asserted in the LCA that the proffered position corresponds to a software developer position. However, a review of the brief description of the duties of the position as set forth in the petitioner's April 6, 2012 letter, in comparison to the description of the occupation of software developer set forth above, reveals substantial differences. For example, the petitioner claims that the beneficiary will essentially be responsible for the "delivery of communications solutions" and "resolving customer product issues through research." There is no indication anywhere in the record that the beneficiary will be responsible for the design or development of computer applications or software.

Although the petitioner did not assert that the proffered position is a network and computer systems administrator position, the AAO will examine the duties of such positions. In the "Network and Computer Systems Administrators" chapter, the *Handbook* provides the following description of the duties of those positions:

What Network and Computer Systems Administrators Do

Computer networks are critical parts of almost every organization. Network and computer systems administrators are responsible for the day-to-day operation of these networks. They organize, install, and support an organization's computer systems, including local area networks (LANs), wide area networks (WANs), network segments, intranets, and other data communication systems.

Duties

Network and computer systems administrators typically do the following:

- Determine what the organization needs in a network and computer system before it is set up
- Install all network hardware and software and make needed upgrades and repairs
- Maintain network and computer system security and ensure that all systems are operating correctly
- Collect data to evaluate the network's or system's performance and help make the system work better and faster
- Train users on the proper use of hardware and software when necessary
- Solve problems quickly when a user or an automated monitoring system lets them know about a problem

Administrators manage an organization's servers. They ensure that email and data storage networks work properly. They also make sure that employees' workstations are working efficiently and stay connected to the central computer network. Some administrators manage telecommunication networks at their organization.

In some cases, administrators help network architects who design and analyze network models. They also participate in decisions about buying future hardware or software to upgrade the organization's network. Some administrators provide technical support to computer users, and they may supervise computer support specialists who help users with computer problems.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Network and Computer Systems Administrators," <http://www.bls.gov/ooh/Computer-and-Information-Technology/Network-and-computer-systems-administrators.htm#tab-2> (last visited August 27, 2013).

The AAO will also examine the duties of computer support specialists. In the chapter pertinent to such positions, the *Handbook* states:

What Computer Support Specialists

Computer support specialists provide help and advice to people and organizations using computer software or equipment. Some, called technical support specialists, support information technology (IT) employees within their organization. Others, called help-desk technicians, assist non-IT users who are having computer problems.

Duties

Technical support specialists typically do the following:

- Test and evaluate existing network systems
- Perform regular maintenance to ensure that networks operate correctly
- Troubleshoot local area networks (LANs), wide area networks (WANs), and Internet systems

Technical support specialists, also called computer network support specialists, usually work in their organization's IT department. They help IT staff analyze, troubleshoot, and evaluate computer network problems. They play an important role in the daily upkeep of their organization's networks by finding solutions to problems as they occur. Solving an IT problem in a timely manner is important because organizations depend on their computer systems. Technical support specialists may provide assistance to the organization's computer users through phone, email, or in-

person visits. They often work under network and computer systems administrators, who handle more complex tasks. For more information, see the profile on network and computer systems administrators.

Help-desk technicians typically do the following:

- Pay attention to customers when they describe their computer problems
- Ask customers questions to properly diagnose the problem
- Walk customers through the problem-solving steps
- Set up or repair computer equipment and related devices
- Train users to use new computer hardware or software, including printing, installation, word processing, and email
- Give information to others in the organization about what gives customers the most trouble and other concerns customers have

Help-desk technicians, also called computer user support specialists, usually provide technical help to non-IT computer users. They respond to phone and email requests for help. Sometimes they make site visits so that they can solve a problem in person.

Help-desk technicians may solve a range of problems that vary with the industry and the particular firm. Some technicians work for large software companies and for support service firms and must give instructions to business customers on how to use complex programs. Others work in call centers answering simpler questions from consumers. Some technicians work for organizations and help non-IT workers with their computer problems.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Computer Support Specialists," <http://www.bls.gov/ooh/computer-and-information-technology/computer-support-specialists.htm#tab-2> (last visited August 27, 2013).

The duties of the proffered position, and the performance of those duties within the context of the petitioner's operations, are both consistent with either a network and computer systems administrator position or a computer support specialist.³ In fact, the proffered position may be a

³ The record contains no additional evidence, such as an organizational chart of the petitioner's operations, to demonstrate the level of responsibility the beneficiary will hold within the organization. Absent such evidence, and based on a review of the duties as described, it appears that the beneficiary's duties will likely include performing regular maintenance to networks, troubleshooting malfunctioning networks, providing assistance to customer's computer users, and other duties on a much lower level than those the *Handbook* attributes to network and computer systems administrators.

Further, the description of the duties of the proffered position appears to contemplate many such lower-level duties. For instance, such responsibilities as "handling customer converged (voice/data) networking product issues by opening cases within [the petitioner's] case tracking database" and "resolving Customer product

combination of those two types of positions. The AAO observes that, according to the *Handbook* descriptions of those positions, network and computer systems administrators, the more complex of those two types of positions, have more influence over the installation and maintenance of network and computer systems. The description of the duties of the proffered position, however, suggests that the beneficiary will not have such authority. Therefore, the AAO finds that the proffered position is, at best, a computer support specialist as described in the *Handbook*.

The *Handbook* provides the following information on entering the occupation of computer support specialist:

How to Become a Computer Support Specialist

Because of the wide range of skills for different computer support jobs, there are many paths into the occupation. A bachelor's degree is required for some computer support specialist positions, but an associate's degree or postsecondary classes may be enough for others. After being hired, many workers enter a training program that lasts for several months.

Education

Training requirements for computer support specialists vary, but many employers prefer to hire applicants who have a bachelor's degree. More technical positions are likely to require a degree in a field such as computer science, engineering, or information science, but for others the applicant's field of study is less important. Some lower level help-desk jobs or call-center jobs require some computer knowledge, but not necessarily a postsecondary degree.

Training

Computer support specialists usually get on-the-job training after they are hired. For many workers, this training lasts for about 3 months. The training period may be longer for more complex jobs.

issues through research using appropriate user guides, manuals, product release notes, troubleshooting guides, and other members of [the petitioner's] technical support engineering team" are duties generally performed by a computer support specialist. The *Handbook* makes clear that such a position does not ordinarily require a minimum of a bachelor's degree in a specific specialty or its equivalent, as it states that the educational requirements of such positions may be satisfied by an associate's degree or postsecondary classes. See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Computer Support Specialists," <http://www.bls.gov/ooh/computer-and-information-technology/computer-support-specialists.htm#tab-4> (last visited August 27, 2013).

To keep up with changes in technology, many computer support specialists continue their training throughout their careers.

Advancement

Entry-level support specialists often work on simple problems. Over time, they may advance to positions that handle questions on complex software or equipment. Many of these workers advance to other IT positions, such as network and computer systems administrators or software developers. Some become managers in the computer support services department. For more information, see the profiles on network and computer systems administrators and software developers.

Important Qualities

Interpersonal skills. Computer support specialists must be patient and sympathetic. They must often help people who are frustrated with the software or hardware they are trying to use.

Listening skills. Support workers must be able to understand the problem that their customer is describing and know when to ask questions to clarify the situation.

Problem-solving skills. Support workers must identify both simple and complex computer problems, analyze them, and provide a proper solution.

Speaking skills. Support workers must describe the solution to a computer problem in a way that a nontechnical person can understand.

Writing skills. Strong writing skills are useful for preparing instructions and email responses for employees and customers.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Computer Support Specialists," <http://www.bls.gov/ooh/computer-and-information-technology/computer-support-specialists.htm#tab-4> (last visited August 27, 2013).

As the *Handbook* repeatedly makes clear, a minimum of a bachelor's degree in a specific specialty or its equivalent is not a minimum entry requirement for a computer support specialist position. Although it states that a degree in computer science, engineering, or information science is common, it also states that some employers find the candidate's field of study less relevant. It further states that some specialists have an associate's degree, postsecondary classes, or call center experience, rather than a bachelor's degree. Accordingly, the *Handbook* does not support the proposition that computer support specialist positions, as a category, require a bachelor's degree in a specific specialty or its equivalent as a standard minimum entry requirement.

The AAO notes, initially, that, based on the duties of the proffered position, the petitioner characterized the proffered position as a "Technical Assistance Center Engineer Senior" position, rather than a software developer (the position for which the LCA is certified). The petitioner's own

evidence suggests that the LCA is not certified for the position in which the beneficiary would work. That issue will be discussed further below.

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 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or any other authoritative, objective, and reliable resource, reports a standard industry-wide 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 are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is common to the petitioner's industry in parallel positions among similar organizations, and 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 a few 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 associate's degrees or postsecondary coursework 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 of computer support specialist is so complex or unique relative to other computer support specialist positions in telecommunications technology companies 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 record contains no evidence pertinent to anyone the petitioner has previously hired to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).⁴

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.

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 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").

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 (e.g., resolving customer service issues), contain no indication of a nature so specialized and complex that they require knowledge usually associated with a minimum of a bachelor's degree in a specific specialty or its equivalent. For this reason, 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.

Absent a favorable determination that the proffered position is in fact a specialty occupation, there is no basis on which the director could have determined whether the beneficiary is qualified or unqualified to perform the duties of the claimed specialty occupation. Assuming *arguendo* that the proffered position requires at least a bachelor's degree in computer science or a related field as claimed by the petitioner, however, the AAO finds that the director did not err in denying the petition on the beneficiary qualifications issue contested here on appeal.

The statutory and regulatory framework that the AAO must apply in its consideration of the evidence of the beneficiary's qualification to serve in a specialty occupation follows below.

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, 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:

- (I) 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 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 have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In addition, 8 C.F.R. § 214.2(h)(4)(v)(A) states:

General. If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary possesses the requisite license or, if none is required, that he or she has completed a degree in the specialty that the occupation requires. Alternatively, if a license is not required and if the beneficiary does not possess the required U.S. degree or its foreign degree equivalent, the petitioner must show that the beneficiary possesses both (1) education, specialized training, and/or progressively responsible experience in the specialty equivalent to the completion of such degree, and (2) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The petitioner is seeking the beneficiary's services as a Technical Assistance Center Engineer Senior. On the LCA submitted with the petition, the petitioner classified the proffered position as that of "Software Developers, Applications," under SOC (ONET/OES) Code 15-1132.00.

The beneficiary claims on his resume that he worked as a Service Engineer for [REDACTED] from March 1997 to November 1999, and as a Senior Engineer for [REDACTED] from November 1999 to January 2002. Evidence in the record, in the form of letters from past employers, demonstrate the following employment history for the beneficiary:

- (1) "**Technical Support to end customers**" for [REDACTED] from January 21, 2002 to April 9, 2004, where he "handled major responsibilities." On his resume, the beneficiary lists his position title as "Customer Support Engineer."
- (2) In the designation of "**Member-Managed Services**" for [REDACTED] from April 20, 2004 to April 30, 2005. The employer provides no details regarding the nature of the beneficiary's duties. On his resume, the beneficiary lists his position title as "Telecom Engineer."
- (3) **Technical Consultant** for [REDACTED] from June 1, 2005 to September 26, 2006. The employer provides no details regarding the nature of the beneficiary's duties. On his resume, the beneficiary lists his position title as "Senior Technical Consultant."
- (4) **Telecom Specialist** for [REDACTED] from September 27, 2006 to present. The employer provides no details regarding the nature of the beneficiary's duties.

In its letter of support dated April 6, 2012, the petitioner claimed that the beneficiary is qualified for the position as evidenced by the credentials evaluation prepared by [REDACTED] Evaluator for [REDACTED], which accompanied the petition. The petitioner also submitted a copy of the beneficiary's diploma in Electronics and Communication Engineering from the [REDACTED] in Tamil Nadu.

The director found the initial evidence insufficient and consequently issued an RFE on August 29, 2012. The director requested additional evidence demonstrating that the beneficiary was qualified to perform the duties of the specialty occupation as set forth in 8 C.F.R. § 214.2(h)(4)(iii)(C).

In a response dated November 6, 2012, the petitioner, through counsel, addressed the director's request. Counsel for the petitioner submitted updated employment verification letters as well as a new credentials evaluation prepared by [REDACTED] Associate Professor, Department of Computer Systems Technology at the [REDACTED] which stated that the beneficiary's education and experience were "commensurate with a Bachelor's level Degree in Information Technology." In the evaluation dated November 1, 2012, the evaluator also stated:

I have authority to make determinations regarding the granting of college-level credit for the university based on a candidate's foreign educational credentials, training, and/or employment experience in Computer Science, and sub-disciplines including Management Information Systems and Computer Engineering.

That evaluation was accompanied by a letter, dated February 8, 2011, from the registrar at [REDACTED]. That letter claims that the College has a program for granting college-level credit for training and experience. The registrar also stated:

The College's policy for the granting of credit for experience is not documented in a course catalog, due to the fact that the credit-granting policies may vary on a department-by-department or student-by-student basis. (However, the College does

maintain an institutionalized "Alternate Format Advanced Standing" program, which confirms that eligible students "may receive advanced standing degree credits for relevant work and life experience."

The petitioner also submitted letters from prior employers of the beneficiary which discussed the duties performed by the beneficiary during his employment. In support of the petition, the employers provided only brief statements that disclosed no details regarding the nature of the beneficiary's duties while employed with these companies. In response to the RFE, however, the petition submitted new letters from these employers which discussed in further detail the nature of the beneficiary's duties during the course of his employment.

The first letter, from [REDACTED] of [REDACTED] and dated October 10, 2012, claims that the beneficiary was employed by [REDACTED] from January 2002 to April 2004 as a Customer Support Engineer. The letter provided an overview of the beneficiary's duties, which included "assessment, installation, commissioning, [and] maintenance of [REDACTED] systems" and various troubleshooting issues. The second letter, dated September 13, 2012 from [REDACTED] of [REDACTED], claimed that the beneficiary had been employed as a Senior Technical Consultant from April 2005 to September 2006. This letter stated that the beneficiary performed such tasks as designing customer networks and solutions, as well as maintenance and troubleshooting. The final letter, dated October 17, 2012 from [REDACTED] of [REDACTED], claims that the beneficiary is currently employed by the company as a Telecom Specialist, and that he had been assigned to a project for the petitioner from September 2006 to January 2010. It further indicated that from January 4, 2010 to the present, he has been assigned to another project for the petitioner via an agreement with [REDACTED]. The letter indicates that he is again employed as a Telecom Specialist, and that his duties have included monitoring and guiding the petitioner's technical assistance center and technical expert center, and that he has acted as single point of contact between the petitioner and major North American accounts.

The director found the evidence submitted insufficient, and concluded that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training did not qualify him for the specialty occupation. On appeal, the petitioner states that the beneficiary is qualified to perform the duties of the proffered position, and submits a third credential evaluation in support of this contention.

On appeal, the petitioner submits an evaluation from [REDACTED], Distinguished Professor at the [REDACTED], dated January 18, 2013, who states that the beneficiary has the equivalent of a U.S. Bachelor's Degree in Information Technology from an accredited university in the United States. The evaluation is also accompanied by a letter dated July 23, 2012, from [REDACTED] and chair of [REDACTED] Department of Electrical and Computer Engineering, who states that [REDACTED] "is an official who has authority to grant college-level credit for training and/or experience in the specialty at the University which has a program for granting such credit based on an individual's training and/or work experience."

Upon review of the entire record of evidence as currently constituted, the beneficiary does not meet any of the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1), (2), and (3), as there is no evidence of a U.S. accredited college or university baccalaureate or higher degree, a foreign degree determined to be equivalent to a United States baccalaureate or higher degree from an accredited college or university, or of an unrestricted state license, registration or certification which authorizes him to fully practice and be immediately engaged in a specialty occupation in the state of intended employment.

Next and as previously noted, as a license is not required for the claimed specialty occupation and as the beneficiary does not possess the required U.S. degree or its foreign degree equivalent, the petitioner must show that the beneficiary possesses both (1) education, specialized training, and/or progressively responsible experience in the specialty equivalent to the completion of such degree, and (2) recognition of expertise in the specialty through progressively responsible positions relating to the specialty. In order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree under the first prong of 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;⁵
- (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. . . .

⁵ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not training and/or experience.

With regard to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), the AAO finds that the evidence contained in the record is insufficient to establish that the evaluators who have opined on the educational equivalency of the beneficiary's work experience are officials who have "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," as required by this criterion.

As noted by the director, the evaluation submitted by [REDACTED], a foreign educational evaluation service, seeks to equate the beneficiary's academic history *and* work experience to the U.S. equivalent of a bachelor's degree in information technology. The AAO concurs with the director's finding that this evaluation is not acceptable pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), which provides that an evaluation of a beneficiary's education, specialized training, and/or progressively responsible experience may only be accepted 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. There is no evidence in the record that the [REDACTED] evaluator is "an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience."

The next evaluation, by [REDACTED] at [REDACTED], is deficient for two reasons. First, the AAO notes that the letter from the College's registrar is dated February 8, 2011. [REDACTED] evaluation, however, was prepared on November 1, 2012, nearly two years after the registrar's letter was prepared. There is no indication that the statements contained in the February 8, 2011 letter were accurate with regard to [REDACTED] position in the College at the time the evaluation was prepared.

Moreover, the AAO notes that, even if the registrar's letter had been contemporaneously prepared with the evaluation, the information regarding the College's program to grant credit based on training and/or work experience is vague and nonspecific. The registrar claims that its policy for granting credit "is not documented in a course catalog," and claims that policies vary by department. Although the registrar refers to its "Alternate Format Advanced Standing" program and submits a brief synopsis of said program, there is no evidence to establish that [REDACTED] College of Technology has a program for granting credit for training and/or work experience in the specific specialty. For these reasons, this evaluation will also be discounted.

Finally, the petitioner submits a third evaluation on appeal from [REDACTED] Distinguished Professor of [REDACTED]. The evaluation is accompanied by a letter from [REDACTED], who is Professor and Chair of the [REDACTED] Department of Electrical and Computer Engineering. While [REDACTED] claims that [REDACTED] has the authority to grant college-level credit for training and/or experience in the specialty, there is no indication that [REDACTED] is an academic dean, provost, or other official authorized to authenticate such a statement on behalf of [REDACTED]. Moreover, the record contains no evidence to

support this contention, such as [REDACTED] course catalog or handbook. 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)).

The criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(2) and (4) are not factors in this proceeding, as the record contains no evidence related to them.

With regard to 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), this criterion pertains to an evaluation of foreign educational credentials only, without consideration of work experience. The petitioner does not seek to show that the beneficiary's foreign education is equivalent to a U.S. bachelor's or higher degree in a specific specialty but, rather, that the beneficiary's education and work experience, considered together, are such an equivalent. Work experience may not be considered in determining whether the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) has been satisfied. Accordingly, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(3).

The remaining criterion for review is 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). This regulatory provision allows for recognition of a beneficiary's qualification by a USCIS determination "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 [the beneficiary] has achieved recognition of expertise in the specialty occupation as a result of such training and experience." *Id.* This criterion further states in pertinent part the following:

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated [(1)] that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; [(2)] that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and [(3)] that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation⁶;

⁶ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

Id. It is always worth noting that, by its very terms, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) is a matter strictly for USCIS application and determination, and that, also by the clear terms of the rule, experience will merit a positive determination only to the extent that the record of proceeding establishes all of the qualifying elements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) – including, but not limited to, a type of recognition of expertise in the specialty occupation.

The employment verification letters contained in the record, while corroborating the claimed employment history outlined on the beneficiary's resume, do not indicate the extent of the theoretical and practical application of specialized knowledge in any specialty that was involved in the beneficiary's work. In fact, none of the letters submitted with the initial petition provided any details with regard to the beneficiary's responsibilities while working for those individual companies.

In response to the RFE, however, the petitioner submitted new letters from [REDACTED] and [REDACTED]. Although all of the employers claim that the beneficiary's experience was "progressively responsible," the responsibilities listed in each letter provide minimal information regarding the exact nature of these duties, and indicate that the beneficiary's primary duties involved troubleshooting, maintenance, and facilitation of technical support to clients. The AAO finds that the minimal information contained in these letters fails to demonstrate that the beneficiary's 10+ years of employment in the field was progressively more responsible, rather than consisting of very similar duties for multiple companies.

Further, none of the letters provided indicate the educational level of the beneficiary's peers or subordinates during his previous employment, and none of these letters provide information pertinent to the beneficiary's supervisors. Therefore, these letters do not demonstrate that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. Further, the record does not indicate that the beneficiary has recognition of expertise in any specialty, as evidenced by at least one type of documentation such as those listed in this criterion. For all of those reasons, the petitioner has not

established that the beneficiary satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Furthermore and in any event, as the petitioner has failed to establish that the beneficiary has recognition of expertise in the claimed specialty through progressively responsible positions directly related to the specialty, the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) has not been satisfied.

As the petitioner fails to establish that the beneficiary is qualified to serve in any specialty occupation requiring at least a U.S. bachelor's degree in computer science, or its equivalent, the appeal must be dismissed and the visa petition denied for failure to qualify the beneficiary under 8 C.F.R. § 214.2(h)(4)(iii)(C) and (D).

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. For this additional reason, the petition will be denied.

Beyond the decision of the director and as previously discussed, the petition must also be denied due to the petitioner's failure to provide a certified LCA that corresponds to the petition. Specifically and as noted above, the job title on the LCA submitted with the petition was certified for SOC (O*NET/OES) Code 15-1132.00 or "Software Developers, Applications." As determined *supra*, however, the job as titled and as described by the petitioner is best classified as a computer support specialist, i.e., SOC (O*NET/OES) Code 15-1041 (now 15-1051). As such, the petitioner was required to provide at the time of filing an LCA certified for SOC (O*NET/OES) Code 15-1041, not SOC (O*NET/OES) Code 15-1032, in order for it to be found to correspond to the petition.

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

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

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

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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 dismissed.