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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: DEC 12 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

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. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center ("the director"), denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn. The petition will be remanded for entry of a new decision.

On the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a provider of information technology solutions. The petitioner indicates that it was established in July 2010 and employed 27 personnel when the petition was filed. In order to employ the beneficiary in what it designates as a "SAP PP/MM Systems Analyst" position, the petitioner seeks 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 record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the response to the RFE; (4) the denial decision; and, (5) the Form I-290B, Notice of Appeal or Motion, and counsel's letter in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.[1]

Upon review of the record, including the evidence submitted on appeal, the record shows that the beneficiary has a foreign degree in mechanical engineering and a master's degree in engineering science issued by an accredited United States university. The record, however, does not include sufficient evidence demonstrating that the proffered position is a specialty occupation. For this reason, the matter must be remanded to provide the petitioner the opportunity to address this issue.

As noted above, the petitioner stated that it seeks the beneficiary's services as a "SAP PP/MM Systems Analyst."[2] The petitioner provided the requisite Labor Condition Application (LCA) in support of the instant H-1B petition that designated the proffered position as the occupational classification of "Computer Systems Analysts" - SOC (ONET/OES Code) 15-1121 at a Level 1 (entry level) wage. The LCA was certified on March 26, 2013, for a validity period from September 18, 2013 to September 17, 2016.

The petitioner, in its March 28, 2013 letter submitted in support of the petition, stated that it "offers consulting services for Enterprise Resource Planning, Customer Relationship Management, and Business Intelligence" and it "specialize[s] in business process design, solution implementation, business process optimization, SAP software upgrades, and production support." The petitioner noted that the beneficiary is being assigned to a long-term project expected to last through 2016. The petitioner provided a copy of its Master Services Agreement with and the Statement of Work (SOW) assigning the beneficiary to

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

[2] The petitioner indicates that "PP" in the title of the position stands for production planning and the "MM" stands for materials management. The petitioner sometimes refers to the position as a SAP business systems analyst.

to perform the duties of a SAP PP/MM Consultant. The petitioner also provided its letter to the beneficiary assigning him to work at the offices of California and listing the proposed job duties as follows:

- Assist and any future clients in SAP software implementation projects as SAP PP (Sales and Distribution) and LE (Materials & Management) Systems Analyst.
- Gather requirements from business users related to Production Planning and Materials & Management processes.
- Assist in streamlining their production and procurement business processes.
- Prepare blue print documents and functional specification documents.
- Perform configuration according to the project requirements in the SAP systems of .]
- Work with developers/programmers in building custom enhancements to the SAP software.
- Test the implemented business processes in SAP.
- Work with business users in completing User Acceptance Testing (UAT)[.]
- Provide production support to the SAP systems after project go-live in the areas of Production Planning and Materials & Management.

The petitioner stated in its support letter that the proffered position requires a "bachelor's degree (or, sometimes, the equivalent through education and experience) in computer science, engineering, management information systems, or a closely related field of study; and one or more years of relevant experience in SAP systems and applications."

Upon review, the director found the evidence insufficient to establish eligibility for the benefit sought and issued an RFE requesting further evidence to establish a valid employer-employee relationship with the beneficiary as well as evidence pertaining to the beneficiary's qualifications. In response, the petitioner explained that the petitioner will have "full control" over the beneficiary's employment and that the beneficiary is qualified to perform the job duties based on his United States master's degree in engineering and his foreign bachelor's degree. The petitioner also asserted that systems analysts positions "such as the job offered to the beneficiary have long been recognized as specialty occupation positions" by United States Citizenship and Immigration Services (USCIS) and "that the Department previously has recognized system[s] analysts as professional positions and that appropriate degrees can be in engineering." The petitioner cites and includes a legacy U.S. Immigration and Naturalization Services (INS) memorandum from the Nebraska Service Center Director, Terry Way, dated December 22, 2000, titled *Guidance Memo on H-1B Computer Related Positions* (Way memo) and an excerpt from a December 4, 2001 AILA/CSC Quarterly Meeting Agenda question and answer session (AILA meeting), in support of its assertion.

The director denied the petition, finding that the petitioner had not established that the beneficiary is qualified to perform in an occupation that requires a baccalaureate degree in a

specific specialty. The director found that the record did not include supporting evidence establishing that the beneficiary's degrees in mechanical engineering and engineering science qualify him as a systems analyst, a position that requires at least a bachelor's degree in a computer or information science field.

On appeal, counsel for the petitioner asserts that the position of SAP systems analyst specializing in production planning and materials management modules, is a specialized occupation for which a baccalaureate or higher degree in mechanical engineering and engineering science is appropriate. Counsel explains that the beneficiary's education in mechanical engineering provides him the necessary knowledge and skills to work in production planning and materials management as these SAP modules relate to mechanical engineering related business processes. Counsel notes that the beneficiary's degree is not a "generalized degree" such as business administration or liberal arts or one wholly unrelated to the offered position. Counsel references previously submitted job postings which show that prospective employers accept engineering and other technical degrees as one of a "limited" range of degrees acceptable for the systems analyst role. Counsel cites the Department of Labor's (DOL) *Occupational Outlook Handbook's* (*Handbook*) report on systems analysts which states:

> 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.

Counsel contends that USCIS "has not shown that there is only a single field of study and degree that can qualify one for a systems analyst position (and it is not contested that systems analysts qualify as 'specialty occupations' for H-1B purposes)." Counsel avers that the petitioner provided supporting evidence showing the beneficiary's education included information technology coursework and that the petitioner's acceptance of engineering degrees is normal for this type of systems analysts position.

As a preliminary matter, the AAO will discuss whether the proffered position qualifies as a specialty occupation. Counsel's acknowledgement that a systems analyst position can be performed by more than one field of study and degree is noted and confirmed by the current record in this matter. Counsel's assertion that engineering is one of a limited range of degrees is acceptable to perform the duties of a systems analysts position is also noted. Contrary to counsel's conclusion, however, the record does not support that only a limited range of degrees is appropriate to perform the duties of a systems analyst. Rather, the record demonstrates that a variety of educational and training paths may provide the necessary qualifications to perform the duties of a systems analyst. As the record does not establish that a baccalaureate or higher degree in a specific discipline is necessary to perform the duties of the proffered position, the proffered position has not been established as a specialty occupation. Absent a 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. USCIS is required to follow long-standing legal standards and determine first, whether the proffered position is a specialty occupation, and second, whether

an alien 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]."). The director's implicit determination that a systems analyst position as here described is a specialty occupation is withdrawn. Therefore, this matter must be remanded for the director to issue an RFE, requesting probative evidence establishing the actual position proffered in this matter constitutes a specialty occupation.

To meet its burden of proof, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements. 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, supra.* To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

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), 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 AAO notes that, as recognized by the court in *Defensor*, *supra*, where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. *See Defensor v. Meissner*, 201 F.3d at 387-388. The court held that the former Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. *Id.* at 384. Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava,* 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)). For the record, the *Handbook*, does not establish that the proffered position is a specialty occupation.[3] The petitioner identifies the proffered position as aligning most closely with that of a computer systems analyst, SOC (ONET/OES Code) 15-1121. In addition to the *Handbook's* overview of a computer systems analysts position, cited by the petitioner above, the *Handbook* reports that computer systems analysts:

- 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
- 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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-2013 ed., "Computer Systems Analysts," http://www.bls.gov/ooh/management/computer-and-information-technology/computer-systems-analysts.htm#tab-2 (last visited Dec. 4, 2013).

The petitioner indicates that the individual in the proffered position will be working with SAP software and will gather user requirements, streamline processes, prepare blueprints and

[3] All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site http://www.bls.gov/oco/.

functional specification documents, perform configuration and work with developers/programmers in building custom enhancements to the SAP software. The individual in the proffered position will also test the implemented business processes and work with the business users to complete the testing and then provide production support to the SAP systems. The proffered position, thus, will involve consulting with business users, devising ways to make the business users' systems more effective, installing and configuring any new SAP enhancements, and testing the product. The duties broadly described by the petitioner generally correspond to the duties of a computer systems analyst as set out in the *Handbook's* report on computer systems analysts.

The *Handbook* also reports on the educational requirements for a computer systems analyst indicating that a "bachelor's degree in a computer or information science field is common, although not always a requirement" and that "[s]ome firms hire analysts with business or liberal arts degrees who know how to write computer programs." The *Handbook* states further:

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-2013 ed., "Computer Systems Analysts," http://www.bls.gov/ooh/management/computer-and-information-technology/computer-systems-analysts.htm#tab-4 (last visited Dec. 4, 2013).

The *Handbook* reports that a variety of paths are available to enter into the occupation of a computer systems analyst. A computer systems analyst may have a degree in a computer-related field, may take business courses or major in management information systems (MIS), and many have liberal arts degrees and have gained programming or technical expertise elsewhere. Some analysts may only have an associate's degree and experience in a related occupation. A computer systems analysts position is thus not required to have a bachelor's degree in the specific field of computer science or in a specific engineering discipline or business administration or other liberal arts discipline. The *Handbook* indicates at most that a bachelor's or higher degree in computer science, information systems, or management information systems may be a common preference, but not a standard occupational, entry requirement. The *Handbook's* report does not establish that a computer systems analyst position requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act. As the record does not demonstrate that a computer systems analyst position requires a precise and specific course of study that relates directly and closely to the position in question, the position has not been established as a specialty occupation. The *Handbook* does not indicate that, simply by virtue of its occupational classification, such a position qualifies as a specialty occupation in that the *Handbook* does not state a normal minimum requirement of a U.S. bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation.

The petitioner's citation to the Way memo, a USCIS memorandum issued thirteen years ago, fails to support the petitioner's claim that all computer systems analyst positions are specialty occupations. The AAO finds that counsel's reliance on this December 22, 2000 service center memorandum is misplaced as the memorandum is irrelevant to this proceeding. By its very terms, the memorandum was issued by then Director of the NSC as an attempt to "clarify" an aspect of NSC adjudications; and, framed as it was, as a memorandum to NSC "Adjudication's Officers," it was addressed exclusively to NSC personnel within that director's chain of command. As such, it has no force and effect upon the present matter, which was initially adjudicated by the California Service Center and appealed to the AAO.

It is also noted that the legacy memorandum cited by counsel does not bear a "P" designation. According to the Adjudicator's Field Manual (AFM) § 3.4, "correspondence is advisory in nature, intended only to convey the author's point of view. . . ." AFM § 3.4 goes on to note that examples of correspondence include letters, memoranda not bearing the "P" designation, unpublished AAO decisions, USCIS and DHS General Counsel Opinions, etc. Regardless, the NSC no longer adjudicates H-1B petitions and, therefore, the memorandum is not followed by any USCIS officers even as a matter of internal, service center guidance.

Even if the AAO were bound by this memorandum either as a management directive or as a matter of law, it was issued more than a decade ago, during what the NSC Director perceived as a period of "transition" for certain-computer related occupations; that the memorandum referred to now outdated versions of the *Handbook* (the latest of those being the 2000-2001 edition); and that the memorandum also relied partly on a perceived line of relatively early unpublished (and unspecified) AAO decisions in the area of computer-related occupations, which did not address the computer-related occupations as they have evolved since those decisions were issued more

than a decade ago.[4] In any event, the memorandum reminds adjudicators that a specialty occupation eligibility determination is not based on the proffered position's job title but instead on the actual duties to be performed. For all of the reasons articulated above, the memorandum is immaterial to this discussion regarding the job duties of the petitioner's proffered position and whether the petitioner has satisfied its burden of establishing that this particular position qualifies as a specialty occupation.

The fact that a person may be employed in a computer systems analyst position is not in itself sufficient to establish the position as one that qualifies as a specialty occupation. 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. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding and as initially stated by the petitioner do not indicate that the position is one for which a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry.

Similarly, the petitioner's citation to a list of professional positions classified under the PERM, permanent labor certification system, by the DOL does not correspond to positions that are specialty occupations. First, a "professional position" is undefined and may or not be equivalent to a specialty occupation. Second, 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 occupation named in the LCA is a specialty occupation. *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.

In this matter, DOL's 2004 designation of a computer systems analyst occupation, among others, as a "professional occupation" is not determinative when determining whether a computer systems analyst position is a specialty occupation.

The petitioner also submitted five job announcements for various positions with a description of the job duties and educational requirements in support of a claim that the proffered position is a specialty occupation. The advertisements submitted were for: (1) a systems analyst and software developer which required a bachelor's degree in computer science, information technology, or a related field; (2) a senior lead application support analyst which required a bachelor's degree in a

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[4] While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

computer or business related field; (3) a business analyst III which required "[t]ypically" a bachelor's degree in a technical or business discipline or equivalent experience; (4) a senior configuration analyst which required a bachelor's degree in business administration, information science, computer science, industrial engineering or a relevant area, or equivalent technical skills and experience; and (5) a systems analyst which required a bachelor's degree in business or computer science or equivalent degree with business system experience.

These advertisements confirm the *Handbook's* discussion of the variety of educational paths available to perform the duties associated with a computer systems analyst position. The advertisements do not establish that a computer systems analyst position is a specialty occupation. Moreover, the petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers' recruiting history for the type of jobs advertised. Further, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices. It must also be noted that even if all of the job postings indicated that a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these few advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Further, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

Finally, as noted above, the record includes the requisite LCA submitted in support of the instant petition that designates the proffered position under the occupational title of "Computer Systems Analysts" - SOC (ONET/OES Code) 15-1121 at a Level 1 (entry level) wage. Wage levels should be determined only after selecting the most relevant O*NET occupational code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.[5] Prevailing wage determinations start with an entry level wage and progress to a wage that is commensurate with that of a Level 2 (qualified), Level 3 (experienced), or Level 4 (fully competent worker) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required

[5] *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.

to perform the job duties.[6] The DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels.[7] A Level 1 wage rate is described by DOL as follows:

> **Level 1** (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

The AAO, however, must question the level of complexity and independent judgment and understanding required for the proffered position as the LCA is certified for a Level 1 entry-level position. The LCA's wage level indicates the position is actually a low-level, entry position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; that he will be expected to perform routine tasks that require limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results.

This aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the petitioner's assertion that the proffered position involves "complex responsibilities." Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will

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[6] A point system is used to assess the complexity of the job and assign the wage level. Step 1 requires a "1" to represent the job's requirements. Step 2 addresses experience and must contain a "0" (for at or below the level of experience and SVP range), a "1" (low end of experience and SVP), a "2" (high end), or "3" (greater than range). Step 3 considers education required to perform the job duties, a "1" (more than the usual education by one category) or "2" (more than the usual education by more than one category). Step 4 accounts for Special Skills requirements that indicate a higher level of complexity or decision-making with a "1"or a "2" entered as appropriate. Finally, Step 5 addresses Supervisory Duties, with a "1" entered unless supervision is generally required by the occupation.

[7] *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.

not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The AAO finds that, fully considered in the context of the entire record of proceedings, including the requisite LCA, the petitioner failed to provide a consistent characterization of the nature of the proffered position and in what capacity the petitioner actually intended to employ the beneficiary. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho, supra.*

The current record does not establish that the petitioner has satisfied the statutory requirement for a specialty occupation found at section 214(i)(l) of the Act and further has failed to satisfy any of the additional, supplemental requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, it cannot be found that the proffered position qualifies as a specialty occupation.

As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

The director's decision will be withdrawn and the matter remanded for entry of a new decision. The director may issue a second RFE and afford the petitioner reasonable time to provide evidence pertinent to the issue of the nature of the proffered position and to establish that the proffered position constitutes a specialty occupation. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, 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; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The director's June 17, 2013 decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision.