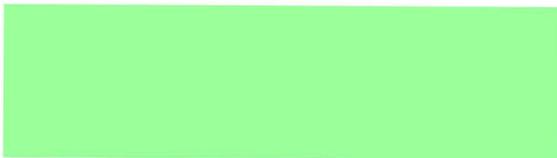


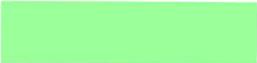


U.S. Citizenship  
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Services

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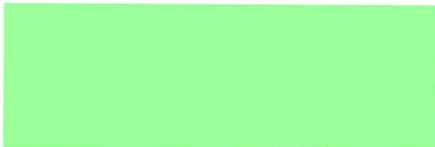
DATE: FEB 01 2013

OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The petitioner is a used car dealership with five employees. To employ the beneficiary in what it designates as a full-time web developer position, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition on the grounds that the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains: (1) the Petition for a Nonimmigrant Worker (Form I-129) and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The primary issue for consideration is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

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 stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *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.

In a letter submitted in support of the Form I-129 dated June 30, 2011, the petitioner stated that it has

"decided to retain the service of a full-time Web Developer to develop, design, establish and operate a web site which will enable [the petitioner's] staff to more aggressively market [its] products and services." The petitioner stated the following with respect to the proffered position's duties:

In this position, [the beneficiary] will be responsible for designing, developing and testing software in support of our web design project. The essential duties of this position include developing and establishing features to be included in the web design to assure that the final product will serve its original purpose. In doing so, [the beneficiary] will gather information and desired specifications from our current staff and utilize his experience in Computer Services to determine their feasibility. We expect that this duty will take approximately 10% of his total time.

Addition, [the beneficiary] will utilize the obtained information to develop overall designs of the web site. Specifically, he will write programming code required to develop several samples, out of which the company's management will choose the one most appropriate for the project's original purpose. He will also propose additional tools, such as multimedia tools, as a way of developing the web pages as a true business tool tailored to our particular line of business. The initial development and design of the web site is expected to take approximately 10% of the Developer's total time.

[The beneficiary] will also be asked to develop software tools specific to our company's current operations. Specifically, since information such as new vehicles and promotion are continuously utilized tools to increase revenues, such information will need to be uploaded onto the site at the time of its inception as well as on a continuous basis thereafter. [The beneficiary] will be asked to develop a software system capable of leading and guiding our staff to upload consistently updated information such as photos, descriptions and promotions onto the website. Moreover, he will also develop a software system which will uniformly list all currently available vehicles with their particular pictures and information in detail, thereby making the internet shopping experience for out [sic] current and future customers unique and satisfying. We expect that the development of these tools will take up approximately 20% of [the beneficiary's] time.

The majority (approximately 50%) of [the beneficiary's] time will be devoted to web security and computer backups. [The petitioner] requires a web site that offers customers the ability to make payments online. Such conveniences require not only a secure web-based payment system but also secure means of storing the information. [The beneficiary] will create a secure web-based payment system as well as user-friendly software for the employees to use to maintain account records without exposing customers' information to potential theft. [The beneficiary] will also create a software system which regularly creates a secure and easy to access backups of business data, including sales and customer information which requires a high level of security.

As part of his web security and backups duties, [the beneficiary] will be responsible for addressing all current and future web security liabilities through programming and re-programming of the website, optimizing the security checks and filling the security breaches. He will also be responsible for preparing the website for acceptance by third party security companies for more protection, which will result in additional confidence in the technical aspects of our website.

We also expect that [the beneficiary] will spend approximately 15% of his total time enhancing our website's search engine optimization ("SEO"), the process of improving the visibility of our website or in search engines via the natural (organic or algorithmic) search results. Rather than utilizing expensive search engine marketing ("SEM") paid listings, the SEO process will result in our webpage being identified higher on the result pages of all search engines. In general, the earlier (or higher on the page) and more frequently a site appears in the search results list, the more visitors it will receive from the search engine's users. [The beneficiary's] SEO work will also target different types of searches, including image search, local search, video search, and industry-specific vertical search engines. The SEO process will provide our website a much improved "web presence."

Specifically, during the SEO process, [the beneficiary] will utilize his knowledge of how search engines work, what people search for, the actual search terms typed into search engines and which search engines are preferred by their targeted audience. To optimize our website, [the beneficiary] will edit its content and HTML and associated coding to both increase its relevance to specific keywords and to remove barriers to the indexing activities of search engines. He will also promote a site to increase the number of backlinks, or inbound links, as another SEO tactic.

Lastly, [the beneficiary] will utilize approximately 5% of his total time on monitoring site technical performance and web servers, coding web pages utilizing CSS and XHTML and programming languages including JavaScript, SQL and PHP and combinations of languages, interacting with servers using SSH, FTP and Telnet protocols and implementing appropriate database systems by utilizing PostgreSQL, MySQL, and SQL Server and frameworks. [The beneficiary] will also analyze our website's performance and redesigning tools and applications, as needed.

The foregoing tasks require a high level of knowledge and expertise in the field of software development, database management, systems analysis and web design. Moreover, this position requires not only fundamental computer knowledge, but specific and highly specialized expertise applicable to information systems as they relate to the design, development and implementation of business-related computer systems. Thus, the knowledge necessary to successfully perform this position can only be gained through the course of study provided by a bachelor's degree in computer science, or the equivalent.

The petitioner submitted a Labor Condition Application (LCA) with the petition. The LCA was certified (1) for a web developer, (2) pursuant to O\*NET/OES code 15-1099.04, (3) within [REDACTED] Ohio, and (4) at a Level I prevailing wage of \$39,562 per year.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on June 25, 2011. The petitioner was asked to submit, *inter alia*, documentation to establish that a specialty occupation position exists for the beneficiary. The director outlined the specific evidence to be submitted.

On September 15, 2011, the petitioner submitted its response to the RFE. The petitioner contended that the proffered position is "best described as a combination of the duties listed under" the "Computer Network, Systems and Database Administrators" and "Computer Software Engineers and Computer Programmers" chapters in the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (hereinafter the *Handbook*). The petitioner also asserted that the "traditional Web Developer job title does not accurately cover the breadth of the job duties included under this position" and that the "majority of the duties relate to the position of a security specialist and software developer/engineer, both of which normally require at least a baccalaureate degree."

The petitioner also submitted, *inter alia*, several job postings and an evaluation of the proffered position by [REDACTED], a professor at [REDACTED]. In his letter, [REDACTED] states that it is his opinion that the proffered position requires "the theoretical and practical application of an advanced highly specialized body of knowledge, in the field of Computer Information Systems, which requires the attainment of at least a Bachelor's degree or its equivalent as the minimum requirement for entry into the occupation."

The director denied the petition on September 26, 2011, finding that the proffered position does not qualify as a specialty occupation.

On appeal, the petitioner's counsel contends that the petitioner demonstrated that the proffered position qualifies for classification as a specialty occupation. In addition, counsel takes issue with the director's finding that the proffered position is not more complex than the ordinary web developer positions described in the *Handbook*. Counsel also contends that [REDACTED] "expert opinion demonstrates that the [proffered position] meets the criteria of [8 C.F.R. § 214.2(h)(4)(iii)(A)(1), 214.2(h)(4)(iii)(A)(2), and 214.2(h)(4)(iii)(A)(4)."

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry

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

The AAO will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup> The petitioner claims in the LCA that the proffered position falls under the occupational category "Web Developers." The *Handbook* describes "Information Security Analysts, Web Developers, and Computer Network Architects" occupations as follows:

### **What Information Security Analysts, Web Developers, and Computer Network Architects Do**

Information security analysts, web developers, and computer network architects all use information technology (IT) to advance their organization's goals. Security analysts ensure a firm's information stays safe from cyberattacks. Web developers create websites to help firms have a public face. Computer network architects create the internal networks all workers within organizations use.

### **Duties**

*Information security analysts* plan and carry out security measures to protect an organization's computer networks and systems. Their responsibilities are continually expanding as the number of cyberattacks increase.

Information security analysts typically do the following:

- Research the latest information technology security trends
- Monitor their organization's networks for security breaches and investigate a violation when one occurs
- Help plan and carry out an organization's way of handling security
- Develop security standards and best practices for their organization
- Install and use software, such as firewalls and data encryption programs, to protect sensitive information
- Recommend security enhancements to management or senior IT staff
- Help computer users when they need to install or learn about new security products and procedures

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<sup>1</sup> The director's decision referred to the 2010-2011 edition of the *Handbook*. 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/>.

Information security analysts must continually adapt to stay a step ahead of cyberattackers. They must stay up to date on the latest methods attackers are using to infiltrate computer systems and on IT security. Analysts need to research new security technology to decide what will most effectively protect their organization. This may involve attending cybersecurity conferences to hear firsthand accounts of other professionals who have experienced new types of attacks.

IT security analysts create their organization's disaster recovery plan, a procedure that IT employees follow in case of emergency. The plan lets an organization's IT department continue functioning. It includes preventative measures such as regularly copying and transferring data to an offsite location. It also involves plans to restore proper IT functioning after a disaster. Analysts continually test the steps in their recovery plans.

Because information security is important, analysts usually report directly to upper management. Many information security analysts work with an organization's Chief Technology Officer (CTO) to design security or disaster recovery systems. For more information on chief technology officers, see the profile on computer and information systems managers.

**Computer network architects**, or **network engineers**, design and build data communication networks, including local area networks (LANs), wide area networks (WANs), and intranets. These networks range from a small connection between two offices to a multinational series of globally distributed communications systems. Network architects must have thorough knowledge of an organization's business plan to design a network that can help the organization achieve its goals.

Computer network architects typically do the following:

- Create a plan and layout for a data communication network
  - Present the plan to management and explain why it is in the organization's best interest to pursue it
  - Decide what hardware, such as routers or adaptors, and software, such as network drivers, will be needed to support the network
  - Determine how cables will be laid out in the building and where other hardware will go
  - Research new technology to determine what would best support their organization in the future
  - Consider information security when designing a network
- Architects often work with their organization's Chief Technology Officer (CTO) to predict the highest need for new networks. They spend most of their time planning these new networks. Some network architects work in the field, supervising engineers and workers who build the networks an architect has

designed. Network architects are often experienced staff and have 5 to 10 years of experience working in network administration or with other IT systems.

**Web developers** design and create websites. They are responsible for the look of the site. They are also responsible for the site's technical aspects, such as performance and capacity, which are measures of a website's speed and how much traffic the site can handle. They also may create content for the site.

Web developers typically do the following:

- Meet with their clients or management to discuss the needs of the website and the expected needs of the website's audience and plan how it should look
- Create and debug applications for a website
- Write code for the site, using programming languages such as HTML or XML
- Work with other team members to determine what information the site will contain
- Work with graphics and other designers to determine the website's layout
- Integrate graphics, audio, and video into the website
- Monitor website traffic

When creating a website, developers have to make their client's vision a reality. They work with clients to determine what sites should be used for, including ecommerce, news, or gaming. The developer has to decide which applications and designs will fit the site best.

The following are some types of web developers:

**Web architects or programmers** are responsible for the overall technical construction of the website. They create the basic framework of the site and ensure that it works as expected. Web architects also establish procedures for allowing others to add new pages to the website and meet with management to discuss major changes to the site.

**Web designers** are responsible for how a website looks. They create the site's layout and integrate graphics; applications, such as a retail checkout tool; and other content into the site. They also write web-design programs in a variety of computer languages, such as HTML or JavaScript.

**Webmasters** maintain websites and keep them updated. They ensure that websites operate correctly and test for errors such as broken links. Many webmasters respond to user comments as well.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Information Security Analysts, Web Developers, and Computer Network Architects," <http://www.bls.gov/ooh/computer-and-information-technology/information-security-analysts-web-developers-and-computer-network-architects.htm#tab-2> (last visited Jan. 31, 2012).

However, the *Handbook* does not indicate that web developers constitute an occupational group for which normally the minimum requirement for entry is a specialty occupation level of education, that is, at least a U.S. bachelor's degree *in a specific specialty*, or its equivalent. This is also evident from the discussion in the "How to Become an Information Security Analyst, Web Developer, or Computer Network Architect." This section of the *Handbook* states the following regarding the requirements for these occupations:

### **How to Become a Computer Systems Analyst**

Most information security analysts, web developers, and computer network architects have a bachelor's degree in a computer-related field. Information security analysts and computer network architects usually need experience in a related occupation, and additional knowledge of web programming languages can help web developers.

#### **Education**

Information security analysts usually need at least a bachelor's degree in computer science, programming, or a related field. As information security continues to develop as a career field, many schools are responding with information security programs to prepare students for the job. These programs may become a common path for entry into the occupation.

Employers of information security analysts sometimes prefer applicants who have a Master of Business Administration (MBA) in information systems. Programs offering the MBA in information systems generally require 2 years of study beyond the undergraduate level and include both business and computer-related courses.

Computer network architects usually need at least a bachelor's degree in computer science, information systems, engineering, or a related field. Employers of network architects sometimes prefer applicants to have a Master of Business Administration (MBA) in information systems. These programs generally require 2 years of study beyond the undergraduate level and include both business and computer-related courses.

Educational requirements for web developers vary with the setting they work in and the type of work they do. Requirements range from a high school diploma to a bachelor's degree. An associate's degree may be sufficient for webmasters who do not do a lot of programming.

However, for web architect or other, more technical, developer positions, some employers prefer workers who have at least a bachelor's degree in computer science, programming, or a related field.

Web developers need to have a thorough understanding of HTML. Many employers also want developers to understand other languages, such as JavaScript or SQL, as

well as have some knowledge of multimedia publishing tools, such as Flash. Throughout their career, web developers must keep up to date on new tools and computer languages.

Some employers prefer web developers who have both a computer degree and have taken classes in graphic design, especially when hiring developers who will be heavily involved in the website's visual appearance.

### **Work Experience**

Information security analysts generally need to have previous experience in a related occupation. Many employers look for people who have already worked in fields related to the one in which they are hiring. For example, if the job opening is in database security, they may look for a database administrator. If they are hiring in systems security, a computer systems analyst may be an ideal candidate.

Network architects generally need to have previous experience in a related occupation. They usually have at least 5 to 10 years of experience working in network administration or with other information technology (IT) systems.

### **Important Qualities**

**Analytical skills.** Information security analysts must carefully examine computer systems and networks to determine if they have been compromised. Computer network architects have to examine data networks and decide how to best connect the networks based on the needs and resources of the organization.

**Concentration.** Web developers must sit at a computer and write detailed code for long periods.

**Creativity.** Web developers are often involved in designing the appearance of a website and must make sure that it looks innovative and up to date.

**Customer-service skills.** Webmasters have to respond politely and correctly to user questions and requests.

**Detail oriented.** Because cyberattacks can be difficult to detect, information security analysts pay careful attention to their computer systems and watch for minor changes in performance. Computer network architects create comprehensive plans of the networks they are creating with precise information describing how the network parts will work together. When web developers write in HTML, a minor error could cause an entire webpage to stop working.

**Ingenuity.** Information security analysts try to outthink cybercriminals and invent new ways to protect their organization's computer systems and networks.

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**Leadership skills.** Many computer network architects direct teams of engineers who build the networks they have designed.

**Organization skills.** Computer network architects who work for large firms must coordinate many different types of communication networks and make sure they work well together.

**Problem-solving skills.** Information security analysts uncover and fix flaws in computer systems and networks.

**Teamwork.** Workers in all three of these occupations must be able to work with different types of employees to accomplish their goals.

U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., at <http://www.bls.gov/ooh/computer-and-information-technology/information-security-analysts-web-developers-and-computer-network-architects.htm#tab-4> (last visited Jan. 31, 2012).

Thus, while "[s]ome employers prefer web developers who have both a computer degree and have taken classes in graphic design," "requirements range from a high school diploma to a bachelor's degree" and "[a]n associate's degree may be sufficient for webmasters who do not do a lot of programming." *Id.* According to the *Handbook*, it appears that the most important qualification is not a specific degree but rather knowledge of web programming languages. *See id.* With no indication that such knowledge must culminate in or be equivalent to a U.S. bachelor's or higher degree in a specific specialty, the *Handbook* is not sufficient evidence in and of itself that the particular position proffered here qualifies as a specialty occupation.

Based on the job description provided by the petitioner as read within the context of the petitioner's used car dealer operations and the fact that the petitioner's organizational chart does not indicate that it has any personnel responsible for the day-to-day operation of the petitioner's computer network, it does not appear that the beneficiary's work will be devoted entirely to the petitioner's website. Instead, it appears that the beneficiary will also be responsible for the day-to-day operation of the petitioner's computer network, including such lower tasks as evaluating, testing, and troubleshooting the petitioner's existing computer system. Thus, it is more likely than not that the beneficiary's job duties will primarily be a combination of a technical support specialist and a web developer. *See Handbook*, "Computer Support Specialists" at <http://www.bls.gov/ooh/computer-and-information-technology/computer-support-specialists.htm#tab-2>, and "Information Security Analysts, Web Developers, and Computer Network Architects" at <http://www.bls.gov/ooh/computer-and-information-technology/information-security-analysts-web-developers-and-computer-network-architects.htm#tab-2> (last visited Jan. 31, 2012).

Given the size of the petitioner and the lack of evidence of subordinate personnel who will relieve the beneficiary of the petitioner's daily technical support needs, it appears that the beneficiary will be

responsible for such tasks.<sup>2</sup> Further, the *Handbook* does not indicate that such tasks require a minimum of a bachelor's or higher degree in a specific specialty or its equivalent to perform. More specifically, while a bachelor's degree may be preferred for many such positions, the *Handbook* indicates that individuals with associate's degrees may enter this occupation. *See id.* at <http://www.bls.gov/ooh/computer-and-information-technology/computer-support-specialists.htm#tab-2> and <http://www.bls.gov/ooh/computer-and-information-technology/information-security-analysts-web-developers-and-computer-network-architects.htm#tab-4> (last visited Jan. 31, 2012).

As the evidence of record does not establish that the particular position proffered here is one for which normally the minimum requirement for entry is a baccalaureate or higher degree, in a specific specialty directly related to the position's duties, or its equivalent, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

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.

As stated earlier, 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

Here, and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* 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.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner submitted copies of nine advertisements as evidence that its degree requirement is standard amongst its peer organizations for parallel positions. Specifically, the petitioner submitted advertisements for the following positions posted on the Internet:

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<sup>2</sup> It is reasonable to assume that the size of an employer's business has or could have an impact on the claimed duties of a particular position. *See EG Enterprises, Inc. d/b/a Mexican Wholesale Grocery v Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). Thus, the size of a petitioner may be considered as a component of the nature of the petitioner's business, as the size impacts upon the actual duties of a particular position.

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- 1) A Java Developer position at [REDACTED]
- 2) A Front-End Web Developer position at [REDACTED]
- 3) A Senior Web Developer position at [REDACTED]
- 4) A Web Application Developer position at [REDACTED]
- 5) A Senior Web Developer position at [REDACTED]
- 6) A Financial Systems Developer position at [REDACTED]
- 7) A Software Developer position at [REDACTED]
- 8) An E-Banking Technical Consultant position at [REDACTED]
- 9) A C++ Developer position at [REDACTED]

The petitioner's reliance upon the job vacancy advertisements it submitted is misplaced. To establish that an organization is similar, the petitioner must demonstrate that it shares the same general characteristics as the advertising organizations. Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and an organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the petitioner or counsel to claim that an organization is similar and in the same industry without providing corroborating evidence that establishes a legitimate basis for such an assertion. 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 record here lacks sufficient evidence demonstrating that the advertised positions are parallel positions. Moreover, without further information, the advertisements appear to be for organizations that are not similar to the petitioner and the petitioner has not provided any probative evidence to suggest otherwise. In fact, the petitioner failed to supplement the record of proceeding to establish that any of the nine advertising organizations are similar to it. That is, the petitioner has not provided any information regarding which aspects or traits (if any) it shares with the advertising organizations. Thus, the advertised positions cannot be found to be parallel positions in similar organizations and the documentation provided does not establish that a bachelor's degree (or higher) in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations.<sup>3</sup>

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<sup>3</sup> Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from just nine job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar companies. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

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 or its equivalent.

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

Next, the record of proceeding does not establish a prior history of recruiting, hiring, and employing in the proffered position persons with at least a bachelor's degree in a specific specialty or its equivalent. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).<sup>4</sup>

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As such, even if the job announcements supported the finding that the position of web developer for a used car dealership required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

<sup>4</sup> 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

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than positions within the same occupational category that are not usually associated with a degree in a specific specialty or its equivalent.<sup>5</sup>

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.

In addition, the AAO finds no probative value in the opinion rendered by [REDACTED]. The opinion is not based upon sufficient information about the "web developer" position proposed here. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

Specifically, the content of the professor's letter does not demonstrate that the professor's opinion is based upon sufficient information about the particular position at issue. First, the letter reveals that the professor's knowledge of the position is limited to the duties submitted by the petitioner to USCIS. Second, the professor does not relate any personal observations of those operations or of the work that the beneficiary would perform, nor does he state that he has reviewed any projects or work products related to the proffered position. Third, the professor's opinion does not relate his conclusions to specific, concrete aspects of this petitioner's business operations to demonstrate a sound factual basis for his conclusions about the educational requirements for the particular position

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limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

<sup>5</sup> Moreover, the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. *See* Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009). Therefore, it is simply not credible that the position is one with specialized and complex duties, as such a higher-level position would likely be classified at a higher level such as a Level IV position, requiring a significantly higher prevailing wage.

(b)(6)

here at issue.

Lastly, the AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be 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, except to note that, in any event, the petitioner did not submit an evaluation of the beneficiary's foreign degree or sufficient evidence to establish that his degree is the equivalent of a U.S. bachelor's or higher degree in a specific specialty. As such, since evidence was not presented that the beneficiary has at least a U.S. bachelor's degree in a specific specialty or its equivalent, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

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

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