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

Date: JUN 2 1 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,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The Form I-129 visa petition states that the petitioner is a "Dance and Musical Equipment International Sales and Showroom" firm. To employ the beneficiary in a position it designates as a business systems analyst position, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that the beneficiary is qualified for the proffered position. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's 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 business systems analyst position proffered to the beneficiary to qualify said position as a specialty occupation.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), defines the term "specialty occupation" as an occupation that requires:

> (A) theoretical and practical application of a body of highly specialized knowledge, and
>
> (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

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

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must also meet one of the following criteria:

(1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

(3) The employer normally requires a degree or its equivalent for the position; or

(4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

The Labor Condition Application (LCA) submitted in support of the visa petition states that the proffered position is a business systems analyst position, and that it corresponds to Standard Occupational Classification (SOC) code and title 15-1032, "Computer Software Engineers, Systems Software" (currently classified as 15-1133.00, software developers, systems software). In addition, the LCA was certified by the United States Department of Labor (DOL) for a Level I position.

With the visa petition, counsel submitted a letter, dated June 9, 2011, from the petitioner's owner, who provided the following list of the duties of the proffered position:

- Analyze the functions and operations for each of six business operations.
- Evaluate the entirety of current IT system software and the hardware running such software.
- Design business systems software based on the needs and goals of each of businesses.
- Researching and recommending the purchase and acquisition of systems software, hardware and other IT equipment within the company's IT budget what will best meet [the petitioner's] business goals and needs.
- Consult with management on overall system software design and functionality to confirm that system software will satisfy management's business goals.
- Implement a comprehensive business systems software operations program that will simultaneously serve the business needs of each of individual businesses and provide management with an overall comprehensive business management command and control.
- Test, adapt and maintain business systems software and systems, resolving any bugs or other systems errors.
- Developing security protocols to management specifications.

The petitioner's owner further stated: "The [proffered position] requires . . . at least a Bachelor's Degree in Computer Science or Computer Information Systems, or its equivalent."

On August 31, 2011, the service center issued an RFE in this matter. The director outlined the specific evidence to be submitted. The service center requested, *inter alia*, evidence that the

petitioner would employ the beneficiary in a specialty occupation. The director specifically requested a more detailed description of the duties of the proffered position and an explanation of why those duties require a minimum of a bachelor's degree in a specific specialty or its equivalent.

In response, counsel submitted a letter, dated November 21, 2011, in which she provided the following more detailed description of the duties of the proffered position:

1) **Analyze the Functions and Operations for Each of Six Business Operations.**

   In order for the [person in the proffered position] to create a comprehensive RRP system they must first learn what each of [the petitioner's] six businesses does and how each business functions. The analysis will involve observation of the business in action, meeting and interviewing staff and management. In their analysis of each business the [person in the proffered position] must consider what management's goals are for each business. Once they complete their detailed study of each of [the petitioner's] businesses then they can determine what the functional and systematic needs are for each business, what each businesses [sic] ERP system should look like and how it should operate so that each individual businesses [sic] goals are forwarded through the ERP systems will then be synthesized into one overarching ERP management system.

   (These duties are estimated to comprise 20% of the [person in the proffered position's] time).

2) **Evaluate the Entirety of Current System and Computer Hardware for Use in Their Respective ERP's.**

   Upon completion of determining the business functions and requirements for each of [the petitioner's] enterprises the [person in the proffered position] must then conduct an examination of the technology already employed by [the petitioner] for determination if it should be retained or replaced. The comprehensive evaluation to be conducted will encompass everything comprising their current hardware (computers, servers, routers, monitors, cables, etc) and software currently in use. Possible retention will be based upon each computer's ability to be upgraded as well as the demands required of each particular ERP. Any hardware that will be retained and incorporated into the ERP system will then be optimized for performance.

   In addition to the fundamental components already possessed by [the petitioner] their IT infrastructure must be examined to determine if either certain features already exist or if the current infrastructure can support such essential ERP

components as an uninterruptable power supply (UPS), a broadband intranet network, and redundant hardware.

(These duties are estimated to comprise 10% of the [person in the proffered position's] time).

3) **Design ERP's Based On the Needs and Goals of Each of businesses.**

The third job duty of [the proffered position] at [the petitioner] is to design a comprehensive business ERP system that incorporates the ability for each business to engage in such business management ERP modules as sales systems, inventory monitoring, purchase order systems, client databases, shipment tracking systems and accounting systems.

To complete this analysis the [person in the proffered position] will need to determine the number and variety of software programs, hardware components, and modules required to implement the system. For a [person in the proffered position] to perform such functions they must have an in-depth understanding of database design and infrastructure that comes with an advanced technical college degree or the appropriate amount and type of experience. They must also be well versed in proper database design and interfacing which is a skill often taught in college database courses or through the appropriate work experience.

As stated above each of [the petitioner's] businesses will require and receive its own ERP that is specifically designed to meet the needs of each business and minimize inefficiency. Another primary function of each ERP will be to meet the specific management goals for each business. The [person in the proffered position] at [the petitioner] will also be required to create an overarching management ERP that will focus on specific management concerns (overall financial issues, human resources, planning, and general supervision of each business). Because the ERP for each of [the petitioner's] businesses will be a system that is customized for each business it is more likely than not that the [person in the proffered position] will be required to create software to run each specific ERP.

(These duties are estimated to comprise 20% of the [person in the proffered position's time).

4) **Consult With Management That Each ERP System Will Satisfy Their Business Goals.**

During the process planning ERP's for [the petitioner's] businesses the [person in the proffered position] will meet and confer with management to confirm that the

goals for each business will be met through the functions and functionality of the ERP. Based on management's evaluation and input the [person in the proffered position] will be required to make changes to the ERP until it meets the satisfaction of management.
(These duties are estimated to comprise 5% of the person in the proffered position's time).

5) **Recommend the Purchase of Software, Hardware and Other Equipment Required to Implement the ERP Systems.**

After evaluating [the petitioner's] present technology and then designing [the petitioner's] ERP systems the [person in the proffered position] will research and recommend the purchase of hardware and software that will sufficiently support the needs of the ERP systems. The Business Systems Analyst will be required to generate recommendations of purchases to management with a timeline of project completion targets.
(These duties are estimated to comprise 5% of the [person in the proffered position's] time).

6) **Construct Each ERP System.**

Upon approval of each ERP system and acquisition of hardware and software the [person in the proffered position] must physically construct each ERP. This will require the setup of physical work stations, servers, intranet connections, internet connections, security systems, and additional support systems such as uninterruptable power supplies and redundant hardware.
(These duties are estimated to comprise 15% of the [person in the proffered position's] time).

7) **Test Each ERP Resolving Any Bugs or Other System Errors.**

Upon completion of the installation of the ERP system each module and program will be thoroughly tested through both static and dynamic testing to reveal bugs. Upon determining any issues with the ERP the [person in the proffered position] will be required to remediate any and all such issues until the system is fully operational.

(These duties are estimated to comprise 10% of the [person in the proffered position's] time).

8) **Develop Full Security Protocols.**

The [person in the proffered position] at [the petitioner] must create a system of comprehensive protections from both inside and outside intruders who might seek access to sensitive information. The creation of this system will likely require the [person in the proffered position] to create an active directory and implement encryption and security protocols. Firewalls will also need to be created to manage internet protocols for each workstation with management maintaining overall access control. Upon completion the security systems will be tested for security loopholes and vulnerabilities using various security tools.

(These duties are estimated to comprise 5% of the [person in the proffered position's] time).

9) **Train Employees to Use ERP Systems and Functions**

After construction of an ERP system the [person in the proffered position] will be required to train [the petitioner's] employees on the use and functionality of the ERP.
(These duties are estimated to comprise 5% of the [person in the proffered position's] time).

10) **Maintain, Adapt and Reconfigure ERP Systems**

After implementation of the ERP the [person in the proffered position] at [the petitioner] will be charged with monitoring the effectiveness of each ERP system to ensure that it meets the efficiency, user friendliness and other business requirements required by management. If the system is not meeting expectations or requirements it is the duty of the [person in the proffered position] [to] develop a plan to fix any and all issues that arise with each ERP.

The [person in the proffered position] at [the petitioner] must also maintain the basic functionality of each system, correcting any breakdowns in hardware of software as they arise. They must also plan for the eventual upgrading and/or replacement of ERP systems software and hardware based on its estimated lifespan and the changing needs of each of [the petitioner's] businesses.
(These duties are estimated to comprise 5% of the [person in the proffered position's] time).

Counsel also submitted an evaluation of the proffered position, prepared by an associate professor in the Computer Science Department of and dated November 15, 2011. The evaluator stated that the proffered position requires, "bachelor's-level educational training in management information systems, IT, computer information systems, or a related technical field . . . ."

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.[1]

Positions formerly described in the *Handbook* as Software Engineer positions are now designated Software Developer positions. 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
> - 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

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

> 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 June 18, 2013).

The petitioner asserted in the LCA that the proffered position corresponds to a computer systems software engineer position, which positions are now called software developer positions in the *Handbook*. However, the petitioner, is a dance studio. Notwithstanding any assertions in the record, in the context of the petitioner's operations and absent evidence to the contrary, it is

unlikely that the beneficiary would be developing a custom operating system or performing the other duties attributed to systems software developers in the *Handbook*. The computing and software needs of the petitioner will, more likely than not, be addressed with purchases of off-the-shelf hardware and software. The petitioner will require that the hardware and software be installed, and the resulting computer system debugged. Although some customization is possible and may be performed by the beneficiary, it is unlikely to rise to the level contemplated by the *Handbook* in discussing software developer positions.

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

> **What Computer Systems Analysts Do**
>
> Computer systems analysts study an organization's current computer systems and procedures and make recommendations to management to help the organization operate more efficiently and effectively. They bring business and information technology (IT) together by understanding the needs and limitations of both.
>
> **Duties**
>
> Computer systems analysts typically do the following:
>
> - Consult with managers to determine the role of the IT system in an organization
> - Research emerging technologies to decide if installing them can increase the organization's efficiency and effectiveness
> - Prepare an analysis of costs and benefits so that management can decide if computer upgrades are financially worthwhile
> - Devise ways to make existing computer systems meet new needs
> - Design and develop new systems by choosing and configuring hardware and software
> - Oversee installing and configuring the new system to customize it for the organization
> - Do tests to ensure that the systems work as expected
> - Train the system's end users and write instruction manuals, when required
>
> Analysts use a variety of techniques to design computer systems such as data-modeling systems, which create rules for the computer to follow when presenting data, thereby allowing analysts to make faster decisions. They also do information engineering, designing and setting up information systems to improve efficiency and communication.

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

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

Most systems analysts specialize in certain types of computer systems that are specific to the organization they work with. For example, an analyst might work predominantly with financial computer systems or engineering systems.

In some cases, analysts who supervise the initial installation or upgrade of IT systems from start to finish may be called IT project managers. They monitor a project's progress to ensure that deadlines, standards, and cost targets are met. IT project managers who plan and direct an organization's IT department or IT policies are included in the profile on computer and information systems managers. For more information, see the profile on computer and information systems managers.

The following are examples of types of computer system analysts.

Systems analysts specialize in developing new systems or fine-tuning existing ones to meet an organization's needs.

Systems designers or systems architects specialize in helping organizations choose a specific type of hardware and software system. They develop long-term goals for the computer systems and a plan to reach those goals. They work with management to ensure that systems are set up to best serve the organization's mission.

Software quality assurance (QA) analysts do in-depth testing of the systems they design. They run tests and diagnose problems to make sure that certain requirements are met. QA analysts write reports to management recommending ways to improve the system.

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook,* 2012-13 ed., "Computer Systems Analysts," http://www.bls.gov/ooh/Computer-and-Information-Technology/Computer-systems-analysts.htm#tab-2 (last visited June 18, 2013).

The AAO will also examine the duties of network and computer systems administrators. In the chapter pertinent to such positions, the *Handbook* states:

> **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 June 18, 2013).

The duties described by counsel in her November 21, 2011 letter are consistent with the duties of a software developer, a computer systems analyst, and a network and computer systems administrator. However, in the context of the petitioner's business, as was observed above, the beneficiary would not likely perform the duties of a software developer. 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 computer systems analyst position or a network and computer systems administrator position.[2] In fact, the proffered position may be a combination of those two types of positions. The AAO observes that, according to the *Handbook* descriptions of those positions, computer systems analysts, the more complex of those two types of positions, have more influence over the design of the computer system and determining the components necessary. The descriptions of the duties of the proffered position suggest that the beneficiary will have such authority. On the balance, the AAO finds that the proffered position is, at best, a computer systems analyst position as described in the *Handbook.*

The *Handbook* provides the following information on entering the occupation of computer systems analyst:

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[2] The record contains an organizational chart of the petitioner's operations that reveals that the petitioner has no positions for computer specialists other than the proffered position. This suggests that the duties of the proffered position will likely include testing and evaluating network systems, performing regular maintenance to networks, troubleshooting malfunctioning networks, providing assistance to the organization's computer users, setting up and repairing computer equipment and peripherals, training users to use new computer hardware or software and other duties on a much lower level than those the *Handbook* attributes to systems analysts.

Further, the description of the duties of the proffered position appears to contemplate many such lower-level duties. For instance, such responsibilities as determining the number and variety of software programs, hardware components, and modules required to implement the system; researching and recommending the purchase of hardware and software; setting up of work stations, servers, intranet connections, Internet connections, security systems including firewalls, uninterruptable power supplies, etc.; training the petitioner's employees to use the resulting computer system; and maintaining and repairing the computer system as necessary, are duties generally performed by a network and computer systems administrator. The *Handbook* makes clear that network and computer systems administrator positions do 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 a postsecondary certificate in a computer field with related work experience.

How to Become a Computer Systems Analyst

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

Education

Most computer systems analysts have a bachelor's degree in a computer-related field. Because computer systems analysts are also heavily involved in the business side of a company, it may be helpful to take business courses or major in management information systems (MIS).

Some employers prefer applicants who have a Master of Business Administration (MBA) with a concentration in information systems. For more technically complex jobs, a master's degree in computer science may be more appropriate.

Although many analysts have technical degrees, such a degree is not always a requirement. Many systems analysts have liberal arts degrees and have gained programming or technical expertise elsewhere.

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

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

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

Advancement

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

Important Qualities

> ***Analytical skills.*** Analysts must interpret complex information from various sources and be able to decide the best way to move forward on a project. They must also be able to predict how changes may affect the project.
> ***Communication skills.*** Analysts work as a go-between with management and the IT department and must be able to explain complex issues in a way that both will understand.
> ***Creativity.*** Because analysts are tasked with finding innovative solutions to computer problems, an ability to "think outside the box" is important.
> ***Teamwork.*** The projects that computer systems analysts work on usually require them to collaborate and coordinate with others.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook,* 2012-13 ed., "Computer Systems Analysts," http://www.bls.gov/ooh/Computer-and-Information-Technology/Computer-systems-analysts.htm#tab-4 (last visited June 18, 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 systems analyst position. Although it states that a degree in computer or information science is common, it also states that some firms hire analysts with business or liberal arts degrees who know how to write computer programs. It further states that some analysts have an associate's degree and experience in a related occupation, rather than a bachelor's degree. Accordingly, the *Handbook* does not support the proposition that computer systems analyst positions, as a category, require a bachelor's degree in a specific specialty or its equivalent as a standard minimum entry requirement.

The November 15, 2011 evaluation of the proffered position reviewed the duty description provided by the petitioner's owner and stated:

> In conclusion, I believe that the subject position of "Business Systems Analyst" cannot be properly performed without bachelor's-level training in management information systems, computer information systems, or a related technical field.

The AAO notes, initially, that, based on the duties of the proffered position, the evaluator characterized the proffered position as a business systems analyst position, rather than a computer software engineer (the position for which the LCA is certified) or a software developer position (the title the *Handbook* now applies to such positions). "Business systems analyst" is an alternative job title for a computer systems analyst working in business, rather than science or engineering. 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.

Having thus characterized the proffered position, the evaluator found that it requires "bachelor's-level training" in a related technical field. It is important to note, however, that the evaluator stops short of stating that it requires a bachelor's degree in a specific specialty or its equivalent. Bachelor's level training may simply mean that a candidate should have taken bachelor's level courses or

training in a related technical field. It does not mean that a candidate must have taken sufficient training or coursework such that it would culminate in a bachelor's degree in a specific specialty or its equivalent. As such, this evaluation does not support the petitioner's claims that the proffered position "requires . . . at least a Bachelor's Degree in Computer Science or Computer Information Systems, or its equivalent."

Even if the evaluator had stated that this particular position required a minimum of a bachelor's degree in a specific specialty or its equivalent, the evaluator did not list any reference materials on which the evaluator relied as a basis for his conclusions. He did not address the *Handbook* information that such positions do not necessarily require a minimum of a bachelor's degree in a specific specialty or its equivalent. The evaluator appears not to have based his opinion on any objective evidence, but instead to have relied on his own subjective judgment.

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). For the reasons articulated above, the November 15, 2011 evaluation does not support the petitioner's assertions that the particular position qualifies as a specialty occupation and, therefore, it will carry little to no weight in this proceeding in favor of establishing eligibility for the benefit sought.

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

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and

recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 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, as suggested by the evaluator, 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 general baccalaureate degrees not in a specific specialty, such as business or liberal arts. 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 systems analyst is so complex or unique relative to other computer systems analyst positions in dance studios 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*).[3]

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position (e.g., studying and analyzing business functions and the petitioner's computer hardware and peripherals; consulting with management and designing a new computer system or upgrading the existing system as necessary to accommodate the petitioner's business; recommending hardware and software for that purpose; constructing the computer system; testing and debugging the computer system; installing an appropriate security system; training employees to use the system; and maintaining and upgrading the system as necessary), for instance, 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.

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[3] While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

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 computer information systems 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.

To establish that the beneficiary is more likely than not qualified to perform the duties of a specialty occupation requiring at least a U.S. bachelor's degree in computer science or computer information systems or its equivalent, the petitioner must satisfy the following statutory and regulatory requirements.

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, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that the beneficiary must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

(*1*) 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 [(a)] 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 [(b)] 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.

With the visa petition, counsel submitted evidence that the beneficiary studied "Marine Power Engineering and Electronic" for four semesters at the for which he was awarded a diploma and the title of Engineer of Maritime Transport. According to the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), a Croatian diploma and professional title "represents attainment of a level of education comparable to 2 - 3 years of university study in the United States." http://edge.aacrao.org/country/credential/diploma-and-professional-title?cid=single (last visited May 28, 2013). Based on the beneficiary's four semesters of study, it appears that he possesses the equivalent of two years of university study in the United States.

In addition, counsel provided a letter, dated June 9, 2011, from the petitioner's owner. That letter states, "The petitioner . . . is comprised of six distinct businesses," and lists six businesses. As previously noted, that letter also states that the proffered position requires: "at least a Bachelor's Degree in Computer Science or Computer Information Systems, or its equivalent."

Evidence in the record shows that the beneficiary has been employed as follows:

(1) as a systems analyst at in from February 2002 to January 2006, in which position he installed and configured Microsoft Windows servers, installed and configured Microsoft Windows workstations, installed and configured specialized software (POS, bookkeeping, etc.), performed data backup and storage, and performed LAN network planning;

(2) in a position, the title of which was not stated, at from February 2006 to March 2007. His duties in that position were described as follows:

> [The beneficiary] was trained in IBM hardware and software technology and performed installations and configurations of the following systems:
>
> - Kofax Ascent Capture (software for Document Imaging – OCR)
> - IBM Tivolli storage manager (backup and archiving software)
> - IBM Common Store for Lotus Domino (e-mail archiving software)
> - Adobe Central Output Pro (software dynamically generates electronic documents such as purchase orders, invoices, and checks for delivery via PDF, on the web, or in print)
>
> Furthermore, [the beneficiary] configured hardware for Servers (IBM, HP, SUN Microsystems, DAT tapes and optical libraries, network installations (copper and optical) and connection and configuration to SAN storage devices (BM ESS), and performed OS software installations of Windows Server OS;

(3) as a systems analyst for from March 2007 to March 2008, in which position his duties included:

- Installation and configuration of Microsoft Windows servers and workstations
- Installation and configuration of specialized software for various systems (CCTV software, hotel electronic locking software, intelligent room software, spa reservation software)
- Localization of the afore[]mentioned software and integration to other systems such as POS software
- Installation and configuration of interactive television systems (setting up the hotel server, satellite communication to the main server from which the content is downloaded, setting up televisions [and] the communication from TV to hotel server)

(4) as a systems analyst for from September 2008 to October 2009, in which position his duties were described as follows:

- Installation and configuration of Microsoft Windows Servers and Workstations
- Installation and configuration of specialized software for various systems
- Localization of the above[-]mentioned software and integration into other systems
- Firmware testing for measurement devices
- Enabling communication of the PC and measurement devices
- Development of the specialized relation database for company business optimization (cataloguing sales program, buyers and manufacturers, and connecting them into a functional unit for easier querying)

and

(5) for from November 2009 to January 2011, in which position his duties were described in part as follows:

> [The beneficiary] was employed in as a technical director; he also participated in the founding of the company and building the infrastructure and logistics. [The beneficiary] was responsible for all IT business in the company
>
> He constructed the system for electronic business for , i.e. the system for document synchronization between two remote locations of the company, as well as a so called virtual office, where it is possible to gain secure access to company documents in electronic form from anywhere in the world via web browser.

Counsel also submitted an evaluation, dated February 16, 2011, prepared by Professor an adjunct instructor at the . The evaluator stated that the beneficiary's education and employment experience, considered together, are equivalent to a U.S. bachelor's degree in computer information systems. The evaluator also stated:

> As an evaluator, I am responsible for reviewing academic experience qualifications in Computer Science, Information Technology, Information Systems, and related fields for applicants for admission to . I participate in "Prior Learning Portfolio" programs at by which college credit is granted based on learning attained through prior study, training, and/or employment experience, and have gained direct experience in evaluating employment histories and making recommendations as to the granting of credit for prior learning and employment.

That evaluation was accompanied by a letter, dated December 27, 2010, from an associate dean at That letter confirms that has a program for granting college credit based on prior employment experience. As to the evaluator's role in that program, the associate dean stated:

> [The evaluator] has participated in the Prior Learning Portfolio program and has made recommendations concerning the granting of college-level credit for prior learning and employment skills in Computer Science, Information Systems, Information Technology, Computer Graphics/Animation, and related fields, such that credit may be granted on the basis of [the evaluator's] recommendations.

The evaluator did not state that he has the authority to grant college-level credit for training and/or experience. In any event, the associate dean does not corroborate that the evaluator has any such

authority and indicates instead that he only has authority to make recommendations regarding the granting of credit in such fields as computer information systems.

On August 31, 2011, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence, consistent with the regulations, that the beneficiary is qualified to perform the duties of the claimed specialty occupation.

In response, counsel submitted the November 15, 2011 evaluation. However, it is an evaluation of the educational requirements of the proffered position, rather than of the beneficiary's own education and experience, and their equivalence in terms of a U.S. education and degree.[4] It does not address whether the beneficiary is qualified to work in the proffered position, or in any specialty occupation position.

The director denied the visa petition on April 3, 2012, finding, as was noted above, that the evidence does not demonstrate, consistent with the regulations, that the beneficiary is qualified to work in a specialty occupation position.

On appeal, counsel observed, correctly, that the evaluation of Professor found that the beneficiary's combined education and employment experience are equivalent to a U.S. bachelor's degree in computer information systems, and that the letter of the associate dean at confirmed that Professor has worked in "Credit for Life Experience" program.

Upon review of the entire record of evidence as currently constituted, the beneficiary does not meet either of the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(*1*) and (*3*), as there is no evidence of a U.S. accredited college or university baccalaureate or higher degree, 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, the petitioner has not established that the beneficiary is qualified to serve in a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(*2*) for an alien holding a foreign degree determined to be equivalent to a U.S. accredited college or university baccalaureate or higher degree required by the pertinent specialty occupation. The petitioner is not seeking to show that the beneficiary has a foreign degree determined to be equivalent to the specialty degree allegedly required but, rather, that the beneficiary's education and work experience, considered together, are such an equivalent. Training and/or work experience or even a combination of education may not be considered in determining whether the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(*2*) has been satisfied.

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[4] Although the evaluator stated, "I believe that I am qualified to issue an opinion regarding . . . the qualifications of the [beneficiary] . . . ." he provided no such opinion.

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. . . .

With regard to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*), the AAO finds that the record has not established 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.

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[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.

Specifically, Professor stated that he is "responsible for reviewing . . . experience qualifications," and that he "participates in 'Prior Learning Portfolio' programs . . . by which college credit is granted . . ." He stated that he makes recommendations pertinent to granting of credit. None of those statements are indicative of *authority to grant college credit* for work experience.

The supporting statement of the associate dean confirms that Professor "has participated in the Prior Learning Portfolio program and has made recommendations concerning the granting of college-level credit for . . . employment skills . . . such that credit may be granted on the basis of Prof. recommendations." It further states that "Professor has the ability to assess, evaluate, and recommend the award of credit for prior life or experiential learning . . . ." It does not indicate that Professor has *authority to grant college credit* for work experience.

Because the evidence does not indicate that Professor has the authority to grant college credit for work experience, his evaluation as presented in this record of proceeding does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*). The record contains no other evaluations addressing the beneficiary's qualifications. The evidence does not, therefore, satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*).

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 occupation[6];

(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 duties described in the employment verification letters provided 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. Although some of the employment verification letters provided state that the beneficiary was assigned progressively more responsible tasks while working for those individual companies, the duties described do not demonstrate that, in general, the beneficiary's employment during the eight years and three months of employment was progressively more responsible, rather than consisting of very similar duties for five different companies.

Further, none of the letters provided indicates the educational level of the beneficiary's peers or subordinates during his previous employment, and only one of those letters provides that information pertinent to the beneficiary's supervisor.[7] That letter pertains to the beneficiary's employment at

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[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).

[7] A letter from states that the beneficiary's supervisor was an electrical engineer, and a

where he worked for slightly more than one year. That does not equate to evidence that, in general, 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 computer information systems, 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).

The record suggests additional issues that were not addressed in the decision of denial.

First, in his June 9, 2011 letter, the petitioner's owner stated: "The petitioner . . . is comprised of six distinct businesses." The petitioner's owner did not indicate what kind of business association the petitioner is, e.g., a corporation, an LLC, or a sole proprietorship, or even whether it has any such commercial identity. This uncertainty raises the issue of whether the petitioner qualifies as the beneficiary's prospective employer within the meaning of 8 C.F.R. § 214.2(h)(1)(i), which states:

> (h) Temporary employees--(1) Admission of temporary employees--(i) General. Under section 101(a)(15)(H) of the Act, an alien may be authorized to come to the United States temporarily to perform services or labor for, or to receive training from, an employer, if petitioned for by that employer. . . .

That regulation does not contemplate an H-1B visa petition being filed by a petitioner so that a beneficiary may come to the United States to be employed by an entity other than the petitioning entity. *See* 8 C.F.R. § 214.2(h)(2)(i)(A) (requiring the United States employer seeking to sponsor the beneficiary to file a Form I-129); 8 C.F.R. § 214.2(h)(4)(ii) (defining a United States employer in pertinent part as the entity that will have an employer-employee relationship with respect to the H-1B beneficiary). It also does not contemplate a single visa petition being filed jointly by more than one business entity so that a beneficiary may work for all of them concurrently. Instead, each entity must separately file its own petition for concurrent employment. *See generally* 8 C.F.R. § 214.2(h); *see also* Form I-129, Petition for a Nonimmigrant Worker, Part 2 (providing for a separate request for concurrent employment).

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footnote explains that this implies a master's degree level of education.

The possibility exists that all six companies are operated as sole proprietorships by the same person, herein identified as the petitioner's owner. In that event, the visa petition would properly be filed by that person, the owner of the companies, for the beneficiary to work for him at his various enterprises. However, that possible scenario has not been established.

The record is unclear as to whether the petitioner actually exists, as such, or whether this is a joint effort of six distinct business entities, acting together, to employ the beneficiary. If the visa petition were otherwise approvable, the petitioner would be obliged to explain and demonstrate what type of business entity the petitioner is and whether the beneficiary's proposed employment would be limited to the petitioning entity or whether it would impermissibly involve employment by any subsidiaries or affiliates of the petitioner absent separate approved employment petitions filed by those entities.

Second and beyond the decision of the director, 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 15-1032.00 or "Computer Software Engineers, Systems Software" (currently classified as 15-1133.00, software developers, systems software). As determined *supra*, however, the job as titled and as described by the petitioner is best classified as a computer systems analyst, i.e., SOC (O*NET/OES) Code 15-1121. As such, the petitioner was required to provide at the time of filing an LCA certified for SOC (O*NET/OES) Code 15-1121, not SOC (O*NET/OES) Code 15-1032 (now 15-1133), 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 petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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

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 petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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