



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **JUN 25 2013** Office: VERMONT SERVICE CENTER

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, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition states the petitioner describes itself as a professional tennis training facility. To employ the beneficiary in what it designates as an IT Director 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 it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserts that the director's basis for denial was erroneous and contends that the petitioner satisfied all evidentiary requirements.

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

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

The issue on appeal is whether the petitioner has demonstrated that the 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 following statutory and regulatory requirements.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics,

physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the 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 upon a proffered position’s title. The specific duties of the 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 at 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 by the petitioner in support the petition was certified for the SOC (O*NET/OES) Code 15-1121, the associated Occupational Classification of “Computer Systems Analysts,” and a Level II (qualified) prevailing wage rate.

With the visa petition, counsel submitted a letter, dated January 27, 2011, from the petitioner’s owner, who described the proffered position as follows:

The [proffered position’s] role is to supervise and operate the [petitioner’s] custom build ERP systems through implementation best practices. This includes installing, configuring, patching, upgrading, and maintaining the company’s investments in the chosen ERP technologies. The [proffered position] is also responsible for planning and coordinating the change management of processes required for the support of the ERP systems necessary for business operations. As an IT manager, will be responsible for managing all organization technologies and providing technology support and training. Primary duties include: analyzing systems and processes; maintaining workstations, servers and networks.

The Responsibilities include: Evaluate, install, configure, and deploy ERP applications, systems software, products, and/or enhancements to existing applications throughout the enterprise; Perform daily monitoring and troubleshooting of the ERP system; install and configure patches and upgrades as required; Collaborate with analysts, designers, and system owners in the testing of ERP software programs and applications; Manages and maintains Microsoft Windows applications and systems including but not limited to Windows XP, Windows Vista, Windows Server 2003, 2008; Administrate Active Directory, Exchange 2003/2007, Microsoft Operation Manager (MOM), Windows Software Update Services (WSUS),

System Center Operations Manager (SCOM), Citrix (XenApp 6.5), VDI, DHCP, DNS, Print & File Servers, Veritas Cluster Server, and perform Microsoft clustering; Managing and maintaining Tennis analysis software DARTFISH.

[The beneficiary] is well qualified to fill this professional position of ERP Administrator/IT Manager. He studied at the [redacted] and the Institute of Informatics. He has been fully Microsoft certified and has over 12 years experience in information technology.

Based upon [the beneficiary's] professional credentials, we wish to employ him for a temporary period of three years. We understand the temporary nature of the H-1B status we seek for [the beneficiary], and assuming our H-1B petition is approved, we fully intend to comply with all the regulations regarding employment of individuals in H-1B status.

The petitioner's president did not indicate that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent or, if it does, what that specific specialty would be.

On June 5, 2012, 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.

In response, counsel submitted (1) a portion of the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* pertinent to database administrators; (2) counsel's own letter, dated June 12, 2012; and (3) two vacancy announcements. The vacancy announcements will be addressed below.

In her letter, counsel stated, "The adjudicator should note that the [proffered position] is a position new and unique in the petitioner's organization."

Counsel also asserted that the duties described show that the proffered position is an ERP Administrator position, which she stated is a database administrator position. She stated that "[t]he [*Handbook* excerpt provided] states that the minimum requirement for a database administrator position is a bachelor's degree in a computer or information related subject."

As noted above, the LCA was certified for a computer systems analyst position. The *Handbook* discusses computer systems analyst positions in a chapter entitled, "Computer Systems Analysts." See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Computer Systems Analysts," <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm> (last visited May 8, 2013). It discusses database administrator positions in a chapter entitled Database Administrators. See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Database Administrators," <http://www.bls.gov/ooh/computer-and-information-technology/database-administrators.htm> (last

visited May 8, 2013). "Computer Systems Analysts" and "Database Administrators" are two separate occupational classifications, and computer systems analysts and database administrators are two different jobs. They are neither identical nor interchangeable.

The materials submitted by the petitioner when it filed the petition, including the LCA, indicated that the beneficiary would be working as a computer systems analyst. In response to the RFE, counsel asserted that the proffered position is actually a database administrator position, and provided evidence to support her argument that such positions are specialty occupation positions.

The purpose of an RFE is to elicit further information that clarifies whether eligibility for the benefit being sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position, but rather asserted that the beneficiary would work in a position different from that previously asserted. Instead, the petitioner sought to change the title and nature of the position, which is not permitted. See *id.* The AAO's analysis of whether the proffered position qualifies as a specialty occupation position will be based upon the petitioner's initial submission, and the occupational classification for which the LCA was certified.¹ Evidence that is not pertinent to computer systems analyst positions will not be considered.

The director denied the petition on July 18, 2012, finding, as was noted above, that the petitioner had not demonstrated that the proffered position is a specialty occupation.

On appeal, counsel submitted invoices showing computer equipment purchases and six letters. Counsel provided the following description of those letters:

- 1) Letter from [sic] [REDACTED] Solution, the original contractor who designed and build [the petitioner's] current IT system. The letter explains why a full[-]time on[-]site employee is needed to administer and maintain the current system.
- 2) Letter from [REDACTED] the creator of the software used by [the petitioner] in their video feedback system. The letter states that [the petitioner] is one of the most technologically advanced tennis facilities and that [the petitioner] has a patent pending on two tennis courts set up with video feedback systems.

¹ If the proffered position were found to be a database administrator position as argued by counsel, the AAO would be required to also find that the LCA does not correspond to the petition, as the LCA was not certified for a database administrator position, and the petition would be denied on this basis.

- 3) Letter from the United States Tennis Association, stating that "Technology has become an instrumental part in the progression of tennis professionals and [the petitioner] has established itself as a leader in such areas[.]"
- 4) Letter from [REDACTED] developer of the brainwave feedback technology used by [the petitioner], also stating that [the petitioner] is one of the most technologically advanced tennis facilities in the world.
- 5) Letter from [REDACTED] President and CEO of CVAC Systems Inc, the company that developed the hyperbaric chamber used by [the petitioner], also stating that [the petitioner] uses the most cutting edge technologies in sports.
- 6) Letter from [REDACTED] a maker of tennis ball machines, stating the [petitioner] uses high tech machines, which can be operated using iPhone, and has assisted the company in testing some of the more technologically advanced [sic] products.

Counsel also observed that the invoices provided show the purchase of computer hardware in the amount of \$72,481.

In his brief, counsel asserted that the evidence provided demonstrates that the proffered position qualifies as a specialty occupation position. Counsel did not specifically assert, however, that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent or, if it does, reveal what that specific specialty would be.

Preliminarily, the AAO observes that neither counsel nor the petitioner has ever alleged that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. Nevertheless, the AAO will consider the evidence presented to determine whether, notwithstanding the lack of any such allegation, the petitioner may have demonstrated that the proffered position qualifies as a specialty occupation pursuant to the salient statutes and regulations.

Also, the AAO finds that the six letters submitted by counsel on appeal do not satisfy any of the criteria described above for establishing a proffered position as a specialty occupation. The AAO notes that none of the authors of these letters discuss the fact that the petitioner submitted an LCA certified for a wage-level that is indicative of duties of, at best, only a moderate degree of complexity requiring the exercise of only a limited degree of judgment by the beneficiary.² The

² The *Prevailing Wage Determination Policy Guidance* (available at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf (last accessed May 8, 2013)) issued by DOL states the following with regard to Level II wage rates:

Level II (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O*NET Job Zones.

omission of such an important factor severely diminishes the evidentiary value of the assertions made by the authors of these letters, particularly those regarding the complexity of the proffered position and its constituent duties.

Moreover, and at a more foundational level, it is noted that not one of these letters included a claim that a bachelor's degree, or the equivalent, in a specific specialty is required to perform the duties of the proffered position.

The above descriptive summary indicates that this wage-level is appropriate for only "moderately complex tasks that require limited judgment."

Further, the AAO notes the relatively low level of complexity that this Level II wage-level reflects when compared with the two still-higher LCA wage levels, neither of which was designated on the LCA submitted to support this petition.

The aforementioned *Prevailing Wage Determination Policy Guidance* describes the Level III wage designation as follows:

Level III (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O*NET Job Zones would be indicators that a Level III wage should be considered.

Frequently, key words in the job title can be used as indicators that an employer's job offer is for an experienced worker. . . .

The *Prevailing Wage Determination Policy Guidance* describes the Level IV wage designation as follows:

Level IV (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibilities.

By virtue of this submission the petitioner effectively attested that the proffered position requires that the beneficiary exercise only a "limited" degree of professional judgment, that the job duties proposed for him are merely "moderately complex," and that, as clear by comparison with DOL's instructive comments about the next higher level (Level III), the proffered position did not even involve "a sound understanding of the occupation" (the level of complexity noted for the next higher wage-level, Level III).

It is also noted that the petitioner submitted no evidence to support the claims made by these individuals. Simply 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 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 Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

Having made these initial observations, 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)(I), which may be 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 the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³ In the "Computer Systems Analysts" chapter, the *Handbook* provides the following description of the duties of those positions:⁴

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:

³ 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.

⁴ Again, if the duties of the proffered position do *not* correspond to those of a computer systems analyst, as argued by counsel, the petition would be denied over the petitioner's failure to submit an LCA that corresponds to the petition, since the LCA submitted by the petitioner in support of this petition was certified for a computer systems analyst position. See 8 C.F.R. § 214.2(h)(4)(i)(B)(1); 20 C.F.R. § 655.705(b).

- 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 May 8, 2013).

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

How to Become a Computer Systems Analyst

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

Education

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

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

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

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

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

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

Advancement

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

Important Qualities

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

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

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

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

Id. at <http://www.bls.gov/ooh/Computer-and-Information-Technology/Computer-systems-analysts.htm#tab-4>.

These statements from the *Handbook* do not indicate that a bachelor's degree or the equivalent, in a specific specialty, is normally required for entry into this occupation. The AAO turns first to its

statement that “most” systems analysts possess a bachelor’s degree in a computer-related field, which is not sufficient to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The first definition of “most” in *Webster’s New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is “[g]reatest in number, quantity, size, or degree.” As such, if merely 51% of systems analyst positions require at least a bachelor’s degree in computer science or a closely related field, it could be said that “most” systems analyst positions require such a degree. It cannot be found, therefore, that a particular degree requirement for “most” positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part “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.” Section 214(i)(1) of the Act.

Furthermore, the *Handbook* specifically states that an associate’s degree combined with work experience is sufficient for some systems analyst positions. Additionally, with regard to positions that do require attainment of a bachelor’s degree or equivalent, the *Handbook* indicates that a degree in a specific specialty is not normally required: the *Handbook* states that technical degrees are not always required, and that many systems analysts have liberal arts degrees and gained their programming or technical expertise “elsewhere.”

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

The record of proceeding does not contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position’s inclusion in this occupational category is sufficient in and of itself to establish the proffered position as, in the words of this criterion, a “particular position” for which “[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry.”

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

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent, is common to

the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent.

Also, there are no submissions from professional associations 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. Nor, as indicated above, do the six letters discussed above 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. Although some of those letters attest that technology has become instrumental to tennis professionals, that the petitioner is among the most technologically advanced tennis facilities, and that the petitioner requires a full-time employee to maintain its computer system, none of them indicate that other similar tennis facilities require a computer systems analyst with a minimum of a bachelor's degree in a specific specialty or its equivalent.

As was noted above, the petitioner also submitted two vacancy announcements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. Specifically, the petitioner submitted advertisements for the following positions posted on the Internet:

1. ERP and System Administrator for a software development and consulting company requiring a bachelor's degree in computer science, information systems, or other related field";
2. ERP Administrator for a pharmaceutical company requiring a "BS in Computer Science or equivalent experience" and "3 years of experience in a similar role/function."

Neither of these positions is at a similar company in the petitioner's industry. Further, although the second vacancy announcement states that the position announced requires a bachelor's degree in computer science or equivalent experience, it contains no indication of what experience the hiring authority would consider equivalent to a bachelor's degree in computer science. The AAO is unable to independently determine that it does, in fact, require the equivalent of a minimum of a bachelor's degree in a specific specialty or its equivalent. For both reasons, those vacancy announcements are

of little evidentiary weight in demonstrating that parallel positions in similar organizations in the petitioner's industry require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, even if both of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and unequivocally required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from two vacancy announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.⁵

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner establishes that the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with a minimum of a bachelor's degree in a specific specialty or its equivalent.

Even assuming that the proffered position is a computer systems analyst position, the record contains little evidence that would differentiate the work of the proffered position as more complex or unique than typical performed by other computer systems analysts which, the *Handbook* indicates, does not necessarily require a person with at least a bachelor's degree, or the equivalent, in a specific specialty. The duties which collectively constitute the proffered position (such as installing and

⁵ Furthermore, according to the *Handbook* there were approximately 664,800 persons employed as computer systems analysts in 2010. *Handbook* at <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-6> (accessed May 8, 2013). Based on the size of this relevant study population, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from the two submitted vacancy announcements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). 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”).

As such, even if these two job-vacancy announcements established that the employers that issued them routinely recruited and hired for the advertised positions only persons with at least a bachelor's degree in a specific specialty closely related to the positions, it cannot be found that these two job-vacancy announcements 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 bachelor's degree, or the equivalent, in a specific specialty for entry into the occupation in the United States.

configuring computer applications; managing and maintaining the petitioner's computer system; and providing training and support) have not been shown to be more complex or unique than the duties of other computer systems analyst positions, some of which, the *Handbook* indicates, do not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a Level II computer systems analyst, an indication that the proffered position is a position for an employee who performs moderately complex tasks requiring only limited judgment. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree, notwithstanding that the *Handbook* suggests that some computer systems analyst positions do not require such a degree.

For both of those reasons, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO turns next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which entails an employer demonstrating that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

The AAO's review of the record of proceeding under this criterion necessarily includes whatever evidence the petitioner has submitted with regard to its past recruiting and hiring practices and employees who previously held the position in question.

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. The record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position.⁶ In the instant case, the record does not establish a prior history of recruiting and hiring for the proposed position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty.

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 the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position 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").

⁶ Any such assertion would be undermined in this particular case by the fact that the petitioner indicated in the LCA that its proffered position involves moderately complex tasks requiring only limited judgment.

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 387. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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 a specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proposed position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

In her June 12, 2012 letter, counsel asserted that the petitioner has never previously employed anyone in the proffered position. Although the fact that a proffered position is a newly-created one is not in itself generally a basis for precluding a position from recognition as a specialty occupation, certainly an employer that has never recruited and hired for the position cannot satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

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. Installing and configuring computer applications; managing and maintaining the petitioner's computer system; and providing training and support contain no indication of specialization and complexity such that the knowledge they require is usually associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent. In other words, even assuming the proffered position to be a systems analyst position, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of computer systems analyst positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Further, as was noted above, the petitioner filed the instant visa petition for a Level II computer systems analyst position, a position requiring performance of only moderately complex tasks that require limited judgment. As discussed above, by virtue of this submission the petitioner effectively attested that the proffered position requires that the beneficiary exercise only a "limited" degree of professional judgment, that the job duties proposed for him are merely "moderately complex," and

that, as clear by comparison with DOL's instructive comments about the next higher level (Level III), the proffered position did not even involve "a sound understanding of the occupation" (the level of complexity noted for the next higher wage-level, Level III).

This does not support the proposition that the duties of the position are so specialized and complex that their performance is associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, closely related to computer systems analysis, notwithstanding that some computer systems analyst positions require no such degree.

For the reasons discussed above, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Counsel cites *Young China Daily v. Chappell*, (hereinafter "*Young China*") 742 F.Supp. 2d 552, 554 (N.D. Cal. 1989), in support of her implicit argument that the director allowed the petitioner's size to negatively impact upon the adjudication of the petition. The AAO disagrees. First, as noted above, the petitioner has simply failed to satisfy any of the relevant criteria discussed above. Furthermore, *Young China* does not stand for the proposition cited by counsel. In *EG Enterprises, Inc. v. Department of Homeland Security*, 467 F. Supp. 2d 728, 737 (E.D. Mich. 2006), the court stated the following:

What [the petitioner] fails to grasp is that the duties of the proffered position, *combined with* the position title and business size, are all components in the H-1B visa petition analysis [emphasis in original] . . . the Sixth Circuit, in an unpublished case, had also determined that the size of the employer is a relevant consideration, although not determinative:

[The court in *Young China*], on which [the petitioner] relies for this allegation of error, made only the narrow ruling that the duties of a graphic designer at a small newspaper do not necessarily differ from those of a graphic designer at a major newspaper. This leads neither to the general conclusion that the skills required to be a manager of a small company are necessarily the same as those required to be a manager at a large company, nor to the specific conclusion that the size of [the petitioner's] business is not relevant to the nature of the duties of its manager. *China Chef, Inc. v. Puelo*, 12 F. 3d 211 (table), 1993 WL 524276 at 2 (6th Cir. Dec. 15, 1993). . . .

[R]eliance in this case on *Young China* does not lead the court to the specific conclusion that the size of [the petitioner's] business is not relevant to the nature of [the beneficiary's] proffered duties. Although USCIS should not rely exclusively on the size of the employer's business when making a determination as to whether a position qualifies as a "specialty occupation," the Court does not find it an abuse of discretion for USCIS to consider size as just one factor in its analysis. It is reasonable to assume that the size of an employer's business has an impact of the duties of a particular position. . . .

The AAO, therefore, is not persuaded by counsel's citation of *Young China*. First, the director did not deny the petition based upon the size of the petitioner. Second, counsel has misunderstood the court's decision in *Young China*, as it does not stand for the proposition cited by counsel.

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.

The record suggests additional issues that were not addressed in the director's denial but that, nonetheless, also preclude approval of this visa petition.

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 an alien 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.

In the instant case, the proffered position has not been shown to require a minimum of a bachelor's degree in a specific specialty or its equivalent. However, if that requirement had been demonstrated, the petitioner would have been obliged to show that the beneficiary is qualified for the position by virtue of having the license or degree required for the position, or else to show, within the constraints of the salient regulations, that the beneficiary has the equivalent of the requisite degree.

As the beneficiary did not earn a baccalaureate or higher degree from an accredited college or university in the United States, he does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1). As he does not possess a foreign degree that has been determined to be equivalent to a baccalaureate or higher degree from an accredited college or university in the United States, he does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), either. As the petitioner has not demonstrated that the beneficiary holds an unrestricted state license, registration or certification to perform the duties of a specialty occupation, he does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3), either. Accordingly, 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) remains as the only avenue for the petitioner to demonstrate the beneficiary's qualifications to perform the duties of the proffered position.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) requires a demonstration that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary also has recognition of that expertise in the specialty through progressively responsible positions directly related to the specialty. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a

beneficiary's credentials to a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) is determined by at least one 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;⁷
- (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. . . .

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), the AAO observes that the evaluation of the beneficiary's qualifications contained in the record is not an evaluation of education alone, but of the equivalence of the beneficiary's employment experience to some level of education. Such an evaluation is not germane to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). The petitioner, therefore, has not satisfied that criterion.

An evaluation of employment experience in terms of its equivalence to education may be considered pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), and the record contains such an evaluation. That evaluation states that the beneficiary's employment experience is equivalent to a U.S. bachelor's degree in information technology. To satisfy that regulation, however, the evaluation must have been prepared by an official who has authority to grant college-level credit for training and/or

⁷ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.

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experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience.

The evaluation in the instant case was prepared by [REDACTED] professor and department chair of the Department of Decisions, Operations, and Information Technologies of the [REDACTED]. The fifth page of that evaluation states:

In his various capacities, [REDACTED] has evaluated students and colleagues. He is vastly familiar with foreign educational systems and has had extensive experience reviewing foreign academic and work experience credentials in all disciplines.

The evaluation does not state that [REDACTED] has authority to grant college-level credit for training and/or experience in information technology at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience.

Further, even if the evaluation had so stated, USCIS will not accept a faculty member's opinion as to the college-credit equivalent of a particular person's work experience or training, unless authoritative, independent evidence from the official's college or university, such as a letter from the appropriate dean or provost, establishes that the official is authorized to grant academic credit for that institution, in the pertinent specialty, on the basis of training or work experience. The evaluation is accompanied by no such authoritative independent evidence that [REDACTED] is authorized to grant academic credit in information technology for the [REDACTED] on the basis of training or work experience. Nor does it establish that the [REDACTED] has such a program.

The evaluation provided by [REDACTED] does not comply with the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) and the record contains no other evaluation of the beneficiary's qualifications. The petitioner has not, therefore, demonstrated that the beneficiary is qualified to work in any specialty occupation position pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

The remaining criterion for review is 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). It allows recognition of a beneficiary's qualification by a USCIS determination that his or her training or work experience is equivalent to U.S. baccalaureate coursework in a specific specialty. This criterion provides that, for each year of college-level training the alien lacks:

[I]t 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 occupation⁸;
- (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.

The instant case contains the following four letters pertinent to the beneficiary's employment experience:

1. Letter from the general manager of [REDACTED], in Macedonia, stating that the beneficiary worked for that company as a help desk technician from March 2000 to June 2005.
2. Letter from the chief operating officer of [REDACTED], in Macedonia, stating that the beneficiary worked for that company from June 2005 to December 2007 as a system engineer, and from December 2010 through April 1, 2012, the date of that letter, as an IT consultant.
3. Letter from the manager of professional services at [REDACTED] in Macedonia, stating that the beneficiary worked for that company from January 2008 to December 2008 as a senior system engineer and Microsoft certified trainer.
4. Letter from the managing director of [REDACTED] in Macedonia, stating that the beneficiary worked for that company from December 2008 to December 2010 as manager of the IT services department, Microsoft and ECDL trainer.

Neither the skeletal letters from the beneficiary's former employers nor any other evidence of record demonstrates the extent of the theoretical and practical application of specialized knowledge in any specialty that was involved in the beneficiary's work; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in any particular specialty occupation; or that the alien has recognition of expertise in any specialty, as evidenced by at least one type of documentation such as those listed in this criterion. Consequently,

⁸ *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).

the petitioner has not established that the beneficiary satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

The evidence fails to satisfy the requirements of 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). The petitioner has not demonstrated that the beneficiary is qualified to work in any specialty occupation. The visa petition will be denied for this additional reason. Even if it were determined that the petitioner had overcome the director's ground for denying this petition (which it has not), the petition could still not be approved.

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.

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. The appeal will be dismissed and the petition denied.

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