



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JUN 25 2013 OFFICE: CALIFORNIA 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 The director's decision will be withdrawn in part and affirmed in part. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition, the petitioner describes itself as a software application development and technical consulting firm. To employ the beneficiary in what it designates as a senior 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: (1) that it would be a "United States employer" having an "employer-employee relationship" with the beneficiary as an H-1B temporary "employee"; and (2) that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserts that the director's bases for denial were erroneous and contends that the petitioner satisfied all evidentiary requirements.

Upon review, the AAO finds that the petitioner has overcome the director's finding that the petitioner failed to establish that it would be a United States employer having an employer-employee relationship with the beneficiary as an H-1B temporary employee, and that portion of the director's decision will be withdrawn. However, the petitioner has not overcome the director's finding that the petitioner failed to demonstrate that the proffered position is a specialty occupation. 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 petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

The AAO will first address the matter of whether the petitioner would be a "United States employer" having an "employer-employee relationship" with the beneficiary as an H-1B "temporary employee." The AAO finds the evidence of record sufficient to make that determination, and that portion of the director's decision finding otherwise is hereby withdrawn.

Next, the AAO will address the specialty occupation basis of the director's decision. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

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

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or

higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

The Labor Condition Application (LCA) submitted 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 evidence that the beneficiary received a bachelor of engineering degree in computer science and engineering from [REDACTED] India. An evaluation in the record states that the beneficiary's degree is equivalent to a U.S. bachelor's degree in computer science.

Counsel also submitted, *inter alia*, an employment contract, dated April 16, 2012, signed by the beneficiary and the petitioner's IT services manager, and a June 4, 2012 letter from the petitioner's CEO.

In the employment contract the petitioner offered, and the beneficiary accepted, employment as a programmer analyst. That document did not otherwise discuss the duties of the proffered position or its educational requirement.

In his June 4, 2012 letter, the petitioner's CEO stated the following about the duties of the proffered position:

As Senior System Analyst, [the beneficiary] will be responsible for requirements capture and analysis for designing, developing, coding, testing and implementing enhancements to existing IT infrastructures. Specifically, [the beneficiary] will develop program specifications based on desired functionality and broad level design

dealing with enterprise application integration, enterprise resource planning and customer relationship management applications. [The beneficiary] will develop and implement flow charts for designing and developing modifications in client/server environments using Java/J2EE Framework, JSP, Servlets, Web Services and databases built on Oracle, SQL Server. [The beneficiary] will engage in change and impact analysis, carry out quality reviews and walk-thrus. [The beneficiary] will execute unit, integration and system testing and he will contribute to the custom development of certain key modules.

The petitioner's CEO further stated that the proffered position requires "at least a Bachelor's degree in Computer Science, Mathematics, Engineering, Information Technology, Management Information Systems or a closely related field."

The record also contains a May 31, 2012 Assignment Order executed between the petitioner and one of its contractors for work to be performed by the beneficiary between October 1, 2012 and September 30, 2015, which states that the beneficiary would perform the following tasks:

- Provide technical implementation and design support related to Dealer Connection deployments
- Provide sound architectural guidance and technical leadership to the team, pertaining to Versata Software (DealerConnection)
- Implement end-to-end technical deployment of the Versata DealerConnection components
- Provide architectural support for database design and data migration activities
- Provide strategic guidance/support on all non Versata components
- Leverage G-DEV for at least 50% of the overall consulting delivery at or above margin targets
- Work with Product Manager to ensure client's product needs are addressed through DealerConnection.

On June 12, 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. The petitioner submitted a timely response.

The director denied the petition on September 18, 2012, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its

equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submitted eight vacancy announcements and a letter from the end-user of the beneficiary's services stating, in pertinent part, the following:

According to the service requirements of the above-mentioned contract, [the beneficiary] will be a Systems Analyst for the software development, configuration and maintenance of the [REDACTED]. His responsibilities include:

- Provide sound architectural guidance pertaining to [REDACTED] deployments
- Implement end-to-end technical solutions of the [REDACTED] components
- Involved in coding Java, SQL queries, shell scripts and stored procedures to support the [REDACTED] platform
- Maintain source code repository on PVCS and SVN
- Write and execute build plans for patches and upgrade products

In his brief on appeal, counsel maintains that the evidence demonstrates that the proffered position qualifies as a position in a specialty occupation and shows that the petitioner will be the beneficiary's actual employer. Counsel also asserted that the Dictionary of Occupational Titles (*DOT*) and the Department of Labor's O*NET system support the proposition that the proffered position is a specialty occupation position.

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 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.¹ In the "Computer Systems Analysts" chapter, the *Handbook* provides the following description of the duties of those positions:

What Computer Systems Analysts Do

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

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 Jun. 21, 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)(I).

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 observes that the only statement in the record pertinent to the educational requirement of the proffered position is the petitioner's CEO's statement in his June 4, 2012 letter that the proffered position requires "at least a Bachelor's degree in Computer Science, Mathematics, Engineering, Information Technology, Management Information Systems or a closely related field."

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of

the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Again, the petitioner states that its minimum educational requirement for the proffered position is a bachelor's degree in "Computer Science, Mathematics, Engineering, Information Technology, Management Information Systems or a closely related field." The issue here is that the field of engineering is a broad category that covers numerous and various specialties, some of which are only related through the basic principles of science and mathematics, e.g., nuclear engineering and aerospace engineering. Therefore, besides a degree in electrical engineering, it is not readily apparent that a general degree in engineering or one of its other sub-specialties, such as chemical engineering or nuclear engineering, is closely related to computer science or that engineering or any and all engineering specialties are directly related to the duties and responsibilities of the particular position proffered in this matter.

Here and as indicated above, the petitioner, who bears the burden of proof in this proceeding, fails to establish either (1) that computer science and engineering in general are closely related fields or (2) that engineering or any and all engineering specialties are directly related to the duties and responsibilities of the proffered position. Absent this evidence, it cannot be found that the particular position proffered in this matter has a normal minimum entry requirement of a bachelor's or higher degree in a specific specialty or its equivalent under the petitioner's own standards. Accordingly, as the evidence of record fails to establish a standard, minimum requirement of at least a bachelor's degree *in a specific specialty* or its equivalent for entry into the particular position, it does not support the proffered position as being a specialty occupation and, in fact, supports the opposite conclusion.

Therefore, absent evidence of a direct relationship between the claimed degrees required and the duties and responsibilities of the position, it cannot be found that the proffered position requires anything more than a general bachelor's degree. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

The materials from DOL's Occupational Information Network (O*NET OnLine) do not establish that the proffered position satisfies the first criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A),

either. O*NET OnLine is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a requirement for a given position, as O*NET OnLine's Job Zone designations make no mention of the specific field of study from which a degree must come. As was noted previously, the AAO 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 proposed position. The Specialized Vocational Preparation (SVP) rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. For all of these reasons, the O*NET OnLine excerpt submitted by counsel is of little evidentiary value to the issue presented on appeal.

Nor is the AAO persuaded by counsel's citation to the DOL's *Dictionary of Occupational Titles* (the *DOT*) and his argument regarding the value of an SVP rating of 7. The *DOT* does not support the assertion that assignment of SVP ratings of 7 is indicative of a specialty occupation, which is obvious upon reading Section II of the *DOT*'s Appendix C, Components of the Definition Trailer, which addresses the Specialized Vocational Preparation (SVP) rating system,² and which states, in pertinent part, the following:

II. SPECIFIC VOCATIONAL PREPARATION (SVP)

Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

Specific vocational training includes training given in any of the following circumstances:

- a. Vocational education (high school; commercial or shop training; technical

² U.S. Dep't of Labor, Office of Administrative Law Judges, OALJ Law Library, *Dictionary of Occupational Titles*, <http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM> (accessed Jun. 21, 2013).

As noted at section A.1.1 in DOL's Employment and Training Administration's Clearance Package Supporting Statement to the Office of Management and Budget, which is accessible on the Internet at http://www.onetcenter.org/dl_files/omb2011/Supporting_StatementA.pdf, "The O*NET data supersede the U.S. Department of Labor's (DOL's) *Dictionary of Occupational Titles* (DOT)," and the DOT "is no longer updated or maintained by DOL." It should also be noted that the DOT was last updated more than 20 years ago, in 1991. See <http://www.oalj.dol.gov/libdot.htm>, the homepage of DOL's Office of Administrative Law Judges (OALJ) Internet site's copy of the DOT's Fourth Edition, Revised in 1991.

school; art school; and that part of college training which is organized around a specific vocational objective);

- b. Apprenticeship training (for apprenticeable jobs only);
- c. In-plant training (organized classroom study provided by an employer);
- d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);
- e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

Level	Time
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month
3	Over 1 month up to and including 3 months
4	Over 3 months up to and including 6 months
5	Over 6 months up to and including 1 year
6	Over 1 year up to and including 2 years
7	Over 2 years up to and including 4 years
8	Over 4 years up to and including 10 years
9	Over 10 years

Note: The levels of this scale are mutually exclusive and do not overlap.

(emphases in original.)

Thus, an SVP rating of 7 does not indicate that at least a four-year bachelor's degree is required to perform the duties of the proffered position or, more importantly, that such a degree must be in a specific specialty closely related to the requirements of that occupation. Therefore, the information from the *DOT* is not probative of the proffered position as being a specialty occupation.

Nor does the record of proceeding 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 some 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, 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.

Counsel did submit eight vacancy announcements in support of his assertion that the petitioner's 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. Senior Systems Analyst [REDACTED], a multimedia company, requiring "a four year degree with a concentration in Computer Science or Finance";
2. Senior Systems Analyst at ViaSat, a satellite and wireless communications company, requiring a "Bachelor's degree in a technical discipline or equivalent experience";
3. Senior Systems Analyst for Teqtron, a company that offers business consulting services, software development and system integration, requiring a "Master's degree in Computer Science, Engineering, Information Systems or related field of study";
4. Senior Systems Analyst for Perceptive Technologies, Inc., which develops software, requiring a "Bachelor's degree or foreign equivalent degree in computer science, business administration, information systems, or a related field";

5. Senior Systems Analysts for [REDACTED] which develops software, requiring a "BS (combination of education accepted) or foreign equiv in Computer Science/Engineering/Technology/Related";
6. Senior Systems Analyst for [REDACTED] which develops software, requiring an otherwise unspecified "BS/BA or equivalent work experience";
7. IT Senior Systems Analyst for [REDACTED], which develops motion sensing equipment and related products, requiring a "BS/BA in Computer Science or related area, or related work experience"; and
8. Senior Systems Analyst for [REDACTED] requiring an otherwise undifferentiated bachelor's degree.

Some of the companies that placed those vacancy announcements clearly are not in the petitioner's industry, and none have been demonstrated to be otherwise similar to the petitioner.

Further, although some of the vacancy announcements contain duty descriptions, none is detailed enough to demonstrate that the positions offered are positions truly parallel to the proffered position.

Further still, the first vacancy announcement states that the position requires a bachelor's degree in computer science or finance, which two vastly different subjects do not delineate a minimum of a bachelor's degree in a specific specialty or its equivalent.

Similarly, the second vacancy announcement seeks applicants with bachelor's degrees in a technical discipline. However broadly or narrowly defined, all "technical disciplines" do not delineate a specific specialty. As such, that vacancy announcement does not require a bachelor's degree in a technical discipline or the equivalent.

Yet further, the second, sixth, seventh, and eighth vacancy announcements state a requirement of a bachelor's degree, but not that the degree must be in any specific specialty, or even any range of specialties.

Even further, the second, sixth, and seventh vacancy announcements indicate that equivalent experience may be substituted for the educational requirement, but do not indicate what type and amount of experience would be considered equivalent to a bachelor's degree.

Additionally, the third and fifth vacancy announcements indicate that an otherwise unspecified bachelor's or master's degree in engineering is a sufficient educational qualification for the position announced. As is explained above, a requirement of an otherwise undifferentiated degree in engineering is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Similarly, the fourth vacancy announcement indicates that an otherwise undifferentiated bachelor's degree in business administration would be a sufficient qualification for the position. An educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific

specialty or its equivalent. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r. 1988).

Finally, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and 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 eight announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.³

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.

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.

³ 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 Jun. 21, 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 eight 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 eight 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 eight 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.

The petitioner therefore failed to establish how the beneficiary's responsibilities and day-to-day duties comprise a position so complex or unique that the position can be performed only by an individual with a bachelor's degree, or the equivalent, in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here. 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 an individual lacking a bachelor's degree in a specific specialty, or the 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 involves, at best, only a moderate degree of complexity requiring the exercise of only a limited degree of judgment by the beneficiary.⁴ This does not support the proposition that the proffered position is so complex or

⁴ The *Prevailing Wage Determination Policy Guidance* (available at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf (last accessed Jun. 21, 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.

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

unique that it can only be performed by a person with a specific bachelor's degree, notwithstanding the *Handbook's* suggestion that some computer systems analyst positions do not require such a degree.

As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

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).

performance requirements of the proffered position.⁵ 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").

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.

The record contains no evidence that the petitioner has ever previously hired anyone 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).

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.

⁵ 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.

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, such as designing, developing, coding, testing and implementing enhancements to existing IT infrastructures; develop program specifications; providing architectural guidance pertaining to an application being developed and deployed; coding Java, SQL queries, shell scripts and stored procedures; maintaining source code repository on PVCS and SVN; developing and executing flow charts; writing and executing build plans for patches and upgrade products; etc., contain no indication of specialization and complexity usually associated with a minimum of a bachelor's degree in a specific specialty or its equivalent. In other words, 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).

As the petitioner has not satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

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.