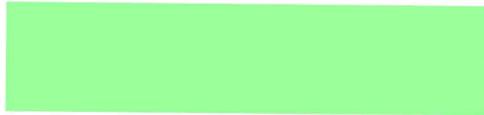




U.S. Citizenship  
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Services

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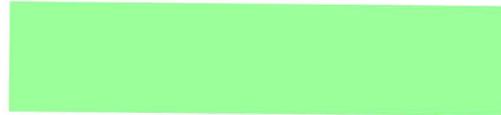


Date: **JUN 25 2013** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:   
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition, 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 the petitioner describes itself as a four-employee "E-Commerce and Wholesale Distribution" firm. To employ the beneficiary in what it designates as a database administrator position, the petitioner endeavors to classify her 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, the petitioner's president 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 her 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 the following: (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 the 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 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 15-1141, the associated Occupational Classification of "Database Administrators," and a Level I (entry-level) prevailing wage rate.

With the visa petition, counsel submitted evidence that the beneficiary received a bachelor's degree in computer science from [REDACTED] in 2006. Counsel also submitted a letter from the petitioner dated March 10, 2012 and four vacancy announcements. The vacancy announcements will be addressed below.

In his March 10, 2012 letter, the petitioner's president provided the following description of the duties of the proffered position:

1. Analyze information processing and plan and design computer systems, using techniques such as structured analysis, data modeling and information engineering
2. Test and coordinate modifications to the system when needed and troubleshoot problems if they occur
3. Provide staff and users with assistance solving computer related problems, such as malfunctions and program problems
4. Test, maintain, and monitor computer programs and systems, including coordinating the installation of computer programs and systems
5. Use object oriented programming languages, as well as client/server applications development processes and multimedia and internet technology
6. Coordinate and link the computer systems within an organization to increase compatibility in order for information to be shared
7. Consult with management to ensure on [sic] an agreement on system principles
8. Expand or modify system to service new purposes or improve work flow

9. Interview or survey workers, observe job performance and/or perform the job in order to determine what information is processed and how it is processed
10. Define the goals of the system and devise flow charts and diagrams describing logical operational steps of programs
11. Determine computer software or hardware needed to set up or alter system
12. Develop[,] document and revise system design procedures, and quality standards
13. Recommend new equipment or software packages
14. Review and analyze computer printouts and performance indicators to locate code problems, and correct errors by correcting codes
15. Prepare cost-benefit and return-on-investment analysis to aid in decisions on system implementation
16. Read manuals, periodicals, and technical reports to learn how to develop programs that meet staff and user requirements
17. Plan and coordinate security measures with network administrators

The petitioner's president stated that the proffered position requires, "at least . . . a Bachelor's degree in a computer related field, or . . . the equivalent in professional work experience." The petitioner's president also cited the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for the proposition that the proffered position qualifies as a specialty occupation position and claimed that it "has never hired any Database Administrator with less [than a minimum of a bachelor's degree in a specific specialty] or the equivalent thereof in experience." The petitioner's president did not, however, provide any evidence to corroborate the educational qualifications of people it previously hired to fill the proffered position.

On June 14, 2012, the service center issued an RFE and requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. In response, the petitioner submitted: (1) a letter dated July 4, 2012; (2) a letter from [REDACTED] dated July 3, 2012; and (3) five additional vacancy announcements. The vacancy announcements will be addressed below.

In his July 4, 2012 letter, the petitioner's president again cited the *Handbook* as evidence that database administrator positions qualify as specialty occupation positions by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. He also cited the vacancy announcements provided and the letter from [REDACTED] for that proposition. The petitioner's president stated that [REDACTED] "is a well-known and highly recognized figure in the online retail, e-commerce, and IT industry" and "a highly respected and highly recognized executive and developer in the digital publishing and IT industry."

In his July 3, 2012 letter, [REDACTED] stated that the proffered position is rendered more complicated by the fact that the petitioner sells products related to various fields of endeavor and that it obtains them from "a number of different suppliers." He further asserted that firms such as the petitioner routinely employ people with a bachelor's degree in positions such as Database Administrator, but did not reveal his basis for making that assertion.

The director denied the petition on July 21, 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 a letter, dated August 1, 2012, from the petitioner's president, who asserted that the evidence demonstrates that the proffered position qualifies as a specialty occupation position pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A). In asserting that point, the petitioner's president again cited the *Handbook* as evidence that database administrator positions qualify as specialty occupation positions.

At the outset of its analysis, the AAO finds that the letter from [REDACTED] does not satisfy any of the criteria described above for establishing a proffered position as a specialty occupation. [REDACTED] indicated that because the petitioner sells various products from various suppliers, the position of database administrator for the petitioner is complicated, and that "firms such as [the petitioner] routinely employ individuals that hold a Bachelor's degree in positions such as Database Administrator." Elsewhere, [REDACTED] states:

Without a Bachelor's degree in Computer Science or a computer or IT related field, it would be extremely difficult for an individual holding the position of Database Administrator to properly fulfill the complicated duties and responsibilities at [the petitioner]. In addition, without a Bachelor's Degree in one of the above fields, the individual holding the position of Database Administrator would not be able to coordinate the numerous websites and e-commerce databases, would not be able to properly maintain our [sic] records and database, and would not be able to create and interpret sales reports and accurately forecast requirements. Furthermore, it is a standard in the retail industry, and especially for companies specializing in the sale of specialty retail goods that the position of Database Administrator is filled by a person holding a Bachelor's degree in Computer Science or a computer[-]related or IT[-] related field.

[REDACTED] does not discuss the fact that the petitioner submitted an LCA certified for a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation, which signifies that the beneficiary is only expected to possess a basic understanding of the occupation.<sup>1</sup> His omission of such an important factor severely diminishes the evidentiary value

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<sup>1</sup> The *Prevailing Wage Determination Policy Guidance* (available at [http://www.foreignlaborcert.doleta.gov/pdf/Policy\\_Nonag\\_Progs.pdf](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 I wage rates:

**Level I** (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work

of his assertions, particularly those regarding the complexity of the proffered position and its constituent duties.

Moreover, [REDACTED] description of the proffered duties consists of the same bullet-pointed list of duties contained in the petitioner's letter. [REDACTED] does not describe any of these duties in detail, or in relation to the petitioner's specific business operation. He does not identify, and his pronouncements do not indicate that he has considered, substantive evidence of specific matters that would actually engage the beneficiary in the performance of the duties of the particular position that is the subject of this petition.

Further, [REDACTED] evaluation does not list any reference materials upon which he relied as a basis for his conclusion that database administrator positions normally require a bachelor's degree. 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).

Also, and as will be discussed in further detail below, the AAO finds that the proffered position is not in fact a database administrator position. As such, [REDACTED] observations about database administrator positions are of little relevance to the instant case.

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.

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under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered [emphasis in original].

The proposed duties' level of complexity, uniqueness, and specialization, as well as the level of independent judgment and occupational understanding required to perform them, are questionable, as the petitioner submitted an LCA certified for a Level I, entry-level position. The LCA's wage-level indicates that the proffered position is actually a low-level, entry position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to possess a basic understanding of the occupation; that she will be expected to perform routine tasks requiring limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

The AAO recognizes the *Handbook*, which cited by the petitioner's president, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>2</sup>

In the "Database Administrators" chapter, the *Handbook* provides the following description of the duties of those positions:

### **What Database Administrators Do**

Database administrators use software to store and organize data, such as financial information and customer shipping records. They make sure that data are available to users and are secure from unauthorized access.

### **Duties**

Database administrators typically do the following:

- Identify user needs to create and administer databases
- Ensure that the database operates efficiently and without error
- Make and test modifications to the database structure when needed
- Maintain the database and update permissions
- Merge old databases into new ones
- Backup and restore data to prevent data loss

Database administrators, often called DBAs, make sure that data analysts can easily use the database to find the information they need and that the system performs as it should. DBAs sometimes work with an organization's management to understand the company's data needs and to plan the goals of the database. Database administrators often plan security measures, making sure that data are secure from unauthorized access. Many databases contain personal or financial information, making security important. Database administrators are responsible for backing up systems in case of a power outage or other disaster. They also ensure the integrity of the database, guaranteeing that the data stored in it come from reliable sources.

Many database administrators are general-purpose DBAs and have all these duties. However, some DBAs specialize in certain tasks that vary with the organization and its needs. Two common specialties are as follows:

**System DBAs** are responsible for the physical and technical aspects of a database, such as installing upgrades and patches to fix program bugs. They typically have a

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<sup>2</sup> 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.

background in system architecture and ensure that the database in a firm's computer systems works properly.

**Application DBAs** support a database that has been designed for a specific application or a set of applications, such as customer service software. Using complex programming languages, they may write or debug programs and must be able to manage the aspects of the applications that work with the database. They also do all the tasks of a general DBA, but only for their particular application.

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#tab-2> (last visited May 8, 2013).

The duties attributed to database administrators indicate that, in general, database administrators *administer databases*, as the name implies. They set up a company's database and perform various functions to maintain and protect it. However, the petitioner's description of the duties of the proffered position indicates that the beneficiary would not be limited to focusing upon the petitioner's databases. Instead, that duty-description indicates that the beneficiary would plan, design, install, maintain, and protect the petitioner's entire computer system.

In the "Network and Computer Systems Administrators" chapter, the *Handbook* provides the following description of the duties of those positions:

### **What Network and Computer Systems Administrators Do**

Computer networks are critical parts of almost every organization. Network and computer systems administrators are responsible for the day-to-day operation of these networks. They organize, install, and support an organization's computer systems, including local area networks (LANs), wide area networks (WANs), network segments, intranets, and other data communication systems.

#### **Duties**

Network and computer systems administrators typically do the following:

- Determine what the organization needs in a network and computer system before it is set up
- Install all network hardware and software and make needed upgrades and repairs
- Maintain network and computer system security and ensure that all systems are operating correctly
- Collect data to evaluate the network's or system's performance and help make the system work better and faster
- Train users on the proper use of hardware and software when necessary

- Solve problems quickly when a user or an automated monitoring system lets them know about a problem

Administrators manage an organization's servers. They ensure that email and data storage networks work properly. They also make sure that employees' workstations are working efficiently and stay connected to the central computer network. Some administrators manage telecommunication networks at their organization.

In some cases, administrators help network architects who design and analyze network models. They also participate in decisions about buying future hardware or software to upgrade the organization's network. Some administrators provide technical support to computer users, and they may supervise computer support specialists who help users with computer problems.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Network and Computer Systems Administrators," <http://www.bls.gov/ooh/Computer-and-Information-Technology/Network-and-computer-systems-administrators.htm#tab-2> (last visited May 8, 2013).

The duties attributed to the proffered position conform to the duties the *Handbook* describes as being normally performed by network and computer systems administrators. The AAO finds that the proffered position is a network and computer systems administrator position, and it will therefore analyze the proffered position as such.

The *Handbook* states the following with regard to the educational requirements of network and computer systems administrator positions:

### **What Network and Computer Systems Administrators Do**

Network and computer systems administrators must often have a bachelor's degree, although some positions require an associate's degree or professional certification along with related work experience.

### **Education**

A bachelor's degree in fields related to computer or information science is most common. However, because administrators work with computer hardware and equipment, a degree in computer engineering or electrical engineering usually is acceptable as well. These programs usually include classes in computer programming, networking, or systems design.

Some positions require an associate's degree or a postsecondary certificate in a computer field with related work experience.

Because network technology is continually changing, administrators need to keep up with the latest developments. Many continue to take courses throughout their careers. Some businesses require that an administrator get a master's degree.

### **Certification**

Certification is a way to show a level of competence and may provide a jobseeker with a competitive advantage. Certification programs are generally offered by product vendors or software firms. Companies may require their network and computer systems administrators to be certified in the product they use. Some of the most common certifications are offered from Microsoft, Red Hat, and Cisco.

### **Important Qualities**

**Analytical skills.** Administrators need analytical skills to evaluate network and system performance and determine how changes in the environment will affect it.

**Communication skills.** Administrators work with many other types of workers and have to be able to describe problems and their solutions to them.

**Computer skills.** Administrators oversee the connections of many different types of computer equipment and must ensure that they all work together properly.

**Multi-tasking skills.** Administrators may have to work on many problems and tasks at the same time.

**Problem-solving skills.** Administrators must be able to quickly resolve problems with computer networks when they occur.

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

These findings do not indicate that a bachelor's degree in a specific specialty, or the equivalent, is normally required for entry into this occupational category. To the contrary, the *Handbook* specifically states that an associate's degree or professional certification along with related work experience is sufficient for some positions, and its statement that such individuals "must often" possess a bachelor's degree does not necessarily even indicate that a majority of systems administrators are required to possess that credential, let alone that it be in a specific specialty. Accordingly, inclusion of the proffered position within this occupational category is not in itself sufficient to establish the position as one for which the normal minimum entry requirement is at least a bachelor's or higher degree, or the equivalent, in a specific specialty.

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."

Finally, it is noted again that the petitioner submitted an LCA certified for a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation, which signifies that the beneficiary is only expected to possess a basic understanding of the occupation.

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, does [REDACTED] letter 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.

The petitioner did submit a total of nine 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. Senior Database Administrator for Forever 21, a clothing store with retail stores and an Internet sales presence, requiring at least a four-year degree in computer science or another information technology degree and "8+ years of hands on SQL Server experience . . . .";
2. Database Administrator with [REDACTED] a creator of on-line games, requiring a bachelor's degree in computer science or equivalent and "More than five years of previous experience with Linux/UNIX based database technologies";
3. Database Administrator for [REDACTED] a "global interactive marketing company," requiring an otherwise unspecified bachelor's degree;
4. MySQL Database Administrator, for an unidentified company in an unidentified industry, requiring a "BS/MS degree in Computer Science, Engineering, Mathematics, Statistics or related fields;
5. Database Administrator for [REDACTED], a live entertainment on-line ticketing service, requiring a "BS in Computer Science, or equivalent," and a "Minimum of three (3) years of experience with any relational database systems on Unix, Linux and Windows;
6. Database Administrator for [REDACTED], a digital discount coupon company, requiring a "BA in CS or MIS (or equivalent) with 5 years of hands-on T-SQL and performing SQL-DBA tasks experience";
7. Database Administrator for [REDACTED] a scrap metal recycling firm, requiring a "Bachelor [sic] degree in Computer/Engineering related field or equivalent work experience;
8. Senior Database Administrator for an unidentified company in an unidentified industry requiring a bachelor's degree in computer science, information technology, or management information systems;
9. Database Administrator for [REDACTED] a company that operates a grocery price comparison application, requiring a bachelor's degree in computer science, or equivalent, and "minimum three (3) years of experience with any relational database systems in Unix, Linux and Windows."

All of the vacancy announcements provided appear to announce vacancies for database administrators. However, as discussed above the proffered position does not appear to be a database administrator position. As such, the vacancy announcements are of little relevance to whether positions parallel to the proffered position qualify as a specialty occupation positions by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, most of the positions announced require considerable experience as a database administrator. However, the petitioner indicated on the LCA that the proffered position is a Level I database administrator position, indicating that it is an entry-level position for an employee who has only a basic understanding of the occupation. Thus, even if the petitioner had demonstrated that the proffered position is, in fact, a database administrator position, evidence pertinent to database administrator positions requiring work experience are of little relevance to whether *positions parallel to the proffered position* would require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further still, none of those vacancies has been shown to be in the petitioner's industry, and the majority clearly are not. For this reason, they are of little relevance to whether companies in the petitioner's industry require a minimum of a bachelor's degree in a specific specialty or its equivalent for parallel positions.

Yet further, the third vacancy announcement indicates that although the advertiser requires a bachelor's degree, it does not require that the degree must be in a specific specialty. Nor do the fourth and seventh vacancy announcements indicate a requirement for a bachelor's degree, or the equivalent, *in a specific specialty*.

Again, 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. at 165.<sup>3</sup>

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 from the work of network and computer systems administrators in general. The duties that collectively

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<sup>3</sup> Furthermore, according to the *Handbook* there were approximately 110,800 persons employed as database administrators in 2010. *Handbook* at <http://www.bls.gov/ooh/computer-and-information-technology/database-administrators.htm#tab-6> (last 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 nine submitted vacancy announcement 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 these 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 nine 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 nine job-vacancy announcements which 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 normally require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

constitute the proffered position (such as planning and designing computer systems; testing and coordinating modifications to the system; troubleshooting computer problems and assisting with solving computer related problems; testing, maintaining, and monitoring computer programs and systems; and expanding or modifying computer systems) are described in terms of functions common to network and computer systems administrator positions in general, and so have not been shown to be more complex or unique than the duties of other network and computer systems administrator positions, some of which, the *Handbook* indicates, do not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Additionally, the AAO incorporates here by reference and reiterates its earlier discussion regarding the LCA and its indication that the petitioner would be paying a wage-rate that is only appropriate for a low-level, entry position relative to others within the occupation, as this factor is inconsistent with the relative complexity and uniqueness required to satisfy this criterion. Based upon the wage rate, the beneficiary is only required to have a basic understanding of the occupation. Moreover, that wage rate indicates that the beneficiary will perform routine tasks that require limited, if any, exercise of independent judgment; that the beneficiary's work will be closely supervised and monitored; that she will receive specific instructions on required tasks and expected results; and that her work will be reviewed for accuracy.

Thus, 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.<sup>4</sup> 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

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<sup>4</sup> Any such assertion would be undermined in this particular case by the fact that the petitioner indicated in the LCA that its proffered position is a comparatively low, entry-level position relative to others within its 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.

As the petitioner has failed to demonstrate a history of recruiting and hiring only individuals with a bachelor's degree, or the equivalent, in a specific specialty for the proffered position, it has failed to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, the AAO finds that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specialty.

Both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, the petitioner's designation of an LCA wage-level I is indicative of duties of relatively low complexity.

As earlier noted, the *Prevailing Wage Determination Policy Guidance* issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

**Level I** (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees

may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered [emphasis in original].

The pertinent guidance from the Department of Labor, at page 7 of its *Prevailing Wage Determination Policy Guidance* describes the next higher wage-level as follows:

**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 even this higher-than-designated wage level is appropriate for only “moderately complex tasks that require limited judgment.” The fact that this higher-than-here-assigned, Level II wage-rate itself indicates performance of only “moderately complex tasks that require limited judgment,” is very telling with regard to the relatively low level of complexity imputed to the proffered position by virtue of its Level I wage-rate designation.

Further, the AAO notes the relatively low level of complexity that even 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.

Here the AAO again incorporates its earlier discussion and analysis regarding the implications of the petitioner's submission of an LCA certified for the lowest assignable wage-level. By virtue of this submission the petitioner effectively attested that the proffered position is a low-level, entry position relative to others within the occupation, and that, as clear by comparison with DOL's instructive comments about the next higher level (Level II), the proffered position did not even involve "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II).

The AAO also finds that, separate and apart from the petitioner's submission of an LCA with a wage-level I designation, the petitioner has also failed to provide sufficiently detailed documentary evidence to establish that the nature of the specific duties that would be performed if this petition were approved is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

For all of these reasons, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold 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.

The record suggests an additional issue that was not addressed in the director's denial but that, nonetheless, also precludes approval of this visa petition.

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) stipulates the following:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

While the U.S. Department of Labor (DOL) is the agency that certifies LCAs before they are submitted to USCIS, the DOL regulations note that it is within the discretion of the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) to determine whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part:

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification. . . .

[Italics added]

The LCA submitted in the instant case was certified for a database administrator position. However, submissions with the instant visa petition indicate that the proffered position is a network and systems administrator position as described in the *Handbook*. The LCA submitted does not correspond to the visa petition. The visa petition is not, therefore, supported by a corresponding visa petition as required by 8 C.F.R. § 214.2(h)(4)(i)(B)(1), and the visa petition must be denied for this additional reason.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

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

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