

(b)(6)

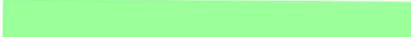
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: JUN 28 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: SELF-REPRESENTED

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".


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 an IT consulting business with 25 employees. To employ the beneficiary in what it designates as a programmer analyst 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 asserted that the director's basis for denial was erroneous and contended 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: (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 the petitioner's submissions on appeal.

The issue before the AAO is whether the petitioner has demonstrated that the proffered position qualifies as 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, 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 AAO notes that, as recognized by the court in *Defensor, supra*, where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. *See Defensor v. Meissner*, 201 F.3d at 387-388. The court held that the legacy Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. *Id.* at 384. Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a programmer analyst position, but that it corresponds to Standard Occupational Classification (SOC) code and title 15-1131, Computer Programmers from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, the petitioner submitted evidence that the beneficiary received a bachelor of commerce degree from [REDACTED] in India, and a master of computer applications degree, also from [REDACTED]. The record contains an evaluation of the beneficiary's education. That evaluation states that the beneficiary's bachelor of commerce degree is equivalent to "Three years of undergraduate study in Accounting." The evaluation states that the beneficiary's bachelor's degree and master's degree, considered together, are equivalent to a bachelor's degree and a master's degree in computer science.

On the Form I-129 visa petition, the petitioner indicated that the beneficiary will work at the petitioner's offices in La Palma, California. However, at Part D of the Form I-129 H-1B Data Collection and Filing Fee Exemption Supplement, the petitioner indicated that the beneficiary would be assigned to work at an off-site location for all or part of the period of requested employment.

The petitioner also provided, *inter alia*, (1) a document headed, "Itinerary of Definite Employment for [the beneficiary]"; (2) a letter, dated May 2, 2012, from the petitioner's vice president; (3) an employment agreement executed by the petitioner and the beneficiary; (4) a lease of the petitioner's office; (5) a floor plan of the petitioner's office; and (6) various agreements between the petitioner and other entities.

The "Itinerary of Definite Employment for [the beneficiary]" states the following as to the duties of the proffered position:

As a Programmer Analyst, [the beneficiary] will analyze user specifications and requirements. She will also engage in Database administration and software development. She will execute and deliver databases required for our client projects as well as our web projects [REDACTED], [REDACTED] and others. [The petitioner] owns 1241 web domains and has started developing some lucrative and unique concept web projects including [REDACTED] and many others. [The beneficiary] will also assist our client projects as and when needed. Some of the development work has been outsourced, but analysis, key development and testing work will be done in-house. [The beneficiary] will be a big asset in on-going development and testing of the various web projects analyzing the problems and communicating to the development team for bug fixes and improvements. She will also contribute to software development improvement process.

More specifically, the beneficiary will be responsible for the following duties:

- Test programs or databases, correct errors and make necessary modifications. Modify existing databases and database management systems or direct programmers and analysts to make changes. (approximately 20 % of the daily work)
- Plan, coordinate and implement security measures to safeguard information in computer files against accidental or unauthorized damage, modification or disclosure. (approximately 20 % of the daily work)
- Work as part of a project team to coordinate database development and determine project scope and limitations. (approximately 15 % of the daily work)
- Write and code logical and physical database descriptions and specify identifiers of database to management system or direct

others in coding descriptions. (approximately 15 % of the daily work)

- Train users and answer questions. Specify users and user access levels for each segment of database. Approve, schedule, plan, and supervise the installation and testing of new projects and improvements to computer systems such as the installation of new databases. Review project requests describing database user needs to estimate time and cost required to accomplish project. (approximately 15 % of the daily work)
- Develop standards and guidelines to guide the use and acquisition of software and to protect vulnerable information. (approximately 15% of the daily work)

That letter states that the location of the beneficiary's work would be the petitioner's office in La Palma, California. It also states:

[The beneficiary] may travel to client locations for presentations, demos or implementations if needed. (New LCAs will be filed for any new locations if an when needed[.]) She may also work from home if needed.

Further still, the letter states: "The petitioner has the right to control over [sic] when, where, and how the beneficiary performs his [sic] duties." As to the location where the beneficiary would work, it asserts: "The venue, establishment and location of the beneficiary's services performed shall be La Palma, CA. This is the complete itinerary of the beneficiary's employment and no other working location is anticipated." Finally, the petitioner's vice president stated: "As his [sic] employer, the petitioner shall be responsible for paying, hiring, firing, supervising, and controlling the employment."

The petitioner's vice president's May 2, 2012 letter reiterates the duties stated in the itinerary. The petitioner's vice president stated that the educational requirement of the position, "is a bachelor's degree in Computer Science, Engineering or a related field or equivalent thereof" He stated, further, that the petitioner, "has not previously hired individuals in the [proffered] position who have not had at least a bachelors [sic] degree or equivalent."

As to the educational requirement of the proffered position, the petitioner's vice president stated in his May 2, 2012 letter:

As with any Programmer Analyst level at which [the beneficiary] will be involved, the usual minimum requirement for the performance of these duties is a Bachelor's Degree in Computer Science, Engineering, Management or a related field or equivalent thereof.

The employment agreement between the petitioner and the beneficiary was executed on April 9, 2012 and states:

Duties: As a Programmer Analyst, [the beneficiary] will analyze user specifications and requirements. She will also engage in software development. She will execute and deliver software development required for our client projects and our internal web projects. [The beneficiary's] duties include the following:

- I. Conduct trial runs of programs and software applications to be sure they will produce the desired information and that the instructions are correct. (approximately 20% of daily work time)
- II. Perform or direct revision, repair, or expansion of existing programs to increase operating efficiency or adapt to new requirements. (approximately 10% of daily work time)
- III. Consult with managerial, engineering, and technical personnel to clarify program intent, identify problems, and suggest changes. (approximately 10% of daily work time)
- IV. Perform systems analysis and programming tasks to maintain and control the use of computer systems software as a systems programmer.. (approximately 10% of daily work time)
- V. Compile and write documentation of program development and subsequent revisions, inserting comments in the coded instructions so others can understand the program. (approximately 10% of daily work time)
- VI. Prepare detailed workflow charts and diagrams that describe input, output, and logical operation, and convert them into a series of instructions coded in a computer language. (approximately 10% of daily work time)
- VII. Correct errors by making appropriate changes and rechecking the program to ensure that the desired results are produced. (approximately 20% of daily work time)
- VIII. Investigate whether networks, workstations, the central processing unit of the system, or peripheral equipment are responding to a program's instructions. (approximately 10% of daily work time)

The lease provided shows that on April 1, 2010 the petitioner agreed to lease its office on a month to month basis. The floor plan provided shows that the petitioner's office contains two offices and four cubicles.

An agreement with [redacted] dated February 21, 2008, sets out terms pursuant to which the petitioner may provide "contingent labor personnel" to [redacted]. Among its terms, it states:

In the event that [redacted] reasonably determines that any personnel of [the petitioner] is unsatisfactory to [redacted] may reject such individual, and [the petitioner] will remove that individual on assignment at [redacted]

The AAO observes that the agreement with [redacted] makes clear that any workers provided by the petitioner pursuant to that agreement would work at [redacted] location, and that [redacted] may dismiss them from working on the project.

An agreement between the petitioner and [redacted] states:

[redacted] desires to have [the petitioner] furnish individual employees and/or independent contractors/consultants of Vendor who are qualified computer/data processing professionals . . . to [redacted] for the purpose of performing professional computer consulting and programming services.

That agreement appears to indicate that the petitioner's workers would perform those duties at [redacted] location.

A purchase order agreed to by the petitioner and [redacted] indicates that they agreed that the petitioner would "perform work" for [redacted] beginning on April 1, 2011. The end date of that work was not provided. That purchase order does not state the type of work to be performed or identify the petitioner's workers who would perform it, but states:

[The petitioner] is responsible for having its Consultant discuss its hours and location where the work is to be performed with [redacted], including notification to [redacted] if the [petitioner] or its Employees/Consultants cannot be present.

An agreement between the petitioner and [redacted] sets forth the terms pursuant to which the petitioner may provide workers to perform services for [redacted] client. That agreement states: "[The petitioner] shall follow [redacted] client's] policies, if any, in order to avoid being disruptive of [redacted] client's] personnel, systems, procedures, and working environment." It further states:

Where [redacted] or [its] client requires [the petitioner's] personnel or any of them to be replaced, [redacted] or client may inform [the petitioner] in writing and notify [the petitioner] that such personnel . . . is required.

Thus, that agreement contemplates that the petitioner's personnel would work on a project at the location of [redacted] client, and that [redacted] and its client have the authority to remove the petitioner's personnel from that project.

An agreement with [redacted] sets out terms pursuant to which the petitioner would provide "specialized services" "to be performed for third party business." As to the location where the services will be performed, it states, [The petitioner will] set [its] hours or location where

services will be performed (no services shall be performed on [REDACTED] premises)." Thus, it does not state where services pursuant to that agreement will be performed.

An agreement between the petitioner and [REDACTED] sets forth terms pursuant to which the petitioner might provide personnel. It states:

[REDACTED] agrees to place [the petitioner's workers] referred to [REDACTED] by [the petitioner] as contract services staff to perform, under the direction of [REDACTED] clients ("Clients"), such information technology services or other services as are agreed upon between [REDACTED] and Clients. [REDACTED] shall utilize Services either at its corporate office location or its Client's locations.

Thus, that agreement makes clear that the petitioner's workers utilized under that agreement, if any, would not work at the petitioner's location, but either at [REDACTED] location or at third-party locations, and that the third parties would direct the petitioner's workers in their work.

An agreement between the petitioner and [REDACTED] sets out terms pursuant to which the petitioner might provide services associated with [REDACTED] contract with [REDACTED]. That agreement does not specify where the services would be provided. The AAO observes, however, that the name [REDACTED] may indicate that the company provides personnel to other companies to work at their locations.

An agreement between the petitioner and [REDACTED] sets out the terms pursuant to which the petitioner might "provide . . . personnel to [REDACTED] client] at the [client's location]." That agreement does not contemplate the use of any of the petitioner's personnel at the petitioner's location.

On August 15, 2012, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The director outlined the specific evidence to be submitted.

In response, the petitioner provided a letter, dated September 27, 2012. An addendum to that letter reiterates the description of the duties of the proffered position contained in the "Itinerary of Definite Employment for [the beneficiary]" provided with the visa petition.

The petitioner also provided a description of websites that it intends to develop and a statement that all of its programmer analyst positions are filled, and have been filled, by people with bachelor's or higher degrees. In addition, the petitioner provided an organizational chart listing its 25 employees, their positions, and the locations where they work.

Eleven people on the petitioner's organizational chart are identified as programmer analysts.¹ The chart indicates that [REDACTED] works in Alpharetta, Georgia; [REDACTED] works in San Francisco and La Palma, California; [REDACTED] works in Mooresville, North Carolina and also works from his home; [REDACTED] works in Orange County, California; [REDACTED] and an employee identified only as [REDACTED] work from their homes somewhere in California; [REDACTED] works in Lakewood, California; [REDACTED] works from home somewhere in Ohio; [REDACTED] works in Washington, D.C.; and [REDACTED] works in Lakewood, California. That chart also states that [REDACTED] works for the petitioner as a programmer analyst, but does not state where he works. The organizational chart indicates that the beneficiary would work in La Palma, California.

That organizational chart also contained assertions pertinent to the petitioner's programmer analysts' educational qualifications, but no documentary evidence to corroborate those assertions.

The director denied the petition on October 20, 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 the I-290B appeal form, the petitioner stated:

Attachment A:

Our company has only hired professionals with at least a Bachelor's degree for the position of Programmer Analyst/Computer Programmer/Software Developer in past and present.

You can notice in our organization chart that all our programmer analyst jobs have been filled with people with baccalaureate of higher degree.

You can also notice the list of current and past employees with their bachelor[']s degree certificates and/or evaluations who are programmer analysts.

Attachment B:

Industry wide advertisements for Programmer Analyst jobs which call for minimum of Bachelor[']s degree, we have included 14 of the advertisement as representative sample of Programmer Analyst jobs in industry.

¹ The chart also identifies [REDACTED] as the petitioner's senior programmer analyst, and states that he has a bachelor's degree in computer science. Because the proffered position in the instant case is not a senior programmer analyst, that position has not been included in this analysis.

With the appeal, the petitioner provided a list of nine people it identifies as current programmer analysts and six people it identifies as former programmer analysts. The petitioner also provided printouts of 14 vacancy announcements from public job search websites.

That list states that [REDACTED] works in Rhode Island. The information pertinent to [REDACTED] is unchanged, except that the new list shows that he is a past employee, rather than a present employee.

The new list shows that [REDACTED] who was not included on the organizational chart, now works for the petitioner in Lakewood, California as a programmer analyst. The new list shows that [REDACTED] also not previously included, works for the petitioner in San Ramon, California as a programmer analyst.

The new list indicates that [REDACTED] [REDACTED] previously worked for the petitioner as programmer analysts, but does not state where they worked.

Although [REDACTED] were listed as programmer analysts on the petitioner's organizational chart, they are not listed on the new list among either the petitioner's past or present programmer analysts.

The petitioner also provided evidence pertinent to the educational qualifications of various people, including most of the people it claims to have employed as programmer analysts. Some of the documents provided, however, do not pertain to people the petitioner claims to employ, or to have employed, as programmer analysts. Documents pertinent to those other people are of no apparent relevance to whether the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent, and will not be considered further.

Documents provided show that [REDACTED] has a bachelor's degree in computer science and engineering and a master's degree in information system; that [REDACTED] has a bachelor's of engineering degree in information science and engineering, evaluated to be equivalent to a U.S. bachelor's degree in computer science; that [REDACTED] has a foreign bachelor's degree in electrical and electronics engineering evaluated to be equivalent to a U.S. bachelor's in electrical and electronics engineering with an additional concentration in computer science; that [REDACTED] has a foreign bachelor's degree in computer science and engineering evaluated to be equivalent to a bachelor's degree in computer science; that [REDACTED] has a foreign bachelor's degree in information technology and a foreign master's degree in applied informatics, which, together, were evaluated as equivalent to a U.S. master's degree in computer information systems; that [REDACTED] has a bachelor's degree in mechanical engineering and a master's degree in business administration with a concentration in finance; that [REDACTED] has a master's degree in electrical engineering; that [REDACTED] has a bachelor's of technology degree computer engineering evaluated to be equivalent to a bachelor's in computer science; that [REDACTED] has a bachelor's degree in business administration; that [REDACTED] has a master's degree in electrical engineering; that [REDACTED] has a bachelor's degree in business administration; that [REDACTED]

has a bachelor's degree in applied mathematics; that [REDACTED] has a master's degree in computer science; that [REDACTED] has a master's degree in software engineering; and that [REDACTED] has a foreign bachelor's degree in computer applications and a master's degree in business.

On the organizational chart submitted in response to the RFE, the petitioner stated that [REDACTED] has a master's degree in computer science and that [REDACTED] has a bachelor's degree in business administration. As to [REDACTED] that chart states that he has a "Diploma," without any further specification. The petitioner provided no evidence to corroborate the assertions pertinent to those three employees' educational qualifications.

The petitioner's vice president's May 2, 2012 letter states that the proffered position requires "a bachelor's degree in Computer Science, Engineering or a related field or equivalent thereof" The employment agreement executed by the petitioner and the beneficiary states that it requires "a Bachelor's Degree in Computer Science, Engineering, Management or a related field or equivalent thereof." Even assuming that one of those two statements is the actual educational requirement of the proffered position, the proffered position does not appear to qualify as a specialty occupation position because it does not require a minimum of a bachelor's degree in a specific specialty or its equivalent. The assertion that the duties of the proffered position can be performed by a person with an otherwise unspecified degree in engineering implies that the proffered position is not, in fact, a specialty occupation.

More specifically, the field of engineering is a very broad category that covers numerous and various disciplines, some of which are only related through the basic principles of science and mathematics, e.g., petroleum engineering and aerospace engineering. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or engineering, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

Again, to prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. 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, or, as in this case, an otherwise unspecified degree in engineering, 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 139, 147 (1st Cir. 2007).

Thus, the petitioner's recognition of an otherwise undifferentiated bachelor's degree in engineering, without additional specification, as a sufficient educational qualification for the proffered position, is tantamount to an admission that performance of the proffered position does not require at least a bachelor's degree in a specific specialty or its equivalent. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, the AAO turns next to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Preliminary to this analysis, the AAO observes that the floor plan of the petitioner's offices, the contracts between the petitioner and other companies, and the petitioner's statements about where its programmer analysts work all indicate that only a small percentage of the petitioner's programmer analysts may work in the petitioner's offices in La Palma, California. The petitioner appears, therefore, to be in the business of providing workers with technical backgrounds to other companies to work on those other companies projects at those other companies locations throughout the United States. The AAO finds that, more likely than not, the beneficiary will also be provided to other companies to work on their projects at their locations, perhaps through one or more intermediary companies, as indicated by the contracts submitted.

As was stated above, in such a situation, where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. *See Defensor, supra*. The record in this case contains no evidence from the end-user or end-users of the beneficiary's services pertinent to the work they would require the beneficiary to do, or what educational background that work requires.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Nevertheless, the AAO will continue, again, with the analysis of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), based on the assumption, made *arguendo*, that the petitioner actually will, as represented, employ the beneficiary at its own offices, will assign her tasks to her, and will supervise her performance of them. The AAO first turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific

specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors routinely considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

Notwithstanding that the title of the proffered position is "programmer analyst," the petitioner claims in the LCA that the proffered position SOC code and title 15-1131, Computer Programmers from O*NET.² The AAO reviewed the chapter of the *Handbook* (2012-2013 edition) entitled "Computer Programmers," including the sections regarding the typical duties and requirements for this occupational category. The *Handbook* states the following with regard to the duties of computer programmers:

What Computer Programmers Do

Computer programmers write code to create software programs. They turn the program designs created by software developers and engineers into instructions that a computer can follow. Programmers must debug the programs—that is, test them to ensure that they produce the expected results. If a program does not work correctly, they check the code for mistakes and fix them.

Duties

Computer programmers typically do the following:

- Write programs in a variety of computer languages, such as C++ and Java
- Update and expand existing programs
- Debug programs by testing for and fixing errors
- Build and use computer-assisted software engineering (CASE) tools to automate the writing of some code

² Programmer analysts are usually, as in the *Handbook*, considered and analyzed as a subset of computer systems analysts, rather than of computer programmers.

- Use code libraries, which are collections of independent lines of code, to simplify the writing

Programmers work closely with software developers and, in some businesses, their work overlaps. When this happens, programmers can do the work typical of developers, such as designing the program. This entails initially planning the software, creating models and flowcharts detailing how the code is to be written, and designing an application or system interface. For more information, see the profile on software developers.

Some programs are relatively simple and usually take a few days to write, such as mobile applications for cell phones. Other programs, like computer operating systems, are more complex and can take a year or more to complete.

Software-as-a-service (SaaS), which consists of applications provided through the Internet, is a growing field. Although programmers typically need to rewrite their programs to work on different systems platforms such as Windows or OS X, applications created using SaaS work on all platforms. That is why programmers writing for software-as-a-service applications may not have to update as much code as other programmers and can instead spend more time writing new programs.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Computer Programmer," <http://www.bls.gov/ooh/computer-and-information-technology/computer-programmers.htm#tab-2> (last visited June 26, 2013).

Many of the duties of the proffered position are included in the *Handbook's* description of computer programmers' duties. However, the descriptions of the duties of the proffered position also stated that she would, "[c]onsult with managerial, engineering, and technical personnel to clarify program intent, identify problems, and suggest changes, "analyze user specifications and requirements," and [p]erform systems analysis . . . tasks." The AAO will also, therefore, consider the *Handbook* section pertinent to computer systems analysts, which states, as to the duties of those positions:

What Computer Systems Analysts Do

Computer systems analysts study an organization's current computer systems and procedures and make recommendations to management to help the organization operate more efficiently and effectively. They bring business and information technology (IT) together by understanding the needs and limitations of both.

Duties

Computer systems analysts typically do the following:

- Consult with managers to determine the role of the IT system in an organization
- Research emerging technologies to decide if installing them can increase the organization's efficiency and effectiveness
- Prepare an analysis of costs and benefits so that management can decide if computer upgrades are financially worthwhile
- Devise ways to make existing computer systems meet new needs
- Design and develop new systems by choosing and configuring hardware and software
- Oversee installing and configuring the new system to customize it for the organization
- Do tests to ensure that the systems work as expected
- Train the system's end users and write instruction manuals, when required

Analysts use a variety of techniques to design computer systems such as data-modeling systems, which create rules for the computer to follow when presenting data, thereby allowing analysts to make faster decisions. They also do information engineering, designing and setting up information systems to improve efficiency and communication.

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

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

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

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

The following are examples of types of computer system analysts.

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

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

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Computer Systems Analysts," <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-2> (last visited June 26, 2013).

The *Handbook* description of the duties of a computer systems analyst, and, more specifically, a programmer analyst, is entirely consistent with the duties of the proffered position as described in the addendum to the petitioner's vice president's May 2, 2012 letter and the employment agreement submitted. The AAO finds that the proffered position is a computer systems analyst position as described in the *Handbook*.

The *Handbook* states the following about 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> (last visited June 26, 2013).

Although the *Handbook* indicates that most computer systems analysts have a bachelor's degree in a field related to computers, it also indicates that some systems analyst positions are available to people with a degree in business or liberal arts who know how to write computer programs. Clearly, computer systems analyst positions do not, as a category, require a minimum of a bachelor's degree in a specific specialty or its equivalent.

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

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 in a specific specialty or its equivalent, 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, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

The petitioner did submit 14 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. Programmer Analyst for [REDACTED] requiring a bachelor's degree in computer science or a related field;
2. Programmer Analyst for a civilian position with the [REDACTED] requiring a bachelor's degree in a related discipline or equivalent experience;
3. Programmer Analyst for an unidentified company in an unknown industry requiring a "Bachelor's degree in computer science, business administration or related field or equivalent."
4. Programmer/Analyst for [REDACTED] a manufacturer of "production, transportation, lighting, and building technologies" requiring a bachelor's degree in computer science or a related technical major;
5. Programmer Analyst for [REDACTED] a retailer of lingerie, personal care and beauty products, apparel, and accessories, requiring a bachelor's degree in information systems;
6. Information Systems Analyst/Programmer for [REDACTED] an organization that provides affordable housing to homeless and other disadvantaged people, requiring, "A baccalaureate degree in Computer Science, Information Systems or related field, or equivalent work experience;
7. Programmer Analyst for [REDACTED] sector, a self-described global security company providing innovative systems, products and solutions in unmanned systems, cybersecurity, C4ISR, and logistics and modernization to government and commercial customers, requiring a "Bachelor's or equivalent";
8. Programmer Analyst for an unidentified company in an unknown industry requiring a bachelor's degree in computer science or a related discipline;
9. Senior Program Analyst ISD for [REDACTED] requiring a bachelor's degree in IS-related discipline or related experience;
10. Programmer Analyst Leader for [REDACTED] an information technology services company with a presence in 70 countries, requiring a "Bachelor's degree or equivalent combination of education or experience";
11. Programmer Analyst for [REDACTED] a cable television service provider, requiring a bachelor's degree in computer science or a related field;
12. Programmer Analyst for [REDACTED] a VOIP telephone system service provider, requiring a bachelor's degree in computer science, electrical engineering, or computer engineering;
13. Programmer Analyst I for [REDACTED], an information technology firm, requiring a "Master's Degree in Computer Science, Engineering (any), Business or [a] related [field]."; and

14. Another programmer analyst position. The copy of the vacancy announcement the petitioner provided, however, is largely illegible. The company seeking to hire for that position, the industry that company is in, and the educational requirement of that position are all unknown to the AAO.

As was observed above, salient portions of the 14th vacancy announcement are illegible. Because the educational requirement of the position it announces cannot be discerned, it provides no support for the proposition that the proffered position qualifies as a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, although some of the vacancy announcements contain descriptions of the duties of the positions they announce, none of those position descriptions is sufficient to show that the position announced is truly parallel to the proffered position.

Further still, none of the vacancy announcements have been shown to be in the petitioner's industry of providing workers to other companies to work on those other companies' projects, and many clearly are not in that industry.

Yet further, the seventh and tenth vacancy announcements only indicate that the position announced requires a bachelor's degree, not that it requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

Even further, the third and thirteenth vacancy announcements indicate that a degree in business administration, without further specification, would be an acceptable educational qualification for the proffered position. A degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r. 1988). As such, 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.

Additionally, the thirteenth vacancy announcement indicates that a degree in any branch of engineering would be an acceptable educational qualification for the position announced. As was explained above, a requirement of a degree in any branch of engineering is not a requirement of a degree in a specific specialty. For this additional reason, the thirteenth vacancy announcement does not contain a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Moreover, the second, sixth, ninth, and tenth vacancy announcements indicate that the hiring authority will consider some amount of experience in lieu of the otherwise required education, but do not clearly delineate what amount or type of experience would be acceptable. The AAO is unable to independently determine, therefore, that those positions require a minimum of a bachelor's degree in a specific specialty or its equivalent.

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 14 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 petitioner also has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established

³ Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these job advertisements 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 the job announcements supported the finding that the position of computer systems analyst for firms similar to and in the same industry as the petitioner required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty or its equivalent, is required to perform the duties of the particular position here.

Therefore, the evidence of record does not establish that this position is significantly different from other programmer analyst positions such that it demonstrates that the proffered position is so complex or unique that it can be performed only by an individual with a degree, notwithstanding that the *Handbook's* indicates that some such positions do not require a minimum of a bachelor's degree in a specific specialty or its equivalent. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a degree or its equivalent for the position.⁴

On appeal, the petitioner asserted that the evidence demonstrates that all of its past and present program analysts have had bachelor's degrees. The AAO observes, first, that the issue is not whether the proffered position requires a bachelor's degree, but whether it requires a bachelor's degree *in a specific specialty* or its equivalent.

The evidence presented shows that [REDACTED] has a bachelor's degree in mechanical engineering and a master's degree in business administration with a concentration in finance, that [REDACTED] have bachelor's degrees in business administration, and that [REDACTED] has a bachelor's degree in applied mathematics. None of those people, whom the petitioner claims to have employed as programmer analysts, have a minimum of a bachelor's degree in a specific specialty directly related to the proffered position, or its equivalent.

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

Further, although the petitioner claims to have employed [REDACTED] as programmer analysts, and has stated that they have a master's degree in computer science, a bachelor's degree in business administration, and a "Diploma," respectively, the petitioner provided insufficient evidence to corroborate those claimed qualifications. The AAO also observes that, for reasons explained in detail above, an otherwise unspecified degree in business administration is not a degree in a specific specialty, and whether a "Diploma" represents a minimum of a bachelor's degree in a specific specialty directly related to the proffered position, or its equivalent, is entirely unclear.

The petitioner has not demonstrated that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position, and has not, therefore, satisfied 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.

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 analyzing user specifications and requirements, web development, software development, debugging or directing debugging, implementing security measures, and training people to use new programs contain no indication of a nature so specialized and complex that they require knowledge usually associated with a minimum of a bachelor's degree in a specific specialty or its equivalent. 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 programmer analyst positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. The petitioner has not, therefore, satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Even with the assumption, *arguendo*, that the petitioner would employ the beneficiary at its offices, assign her duties, and supervise her performance, the petitioner has yet failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it could not be found, even with that assumption, that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

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.