



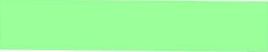
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: JUN 29 2013

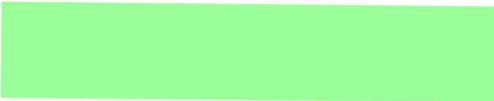
Office: VERMONT SERVICE CENTER

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.

The Form I-129 visa petition states that the petitioner is a hotel. To employ the beneficiary in what it designates as a part-time information systems manager position, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserts that the director's basis for denial was erroneous and contends that the petitioner satisfied all evidentiary requirements.

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

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

The 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 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 of the petition was certified for the SOC (O*NET/OES) Code 11-3021, the associated Occupational Classification of "Computer and Information Systems Managers," and a Level I (entry-level) prevailing wage rate.

With the visa petition, counsel submitted evidence that the petitioner attended the [redacted] and subsequently received a master's degree in management with a concentration in information systems management from the [redacted].

Counsel also submitted his own letter, dated November 14, 2011. In it, he stated the following pertinent to the duties of the proffered position:

[The beneficiary will work as the [petitioner's] Information Systems Manager. In this capacity, [the beneficiary] will develop and implement technology and information management systems that will help the [petitioner] run more efficiently. [The beneficiary] will regulate development, customization and implementation of all of the [petitioner's] information management systems, including accounting, payroll, restaurant management, bar management, invoicing, facilities management, inventory and personnel management systems, network administration, back-end systems, and the interface with the [redacted] reservation system. [The beneficiary] will use his expertise and skill to manage the [petitioner's] software and networking systems and ultimately ensure the smooth operation of business

[The beneficiary's] duties [in the proffered position] will additionally include managing the [petitioner's] information technology projects and systems, determining technical and logistical requirements, interfacing with technical, consulting, and advertising personnel to determine project requirements and deadlines, and managing technical personnel (including end users and certain hotel managers). [The beneficiary] will play a key role in planning the development of the Hotel's technical projects and systems. He will assist senior management in planning projects,

reviewing project proposals, scheduling projects, staffing projects, establishing work priorities, and prescribing technical standards.

In the [proffered position], we anticipate that [the beneficiary] can design a database system for use by all [of the petitioner's departments]. It is the [petitioner's] goal that all information regarding reservations and occupancy rates be centralized. This would allow all employees, including marketing personnel, to access all the information from a central location. In addition, [the beneficiary will be responsible for planning, developing and implementing computer systems and networks to link all of the [petitioner's departments] with each other and other \

Counsel cited the Foreign Labor Certification Data Center Online Wage Library OWL as evidence that the proffered position is a specialty occupation position. Counsel did not state, however, that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent or, if it does, what that specific specialty is.

On March 30, 2012, the service center issued an RFE in this matter and requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, counsel submitted: (1) a letter, dated May 31, 2012, from the petitioner's president; (2) information, printed from social networking websites, pertinent to employees of other companies; (3) printouts of five vacancy announcements from job search websites; (4) printouts from iseek.org and educationatlas.com pertinent to computer and information systems managers; and (5) counsel's own letter, dated June 21, 2012;

In his May 31, 2012 letter, the petitioner's president provided the following list of the duties of the proffered position:

1. Develop and implement technology and information management systems that will help the hotel run more efficiently
2. Regulate development, customization and implementation of all of the [petitioner's] information management systems, including accounting, payroll, restaurant management, bar management, invoicing, facilities management, inventory and personnel management systems
3. Update network administration
4. Supervise back-end systems
5. Interact with the \ reservation system
6. Manage [the petitioner's] information technology projects and systems
7. Determine technical and logistical requirements
8. Interface with technical, consulting, and advertising personnel to determine project requirements and deadlines
9. Manage technical personnel (including end users and certain hotel managers)
10. Plan and develop [the petitioner's] technical projects and systems
11. Assist senior management in planning projects, reviewing project proposals, scheduling projects, staffing projects, establishing work priorities

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12. Prescribe technical standards
13. Design centralized database system for use by all [of the petitioner's departments]
14. Plan, develop, and implement computer systems and networks to link all [of the petitioner's departments]
15. Delivery and upgrade of Rate Management System (Room master 2000 – InnQuest) and 20 high-profile reports that enable the Revenue management Department to optimize/maximize nightly room revenue.

The petitioner's president stated, "This position requires exceptional analytical, communication, organizational, and computer skills. The petitioner's president did not, however, state that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent, or, if it does, identify the specific specialty in which it requires a degree.

The printouts from social networking websites pertain to two people, [REDACTED] and they indicate that both individuals have held computer-related positions at hotels and resorts. Although this evidence indicates [REDACTED] received a bachelor's degree from the [REDACTED] it does not indicate [REDACTED] received any education beyond high school.

In his June 21, 2012 letter, counsel reiterated the list of duties provided by the petitioner's president in his May 31, 2012 letter. He cited the evidence provided and the U.S. Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) as support for his proposition that the proffered position qualifies as a specialty occupation position.

The director denied the petition on August 13, 2012 finding, as was noted above, that the petitioner had not demonstrated that the proffered position is a specialty occupation.

On appeal, counsel asserts that the evidence of record demonstrates: (1) that the petitioner's operations require a part-time computer and information systems manager; (2) that the duties of the proffered position are consistent with such a position; and (3) that computer and information systems manager positions are specialty occupation positions.

The AAO observes, preliminarily, that the petitioner has never asserted that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent, or identified, if it does, the specific specialty in which it requires such a degree or equivalent. However, the AAO will continue its analysis to determine whether the evidence supports that the proffered position does, in fact, require a minimum of a bachelor's degree in a specific specialty or its equivalent.

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 is satisfied if a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position.

To begin that inquiry, the AAO must determine whether the proffered position in fact falls within the Computer and Information Systems Manager occupational category as described in the *Handbook*.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹ In its discussion of the "Computer and Information Systems Managers" occupational category, the *Handbook* provides the following information regarding the duties of such positions:

What Computer and Information Systems Managers Do

Computer and information systems managers, often called information technology managers (IT managers or IT project managers), plan, coordinate, and direct computer-related activities in an organization. They help determine the information technology goals of an organization and are responsible for implementing computer systems to meet those goals.

Duties

Computer and information systems managers typically do the following:

- Analyze their organization's computer needs and recommend possible upgrades to top executives
- Plan and direct installing and upgrading computer hardware and software
- Ensure the security of an organization's network and electronic documents
- Assess the costs and benefits of a new project to justify spending to top executives
- Learn about new technology and look for ways to upgrade their organization's computer systems
- Determine short- and long-term personnel needs for their department
- Plan and direct the work of other IT professionals, including computer systems analysts, software developers, information security analysts, and computer support specialists
- Negotiate with technology vendors to get the highest level of service for their organization

Few managers do all of these duties. There are various types of computer and information systems managers, and the specific duties of each are determined by the size and structure of the firm. Smaller firms may not employ every type of manager.

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

The following are types of computer and information systems managers:

Chief information officers (CIOs) are responsible for the overall technology strategy of their organizations. They help determine the technology or information goals of an organization and then oversee planning to implement technology to meet those goals.

They may focus on a specific area such as electronic data processing or information systems, but they differ from chief technology officers (CTOs; see next) in that the CIO is more focused on long-term, or “big picture,” issues. CIOs who do not have technical expertise and focus solely on the business aspects of creating an overall company vision are included in a separate profile on top executives. For more information, see the profile on top executives.

Chief technology officers (CTOs) evaluate new technology and how it can help their organization. When both CIOs and CTOs are present, the CTO usually has more technical expertise.

The CTO is responsible for designing and recommending the appropriate technology solutions to support the policies and directives issued by the CIO. CTOs also work with different departments to implement the organization’s technology plans.

The CTO usually reports directly to the CIO and also may be responsible for overseeing the development of new technologies or other research and development activities. When a company does not have a CIO, the CTO determines the overall technology strategy for the firm and presents it to top executives.

IT directors, including management information systems (MIS) directors, are in charge of their organizations’ information technology (IT) departments, and they directly supervise other employees. They help to determine the business requirements for IT systems and they implement the policies that have been chosen by top executives. It is the IT director’s job to ensure the availability of data and network services by coordinating IT activities. IT directors also oversee the financial aspects of their department, such as budgeting.

IT security managers oversee their organizations’ network and data security. They work with top executives to plan security policies and training for employees. These managers must keep up to date on IT security measures. They also supervise investigations if there is a security violation.

As noted above, the petitioner submitted an LCA certified for a Computer and Information Systems Manager position. Notwithstanding any assertions in the record, it appears unlikely that, in the context of the petitioner's operations, the beneficiary would plan, coordinate, and direct computer-related activities at the level contemplated in the *Handbook* description of those positions. Whereas the *Handbook* states that computer and information systems managers "Plan and direct the work of other IT professionals, including computer systems analysts, software developers, information security analysts, and computer support specialists," the record contains no evidence that the petitioner, an individual hotel with a total of 18 employees, employs such a staff of information technology professionals for the beneficiary to supervise. The only allusion in the duty description to the beneficiary managing technical personnel refers to end-users and hotel managers. However, those are not the type of technical personnel contemplated by the *Handbook's* discussion of computer and information system manager positions, which refers to "computer systems analysts, software developers, information security analysts, and computer support specialists."

Furthermore, a study of the *Handbook's* discussion of the educational requirements normally required for entrance into the Computer and Information Systems Manager occupational category yields information that further undermines the petitioner's claim that the proffered position actually falls within this occupational category. For example, the *Handbook* states that "[c]omputer and information systems managers usually spend 5-10 years in an IT occupation before being promoted to a manager." *Id.* at <http://www.bls.gov/ooh/Management/Computer-and-information-systems-managers.htm#tab-4>. However, the petitioner submitted an LCA certified for a Level I, entry-level position. The *Prevailing Wage Determination Policy Guidance*² 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 claims of record regarding the proposed duties' level of complexity and the occupational understanding required to perform them are materially inconsistent with the petitioner's submission of an LCA certified for a Level I, entry-level position. The LCA's wage level (Level I, the lowest of the four that can be designated) is only appropriate for a low-level, entry position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels quoted above, this wage rate is appropriate for positions in which that the beneficiary is only required to have a basic understanding of the occupation; will be expected to perform routine tasks requiring limited, if any, exercise of judgment; will be closely supervised and his work closely monitored and

² Available at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf (last accessed Jun. 26, 2013).

reviewed for accuracy; and will receive specific instructions on required tasks and expected results. These characteristics of the proffered position do not align with the general thrust of the computer and information systems manager positions described in the *Handbook*.

Instead, the AAO finds the duties of the proffered position generally align with those of network and computer systems administrators as described in the *Handbook*. In its discussion of the "Network and Computer System Administrators" occupational category, the *Handbook* provides the following description of the duties of such positions:

What Network and Computer System 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 System Administrators," <http://www.bls.gov/ooh/Computer-and-Information-Technology/Network-and-computer-systems-administrators.htm#tab-2> (last visited Jun. 26, 2013).

The duties attributed to the proffered position, and the level at which they would likely be performed in the context of the petitioner's business operations, are consistent with the duties of network and computer system administrators as described in the *Handbook*.

The *Handbook* states the following about the educational requirements of network and computer system administrator positions:

How to Become a Network and Computer System Administrator

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>.

The *Handbook* makes clear that network and system administrator positions do not normally require a minimum of a bachelor's degree, or the equivalent, in a specific specialty, as it indicates that an associate's degree may suffice for some positions. 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. For all of these reasons, the *Handbook* fails to support the proposition that network and computer system administrator positions, as a category, require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Counsel submitted printouts from iseek.org and educationatlas.com, apparently to support the proposition that the particular position in this case is one for which the normal minimum entry requirement is a minimum of a bachelor's degree in a specific specialty or its equivalent. Those printouts, however, pertain to computer and information systems manager positions. For the reasons explained above, the AAO has found, by a preponderance of the evidence, that the proffered position is a network and computer system administrator position, and the requirements listed on those printouts are not directly relevant.

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.

The materials from DOL's Occupational Information Network (O*NET OnLine) do not establish that the proffered position satisfies the first criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A), either. O*NET OnLine is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a requirement for a given position, as O*NET OnLine's Job Zone designations make no mention of the specific field of study from which a degree must come.

As was noted previously, the AAO interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position. The Specialized Vocational Preparation (SVP) rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. For all of these reasons, the O*NET OnLine excerpt submitted by counsel is of little evidentiary value to the issue presented on appeal.

Nor 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 once 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 in the record of proceeding does not establish that a baccalaureate degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of this petition, 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 such 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 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or any other authoritative, objective, and reliable resource, reports a standard industry-wide requirement of at least a bachelor’s degree in a specific specialty or its equivalent.

Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner’s industry attesting that individuals employed in positions parallel to the proffered position

are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

As detailed above, the petitioner provided the résumés of two individuals who appear to work in the hospitality industry. Those résumés were apparently provided to show that a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is common to the petitioner's industry for parallel positions in similar firms.

Although both of these individuals appear to have worked, in the hospitality industry, the record contains insufficient evidence to show that the companies that employed them are otherwise similar in size, scope of operations, etc., to the petitioner, or that the positions they work or worked in are sufficiently similar to the proffered position that they might be characterized as parallel. Further, those résumés do not indicate that either individual has a minimum of a bachelor's degree in a specific specialty or its equivalent closely related to their past or present positions.

However, even if these factors were not present the AAO would still accord no evidentiary weight to these resumes, as the evidentiary weight of a resume is insignificant. These two resumes represent claims made by the individuals who prepared them rather than evidence to support those claims, and the record of proceeding lacks documentary evidence to establish or corroborate the claims made therein. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Therefore, they are of no evidentiary weight in the analysis of the criterion of the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner did submit five 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. Manager of Information Technology at [REDACTED] requiring a bachelor's degree in "Computer Science or Management/Business or equivalent";
2. Manager of Information Technology at the [REDACTED] requiring a bachelor's degree in "Computer Science or Management/Business or equivalent";
3. Information Systems Manager for the [REDACTED] requiring a bachelor's degree in computer science or a closely-related discipline;
4. Information Systems Manager for [REDACTED] a company that specializes in secure disposal of computer equipment, requiring "A Bachelor Degree with relevant major"; and
5. Information Systems Manager for the [REDACTED], stating, "Ideally with a university degree or diploma in Information Systems and/or Computer Programming";

The AAO observes that the fourth vacancy announcement was not placed by a company in the hospitality industry, and that none of the vacancy announcements have been shown to have been

placed by companies that are otherwise similar to the petitioner, such as in size or scope of operations:

Further, although some of the vacancy announcements contain descriptions of the duties of the positions announced, none are sufficient to show that the positions offered are so similar to the proffered position that they can be fairly characterized as “parallel” positions.

As the third and fifth vacancy announcements are for positions in Kenya and India they are not relevant.

Yet further, the fourth vacancy announcement states that the position advertised requires a bachelor’s degree in a “relevant major.” Because the array of majors the hiring authority might consider to be “relevant” to that position is not delineated, whether that vacancy announcement actually requires a bachelor’s degree in a specific specialty or its equivalent is unclear.

Even further, the fifth vacancy announcement seeks applicants, “Ideally with a university degree or diploma in Information Systems and/or Computer Programming.” Because a preference is not a minimum requirement, that vacancy announcement does not state a requirement of a minimum of a bachelor’s degree in a specific specialty or its equivalent.

Moreover, it is noted that four of the five vacancy announcements require work experience. However, as noted above the petitioner indicated on the LCA that the proffered position is an entry-level position relative to others within the occupational category, and that the beneficiary is only required to have a basic understanding of the occupation; will be expected to perform routine tasks requiring limited, if any, exercise of judgment; will be closely supervised and his work closely monitored and reviewed for accuracy; and will receive specific instructions on required tasks and expected results. It is therefore not clear how these positions are “parallel” to the proffered position.

Finally, even if the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the United States and unequivocally required a minimum of a bachelor’s degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from five announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.³

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 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

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The 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 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 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.

The AAO also incorporates here by reference and reiterates its earlier discussion regarding the LCA and its indication that the proffered position is a low-level, entry position relative to others within the occupation. 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 he will receive specific instructions on required tasks and expected results; and that his work will be reviewed for accuracy. The petitioner therefore failed to establish how the beneficiary's responsibilities and day-to-day duties are so complex or unique that the position can be performed only by an individual with a bachelor's degree in a specific specialty. Thus, based upon the record of proceeding, including the LCA, the petitioner has not established that the proposed position is so complex or unique that it can only be performed by an individual who

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 require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

has completed a baccalaureate program in a specific discipline that directly relates to the proffered position.

Consequently, as it did not show that the particular position for which it filed this petition is so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty, 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.⁴ In the instant case, the record does not establish a prior history of recruiting and hiring for the proposed position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty.

Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position would not meet the statutory or regulatory definition of a specialty occupation. *See* section 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

⁴ 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.

of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in a specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proposed position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

In the March 30, 2012 RFE, the service center requested that the petitioner provide evidence regarding the number of people it has previously employed in the proffered position, and their educational qualifications. However, the record contains no evidence pertinent to anyone the petitioner has ever previously hired to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under this criterion.

Even if the record contained such evidence, however, the AAO would still find that the petitioner failed to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) because the record does not, as indicated above, establish that its degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position, a determination which is strengthened by the petitioner's indication in the LCA that its proffered position is a comparatively low, entry-level position relative to others within its occupation.

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 decision of 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. . . .

Although the LCA submitted by the petitioner in support of the petitioner was certified for a computer and information systems manager position, the AAO has found, by a preponderance of the evidence, that the proffered position is actually a network and computer system administrator position. The LCA submitted by the petitioner does not, therefore, correspond to the visa petition, and the petition must be denied for this additional reason.

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

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

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

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