(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

[redacted]

MAY 0 6 2013

Date: Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

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,

for

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.

In the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a software reseller. To employ the beneficiary in what it designates as a technical support representative 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, counsel 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 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)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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;
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> (*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;
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> (*3*) The employer normally requires a degree or its equivalent for the position; or
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> (*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 stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

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 to support the visa petition states that the proffered position is a technical support representative position, and that it corresponds to Standard Occupational Classification (SOC) code and title 15-1150, Computer Support Specialists from the *Dictionary of Occupational Titles* (*DOT*) maintained by the United States Department of Labor (DOL). The LCA further states that the proffered position is a Level I[1] position.

With the visa petition, counsel submitted evidence that the beneficiary received a bachelor's of technology degree in mechanical engineering from in India.

On Supplement H of the visa petition, the petitioner stated that the duties of the proffered position are: "Taking incoming calls, email messages, and chats from computer-aided design and data-management software end users; fielding technical questions about all software."

An unsigned, unattributed description of the proffered position was also submitted with the visa petition. The body of that description states, in its entirety:

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[1] The AAO notes the prevailing wage of $29,994 per year on the LCA corresponds to a Level I position for the occupational category, Computer Support Specialists for UT). The AAO further notes that the petitioner proposes to pay the beneficiary at a rate of $40,000, which is slightly higher than a Level II wage ($38,418 per year). Nevertheless, the wage level designation on the LCA must correspond to the duties and requirements of the proffered position. The AAO is not in a position to speculate as to why the petitioner proposes to pay the beneficiary a wage in excess of the prevailing wage for a Level I position.

Job Title:
Technical Support Rep
Description:
[The petitioner] is looking for friendly skilled users for their technical support department. If you love and like to help others learn, [the petitioner] can provide an outstanding career path.
General responsibilities include taking incoming calls and emails from customers, fielding questions about all products including CAD, FEA and PDM. Part time and full time positions are available.

Job Requirements:

- Excellent communication and follow-up skills
- Diagnostics and problem resolution skills
- Strong skills – CSWP a plus
- Basic networking and hardware knowledge
- Training/instructional experience is a plus
- B.S. Degree or higher in Engineering

[The petitioner] offers competitive salary and benefits in a casual team work environment located in Utah.

On April 13, 2012, the service center issued an RFE in this matter. The service center requested, *inter alia*, (1) evidence that the petitioner would employ the beneficiary in a specialty occupation, and (2) an evaluation of the beneficiary's foreign degree.

In response, counsel submitted a letter, dated June 14, 2012, in which he stated:

> The RFE asks whether the position offered is in fact a "specialty occupation." The position is benignly and misleadingly called "technical support representative," but is, in fact, highly sophisticated. The petitioner is a value-added reseller of computer-aided design software. The petitioner's customers are engineering and design firms, manufacturers, and municipalities that are sophisticated users of engineering and design software. The petitioner's support staff is highly trained in the areas of computer and mechanical engineering, and must "speak the language" of customers and clients that call with questions on how to best use the software sold to them by the petitioner.

> The specific job description is to provide "customer service," but again, this is misleading. The "customers" in question are highly trained, sophisticated designers and engineers, not end users of basic software and applications. Accordingly, a bachelor's degree in mechanical or manufacturing engineering is a minimum requirement; a post-graduate degree in the same or an equivalent field is preferred. Attached as **Exhibit B** is a job description provided by the petitioner's engineering staff setting forth the minimum requirements for the position.

The Exhibit B referred to by counsel is an unsigned description of the proffered position on the petitioner's letterhead. It is identical to the job description submitted with the visa petition, except that, rather than stating that the proffered position requires a "B.S. Degree or higher in Engineering," it states: "BS or MS degree in mechanical or manufacturing engineering" as a requirement of the proffered position.

An evaluation submitted in response to the RFE states, without analysis, that the beneficiary's degree is equivalent to a U.S. bachelor's degree in mechanical engineering.

The director denied the petition on June 22, 2012, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel provided (1) a brief, (2) a statement from the petitioner's CEO, and (3) a letter from who is in the petitioner's industry. Counsel asserts in his brief that the evidence shows that the proffered position qualifies as a specialty occupation position.

The petitioner's CEO's statement contains the following revised list of the duties of the proffered position:

- Confer with engineers to implement procedures and provide technical information for SolidWorks CAD software.
- Research and analyze customer specifications to evaluate the feasibility of designs or applications
- Instruct customers on engineering design, manufacturing and control software and theory
- Specify system components or direct modification of product features to ensure conformance with engineering design and performance specifications
- Provide help with research, evaluate, install, operate and maintain systems and software processes to meet requirements applying knowledge of engineering principles
- Investigate software failures and difficulties to diagnose faulty operation and to make recommendations to research and development crew

- Conduct research that tests and analyzes the feasibility, design, operation and performance of software tools [redacted], Enterprise Product Data Management, CAMWorks)
- Recommend design and software usage modifications to eliminate software malfunctions
- Perform personnel functions such as coordinating meetings between the CAD systems administrators and [redacted] engineers to communicate directly regarding software modifications and configuration
- Write performance requirements for product development
- Provide administrative training for [redacted] Enterprise Product Data Management to the clients
- Provide SQL database configuration for clients Enterprise Product Data Management vaults
- Develop custom add-in as per client's requirements
- Provide help with licensing strategies for the software in a network environment
- Demonstrate, compose audio/visual records the best practices for modeling and managing files in the software

In that statement, the petitioner's CEO also stated:

> In order to provide the best possible service to its end-users, Petitioner's support staff need to "speak the language" of engineers: the Position requires a technical understanding of engineering concepts and technology. As such, [the petitioner's] support personnel are not "computer support personnel" so much as "engineering and design support" to end-users of the [redacted] Products. For that reason, [the petitioner] rarely hires anyone to its support staff that does not have at least a bachelor's degree in engineering. If [the petitioner] hires someone without an engineering degree to a support position, it would only be because that person has engineering competencies or experience with the [redacted] Products equivalent to a degree.

No documentary evidence was submitted to support the CEO's claims regarding the petitioner's hiring practices.

The letter from Brian Findley states that he is part owner of Digital Dimensions, Inc., which specializes in "the value-added resale of SolidWorks computer-aided design software and related products." He stated that his business is "virtually identical" to the petitioner's, and that he hires support specialists similar to those the petitioner hires. As to the educational requirements of those positions, he stated:

> I rarely hire without a bachelor's degree. When we do, it is only because the candidate has a significant amount of experience and has exhibited a high competency level as to the engineering-related questions he/she will have to answer.

No evidence was provided of (1) the number of support personnel Inc. employs in positions parallel to the proffered position, (2) the educational qualifications of the people Inc. employs, and (3) the credentials of the people Inc. employs without a specialized degree closely related to the proffered position and what they possess that is considered by Inc. to be equivalent to a specialized bachelor's degree.

As a preliminary matter, the AAO observes that, rather than merely providing additional detail about the duties previously attributed to the proffered position, the revised description adds duties never previously revealed. The previous description of the duties of the proffered position consisted of "Taking incoming calls, email messages, and chats from computer-aided design and data-management software end users; [and] fielding technical questions about all software." In the revised description, the petitioner would, among other tasks:

"Instruct customers on engineering design, manufacturing and control software and theory;" "Provide help with research, evaluate, install, operate and maintain systems and software processes . . . applying knowledge of engineering principles"; "Perform personnel functions such as coordinating meetings between the CAD systems administrators and engineers"; "Write performance requirements for product development"; "Provide SQL database configuration"; "Develop custom add-in[s]"; "Provide help with licensing strategies"; and "Demonstrate [and] compose audio/visual records . . . for modeling and managing files in the software."

Those are not extrapolations on previously described duties, but entirely new duties.

On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Therefore, the AAO will rely on the descriptions of the proffered position submitted prior to the appeal. The AAO will disregard the additional duties submitted on appeal.[2]

[2] The AAO observes, however, that the revised description includes providing engineering support, as well as other engineering duties, among the responsibilities of the proffered position. If those additional duties were to be considered, the proffered position may be classified as a position for an engineer. In that event, the visa petition would not be supported by a corresponding LCA, as the submitted LCA is only valid for employment in a Computer Support Specialist position. Therefore, in that event, the visa petition could not be found to conform to the requirement of 8 C.F.R. § 214.2(h)(4)(i)(B)(1) that it be supported by a corresponding LCA, and the visa petition would be denied on that basis.

Next, to make its determination whether the proffered position qualifies as a specialty occupation, the AAO turns first 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 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 now discuss the application of the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

The AAO will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*), which 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.

As noted above, the petitioner claims in the LCA that the proffered position falls under the occupational category "Computer Support Specialists." The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.[3] In the "Computer Support Specialists" chapter, the *Handbook* provides the following description of the duties of those positions:

> Computer support specialists provide help and advice to people and organizations using computer software or equipment. Some, called technical support specialists, support information technology (IT) employees within their organization. Others, called help-desk technicians, assist non-IT users who are having computer problems.
>
> **Duties**
>
> ***Technical support specialists*** typically do the following:
>
> - Test and evaluate existing network systems

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

- Perform regular maintenance to ensure that networks operate correctly
- Troubleshoot local area networks (LANs), wide area networks (WANs), and Internet systems

Technical support specialists, also called computer network support specialists, usually work in their organization's IT department. They help IT staff analyze, troubleshoot, and evaluate computer network problems. They play an important role in the daily upkeep of their organization's networks by finding solutions to problems as they occur. Solving an IT problem in a timely manner is important because organizations depend on their computer systems. Technical support specialists may provide assistance to the organization's computer users through phone, email, or in-person visits. They often work under network and computer systems administrators, who handle more complex tasks. For more information, see the profile on network and computer systems administrators.

Help-desk technicians typically do the following:

- Pay attention to customers when they describe their computer problems
- Ask customers questions to properly diagnose the problem
- Walk customers through the problem-solving steps
- Set up or repair computer equipment and related devices
- Train users to use new computer hardware or software, including printing, installation, word processing, and email
- Give information to others in the organization about what gives customers the most trouble and other concerns customers have

Help-desk technicians, also called computer user support specialists, usually provide technical help to non-IT computer users. They respond to phone and email requests for help. Sometimes they make site visits so that they can solve a problem in person.

Help-desk technicians may solve a range of problems that vary with the industry and the particular firm. Some technicians work for large software companies and for support service firms and must give instructions to business customers on how to use complex programs. Others work in call centers answering simpler questions from consumers. Some technicians work for organizations and help non-IT workers with their computer problems.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook,* 2012-13 ed. "Computer Support Specialists," http://www.bls.gov/ooh/computer-and-information-technology/computer-support-specialists.htm#tab-2 (last visited April 11, 2013).

The duties attributed to the proffered position in Supplement H of the Form I-129 and in the job description submitted with the petition are entirely consistent with the duties of help-desk technicians as described in the Computer Support Specialists chapter of the *Handbook*. The AAO finds that the position, as described, is a help-desk technician position as described in that chapter.

The *Handbook* states the following about the educational requirements of computer support specialist positions:

> Because of the wide range of skills for different computer support jobs, there are many paths into the occupation. A bachelor's degree is required for some computer support specialist positions, but an associate's degree or postsecondary classes may be enough for others. After being hired, many workers enter a training program that lasts for several months.
>
> **Education**
>
> Training requirements for computer support specialists vary, but many employers prefer to hire applicants who have a bachelor's degree. More technical positions are likely to require a degree in a field such as computer science, engineering, or information science, but for others the applicant's field of study is less important. Some lower level help-desk jobs or call-center jobs require some computer knowledge, but not necessarily a postsecondary degree.

Id. at http://www.bls.gov/ooh/computer-and-information-technology/computer-support-specialists.htm#tab-4 (last visited April 11, 2013).

The *Handbook* makes clear that computer support specialist positions, which classification includes help-desk technician positions, like the proffered position, do not as a category require a minimum of a bachelor's degree, as it indicates that an associate's degree or some postsecondary classes may suffice for some positions. Further, even as to some computer support positions, including help-desk technician positions, that require a bachelor's degree, the *Handbook* does not indicate that the degree must necessarily be in any specific specialty.

The *Handbook* does state: "More technical positions are likely to require a degree in a field such as computer science, engineering, or information science." To the extent that they are described in the record of proceeding, however, the duties that the petitioner initially ascribed to the proffered position indicate a need for the ability to assist software users, but do not establish any particular level of formal, post-secondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such ability.

Further, the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. *See* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage*

Determination Policy Guidance, Nonagric. Immigration Programs (rev. Nov. 2009), *available at* http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. The classification of the proffered position as a Level I position does not support the assertion that it is a position that cannot be performed without a minimum of a bachelor's degree in a specific specialty or its equivalent, notwithstanding that the *Handbook* suggests that some computer support specialist positions do not require such a degree.

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

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

As stated earlier, 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.

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 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.

In his letter, Mr. [redacted] stated that he rarely hires anyone without a bachelor's degree for positions parallel to the proffered position, and that, when he does, that person has exhibited competence in answering engineering-related questions. No evidence was submitted, however, to corroborate either of his assertions. Mr. [redacted] assertions, absent corroborating evidence, are insufficient to sustain the burden of proof in this matter.

Further, even if Mr. [redacted] assertions were shown to be true, no evidence was presented to show that the people hired for positions parallel to the proffered position who do not have bachelor's degrees have qualifications equivalent to a bachelor's degree in a specific specialty closely related to

their positions. For these reasons, Mr. letter cannot be accepted as evidence that positions parallel to the proffered position require a minimum of a bachelor's degree in a specific specialty or its equivalent.

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

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

The record contains little evidence that would differentiate the work of the proffered position from the work of computer support specialist positions in general.[4] The duties of the proffered position ("Taking incoming calls, email messages, and chats from computer-aided design and data-management software end users; fielding technical questions about all software") are described in terms of functions typical to computer support specialist positions in general, and especially to help-desk technician positions, and so have not been shown to be more complex or unique than the duties of other computer support specialist positions, some of which, the *Handbook* indicates, do not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a Level I computer support specialist, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of computer support specialist positions. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree, notwithstanding that the *Handbook* suggests that some computer support specialist positions do not require such a degree.

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

The AAO will next consider the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*), which is satisfied if the petitioner is able to demonstrate that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.[5]

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[4] As was noted above, the AAO will not consider the revised description of the duties of the proffered position submitted on appeal.

[5] 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

The petitioner's CEO asserted that the petitioner rarely hires anyone for the proffered position who does not have at least a bachelor's degree in engineering. As was observed above, however, the record contains no evidence to corroborate that assertion.

The petitioner's CEO also asserted that, on those rare occasions when he hires someone without a bachelor's degree in engineering for the proffered position, that person has the equivalent of such a degree. No evidence in the record, however, supports that assertion.

In fact, the record contains no evidence pertinent to anyone the petitioner has ever previously hired to fill the proffered position. The petitioner has not, therefore, submitted evidence sufficient to satisfy 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 descriptions of the duties contain no indication that such duties inherently require 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 support specialist or help-desk technician positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Further, as was noted above, the petitioner filed the instant visa petition for a Level I computer support specialist position, a position for a beginning level employee with only a basic understanding of a computer support specialist position. This does not support the proposition that the nature of the specific duties of the proffered position is so specialized and complex that their performance is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, directly related to the duties of the position, especially as the *Handbook* indicates that some computer support specialist positions require no such degree.

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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").

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

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.

As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that specialty degree or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. §1361. Here, that burden has not been met. The appeal will be dismissed and the petition denied.

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