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



U.S. Citizenship
and Immigration
Services

DATE: **MAY 31 2013** Office: CALIFORNIA SERVICE CENTER File: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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 (AAO) 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner, through counsel, submitted a Petition for a Nonimmigrant Worker (Form I-129) to the California Service Center on April 27, 2012. On the Form I-129 visa petition, the petitioner describes itself as a packaging equipment manufacturer¹ with an undisclosed number of employees², established in 1952. In order to employ the beneficiary in a position to which it assigned the title Computer Programmer Analyst, the petitioner seeks 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 on August 9, 2012, finding that the petitioner failed to establish that the beneficiary is qualified to perform the duties of any specialty occupation.

The petitioner, through counsel, submitted an appeal of the decision on August 30, 2012. On appeal, counsel for the petitioner states that the director's basis for denial of the petition was erroneous. In support of this contention, counsel for the petitioner submitted a brief and additional evidence.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's notice denying the petition; and (5) the petitioner's Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

For the reasons that will be discussed below, the AAO finds that the director's decision to deny the petition for its failure to establish the beneficiary as qualified to perform in a position requiring at least a bachelor's degree, or the equivalent, in a computer-related specialty was correct. Accordingly, the appeal will be dismissed, and the petition will be denied.

Later in this decision, the AAO will also address an additional, independent ground that the AAO finds also precludes approval of this petition. That is, contrary to the director's decision, the AAO finds that the evidence of record does not establish the proffered position as a specialty occupation. However, the AAO will first address the beneficiary qualification issue, which was the director's stated basis for denying the petition.

¹ In its letter of support, dated April 20, 2012, the petitioner states that it is a "world leading supplier of adhesive application and quality assurance equipment." The petitioner further states that it "serves a variety of markets, including the paper converting (bookbinding, container, box, bag, envelope, folding carton, corrugated) and packaging, food and beverage, graphics/printing, nonwoven/tissue, wood products, automotive, and other industrial applications."

² On the Form I-129 H-1B Data Collection and Filing Fee Exemption Supplement, at Part A, Section 1, Subsection e, the petitioner checked the box that states that it employs 50 or more individuals in the United States.

As a preliminary aspect of the decision denying the petition for its failure to establish the beneficiary as qualified to serve in the position for which the petition was filed, the director found that the subject of the petition was a "Computer Programmer Analyst" position that required at least a bachelor's degree, or the equivalent, in computer science or a closely related specialty. This aspect of the director's decision is best reflected in the following segment:

The petitioner seeks to employ the beneficiary as a computer programmer analyst. Since the proffered position is a computer programmer analyst, the beneficiary must possess a baccalaureate degree or higher, or its equivalent, in the appropriate field of study such as computer science as shown in the Department of Labor's Occupational Outlook Handbook (OOH).³

Since the director denied the petition on the basis of the beneficiary's qualifications, the AAO will first address the issue of the beneficiary's qualifications as it would relate to this petition's computer programmer analyst position if the evidence had actually established that, as the director found, it required at least a bachelor's degree, or the equivalent, in a computer-related specialty.

A review of the U.S. Department of Labor's *Occupational Outlook Handbook* (hereinafter referred to as the *Handbook*) reveals that "Computer Programmer Analysts" are a subcategory of the "Computer Systems Analysts" occupational category – discussed in the *Handbook's* "Computer Systems Analysts" chapter. In pertinent parts, the subchapter of the *Handbook* entitled "What Computer Systems Analysts Do" states:

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

* * *

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

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

Analysts determine requirements for how much memory and speed the computer system needs, as well as other necessary features. They prepare flowcharts or

³ As already noted, the AAO does not concur with the director's determination on the specialty occupation issue, which seems to be based upon the erroneous view that the *Occupational Outlook Handbook* identifies computer systems analysts as comprising an occupational group that requires for entry at least a bachelor's degree, or the equivalent, in a specific specialty.

diagrams for programmers or engineers to use when building the system. Analysts also work with these people to solve problems that arise after the initial system is set up.

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

* * *

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Computer Systems Analysts, available on the Internet at <http://www.bls.gov/ooh/Computer-and-Information-Technology/Computer-systems-analysts.htm#tab-2> (last visited May 21, 2013).

As will be discussed later in greater detail with regard to the specialty occupation issue, the *Handbook* does not report that a bachelor's degree in a specific specialty is a normal requirement for entry into the "Computer Systems Analysts" occupational category or into its "Programmer Analysts" subcategory; but the *Handbook* does indicate that, if a bachelor's or higher degree in a specific specialty were necessitated by the specific performance requirements of a particular programmer analyst position, that specialty would likely be a computer-related field, such as, for instance, computer science or management information systems. See, in particular, the section of the *Handbook's* "Computer Systems Analysts" chapter entitled "How to Become a Computer Systems Analyst," which is available on the Internet at <http://www.bls.gov/ooh/Computer-and-Information-Technology/Computer-systems-analysts.htm#tab-4> (last visited May 21, 2013).

As will now be discussed, the AAO finds that the evidence in the record of proceeding is not sufficient to establish that the beneficiary had attained a bachelor's or higher degree, or the equivalent, in a computer-related specialty. Accordingly, the appeal will be dismissed, and the petition will be denied.

More specifically, upon review of the record, the AAO finds that the petitioner has failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation. Even assuming *arguendo* that the proffered position is a specialty occupation (which it is not, as will be discussed later in greater detail) requiring at least a bachelor's degree or its equivalent in the specialty indicated by the director in the decision, the evidence in the record is insufficient to establish that the beneficiary possesses such a degree or its equivalent to perform the duties of the proffered position.

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The statutory and regulatory framework that the AAO must apply in its consideration of the evidence of the beneficiary's qualification to serve in a specialty occupation follows below.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The degree referenced by section 214(i)(1)(B) of the Act, 8 U.S.C. § 1184(i)(1)(B), means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

For purposes of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require one or more of the following to determine whether a beneficiary has achieved a level of

knowledge, competence, and practice in the specialty occupation that is equal to that of an individual who has a baccalaureate or higher degree in the specialty:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;⁴
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . . .

The petitioner did not submit evidence to satisfy the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), (2), and (4).

In the present matter, the petitioner relies, mistakenly, upon an evaluation which purports to be – but has not been shown to be – strictly an evaluation of education that was produced for the petitioner's counsel by [REDACTED]. This document, which bears the title "Academic Evaluation Report" and is dated July 16, 2012, purports to evaluate only the beneficiary's education. However, the AAO is not persuaded that this is the case.

The [REDACTED] document evaluates three components of the beneficiary's background, namely: (1) three years of study at [REDACTED] India, which culminated in the award of a three-year bachelor's degree in Business Administration on May 18, 2007; (2) what the evaluator describes as "a twelve-month (one year) course of study" at [REDACTED] culminating in the award of a "Diploma in Information Systems Management on January 15, 2007"; and (3) a course of studies at the [REDACTED] culminating in a Master's Degree in Education.

⁴ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not training and/or work experience.

The AAO finds that the documentation submitted to support the [REDACTED] evaluation is sufficient to establish that the beneficiary had attained the equivalent of three-years of U.S. college coursework in business administration and that she had also obtained a U.S. Master's Degree in Education.

However, the AAO finds that, notwithstanding the [REDACTED] evaluator's expressed view, the Diploma in Information Systems Management from [REDACTED],⁵ which the evaluator referenced as a post-graduate diploma, does not appear to be a post-graduate document at all. The AAO further finds that neither the referenced [REDACTED] diploma document itself, the related program performance report, the evaluation, nor any other evidence in the record of proceeding establishes that the [REDACTED] document represents education rather than training.

On the first point, the AAO finds nothing within this record of proceeding that supports the evaluator's characterization of the [REDACTED] diploma as "post graduate." In this regard, the AAO notes that, while the evaluator characterizes the related program as post-graduate, the evaluator cites no authority for this claim and its attendant suggestion that one must have achieved a post-secondary degree in order to qualify for attendance in the so-called post-graduate program. Further, the AAO finds that comparison of the [REDACTED] academic transcripts and diploma, on the one hand, and the [REDACTED] diploma and its related record, on the other, indicate that attendance at the [REDACTED] program occurred prior to the beneficiary's award of any post-secondary degree. The AAO further notes that the evaluator fails to substantiate her language's suggestion that [REDACTED] – the source of the diploma – is an educational institution rather than a training center.⁶

Moreover, the [REDACTED] program performance report lists the following titles under the heading "module description" for the initial "common foundation semester": [REDACTED]
[REDACTED] The following titles are listed under the heading "module description" for semester 2: [REDACTED]
[REDACTED] No explanation was provided for what the acronyms stand for, and therefore it is unclear how the evaluator was able to assess these modules as being

⁵ The AAO notes that the EAI evaluator refers to [REDACTED] as being the [REDACTED] however the record of proceeding is devoid of any information to corroborate this name. The [REDACTED] diploma document (which has a certificate number and appears to be a certificate) lists [REDACTED] Academy and [REDACTED] on the document and the [REDACTED] program performance report only lists [REDACTED]. In any event, the record of proceeding contains no documentary evidence that [REDACTED] was at the time of the diploma's issuance accredited or recognized as an educational institution, let alone as one that provided college-level or higher-level courses.

⁶ In this regard, not only does the AAO find that the record of proceeding lacks any documentation from [REDACTED] indicating that it is a university, or college, or is officially recognized by the appropriate educational accreditation authorities in India as an educational institution providing college-level courses in the area for which the diploma was granted, but the AAO also notes that its review of the [REDACTED] internet site indicates that [REDACTED] is a training institution, rather than an educational institution. Also, while in addition to the training programs, the [REDACTED] internet site mentions the not-for-profit [REDACTED] [REDACTED] was established in 2009, two years after the beneficiary completed her [REDACTED] diploma. See [REDACTED] Overview, on the Internet at [REDACTED] (last visited May 21, 2013).

education rather than training. Also, [REDACTED] appears to be the common foundation semester quiz, and MSACCESS and EXCEL appear to refer, respectively, to the Microsoft Access and Excel programs, which would appear to only require training.

Furthermore, the evaluator failed to explain the relevance of her comment in this case that “EDGE cites specific instances wherein a three-year Indian bachelor’s degree with a one-year postgraduate diploma is considered equivalent to a U.S. Bachelor’s degree,” especially in light of the fact that the one-year diploma (which was awarded prior to the three-year bachelor’s degree) has not been established to be postgraduate education. The AAO further infers from the evaluator’s language that the combination to which she refers is not the combination that is present in this record of proceeding.

Finally, the evaluator stated that since the beneficiary was admitted to a master’s degree program at an accredited U.S. university, “this is clear evidence that the foreign degree/diploma was judged as equivalent to a four-year U.S. Bachelor’s degree for graduate admission.” However, the evaluator failed to substantiate her claim with respect to the [REDACTED]’s graduate admission requirements and whether the university in fact requires a four-year bachelor’s degree for graduate admission. Additionally, the evaluator does not even assert, much less prove, that the [REDACTED] concurred with her pronouncement that the beneficiary had achieved the equivalent of a “four-year U.S. Bachelor of Business Administration (BBA) degree in Information Systems.” Further, the evaluator presents no documentary evidence establishing the scope of information that the board of graduate admissions considered or the weight, if any, that it accorded the [REDACTED] diploma.

The first and third criteria above preclude USCIS from accepting that portion of the [REDACTED] evaluation that is based upon the beneficiary’s training. This is because the evidence does not establish that the evaluator is, in the words of the first criterion, “an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual’s training and/or work experience.”

The [REDACTED] evaluation falls partly under the third criterion to the extent that it opines on the beneficiary’s foreign education, in its capacity as a credentials evaluation service specializing in foreign-educational-credentials evaluations. Accordingly, the AAO accepts only the [REDACTED] evaluator’s conclusion that the beneficiary’s foreign coursework at [REDACTED] is the equivalent to three years of study in business administration at a U.S. university. (The AAO also accepts the portion of the [REDACTED] evaluation that states that the beneficiary possesses a U.S. Masters of Education degree from the [REDACTED] in Ohio.)

Consequently, the AAO accords no weight to the [REDACTED] evaluator’s opinion about the educational equivalency of the beneficiary’s training in information systems management. As evident at 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), USCIS recognizes educational evaluation services, such as [REDACTED] as competent to opine only in the area of the U.S. educational equivalency of a beneficiary’s foreign formal education, and not on the educational equivalency of training and/or work experience. Therefore, the [REDACTED] opinion about the educational equivalency of the beneficiary’s training carries no weight in these proceedings. USCIS uses an evaluation by a credentials evaluation service of a person’s foreign education as an advisory opinion only. Where an

evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). Consequently, the Academic Evaluation Report establishes no more than that the beneficiary holds the equivalent of three years of study in business administration at a U.S. university and a Master's Degree in Education. The AAO further finds that the petitioner has failed to establish that the combination of coursework reflected by these degrees is equivalent to a U.S. bachelor's degree in any computer-related specialty.

For the reasons discussed above, the AAO concludes that the petitioner has failed to satisfy any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(I)-(4).

Next, the AAO will discuss its conclusion that the evidence of record does not merit a USCIS determination that the beneficiary has attained the equivalent of a U.S. bachelor's degree in a computer-related specialty by virtue of a combination of his three-year degree, his master's degree, and his training.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) states the following with regard to achieving a USCIS determination that a beneficiary has the requisite qualifications to serve in a specialty occupation by virtue of a combination of education, training and/or experience:

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;⁷
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or

⁷ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. See 8 C.F.R. § 214.2(h)(4)(ii).

- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The AAO observes that while - as noted earlier - the record of proceeding indicates that the petitioner has attained the equivalent of a U.S. three-year degree in business and has also attained a U.S. master's degree in education, the petitioner has not presented credible evidence documenting how many years of college-level computer-related education the beneficiary actually lacks for attainment of the equivalent at least a U.S. bachelor's degree in a computer-related specialty. The AAO will, for the sake of argument, assume that the beneficiary lacks at least one year of such education (an assumption that appears in line with the [REDACTED] evaluation's presentation). By operation of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), to merit a USCIS determination that the beneficiary had attained the training equivalent of this year of missing education, the petitioner would have to establish that the beneficiary had attained at least three (3) years of training in a computer-related specialty - and that extent of training has not been established in this record of proceeding. Further, also by operation of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), it must be "clearly demonstrated" by the evidence of record "that the alien's training . . . included the theoretical and practical application of specialized knowledge required by the specialty occupation." As reflected in this decision's earlier comments regarding the [REDACTED] instructional record submitted by the petitioner, that record is too generalized and abstract to convey any substantive information, especially with regard to whatever theoretical applications of specialized computer-related knowledge, if any, may have been included. Finally, the record of proceeding lacks evidence that "the alien has recognition of expertise in the specialty" as expressly required by section 214(i)(2) of the Act, by the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C), and by 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), which regulation enunciates that the requisite recognition of expertise in the specialty must be evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;⁸
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be

⁸ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. See 8 C.F.R. § 214.2(h)(4)(ii).

significant contributions to the field of the specialty occupation.

Accordingly, the beneficiary does not qualify under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) either.

As the evidence in the record of proceeding fails to establish that the beneficiary has attained the equivalent of at least a U.S. bachelor's degree in computer science, information systems management, or other computer-related specialty – the range of degrees that the petitioner claimed that the proffered position required, the appeal will be dismissed, and the petition will be denied.

Next, beyond the decision of the director, the AAO will discuss its determination that the petitioner has provided insufficient evidence to establish that it would employ the beneficiary in a specialty occupation position.

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable 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, a proposed position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

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

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

In this matter, the petitioner indicated in the Form I-129 and supporting documentation that it seeks the beneficiary's services in a position that it designates as a computer programmer analyst to work on a full-time basis at a salary of \$50,000 per year. In the Form I-129, the petitioner described the proposed duties of the proffered position, as follows:

Perform adaption of systems to electronic data applications. This will include that she work with department heads to gain timely information. She will also prepare detailed flowcharts from block diagrams itemizing the specific logical steps to be included in solving problems. ([S]ee employer's letter)

In its support letter, dated April 20, 2012, the petitioner provided the following description of the duties of the proffered position:

The services of [the beneficiary] will include the adaption of systems to electronic data applications. This will include that she work with department heads to gain timely information. She will also prepare detailed flowcharts from block diagrams itemizing the specific logical steps to be included in solving problems.

In addition, the petitioner claims the following:

[The beneficiary] meets (and even exceeds) the H-1B degree qualification for this position, namely, a degree in computer science, information systems or engineering which is the minimum requirement for the position. . . . [The beneficiary] has received a master's degree from the [redacted] with a specialty in instructional design and technology, following her bachelor's degree, and diploma of information technology from her home country.

The petitioner also submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The AAO notes that the LCA designation for the proffered position corresponds to the occupational classification of "Computer Programmers" – SOC (ONET/OES Code) 15-1131.00, at a Level I wage.

In the letter submitted in response to the RFE, dated July 24, 2012, the petitioner provided the following more detailed description of the duties of the proffered position:

[The beneficiary] will report directly to the Manager of Information Technology. She will be involved in developing and maintaining the corporation's remote connectivity tools that include products from [redacted] connectivity and [redacted]. She will develop computer[-]based technologies and tools to be used by the corporation's sales and marketing team worldwide.

Once developed[,] she will be responsible for the deployment and training required. She will also be heading up the deployment and training surrounding the company's effort to deploy Apple iPads and iPhones to all [sic] sales and service personnel.

She will also be responsible for the development and maintenance of the corporation's Customer Relations Management incentive that involves the use of various web-based and PC[-]based products and tools that include[]

networking skills, Microsoft Office Products, and others. Although the distribution of her activities and duties will evolve over time, her current time[-]spent distribution would be: In general, it is estimated that she will spend approximately 50% of her time on development (i.e. programming, testing, deploying, documenting and maintaining) of systems, and 50% of her time working directly with the sales, service and marketing team in training and supporting the tools and products that she has supplied, such as development, deployment and training of CRM systems and workflows; development, deployment and training of sales related tools such as quoting and follow[-]up systems; deployment, deployment and training of hardware/software tools (i.e.[,] iPad Project); and help desk and support of the tools that she has developed.

On August 9, 2012, the director denied the petition. Although the petitioner claimed that, based on a preponderance of the evidence, the beneficiary would serve in a specialty occupation and was qualified to do so, the director determined that the petitioner failed to establish that the beneficiary is qualified to perform services in a specialty occupation. Counsel for the petitioner submitted a timely appeal of the denial of the H-1B petition.

Based upon a complete review of the record of proceeding, and applying the preponderance of the evidence standard, the AAO will make some preliminary findings that are material to the determination of the merits of this appeal.

At the outset, the AAO notes that there is insufficient evidence in the record of proceeding to support the broad proposition that a computer programmer analyst position constitutes an occupational category that qualifies as a specialty occupation, especially in light of the information in the *Handbook* that this is not the case. Furthermore, the evidence in the record is insufficient to support that this particular proffered position qualifies as a specialty occupation.

When determining whether a position is a specialty occupation, the AAO must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, USCIS looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific

specialty or its equivalent is normally the minimum requirement for entry into the particular position that is the subject of the petition.

The petitioner stated that the beneficiary would be employed in a computer programmer analyst position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, 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 evidence in the record of proceeding establishes that performance of the particular proffered 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.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁹ As previously discussed, the petitioner asserts in the LCA that the proffered position falls within the occupational group "Computer Programmers."

The AAO reviewed the information in the *Handbook* regarding the occupational category "Computer Programmers," including the sections regarding the typical duties and requirements for this occupational category.¹⁰ The AAO also reviewed the information in the *Handbook* regarding the occupational category "Computer Systems Analysts," including the sections regarding the typical duties and requirements for this occupational category.¹¹ Upon review of the job description provided by the petitioner, the AAO finds that the proffered position most closely falls under the occupational classification of "Computer Systems Analysts" under which Computer Programmer Analysts fall as a subcategory. The AAO notes that the *Handbook* does not support a conclusion that either Computer Programmers or Computer Systems Analysts constitute occupational groups to which entry normally requires at least a bachelor's degree, or its equivalent, in a specific specialty.

More specifically, the subchapter of the *Handbook* entitled "How to Become a Computer Programmer" states the following about this occupational category:

⁹ The *Handbook*, which is available in printed form, may also be accessed on the Internet at <http://www.bls.gov/ooh/>. The AAO's references to the *Handbook* are to the 2012-2013 edition available online.

¹⁰ For additional information regarding the occupational category "Computer Programmers," *see* U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Computer Programmers, on the Internet at <http://www.bls.gov/ooh/computer-and-information-technology/computer-programmers.htm#tab-1> (last visited May 21, 2013).

¹¹ For additional information regarding the occupational category "Computer Systems Analysts," *see id.*, Computer Systems Analysts, on the Internet at <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-1> (last visited May 21, 2013).

Most computer programmers have a bachelor's degree; however, some employers hire workers with an associate's degree. Most programmers specialize in a few programming languages.

Education

Most computer programmers have a bachelor's degree; however, some employers hire workers who have an associate's degree. Most programmers get a degree in computer science or a related subject. Programmers who work in specific fields, such as healthcare or accounting, may take classes in that field in addition to their degree in computer programming. In addition, employers value experience, which many students get through internships.

Most programmers learn only a few computer languages while in school. However, a computer science degree also gives students the skills needed to learn new computer languages easily. During their classes, students receive hands-on experience writing code, debugging programs, and many other tasks that they will do on the job.

To keep up with changing technology, computer programmers may take continuing education and professional development seminars to learn new programming languages or about upgrades to programming languages they already know.

Certification

Certification is a way to demonstrate a level of competence and may provide a jobseeker with a competitive advantage. Certification programs, generally available through product vendors or software firms, offer programmers a way to become certified in specific programming languages or for vendor-specific programming products. Some companies may require their computer programmers to be certified in the products they use.

Advancement

Programmers who have general business experience may become computer systems analysts. Programmers with specialized knowledge of, and experience with, a language or operating system may become computer software developers. They also may be promoted to managerial positions. For more information, see the profiles on computer systems analysts, software developers, and computer and information systems managers.

Important Qualities

Analytical skills. Computer programmers must understand complex instructions in order to create computer code.

Concentration. Programmers must be able to work at a computer, writing lines of code for long periods of time.

Detail oriented. Computer programmers must closely examine the code they write because a small mistake can affect the entire computer program.

Troubleshooting skills. An important part of a programmer's job is to check the program for errors and fix any they find.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Computer Programmers, available on the Internet at <http://www.bls.gov/ooh/computer-and-information-technology/computer-programmers.htm#tab-4> (last visited May 21, 2013).

The *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the "Computer Programmer" occupation. Rather, the occupation accommodates a wide spectrum of educational credentials, including less than a bachelor's degree in a specific specialty. The *Handbook* repeatedly states that some employers hire workers who have an associate's degree. Furthermore, while the *Handbook's* narrative indicates that most computer programmers obtain a degree (either a bachelor's degree or an associate's degree) in computer science or a related field, the *Handbook* does not report that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. The *Handbook* continues by stating that employers value computer programmers who possess experience, which can be obtained through internships.

The *Handbook* states that most computer programmers have a bachelor's degree, but the *Handbook* does not report that it is an occupational, entry requirement.¹² The text suggests that a

¹² The statement that "most computer programmers have a bachelor's degree" does not support the view that all computer programmer positions qualify as a specialty occupation. The statement does not indicate that most employees in this occupation have a bachelor's degree *in a specific specialty*, or its equivalent, that is directly related to the duties and responsibilities of the position. Although a general-purpose bachelor's degree may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 147.

Furthermore, the term "most" is not indicative that a particular position within the wide spectrum of computer programming jobs normally requires at least a bachelor's degree in a specific specialty, or its equivalent. For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of employees in this occupation have a bachelor's degree, it could be said that "most" of the individuals have such a degree. It cannot be found, therefore, that a statement that "most" employees possessing such a degree in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. (As previously mentioned, the proffered position has been designated by the petitioner in the LCA as a Level I low, entry-level position relative to others within the occupation). Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "attainment of a bachelor's or higher degree in the

baccalaureate degree may be a preference among employers of computer programmers in some environments, but that some employers hire candidates with less than a bachelor's degree, including candidates that possess an associate's degree.

Next, as already noted, the *Handbook* indicates that Computer Programmer Analysts constitute a subcategory of the Computer Systems Analysts occupational group. This fact is illustrated by the following excerpt from the *Handbook's* "Computer Systems Analysts" chapter:

The following are examples of types of computer system analysts.

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

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

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

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

Id., Computer Systems Analysts, available on the Internet at <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-2> (last visited May 21, 2013).

The subchapter of the *Handbook* entitled "How to Become a Computer Systems Analyst" states the following about this occupational category:

A bachelor's degree in a computer or information science field is common, although not always a requirement. Some firms hire analysts with business or liberal arts degrees who know how to write computer programs.

Education

specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States." Section 214(i)(1) of the Act.

Most computer systems analysts have a bachelor's degree in a computer-related field. Because computer systems analysts are also heavily involved in the business side of a company, it may be helpful to take business courses or major in management information systems (MIS).

Some employers prefer applicants who have a Master of Business Administration (MBA) with a concentration in information systems. For more technically complex jobs, a master's degree in computer science may be more appropriate.

Although many analysts have technical degrees, such a degree is not always a requirement. Many systems analysts have liberal arts degrees and have gained programming or technical expertise elsewhere.

Some analysts have an associate's degree and experience in a related occupation.

Many systems analysts continue to take classes throughout their careers so that they can learn about new and innovative technologies and keep their skills competitive. Technological advances come so rapidly in the computer field that continual study is necessary to remain competitive.

Systems analysts must also understand the business field they are working in. For example, a hospital may want an analyst with a background or coursework in health management. An analyst working for a bank may need to understand finance.

Advancement

With experience, systems analysts can advance to project manager and lead a team of analysts. Some can eventually become information technology (IT) directors or chief technology officers. For more information, see the profile on computer and information systems managers.

Important Qualities

Analytical skills. Analysts must interpret complex information from various sources and be able to decide the best way to move forward on a project. They must also be able to predict how changes may affect the project.

Communication skills. Analysts work as a go-between with management and the IT department and must be able to explain complex issues in a way that both will understand.

Creativity. Because analysts are tasked with finding innovative solutions to computer problems, an ability to "think outside the box" is important.

Teamwork. The projects that computer systems analysts work on usually require them to collaborate and coordinate with others.

Id., Computer Systems Analysts, available on the Internet at <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-4> (last visited May 21, 2013).

The *Handbook* does not report that a bachelor's degree in a specific specialty is a normal requirement for entry into the "Computer Systems Analysts" occupational category. The *Handbook* states that "[m]ost computer systems analysts have a bachelor's degree in a computer-related field," but "many analysts have technical degrees," and "[s]ome analysts have an associate's degree and experience in a related occupation."

When reviewing the *Handbook*, the AAO must note again that the petitioner designated the prevailing wage for the proffered position as wage for a Level I (entry level) position on the LCA.¹³ This designation is indicative of a comparatively low, entry-level position relative to others within the occupation.¹⁴ That is, in accordance with the relevant DOL explanatory information on wage levels, this Level I wage rate is only appropriate for a position in which the beneficiary is only required to have a basic understanding of the occupation and would be

¹³ Wage levels should be determined only after selecting the most relevant Occupational Information Network (O*NET) code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.

Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf.

¹⁴ The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is describes as follows:

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.

Id.

expected to perform routine tasks that require limited, if any, exercise of judgment. This wage rate also indicates that the beneficiary would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she would receive specific instructions on required tasks and expected results. Moreover, since the proffered position appears to be that of a computer systems analyst, the LCA submitted in support of the petition was not certified for, and therefore does not correspond to or support, a petition for a computer systems analyst position.

Accordingly, as the *Handbook* indicates that working as a computer programmer analyst does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation, it does not support the proffered position as being a specialty occupation.

When, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies the criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." 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)).

Upon review of the totality of the evidence in the entire record of proceeding, the AAO concludes that the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is normally required for entry. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the particular position that is the subject of this petition is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO reviews the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This first alternative prong 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 1151,

1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The record of proceeding does not contain any evidence that the claimed degree requirement is common to the petitioner's industry in parallel positions among similar organizations. Thus, the petitioner has not 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 shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

In the instant case, the AAO finds that the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position. Specifically, the petitioner failed to demonstrate how the computer programmer analyst duties described are so complex or unique that they would require the theoretical and practical application of a body of highly specialized knowledge such that a person who has attained a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. Rather, the AAO finds that to the extent that they are developed in this record of proceeding, neither the proffered position nor its constituent duties show that this position is more complex or unique than Computer Programmer Analyst positions that the *Handbook's* information reflects as being held by persons who have attained less than a bachelor's degree or the equivalent in a specific specialty.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, the AAO incorporates by reference and reiterates its earlier discussion that the LCA indicates a wage level based upon the occupational classification "Computer Programmers" at a Level I (entry level) wage. This wage level designation is appropriate for positions for which the petitioner expects the beneficiary to have a basic understanding of the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

By way of comparison, the AAO notes that a position classified at a Level IV (fully competent) position is designated by the DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems." Thus, the wage level designated by the petitioner in the LCA for the proffered position is not consistent with claims that the position would entail any particularly complex or unique duties or that the position itself would be so complex or unique as to require the services of a person with at least a bachelor's degree in a specific specialty.

In other words, the record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique than positions in the pertinent occupation that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

Consequently, as the petitioner fails to demonstrate how the proffered position is more complex or unique than other computer programmer analyst positions that can be performed by a person without at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or the equivalent, for the position.

Of course, the AAO will necessarily review and consider whatever evidence the petitioner may have submitted with regard to its history of recruiting and hiring for the proffered position and with regard to the educational credentials of the persons who have held the proffered position in the past.

To merit approval of the petition under this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency in its prior recruiting and hiring for the position. Further, it should be noted that 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 position.

While a petitioner may believe and assert that a proffered position requires a specific degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner 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 388. In other words, if a petitioner's stated degree-requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if 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").

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 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in a specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because

the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

The record of proceeding is devoid of any information to establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty. While, in its letter of support, dated April 20, 2012, the petitioner stated that ". . . we would normally require such a degree for this position," the record is devoid of evidence to substantiate the petitioner's claim. For instance, the petitioner did not provide the total number of people it has employed (if any) to serve in the proffered position. The petitioner also did not submit any documentation regarding employees who have previously held the position. Moreover, the petitioner did not submit any documentation regarding its recruiting and hiring practices. Also, the petitioner did not submit documentation regarding its current or prior employees' academic credentials (e.g., diplomas, transcripts). Without further information, the petitioner failed to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position.

As the evidence in the record of proceeding does not establish that the petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish 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.

Upon review of the record of the proceeding, the AAO finds that the petitioner has not provided sufficient evidence to satisfy this criterion.

In the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish their nature as more specialized and complex than the nature of the duties of other positions in the pertinent occupational category whose performance does not require the application of knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or its equivalent.

In this regard, the AAO also here incorporates into this analysis its earlier comments and findings with regard to the implication of the Level I wage-rate designation (the lowest of four possible wage-levels) in the LCA. That is, that the proffered position's Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category and hence one not likely distinguishable by relatively specialized and complex duties. As noted earlier, the DOL indicates that a Level I designation is appropriate for "beginning level employees who have only a basic understanding of the occupation."

As the petitioner has not established that the nature of the duties of the position is so specialized

and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, the petitioner did not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, 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. Accordingly, for this additional reason, the petition cannot be approved.

The AAO will now discuss the DOL's Occupational Information Network (O*NET) referenced by counsel in the letter submitted with the petition, dated April 23, 2012, in counsel's letter in response to the RFE, dated July 26, 2012, and on appeal. Counsel states that "O*NET supports that the degree is 'normally' required for the [proffered] position." However, the information from O*NET does not establish that the proffered position qualifies as a specialty occupation under the first criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A). O*NET 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 JobZone 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. Thus, the O*NET excerpt referenced by counsel is of little evidentiary value to the issue presented on appeal.

Finally, the AAO notes that counsel cites to *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), for the proposition that "[t]he knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge."

The AAO agrees with the aforementioned proposition that "[t]he knowledge and not the title of the degree is what is important." In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) (emphasis added). In any event, however, this point is academic, for as discussed at length in this decision, the petitioner has failed to meet its burden and establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those duties.

Moreover, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*.¹⁵ The AAO also notes that, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising even within the same district (as in the instant case). *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

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 145 (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. Here, that burden has not been met.

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

¹⁵ It is noted that the district judge's decision in that case appears to have been based largely on the many factual errors made by the service center in its decision denying the petition. The AAO further notes that the service center director's decision was not appealed to the AAO. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, the AAO may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by the AAO in its *de novo* review of the matter.