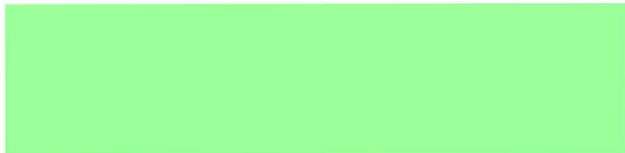




U.S. Citizenship  
and Immigration  
Services

(b)(6)



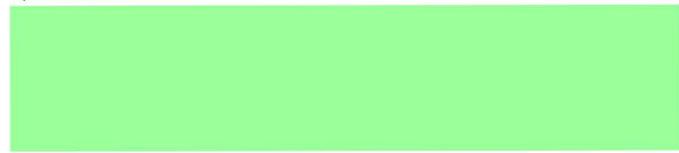
Date: **NOV 25 2013** Office: VERMONT SERVICE CENTER

FILE:

IN RE: Petitioner:   
Beneficiary:

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

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center ("the director"), denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner describes itself as an elementary school which was established in 1947 and currently employs 104 personnel in the United States. The petitioner seeks to employ the beneficiary in what it designates as an information specialist position and to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the petitioner failed to establish that the proffered position is a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B, Notice of Appeal or Motion, counsel's brief, and additional documentation.

Upon review of the entire record of proceeding, the AAO finds that the petitioner has failed to overcome the director's grounds for denying this petition.<sup>1</sup> Accordingly, the appeal will be dismissed and the petition will remain denied.

### The Law

The issue before the AAO is whether the position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

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<sup>1</sup> The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

*Specialty occupation* means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must also meet one of the following criteria:

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

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate

or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

### **Facts and Procedural History**

In a letter submitted in support of the petition, the petitioner indicated it is a parish day school with more than 500 students in pre-kindergarten through eighth grade. The petitioner stated that the duties of its information specialist included the following (bullet points added):

- Maintain and organize student records;
- Create and deliver report cards and report card templates;
- Provide general troubleshooting of [the petitioner's] PowerSchool student database system;
- Make updates as necessary to [the petitioner's] school website homepage, faculty, forms, announcements, calendar, etc., and write code as necessary;
- Assist with technical and creative side of producing marketing material (print, photo, video) for [the petitioner's] website and print publications;
- Evaluate efficacy of current systems and provide evaluation of potential solutions;
- Assist with general hardware and software troubleshooting; and,
- Perform other duties as assigned.

The petitioner provided the required certified Labor Condition Application (LCA) which indicates that the occupational classification for the position is "Computer Support Specialists," SOC (ONET/OES) Code 15-1150, at a Level II (qualified) wage. The petitioner noted its belief that the beneficiary is "uniquely qualified" for the proffered position based on his education and experience. The petitioner stated that the beneficiary has a Master of Science degree in Engineering Technology from the [redacted] and a

Bachelor of Technology, Electronics and Communication Engineering degree from [REDACTED] in [REDACTED] India. The petitioner did not express a specific educational requirement to perform the duties of the proffered position. The Form I-129 set out the dates of intended full-time employment for the beneficiary as November 1, 2012 to October 31, 2015.

Upon review, the director requested further detail regarding the proposed position, sufficient to establish it as a specialty occupation. The director outlined the specific evidence to be submitted.

In response, the petitioner provided the following revised description of the responsibilities of the proffered position and allocated the time the beneficiary would spend performing these responsibilities:

1. PowerSchool (student database) administration: Maintain and organize student records, create and deliver report cards and report card templates, general troubleshooting of this system. 30 percent.
2. School Website: Make updates as necessary to homepage, faculty, forms, announcements, calendar, etc. Writes new code as needed. 30 percent.
3. Marketing: Assist with technical and creative side of producing material (print, photo, video) for website and print publications. 5 percent.
4. Consultation: Evaluate efficacy of current systems and provide evaluation of potential solutions. 15 percent.
5. Help Desk: Assist with general hardware and software troubleshooting. 15 percent.
6. Other duties as assigned. 5 percent.

The petitioner also stated:

The position of Information Specialist (previously Director of Technology) requires knowledge and experience in information technology, both theoretical and applied, in order to be able to provide technical assistance and potential solutions to computer-related problems and sharing of information across departmental lines in an academic environment. Professional preparation in mathematics, computer science, and/or engineering technology with a fundamental understanding of both computer software and hardware is essential.

The petitioner, again, did not specify that it required the successful applicant to have a bachelor's degree in a specific discipline. The petitioner also provided a copy of its employment agreement with the beneficiary which provided that the beneficiary's employment is "for the period beginning 7 November 2012 through 31 July 2013." The petitioner further submitted its organizational chart and brief job descriptions for its employees. The petitioner noted that it had previously employed two individuals, [REDACTED] in the proffered position. The petitioner provided a copy of Mr. [REDACTED] employment contract and resume. Mr. [REDACTED] resume shows that he obtained a bachelor's of arts in English with a computer science minor. The petitioner also provided a copy of Ms. [REDACTED] employment

contract and her application to teach math in which she listed her educational qualifications as including a bachelor's degree in math with a minor in education.

The petitioner also submitted letters from two private schools: (1) a November 12, 2012 letter on the letterhead of [REDACTED] signed by [REDACTED], Head of School; and (2) a November 15, 2012 letter on the letterhead of The School in [REDACTED] signed by [REDACTED], Head of School. In Mr. [REDACTED] letter, he wrote that it is his school's practice "to require a Bachelor's degree in a related field for [its] technology related positions, including Information Specialists." In Mr. [REDACTED] letter, he noted that it has been his school's practice "to require a B.A. degree for all faculty and staff, including those working on technology."

Upon review of the evidence in the record, the director denied the petition, determining that the record did not establish the proffered position as a specialty occupation. The director noted that the Department of Labor's *Occupational Outlook Handbook (Handbook)* did not indicate that a baccalaureate degree in a specified field of study is the minimum educational requirement for a computer administrator or computer support specialist. The director referenced the letters provided by the [REDACTED] and noted that the letter-writers did not provide documentation to verify that their schools routinely employ bachelor's degree recipients to perform the duties of an information specialist. The director also determined that the record, including the petitioner's job description of the responsibilities of its information specialist, did not establish the proffered position was unique or complex or specialized. The director also found that the petitioner had not submitted evidence establishing that it normally required a degree or its equivalent for the proffered position.

On appeal, counsel for the petitioner observes that the *Handbook* indicates that a college degree is required for some computer specialist positions. Counsel asserts that the proffered position in the context of secondary educational institutions is an occupation that requires at a minimum an individual holding a bachelor's degree in a related field such as mathematics, engineering, or computer science. Counsel contends:

In particular, similarly-situated secondary school administrators expect their specialists to write computer code, handle programming, maintain databases, understand and troubleshoot multiple software programs, recover information, diagnose and remedy problems relating to computer hardware, as well as possess a firm grounding in data security, storage and transfer predicated on formal training and experience in the computer field. It is also essential that such individuals be able to interface with administrators and faculty on a comparable professional level as opposed to similar positions in the non-academic marketplace.

Counsel claims that the degree requirement is common to the industry and provides an additional five letters from heads of schools and a letter from the president of a professional association in support of this claim.

In the December 11, 2012 letter on the letterhead of [REDACTED] an organization that represents and accredits independent schools across the southeast portion of the United States, the President, [REDACTED] Ph.D., states:

It is our practice and belief that schools be required to hire candidates for [the position of information specialist] with a minimum of a Bachelor's degree in a related field, such as math or computer science. The experience gained from earning a Bachelor's degree in a related field is invaluable.

In the December 7, 2012 letter on the letterhead of [REDACTED] President [REDACTED] O.P.A., states:

We believe that it is imperative for someone in this field to have received a Bachelor[s] Degree from an accredited college or university, and we prefer that the candidates have expertise in a related field such as mathematics or science. Our school has five employees in the information technology department, each of whom has earned a Bachelor's degree.

In the December 11, 2012 letter on the letterhead of [REDACTED] states:

It is our practice and belief that schools be required to hire candidates for [the position of information specialist] with a minimum of a Bachelor's degree in a related field, such as math or computer science. The experience gained from earning a Bachelor's degree in a related field is invaluable. All of our current Information Specialist staff has similar credentials and all have, at minimum, a Bachelor's degree.

In the December 10, 2012 letter on the letterhead of [REDACTED] Headmaster [REDACTED] states:

It is our practice and belief that schools be required to hire candidates for [the position of information specialist] with a minimum of a Bachelor's degree in a related field, such as math or computer science. The experience gained from earning a Bachelor's degree in a related field is invaluable.

[REDACTED] also notes that its current information specialist/network administrator and its previous information specialist/systems engineer both had bachelor's degrees in engineering.

In the December 11, 2012 letter on the letterhead of [REDACTED] the Head of School [REDACTED] states:

[REDACTED] requires a minimum of a Bachelor's Degree to hold [the position of Director of Technology and Communication] and the current director had thirteen years of teaching experience with five of those years teaching some of our technology classes before becoming the Director of Technology and

Communications. She holds a Bachelor's Degree in Human Learning from the

In the December 14, 2012 letter on the letterhead of the President and Head of School Ed.D. states:

It is our practice and belief that schools be required to hire candidates for [the position of information specialist] with a minimum of a Bachelor's degree in a related field, such as math or computer science. The experience gained from earning a Bachelor's degree in a related field is invaluable.

Dr. notes that technology director and its technology integrationist have master's degrees.

Four of the six letter-writers, Dr. also use the following phrase:

[T]he demands of working with student database systems, updating school websites, evaluating current systems and marking recommendations for new implementations requires a sophisticated knowledge of technology and its use in supporting schools.

Counsel also asserts that the petitioner normally requires a degree or its equivalent for the proffered position. Counsel notes that the director disregarded the previously submitted employment contracts and resumes of its two previous employees. Counsel avers that the director's decision focused narrowly on the fact that "some" industries may hire information specialists with less educational preparation than a bachelor's degree in a related field but that private preparatory schools are not one of those industries.

**Analysis**

The petitioner states on the Form I-129 that it is an elementary school and in the accompanying letter in support of the petition that it is a parish day school with more than 500 students in pre-kindergarten through eighth grade. Although counsel identifies the petitioner as a secondary educational institution, it appears the petitioner is an elementary/middle school, thus only the middle school grades of sixth to eighth could be considered the secondary grade level. The petitioner, on the Form I-129 H-1B Data Collection Supplement, at Part A, 5, however, identifies the applicable DOT (Dictionary Occupational Titles) Code as 092 – Occupations in Preschool, Primary School, and Kindergarten Education, not 091 Occupations in Secondary School Education. Thus, it appears the petitioner considers itself principally a primary school, not a secondary school.

The petitioner initially referenced the beneficiary's educational background but did not specify that the generally described duties of the position required a bachelor's degree in a specific discipline. In response to the director's RFE, the petitioner noted that professional preparation in

mathematics, computer science, and/or engineering technology with a fundamental understanding of both computer software and hardware is essential for the proffered position but again did not identify a requirement of a bachelor's degree in a specific field of study, or its equivalent, to perform the duties of the proffered position. Moreover, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. Cf. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation]."); ("The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility."). In this matter, the petitioner's description of the proposed duties of the position, the LCA submitted with the petition, and the other evidence of record has not established that the proffered position requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area.

Turning to the specific position proffered by the petitioner, the AAO will first review the record of proceeding in relation to 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). To satisfy this criterion, the evidence must establish 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 AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>2</sup> The petitioner titles the proffered position "Information Specialist," and identifies the position as a computer support specialist on the certified LCA. The proffered position incorporates some of the duties of a computer support specialist as described in the *Handbook*. The *Handbook* states in pertinent part:

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.

*Technical support specialists* typically do the following:

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

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<sup>2</sup> All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/oco/>.

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.

See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-2013 ed., "Computer Support Specialists," <http://www.bls.gov/ooh/computer-and-information-technology/computer-support-specialists.htm#tab-2> (last visited Nov. 20, 2013).

The duties of the proffered position, including administering and troubleshooting the student database, evaluating and reporting on the efficacy of the petitioner's current systems, as well as assisting with general hardware and software troubleshooting, are all duties that correspond to the *Handbook's* overview of a computer support specialist. According to the petitioner the beneficiary will spend approximately 60 percent of his time on these duties.

The *Handbook*, however, does not state that a baccalaureate (or higher degree) in a specific specialty, or its equivalent, is normally the minimum requirement for entry into this occupation. The subchapter of the *Handbook* entitled "How to Become a Computer Support Specialist" states the following about this occupational category:

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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-2013 ed., "Computer Support Specialists," <http://www.bls.gov/ooh/computer-and-information-technology/computer-support-specialists.htm#tab-4> (last visited Nov. 20, 2013).

Regarding the educational requirements, the *Handbook* reports:

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.*

Thus, according to the *Handbook*, the occupational category of computer support specialist does not require a bachelor's degree. Employer preference is not synonymous with a degree requirement. For this reason, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

Counsel's assertion on appeal that the director focused too narrowly on the *Handbook's* indication that some industries hire information specialists with less educational preparation than a bachelor's degree but that private preparatory schools, like the petitioner, are not one of those industries is unpersuasive. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) requires that a baccalaureate or higher degree or its equivalent be the normal minimum requirement for entry into a particular position. The position for which the petitioner certified the LCA and the description of the majority of the duties of the proffered position fall within the purview of a computer support specialist. The normal minimum requirement for entry into such a position is not a bachelor's degree. Rather there are a variety of paths available to enter into the position of a computer support specialist. The petitioner in this matter has not explained or submitted probative evidence establishing that an information specialist for a private preparatory school requires an advanced degree. Moreover, as stated above, section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), require interpretation of 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, supra*. In this matter, the petitioner has not provided a description of duties or other evidence establishing that the particular position here offered is a position that requires a bachelor's degree in a specific discipline, or its equivalent.

The petitioner also indicated that the beneficiary will update the petitioner's website and write new code as necessary, as well as assist with the technical and creative side of producing material for the school's website, duties that may fall within the purview of two additional occupations, computer programmer and/or web developer.<sup>3</sup> Although the petitioner did not obtain a certified LCA for the occupations of computer programmer or web developer, for thoroughness, we also examine the duties of the educational requirements for these positions.<sup>4</sup>

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<sup>3</sup> The occupational classification for a "Computer Programmer," is SOC (ONET/OES) Code 15-1131. The occupational classification for a "Web Developer," is SOC (ONET/OES) Code 15-1134.

<sup>4</sup> Where a petitioner seeks to employ a beneficiary in two or more distinct occupations, the petitioner should file two or more separate petitions, requesting concurrent, part-time employment for each occupation. While it is not the case here, if a petitioner does not file separate petitions and if only one aspect of a combined position qualifies as a specialty occupation, USCIS would be required to deny the entire petition as the pertinent regulations do not permit the partial approval of only a portion of a proffered position and/or the limiting of the approval of a petition to perform only certain duties. See generally 8 C.F.R. § 214.2(h). Furthermore and as is the case here, the petitioner would need to ensure that it separately meets all requirements relevant to each occupation and the payment of wages commensurate with the higher paying occupation. See generally 8 C.F.R. § 214.2(h); 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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). Thus, filing

In the *Handbook's* chapter on computer programmers, the *Handbook* reports that while most computer programmers have a bachelor's degree, some employers hire workers with an associate's degree and that most programmers specialize in a few programming languages.<sup>5</sup> Thus, according to the *Handbook*, a computer programmer is not required to have a bachelor's degree.<sup>6</sup> The *Handbook* does not report that, simply by virtue of its occupational classification, a computer programmer position qualifies as a specialty occupation as the *Handbook* does not specify that a U.S. bachelor's or higher degree in a specific specialty, or its equivalent, is required for entry into the occupation.<sup>7</sup>

Similarly, the *Handbook's* chapter on information security analysts, web developers, and computer network architects indicates that the educational requirements for web developers vary with the setting they work in and the type of work they do. Specifically, the *Handbook* indicates that educational requirements range from a high school diploma to a bachelor's degree and that an associate's degree may be sufficient for webmasters who do not do a lot of programming.<sup>8</sup> As the petitioner in this matter does not provide a detailed description of the actual duties the beneficiary will perform regarding potential programming or in maintaining its website, it is not possible to conclude that the duties of the successful applicant require a bachelor's degree in a specific discipline, or its equivalent.

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separate petitions would help ensure that the petitioner submits the requisite evidence pertinent to each occupation and would help eliminate confusion with regard to the proper classification of the position being offered.

<sup>5</sup> U.S. Dept' of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-2013 ed., "Computer Programmers," <http://www.bls.gov/ooh/computer-and-information-technology/computer-programmers.htm#tab-4> (last visited Nov. 20, 2013).

<sup>6</sup> The first definition of "most" in *Webster's New College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of computer programmer positions require at least a bachelor's degree, it could be said that "most" computer programmers positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. 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 specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States." Section 214(i)(1) of the Act.

<sup>7</sup> U.S. Dept' of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Computer Programmers," <http://www.bls.gov/ooh/computer-and-information-technology/computer-programmers.htm#tab-4> (last visited Nov. 20, 2013).

<sup>8</sup> U.S. Dept' of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Information Security Analysts, Web Developers, and Computer Network Architects," <http://www.bls.gov/ooh/computer-and-information-technology/information-security-analysts-web-developers-and-computer-network-architects.htm#tab-4> (last visited Nov. 20, 2013).

The petitioner, who bears the burden of proof in this proceeding, fails to establish that the particular position proffered in this matter has a normal minimum entry requirement of a bachelor's or higher degree in a specific specialty, or its equivalent. Based on the analysis above of the evidence contained in the record, the AAO finds that the petitioner has failed to demonstrate that the proffered position normally requires the incumbent to possess a high level of specialized knowledge that may be obtained only through at least a baccalaureate degree in a specific discipline or its equivalent for entry into that particular position. Accordingly, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner in this matter also fails to establish that the proffered position satisfies either of the two alternative prongs set out at 8 C.F.R. §214.2(h)(4)(iii)(A)(2). 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)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. In support of its claim that a degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner submitted several letters as evidence that a degree requirement is standard amongst its peer organizations for parallel positions in the private preparatory school industry. As the director determined, the letters provided by the [REDACTED] did not include documentation corroborating the assertions that those schools routinely employ bachelor's degree recipients to perform the duties of an information specialist. To elaborate upon the director's discussion, the author of the [REDACTED] letter noted the school's practice to require a "Bachelor's degree in a related field for [its] technology related positions" but failed to identify to which "related field" he referred. In addition, he failed to provide sufficient information regarding the duties of the technology related positions to determine that the [REDACTED] technology positions are parallel to the proffered position. The author of [REDACTED] letter differentiated its technology coordinator position from the petitioner's proffered position by noting that its position was a hybrid, requiring not only "knowledge of particular information technology systems, but also an understanding of pedagogy and curriculum." Moreover, this letter-writer indicates that it requires a bachelor's of arts degree for all its faculty and staff but does not specify that the degree must be in a specific discipline.

The letters submitted on appeal, likewise, fail to establish that a degree requirement is common to similar organizations within the petitioner's industry in parallel positions. First, the letters all use virtually the same language and phrasing when providing an opinion on the hiring practices of schools. As noted above, four of the letter-writers also use the exact same paraphrase of the petitioner's general description of duties. Such similarity in language undermines the veracity of the statements and casts doubt on the actual authorship of the letters.

Most importantly, the letter-writers do not state that they require a bachelor's degree in a specific discipline to perform the duties of their technology employees. For example, Ms. [REDACTED] of the [REDACTED] notes that each of her school's five employees in the information technology department hold a bachelor's degree. She does not state that the degree they hold is in a specific discipline and she does not identify the particular duties of any of the five positions. Although she references a preference for candidates with expertise in mathematics or science, she does not indicate that this is a requirement and the myriad number of degrees related to mathematics or science cannot be condensed into a degree in a specific discipline. Mr. [REDACTED] Mr. [REDACTED] and Dr. [REDACTED] also reference bachelor's degrees in fields such as math or computer science but do not provide descriptions of their technology employees' duties and do not provide evidence that such employees hold bachelor's degrees in specific disciplines. For example, Mr. [REDACTED] notes that his school's information specialist staff has bachelor's degrees but does not specify in what discipline.

Mr. [REDACTED] identifies his school's technology employees as information specialist/network administrator and information specialist/systems engineer, occupations with duties significantly different from that of an information specialist/computer support specialist. Dr. [REDACTED] indicates her technology staff has master's degrees and Mr. [REDACTED] indicates his school's director of technology and communications holds a bachelor's degree in human learning.

These letters establish at best that a bachelor's degree is generally required for undefined positions in a private school's technology department, but not at least a bachelor's degree in a *specific specialty* or its equivalent. The letter from the president of SAIS does not provide additional information in support of the petitioner's claim. The record does not include probative evidence establishing that organizations similar to the petitioner require a bachelor's degree in a specific discipline, or its equivalent, to perform the duties of position that are actually parallel to the position proffered.

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." To begin with and as discussed previously, the petitioner has not demonstrated that it itself requires at least a baccalaureate degree in a specific specialty or its equivalent. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it claims are so complex and unique. While a degree in computer science or math may be beneficial in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the particular position here proffered. Moreover, an examination of the petitioner's general description of the duties of the position does not reveal duties that are more unique or complex than the duties of a computer support specialist, a computer programmer, or a web developer, occupations that do not require a baccalaureate or higher degree in a specific discipline. The petitioner has not satisfied either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, we consider whether the petitioner's prior history of recruiting and hiring for the proffered position establishes the proffered position as a specialty occupation. Again, the petitioner does not state that it requires a bachelor's degree in a specific discipline to perform the duties of the proffered position. A review of the education of the petitioner's previously employed individuals in the proffered position also fails to support the petitioner's claim that it normally hires only individuals with a degree in a specific discipline. Mr. [REDACTED] degree is in English with a minor in computer science and Ms. [REDACTED] application shows that she held a bachelor's degree in math with a minor in education. The petitioner does not detail the precise and specific course of study common to either of these individuals' majors or minors that relates directly and closely to the position in question. Rather, it appears that the petitioner desires to employ an individual with a general bachelor's degree to perform the duties of the position; the evidence, however, does not establish that a bachelor's degree in a specific discipline, or its equivalent, closely related to the actual duties of the position, is necessary to perform the duties of the position.

Moreover, while a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. The petitioner must establish that 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 specialist or its equivalent as the minimum for entry into the occupation as required by section 214(i)(1) of the Act. To interpret the regulation 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 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 *Defensor v. Meissner, supra*. Here, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Here, the AAO incorporates by reference and reiterates its earlier discussions about the nature of the petitioner's descriptions of the proposed duties. The petitioner has failed to establish that the duties of the proffered position are sufficiently specialized and complex that their performance would require knowledge at a level usually associated with at least a bachelor's degree in a specific discipline, or the equivalent. Insufficient evidence was provided to demonstrate that the proffered position reflects a higher degree of knowledge and skill than other types of employees, including those bearing the title "Information Specialist" or "Computer Support Specialist." In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than a position that is not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.<sup>9</sup>

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<sup>9</sup> The petitioner in this matter has designated the proffered position as a Level II position on the submitted

The record does not include evidence or argument to support that the proffered position is one with specialized and complex duties. The petitioner fails to establish that the proffered position satisfies 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.

As a final matter, it is noted that the petitioner in this matter submitted its employment contract with the beneficiary which provides for a one-year term of employment. The petitioner, however, identified the period of intended employment on the Form I-129 as three years, from November 1, 2012 until October 31, 2015. The record does not include evidence regarding the beneficiary's employment subsequent to the completion of his one-year contract with the petitioner. The AAO finds that the petitioner has failed to establish that the petition was filed for non-speculative work for the beneficiary, for the entire period requested, that existed as of the time of the petition's filing. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(1). The agency made clear long ago that speculative employment is not permitted in the H-1B program. A 1998 proposed rule documented this position as follows:

Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. See section 214(i) of the Immigration and Nationality Act (the "Act"). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

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Labor Condition Application (LCA), indicating that it is a position for an employee who has a good understanding of the occupation but who will only perform moderately complex tasks that require limited judgment. *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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). Therefore, it is not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage.

63 Fed. Reg. 30419, 30419 - 30420 (June 4, 1998). Beyond the decision of the director, as the record does not include evidence of the beneficiary's proposed employment for the duration of the requested employment period, the petition must be denied for this additional reason.

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

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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