



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: AUG 05 2014 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:

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 service center director (hereinafter "director") denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. The petition will be denied.

## I. PROCEDURAL AND FACTUAL BACKGROUND

On the Form I-129 visa petition, the petitioner describes itself as a "Software Development/Consulting" firm. In order to employ the beneficiary in what it designates as a systems analyst position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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

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

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

## II. THE LAW

The issue before us is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

*Specialty occupation* means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics,

physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

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

### III. EVIDENCE

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a systems analyst position, and that it corresponds to Standard Occupational Classification (SOC) code and title 15-1121, Computer Systems Analysts from the Occupational Information Network (O\*NET). The LCA further states that the proffered position is a Level I, entry-level, position and that the beneficiary would work at [REDACTED] California.

The visa petition states that the petitioner's address is [REDACTED] California. With the visa petition, counsel submitted evidence that the beneficiary received a bachelor of technology degree in electrical and electronics engineering from [REDACTED] in India. An evaluation in the record states that the beneficiary's degree is equivalent to a U.S. bachelor's degree in electronic engineering.

Counsel also submitted (1) a copy of the employment contract between the petitioner and the beneficiary; (2) a letter, dated March 12, 2013, from the petitioner's president; and (3) a letter, dated March 22, 2013, from the petitioner's president.

As to the duties of the proffered position, the beneficiary's employment contract states:

[The beneficiary's] **duties** include, but are not limited to:

- Translating business and user requirements into comprehensive functional specification and technical specification documents that include elements such as: User Stories, Decision Flow Diagrams, Sequence Diagrams, Use Cases, and Service Orchestration/Mappings;
- Performs the research necessary to communicate functional/technical designs and logical functionality which will ensure that business application systems can be effectively developed and implemented to meet actual business needs;
- Works closely with IT management and staff to identify: application development solutions, new applications or modifications to existing programs, capability to reuse existing code, integration of purchased solutions or a combination thereof and the appropriate software development methodology alternative;
- Review and recommend changes to system design and architecture as described verbally or through written artifacts (e.g. sequence/activity diagrams, pseudo-code) to ensure completeness of design-to-requirements traceability;
- Provide identification/fixing for the problems within existing systems design, implementation of new systems and enhancements to existing systems;
- Use object-oriented programming languages, as well as client/server applications development processes, working knowledge with Oracle enterprise environments, Microsoft enterprise technologies. Agile development methodologies, and multimedia and Internet technologies;

- Responsible for the day-to-day execution of the project delivery including requirements validation, design review, test planning, testing, operational preparations and implementation.

In his March 12, 2013 letter, the petitioner's president and CEO, [REDACTED] reiterated the description of duties contained in the employment contract. He stated that the educational requirement of the proffered position is a bachelor's degree "in Computer Science, and Engineering discipline, or a closely related field." He further stated:

As [the beneficiary's] employer, [the petitioner] is responsible for the supervision, direction and control of their employees, payment of wages, hiring and termination, providing benefits, compliance with worker's compensation and other applicable employer employee related laws and regulations.

In his March 22, 2013 letter, the Mr. [REDACTED] reiterated the duty description and the assertion as to payment and control of the beneficiary. He also stated:

For [the proffered position] we require a minimum of a Bachelor's degree in Computer Science, an Engineering/Technology discipline, or a closely related field, with applicable systems analysis experience.

On September 4, 2013, the service center issued an RFE in this matter. The service center requested evidence demonstrating an employer-employee relationship with the beneficiary as well as evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center provided a non-exhaustive list of items that might be used to satisfy the specialty occupation and the employer-employee requirements.

In response, counsel submitted: (1) a letter, dated August 19, 2013, from [REDACTED] president of [REDACTED] (2) a letter, dated September 5, 2013, from Mr. [REDACTED]; and (3) counsel's own letter, dated September 9, 2013.

In his August 19, 2013 letter, Mr. [REDACTED] stated that the petitioner has agreed to provide the beneficiary to perform, at the petitioner's own location, duties for [REDACTED]. He reiterated the previous duty description and stated: "The minimum qualification for this position is a B.S. degree in Computer Science, an Engineering discipline, or a closely related field."

In his September 5, 2013 letter, Mr. [REDACTED] reiterated the duty description previously provided, but also provided the following expanded list of the duties of the proffered position:

**Essential Functions of the Job:**

Translating business and user requirements into comprehensive functional specification and technical specification documents that include elements such as:

User Stories, Decision Flow Diagrams, Sequence Diagrams, Use Cases, and Service Orchestration/Mappings;

- Reviews, analyzes, and creates detailed documentation of business systems and user needs, including workflow, program functions, and steps required to develop or modify computer programs.
- Coordinates the development of all approved versions of business and functional specifications for the applications. Reviews use cases and other technical documents with IT project staff to ensure business requirements are adequately reflected in technical and planning documents.
- Analyzes the business unit's activities and trends and compares analyses against the service standards and best practices.
- Works closely with IT personnel and business partners to identify and maximize opportunities to use information and technology to improve product, service and/or program business processes.

Performs the research necessary to communicate functional/technical designs and logical functionality which will ensure that business application systems can be effectively developed and implemented to meet actual business needs;

- Establishing a functional base line for as-is-state and defining the to-be-state with transition roadmap that includes the key components around business processes, policy framework, process re-design, change management and working closely with other technology team members in determining technology and product configurations.
- Identify Business Process re-engineering opportunities for existing and future modules and processes.
- Assist Application Developers with design solutions for application modifications, interfaces and reports.
- Identify impacts that changes to system configurations will have on integrated systems and existing internal and external interfaces.

Works closely with IT management and staff to identify: application development solutions, new applications or modifications to existing programs, capability to reuse existing code, integration of purchased solutions or a combination thereof and the appropriate software development methodology alternative;

- Recommends system solutions by comparing advantages and disadvantages of custom development and purchase alternatives.
- Designs and develops user interfaces to Internet/intranet applications by setting expectations and features priorities throughout development life cycle; determining design methodologies and tool sets.
- Updates job knowledge by researching new internet/intranet technologies and software products.
- Determine appropriate architecture, and other technical solutions, and make relevant recommendations.

- Improves existing programs by reviewing objectives and specifications; evaluating proposed changes; recommending changes; making modifications.

Provide identification/fixing for the problems within existing systems design, implementation of new systems and enhancements to existing systems;

- Perform all tasks related to the day-to-day operations of several large implementations including managing users, creating and maintaining custom objects and fields, handling bulk data migration, maintenance of page layouts, and installation and support of app exchange applications.
- Support the Tech Support group with client issues that are or could be related to the operations of the code.
- Develop small applications and tools that help measure application performance, help ease installation, or otherwise speed the implementation of Impact suite products.

Use object-oriented programming languages, as well as client/server applications development processes, working knowledge with Oracle enterprise environments, Microsoft enterprise technologies. Agile development methodologies, and multimedia and Internet technologies;

- Establish project plans for the implementation of client/server model based IT applications with object oriented programming, application performance tuning across networks, and good command on the SQL scripts with the ability to write complex queries and stored procedures/functions.
- Use Oracle Work Flow, Oracle Forms 6i / 9i, Report 6i / 9i, JDeveloper9i / 10g, and other Oracle software tools to support the development of code for various software applications.
- Perform all aspects of the development life cycle and will utilize Microsoft and Object Oriented technologies as the primary technology platform for developing and delivering solutions.
- Design, develop, and maintain web and database applications, write advanced stored procedures and SQL queries, ability to design and develop enterprise level applications, ability to maintain applications and database servers to ensure stable environments for web and database applications.

Responsible for the day-to-day execution of the project delivery including requirements validation, design review, test planning, testing, operational preparations and implementation.

- Defines, develops and implements quality assurance practices and procedures, end user test plans and other QA assessments.
- Ensures that all tests are conducted and documented according the standards agreed upon by the business unit and IT.

- Responsible for ensuring that all documentation accurately reflects the current status of changes and outstanding issues so that business requirements reflect application features and functions.
- Manages specific application quality assurance and help desk activities including the tracking of bug reports and change requests and ensuring their timely resolution.
- Ensures that all items follow the change management process and are entered and tracked through the change management software.
- Responsible for the overall success of testing, including results verification and release sign-off.
- Ensures continuing operational quality by documenting bug fixes and enhancements assigning tasks to developers, testing and releasing updates.

The petitioner's president also reiterated, yet again, "The minimum qualification for this position is a B.S. degree in Computer Science, and Engineering discipline, or a closely related field."

In his own September 9, 2013 letter, counsel stated that the evidence provided demonstrates that the proffered position is a specialty occupation position.

The director denied the petition on September 24, 2013, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

With the appeal, counsel submitted another letter, dated October 22, 2013, from Mr. [REDACTED] in which he provided additional information pertinent to the system upon which the beneficiary would work. He reiterated, yet again, the duty description contained in the beneficiary's employment contract. He also reiterated that the proffered position requires a minimum of a bachelor's degree in "Computer Science, an Engineering discipline, or a closely related field."

On the Form I-290B appeal, counsel asserted that the evidence submitted demonstrates that the proffered position is a specialty occupation position.

#### IV. ANALYSIS

The petitioner has consistently stated that a bachelor's degree in "an Engineering discipline" would be a sufficient qualification for the proffered position. As a preliminary matter, we observe that this statement indicates that the proffered position does not qualify as a specialty occupation.

The field of engineering is a very broad category that covers numerous and various disciplines, some of which are only related through the basic principles of science and mathematics, e.g., petroleum engineering and aerospace engineering. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the

position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or engineering, without further specification, does not establish the position as a specialty occupation. Cf. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). The director's decision must therefore be affirmed and the petition denied on this basis alone.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we turn next to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors we consider when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* on which we routinely rely for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

We will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup>

The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 15-1121, Computer Systems Analysts from O\*NET. We reviewed the chapter of the *Handbook* (2014-2015 edition) entitled "Computer Systems Analysts," including the sections regarding the typical duties and requirements for this occupational category. The *Handbook* states the following with regard to the duties of Computer Systems Analysts:

#### **What Computer Systems Analysts Do**

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

#### **Duties**

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<sup>1</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online.

Computer systems analysts typically do the following:

- Consult with managers to determine the role of the IT system in an organization
- Research emerging technologies to decide if installing them can increase the organization's efficiency and effectiveness
- Prepare an analysis of costs and benefits so that management can decide if information systems and computing infrastructure upgrades are financially worthwhile
- Devise ways to add new functionality to existing computer systems
- Design and develop new systems by choosing and configuring hardware and software
- Oversee the installation and configuration of new systems to customize them for the organization
- Conduct testing to ensure that the systems work as expected
- Train the system's end users and write instruction manuals

Computer systems analysts use a variety of techniques to design computer systems such as data-modeling, which create rules for the computer to follow when presenting data, thereby allowing analysts to make faster decisions. Analysts conduct in-depth tests and analyze information and trends in the data to increase a system's performance and efficiency.

Analysts calculate requirements for how much memory and speed the computer system needs. They prepare flowcharts or other kinds of 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 analysts do some programming in the course of their work.

Most computer 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.

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

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

Many computer systems analysts are general-purpose analysts who develop new systems or fine-tune existing ones; however, there are some specialized systems analysts. The following are examples of types of computer systems analysts:

*Systems designers* or *systems architects* specialize in helping organizations choose a specific type of hardware and software system. They translate the long-term business goals of an organization into technical solutions. Analysts develop a plan for the computer systems that will be able to reach those goals. They work with management to ensure that systems and the IT infrastructure 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 in order to make sure that critical 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 than other types of analysts, although they still work extensively with management and business analysts to determine what business needs the applications are meant to address. Other occupations that do programming are computer programmers and software developers.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Computer Systems Analysts," <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-2> (last visited July 9, 2014).

The duty descriptions provided are consistent with the duties of computer systems analysts as described in the *Handbook*. On the balance, we find that the proffered position is a computer systems analyst position as described in the *Handbook*.

The *Handbook* states the following about the educational requirements of computer systems analyst positions:

### **How to Become a Computer Systems Analyst**

A bachelor's degree in a computer or information science field is common, although not always a requirement. Some firms hire analysts with business or liberal arts degrees who have skills in information technology or computer programming.

### **Education**

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

Some employers prefer applicants who have a master's degree in 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 computer systems analysts have technical degrees, such a degree is not always a requirement. Many analysts have liberal arts degrees and have gained programming or technical expertise elsewhere.

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 understand the business field they are working in. For example, a hospital may want an analyst with a background or coursework in health management, and 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 figure out 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.

*Id.* at <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-4> (last visited July 9, 2014).

The *Handbook* makes clear that computer systems analyst positions do not as a category require a minimum of a bachelor's degree in a specific specialty or the equivalent, as it indicates that systems analysts may have a business or liberal arts degree and programming knowledge, rather than a degree in a specific specialty directly related to systems analysis.

Where, 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 this criterion by a preponderance of the evidence standard, 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." In this case, the *Handbook* does not support the proposition that the proffered position satisfies 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), and the record of proceeding does not contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in this occupational category would be sufficient in itself to establish that a bachelor's or higher degree in a specific specialty or its equivalent "is normally the minimum requirement for entry into [this] particular position."

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

The record does contain the two letters from Mr. [REDACTED] who stated that the proffered position requires a minimum of a bachelor's degree in "Computer Science, an Engineering discipline, or a closely related field." However, as was explained above, the assertion that an otherwise undifferentiated bachelor's degree in engineering would satisfy the educational requirements of the proffered position is not an assertion that it requires a minimum of a bachelor's degree in a specific specialty or its equivalent. To the contrary, it is tantamount to an admission that the proffered position does not require a specialized degree or equivalent and does not qualify as a specialty occupation position.

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

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

In determining whether there is a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

Finally, as was noted above, the petitioner has designated the proffered position as a Level I position on the LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. In order to attempt to show that parallel positions require a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged to demonstrate that other Level I systems analyst positions, entry-level positions requiring only a basic understanding of such positions, require a minimum of a bachelor's degree in a specific specialty or its equivalent, the proposition of which is not supported by the *Handbook*.

Thus, the evidence of record does not 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. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The evidence of record also does not 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." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties that comprise the proffered position entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

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

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

Further still, as was noted above, the petitioner's president has indicated, on several occasions, that the educational requirement of the proffered position would be satisfied by a bachelor's degree in any branch of engineering. As was explained, an educational requirement that may be satisfied by a bachelor's degree in any branch of engineering is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. The petitioner's president has repeatedly made clear that the particular position is not so complex or unique that it can be performed only by an individual with a minimum of a bachelor's degree in a specific specialty or its equivalent.

For all of these reasons, the evidence of record does not establish that this position is significantly more complex or unique compared to other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for such positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.<sup>2</sup>

The record contains no evidence pertinent to anyone other than the beneficiary whom the petitioner has previously hired to fill the proffered position. However, as was noted above, the petitioner's president repeatedly stated that the educational requirement of the proffered position would be satisfied by an otherwise unspecified bachelor's degree in engineering. As was explained above, this is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. This suggests that the petitioner does not, in fact, normally require a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

The petitioner has not demonstrated that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position and has not, therefore, satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, we will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. Even as expanded upon in the petitioner's president's September 5, 2013 letter, the duties of the proffered position, such as translating requirements into specification documents, working with IT staff and management to identify application development solutions, reviewing and recommending changes to system design and architecture, identifying and fixing problems with existing systems designs, and using object-oriented programming languages and client/server applications development processes, for instance, contain insufficient indication of a nature so specialized and complex that they require knowledge usually associated with a bachelor's degree in a specific specialty.

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<sup>2</sup> While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

In other words, even in the more detailed description provided by the petitioner's president in his September 5, 2013 letter, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of systems analyst positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

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

For the reasons discussed above, the evidence of record does not satisfy 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.

#### V. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. 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.