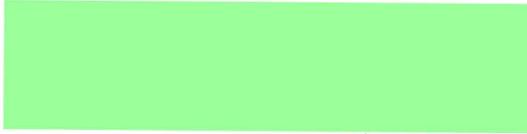
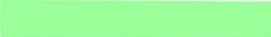


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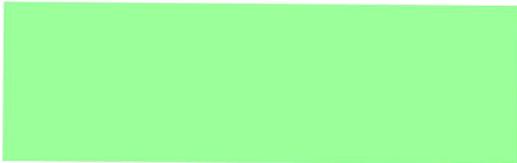


DATE: **AUG 06 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director (hereinafter "director") denied the nonimmigrant visa petition. She granted a subsequent joint motion to reopen and to reconsider and denied the visa petition again. 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 & Business Consulting" firm. In order to employ the beneficiary in what it designates as a Programmer 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 and failed to demonstrate that the beneficiary is qualified to work in a specialty occupation position. With the joint motion to reopen and to reconsider counsel provided additional evidence and asserted that the evidence was sufficient to demonstrate that the visa petition should be approved.

The director granted the joint motion, then denied the visa petition again, 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 first denial letter; (5) counsel's submissions with the joint motion, (6) the director's second denial letter, and (7) 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 Programmer Analyst position, and that it corresponds to Standard Occupational Classification (SOC) code and title 15-1131, Computer Programmers 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] Office, [REDACTED] California.

The visa petition reiterates that the beneficiary would work at the [REDACTED] location in [REDACTED] California. With the visa petition, counsel submitted evidence that the beneficiary received a master's degree in business administration from [REDACTED]. Counsel also submitted a letter, dated March 23, 2013, from the petitioner's vice president, which states the following:

In [the proffered position, the beneficiary] will be responsible for data analysis using various statistical procedures like PROC Summary, PROC Means, PROC Freq, Tabulate, and PROC Anova. He will perform extraction, analysis and clustering marketing data from the data warehouse using SAS/BASE, SAS/Macro, SAS/STAT. He will manage different lines of business as per Medical Plans and Medicare Reporting needs using SAS/EG, information map studio, and Web report studio. He will develop the SAS Programs in SAS EG for generating the Reports of the Plan Specific Reports like SCAL e-CARD and SCAL Quality. He will validate the data and conduct the Analysis of Different Metrics. He will develop the SAS programs for reading the data from the IDR, OLAP Cubes and Excel. He will create the Functional documentation for the HTM Project. He will evaluate different frameworks and tools to provide feasible technical solution. He will define the load testing and regressing testing strategies.

As to the educational requirement of the proffered position, the petitioner's vice president stated: "This position has a minimum requirement of a Bachelor's Degree in Business Administration, Marketing management, Engineering or other related fields of study."

On May 7, 2013, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation and evidence that the petitioner would have an employer-employee relationship with the beneficiary. 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) five vacancy announcements; (2) a copy of the first two pages of a document dated December 3, 2012 and headed Employment Agreement; (3) a document dated June 30, 2012 and headed, Master Services Agreement; (4) a document headed, Statement of Work; and (6) a letter, dated July 8, 2013, from counsel. The vacancy announcements will be further described and addressed below.

The portion of the employment agreement provided states, *inter alia*:

The [petitioner] hereby retains the [beneficiary] to provide computer-consulting services for clients or customers, either directly or indirectly through other consulting firms, service providers and/or brokers[.]

Because only the first two pages of the agreement were provided, the balance of the agreement is not in the record. Further, the signature page, which would have revealed whether the petitioner and the beneficiary ratified that agreement, was not provided. Further still, that agreement states that it will be valid for twelve months. We observe that, if that employment agreement were shown to have been ratified, it would still only have been effective from December 3, 2012 to December 2, 2013, which would cover only two months of the period of requested employment, which was to begin on October 1, 2013.

The Master Services Agreement was ratified by a representative of the petitioner and by a representative of [redacted] located in [redacted] Missouri. That agreement sets out the general terms pursuant to which the petitioner might provide its workers to [redacted], which would, in turn, provide them to its clients, to work in "information systems and software development." The agreement indicates that specific terms, such as the payments due from Rose to the petitioner, will be contained in Statements of Work (SOWs) to be executed later.

The January 7, 2013 SOW indicates that [redacted] and the petitioner agreed that the petitioner would provide the beneficiary to [redacted] for work on a project in [redacted] California to begin on December 24, 2012. That agreement does not identify the services the beneficiary is to render or the client to whom he is to render them. As to the term of that agreement, the SOW states: "The initial term of this [SOW] shall begin on the date [redacted] begins to perform the Services and shall end on the date the Services are completed and accepted by the Client."

In his July 8, 2013 letter counsel asserted that the evidence provided is sufficient to show that the visa petition should be approved.

The director denied the petition on September 12, 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 and had not demonstrated that the beneficiary is qualified to work in a specialty occupation position.

With the joint motion to reopen and to reconsider, counsel provided: (1) four additional vacancy announcements, and (2) a statement signed by the beneficiary on October 7, 2013. The vacancy announcements will be further described and addressed below.

In his October 7, 2013 statement, the beneficiary asserted that he was assigned to the [redacted] location in [redacted] California in December 2012. He provided a duty description that is substantially the same as that provided in the petitioner's vice president's March 23, 2013 letter. The beneficiary further stated that he had requested a verification letter from [redacted] but

that they declined to provide one pursuant to their company policy. He stated, "The e-mail from Manager of [REDACTED] refusing to provide the job verification letter is annexed here as Exhibit A." No such e-mail is in the record.

In a brief provided with the joint motion, counsel asserted that the evidence provided demonstrates both that the petitioner would employ the beneficiary in a specialty occupation and that the beneficiary is qualified for the proffered position. In argument, counsel cited the U.S. Department of Labor's Occupational Outlook Handbook (*Handbook*).

The director granted the joint motion, then denied the visa petition again on September 12, 2013, finding that the petitioner had not demonstrated that it would employ the beneficiary in a specialty occupation position. The director did not include the issue of the beneficiary's qualifications in this second decision of denial.

On appeal, counsel again argued that the evidence submitted is sufficient to show that the visa petition should be approved.

IV. SPECIALTY OCCUPATION ANALYSIS

Preliminarily, we observe that the petitioner's vice president indicated, in his March 23, 2013 letter, that either an otherwise undifferentiated bachelor's degree in business administration or a bachelor's degree in any branch of engineering would be a sufficient educational qualification for the proffered position.

A degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. That the petitioner's vice president indicated that an undifferentiated bachelor's degree in business administration would be a sufficient educational qualification for the proffered position is tantamount to an admission that the proffered position does not require a minimum of a bachelor's degree in a specific specialty or its equivalent and does not qualify as a specialty occupation position. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Similarly, that the educational qualification of the proffered position would be satisfied by a degree in any branch of engineering also demonstrates that it does not require a minimum of a bachelor's degree in a specific specialty or its equivalent and does not qualify as a specialty occupation position. This is because, 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).

Again, to prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as an otherwise undifferentiated degree in business administration or a degree in any branch of engineering, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

The petitioner's vice president has indicated that the educational requirement of the proffered position could be satisfied by a bachelor's degree in any branch of engineering. This is tantamount to an admission that the proffered position does not require a minimum of a bachelor's degree in a specific specialty or its equivalent and does not, therefore, qualify as a specialty occupation position. The director's decision must therefore be affirmed and the petition denied for this additional reason.

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 *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*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹

The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 15-1131, Computer Programmers from O*NET. We reviewed the chapter of the *Handbook* (2014-2015 edition) entitled "Computer Programmers," 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 programmers:

What Computer Programmers Do

Computer programmers write code to create software programs. They turn the program designs created by software developers and engineers into instructions that a computer can follow. Programmers must debug the programs—that is, test them to ensure that they produce the expected results. If a program does not work correctly, they check the code for mistakes and fix them.

Duties

Computer programmers typically do the following:

- Write programs in a variety of computer languages, such as C++ and Java
- Update and expand existing programs
- Debug programs by testing for and fixing errors
- Build and use computer-assisted software engineering (CASE) tools to automate the writing of some code
- Use code libraries, which are collections of independent lines of code, to simplify the writing

Programmers work closely with software developers, and in some businesses, their duties overlap. When this happens, programmers can do work that is typical of developers, such as designing the program. This entails initially planning the software, creating models and flowcharts detailing how the code is to be written, writing and debugging code, and designing an application or systems interface.

Some programs are relatively simple and usually take a few days to write, such as creating mobile applications for cell phones. Other programs, like computer operating systems, are more complex and can take a year or more to complete.

¹ 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.

Software-as-a-service (SaaS), which consists of applications provided through the Internet, is a growing field. Although programmers typically need to rewrite their programs to work on different systems platforms such as Windows or OS X, applications created using SaaS work on all platforms. That is why programmers writing for software-as-a-service applications may not have to update as much code as other programmers and can instead spend more time writing new programs.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Computer Programmers," <http://www.bls.gov/ooh/computer-and-information-technology/computer-programmers.htm#tab-2> (last visited Aug. 5, 2014).

The duties of the proffered position as described in the petitioner's vice president's March 23, 2013 letter do not accord perfectly with the duties of computer programmers as described in the *Handbook*. Extraction, analysis, and clustering marketing data and the use of statistical procedures for data analysis, for instance, are more typical of the duties of a market research analyst or a statistician.

However, we observe that the duty description also states that, in the proffered position, the beneficiary would develop SAS programs in SAS EG for generating Plan Specific Reports like SCAL e-CARD and SCAL Quality, and for reading data from the IDR, OLAP Cubes and Excel; that he would create functional documentation for an HTM project, and that he would define load testing and regression testing strategies. On the balance, we find that the proffered position is a computer programmer position.²

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

What Computer Programmers Do

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

Education

Most computer programmers have a bachelor's degree; however, some employers hire workers who have an associate's degree. Most programmers get a degree in computer science or a related subject. Programmers who work in specific fields, such as healthcare or accounting, may take classes in that field to supplement their degree in

² The AAO observes that if the proffered position were found to be some other type of position, then it would likely be denied as not supported by a corresponding LCA.

computer programming. In addition, employers value experience, which many students gain through internships.

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

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

Licenses, Certifications, and Registrations

Programmers can become certified in specific programming languages or for vendor-specific programming products. Some companies may require their computer programmers to be certified in the products they use.

Other Experience

Many students gain experience in computer programming by completing an internship at a software company while in college.

Advancement

Programmers who have general business experience may become computer systems analysts. With experience, some programmers may become software developers. They may also be promoted to managerial positions. For more information, see the profiles on computer systems analysts, software developers, and computer and information systems managers.

Important Qualities

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

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

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

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

Id. at <http://www.bls.gov/ooh/computer-and-information-technology/computer-programmers.htm#tab-4> (last visited Aug. 5, 2014).

The *Handbook* makes clear that computer programmer positions as a category do not require a minimum of a bachelor's degree or the equivalent, as it indicates that an associate's degree may suffice for some positions. Further, even as to those computer programmer positions that may require a bachelor's degree, the *Handbook* does not indicate that the degree must be in any specific specialty. The *Handbook* states that "most" computer programmers have degrees in computer science or a related subject, which implies that others do not.

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 a 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." Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. 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 and of 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 numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge in the computer/IT field, but do not establish any particular level of formal, post-secondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

Yet further, as was noted above, the petitioner's vice president indicated that either an otherwise undifferentiated bachelor's degree in business administration or a bachelor's degree in any branch of engineering would be a sufficient educational qualification for the proffered position. As was explained in detail above, that indicates that the particular position offered does not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

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.

Counsel did submit the nine vacancy announcements mentioned above. However, those vacancy announcements have not been shown to have been placed by organizations in the petitioner's industry.

Further, the positions announced have not been shown to be parallel to the proffered position. In fact, the evidence indicates that they are not. The proffered position has been designated a Level I computer programmer position, that is, an entry-level position for an employee who has only basic understanding of the occupation. All of the vacancy announcements provided, however, are for positions that require experience, and most require a considerable period of very specific experience.

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 computer programmer positions, entry-level positions requiring only a basic understanding of computer programming, 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*.

Further still, many of the vacancy announcements provided, rather than stating a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent, state a requirement of a degree in any of a wide array of subjects, such as, in one vacancy announcement, economics, finance, health care administration, public health administration, statistics, mathematics, and operations research. An educational requirement that may be satisfied by a bachelor's degree in any of a wide range of subjects is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

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

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 a few related courses may be

³ USCIS "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). As just discussed, the petitioner has failed to establish the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the petitioner still fails to demonstrate what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

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, the petitioner's vice president indicated that the educational requirement of the proffered position could be satisfied by either an otherwise undifferentiated bachelor's degree in business administration or by a bachelor's degree in any branch of engineering. Thus, the proffered 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.

Further still, as was also noted above, the LCA submitted in support of the visa petition is approved for a Level I computer programmer, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of computer programming. 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 computer programmer positions do not require such a degree.

For all three reasons, the evidence of record does not establish that this position is significantly different from 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 that are less than a bachelor's degree and degrees that are 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.⁴

⁴ 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

The record contains no evidence pertinent to anyone other than the beneficiary whom the petitioner has ever previously hired anyone to fill the proffered position. The petitioner has not, therefore, provided any such historical evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

However, as was observed above, the petitioner has indicated that an otherwise undifferentiated bachelor's degree in business administration would be a sufficient qualification for the proffered position, which, as is explained above, is sufficient to show that the proffered position does not require a minimum of a bachelor's degree in a specific specialty or its equivalent. The petitioner has also indicated that a bachelor's degree in any branch of engineering would be a sufficient qualification for the proffered position. That is also sufficient, as explained above, to show that the petitioner does not require a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

For both reasons, 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 at 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. The duties of the proffered position, such as using statistical procedures to perform data analysis; performing extraction, analysis and clustering of marketing data; managing different lines of business as per medical plans and Medicare reporting needs; and developing SAS Programs, for instance, have not been shown to be of a nature so specialized and complex that they require knowledge usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of computer programmer positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Further, as was noted above, the petitioner filed the instant visa petition for a Level I computer programmer position, a position for a beginning level employee with only a basic understanding of computer programming. 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,

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").

directly related to computer programming, especially as the *Handbook* indicates that some computer programmer positions require no such degree.

Further still, as was noted above, the petitioner's vice president indicated that the educational requirement of the proffered position could be satisfied by either an otherwise undifferentiated bachelor's degree in business administration or by a bachelor's degree in any branch of engineering. This makes plain that the duties of the proffered position are not of a nature so specialized and complex that they require knowledge usually associated a minimum of a bachelor's degree in a specific specialty or its equivalent, as the petitioner's president has indicated that they can be performed by someone without such a degree.

For these reasons, the petitioner has not demonstrated that the nature of the specific duties of the proffered position is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, and has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

Also, at a more basic level, the record lacks credible evidence that when the petitioner filed the petition, the petitioner had secured work of any type for the beneficiary to perform during the requested period of employment. That is, as to the period during which work would be available to the petitioner to assign to the beneficiary, the SOW pursuant to which the beneficiary would ostensibly work if the visa petition were approved states only that the term of the SOW will begin when the work to be performed commences and that its term will end when that work is over. Whether that work would continue through any part of the period of requested employment, which was to begin on October 1, 2013, is not established by any evidence in the record.

The petitioner has not demonstrated that it has any work to which it could assign the beneficiary during the period of requested employment. As such, the record does not demonstrate that the work the petitioner would assign the beneficiary to, if any, would be specialty occupation employment. For this additional reason, the petitioner the petitioner not established that, if the visa petition were approved, it would employ the beneficiary in a specialty occupation position.

V. CONCLUSION

The director's decision will be affirmed and the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.

(b)(6)

NON-PRECEDENT DECISION

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