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



U.S. Citizenship  
and Immigration  
Services

DATE: JUN 20 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,

N. Z. / AKM  
for

Ron Rosenberg  
Chief, Administrative Appeals Office

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

The petitioner on the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), describes itself as an "Information Technology Services" business. The petitioner states that it was established in 2001, and employs 13 persons in the United States. It seeks to employ the beneficiary in a position to which it assigned the job title "Computer Systems Analyst" and to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition determining that the petitioner failed to establish that the duties of the proposed position comprise a specialty occupation and that the petitioner has sufficient work for the requested period of intended employment.

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

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

**I. FACTS AND PROCEDURAL HISTORY**

In the April 1, 2013 letter submitted in support of the petition, the petitioner stated that it "is a [redacted] global software development company providing software development, web application development, IT outsourcing services and consulting services." The petitioner noted that "[b]esides application development, Product engineering and E-business solution architecting, we provide a full range application maintenance and HR consultancy service also." The petitioner stated indicated that the beneficiary will work on specific programming projects as a computer systems analyst that will involve the following skills:

Operating System	Windows 9x, Windows XP, Windows Vista
Languages	C, C++, Java, Visual Basic
Database	SQL
Web Technologies	HTML, DHTML, JavaScript, VB Script
Servers	Windows Server 2003, UNIX

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

The petitioner added that the beneficiary's "duties shall include analyzing and gathering project requirements, developing and designing business programs customized to meet specific needs, training users on the use of software applications and providing trouble shooting and debugging support." The petitioner listed the beneficiary's responsibilities as:

- Expand or modify system to serve new purposes or improve work flow.
- Test, maintain, and monitor computer programs and systems, including coordinating the installation of computer programs and systems.
- Develop, document and revise system design procedures, test procedures, and quality standards.
- Provide staff and users with assistance solving computer related problems, such as malfunctions and program problems.
- Review and analyze computer printouts and performance indicators to locate code problems, and correct errors by correcting codes.
- Consult with management to ensure agreement on system principles.
- Confer with clients regarding the nature of the information processing or computation needs a computer program is to address.
- Read manuals, periodicals, and technical reports to learn how to develop programs that meet staff and user requirements.
- Coordinate and link the computer systems within an organization to increase compatibility and so information can be shared.
- Determine computer software or hardware needed to set up or alter system.

The petitioner added further that the beneficiary:

[W]ill identify problems, study existing systems to evaluate effectiveness and develop new systems to improve production of workflow. She will write a detailed description of user needs, program functions, and steps required to develop or modify computer program. [She] will also review computer system capabilities, workflow and scheduling limitation to determine whether the program can be changed with the existing system.

[She] will assist in developing application software on specific needs. She will provide technical evaluation of new products, assess time estimation and provide technical support within the organization.

The petitioner noted that the beneficiary will also:

Be responsible for trouble shooting, installation and design and development of software applications. She will maintain thorough and accurate documentation on all application systems and adhere to established programming and documentation standards.

[She] will prepare flow charts and diagrams to illustrate the sequence of steps that programs follow and to describe logical operations involved by making use of her knowledge of computer science. [She] will also prepare manuals to describe installation and operating procedures.

The petitioner further provided a non-technical description of the beneficiary's job duties as follows:

[She] will enter program codes into the computer systems and enter commands into the computer to run and test the programs. She will replace, delete or modify codes to correct errors. She will provide technical support, solve problems and troubleshoot systems.

She will be involved in systems integration, debugging, troubleshooting and installation. [She] will offer solutions for various software and hardware problems and compatibility of various systems.

[She] will also be responsible for updating existing software systems and updating management on new software that is developed. [She] will maintain records to document various steps in the programming process.

The petitioner asserted that the position described here is a specialty occupation because the job duties require the theoretical and practical application of a body of highly specialized knowledge and attainment of a bachelor's or higher degree in the specific specialty as a minimum. The petitioner contended that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position, the degree requirement is common to the industry in parallel positions among similar organizations, and that the job duties detailed are so complex or unique that they cannot be performed by an individual who does not possess a bachelor's degree. The petitioner indicated that it always requires and employs individual with degrees or equivalent for the position.

The petitioner stated the "usual minimum requirement for performance of the job duties of a Computer Systems Analyst with our company, as with any other similar organization, is a Bachelor's degree in Science, computer science, computer engineering, electronics, engineering, physical sciences or equivalent."

The petitioner also "confirm[ed] that [the petitioner] supervises [the beneficiary] and such supervision is at [the petitioner's] work location" and "ONLY, [the petitioner] directly supervises, controls and directs the work of [the beneficiary]."

The petitioner appended the requisite Labor Condition Application (LCA) to the petition, which indicates that the occupational classification for the position is "Computer Systems Analysts" SOC (ONET/OES) Code 15-1121, at a Level I (entry level) wage. The LCA identified the beneficiary's place of employment as [redacted] California. The LCA was certified for a validity period beginning September 1, 2013 to September 1, 2016.

The petitioner submitted its offer of employment to the beneficiary dated March 5, 2013 and signed by the beneficiary on March 5, 2013. The offer letter included the following language:

Your responsibilities will include but will not be limited to software development/design including client-server and implementation using Core Java/Struts, ORACLE 8i/9i/10g Development. During your employment with [the petitioner], you may be deputed to any location to work not limiting to either a [petitioner] or a client location. You may also be required to travel to other sites from your original location depending upon the need of the assignment. You will be solely responsible for ensuring that [petitioner] and/or its client's policies and objectives are fully complied at all times and for completing the given assignments on time and as per other expectations.

The employment offer also indicated that the beneficiary would report to [redacted] on March 5, 2013 at the petitioner's corporate office.<sup>2</sup> The petitioner noted that Mr. [redacted] would, in pertinent part: assign the beneficiary her duties and explain how those duties are to be done; ensure that the beneficiary is working under a current job description and in a classification appropriate to the duties; update the job description and submit it to the petitioner's chief operating officer as needed; review the beneficiary's performance weekly; and provide necessary instructions relating to the services provided by the beneficiary. The petitioner also included a signed employment agreement dated March 5, 2013.

The initial record further included a document with the heading "Itinerary for [the beneficiary] Performance Testing." The itinerary includes the petitioner's name and corporate address as well as the name [redacted] Inc." with the same address as the beneficiary's place of employment identified on the LCA. The itinerary does not identify a particular project but notes that the duties include the following:

Requirement gathering – 50 days – starting November 1, 2013, ending December 20, 2013;  
Phase 1 – Preparing Test Plan and Test Strategy – 92 days – starting January 2, 2014, ending September 12, 2014;  
Phase 2 – Developing Test Scripts – 20 days – starting September 17, 2014, ending October 14, 2014;  
Phase 3 – Test Execution – 70 days – November 3, 2014, ending February 19, 2015; and  
Phase 4 – Monitoring and Analysis of Test Reports – 100 days – starting May 2, 2015, and ending July 17, 2015.

The petitioner also submitted a letter dated November 29, 2012 with an [redacted] logo at the top which contained an address in Austin, Texas. The letter is signed by [redacted] Development

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<sup>2</sup> The petitioner's organizational chart, also included with the initial documentation in support of the petition identified [redacted] as the petitioner's vice-president, business development and recruitment.

Manager – WW Business Intelligence. In the letter, Mr. [REDACTED] confirmed that the company has a contractual relationship with the petitioner wherein the petitioner provides software and application development and maintenance services on the company's various projects through its software professionals. Mr. [REDACTED] also stated that his company "provide[s] requirements of project and the implementation, development and manner of delivery is [the petitioner's] responsibility." The letter also stated: "[i]f you have any questions, please feel free to contact us directly at the contact details given." The letter does not contain a phone number or e-mail address for Mr. [REDACTED]

The record further included an undated, unsigned, nine-page document titled: "[REDACTED] Inc. Purchase Agreement, Purchase Order Terms and Conditions" between [REDACTED] Inc. and "Seller." The agreement indicated that it set forth the terms and conditions applicable to all purchases of goods and services by [REDACTED] Inc. The agreement is identified with a combination of letters and numbers in the lower left hand portion of each page as "[REDACTED]"

Upon review of the initial record, the director requested additional information from the petitioner to demonstrate that it has an employer-employee relationship with the beneficiary and has the right to control the beneficiary's work. The director also requested, among other things, copies of signed contractual agreements, statements of work, work orders, service agreements and letters between the petitioner and the authorized officials of the ultimate end-client companies where the work will actually be performed, including a detailed description of the duties the beneficiary will perform and the qualifications that are required to perform the job duties. The director further requested a description of who would supervise the beneficiary.

In a September 12, 2013 letter in response, counsel for the petitioner referenced the Department of Labor's (DOL) description of the occupation of a computer systems analyst and the DOL's Occupational Information Network's (O\*NET) description of duties for a computer systems analyst. Counsel then paraphrased the petitioner's initial job description.

Counsel also attached two letters from other entities in the "IT industry" as confirmation that a degree requirement is common to the industry in parallel positions among similar organizations. In an August 12, 2013 letter signed by the president of [REDACTED] Inc., the company president claimed that it provides information technology services similar to the business conducted by the petitioner and that a "bachelorette or higher degree or its equivalent is common to the industry in parallel position of a Computer Systems Analyst and is a standard minimum requirement for a position of Computer Systems Analyst in our organization." In an August 15, 2013 letter signed by the Director of [REDACTED] Inc., the director noted that it is a staffing and consulting firm and asserted that it is a standard practice in the IT industry to hire candidates with a bachelor's degree or equivalent for the position of computer systems analyst. The director claimed that his company "would not hire someone without a Bachelor's degree or Equivalent in a related field for this position."

Counsel asserted that the petitioner has 30 employees in the United States and 60 employees at its offshore development center in India, all of whom possess a minimum of a bachelor's degree. Counsel submitted a September 12, 2013 declaration signed by the petitioner's president in

support of this assertion. However, the petitioner's letter does not address whether its other employees possess bachelor's degrees or not.

The petitioner does assert in its September 12, 2013 letter that it "has enough work available to the beneficiary for the duration of H1B validity period to employ [the beneficiary] at client [redacted] site" at [redacted] California. The petitioner adds in the following sentence that it confirms "that [the beneficiary's] professional services will be required through October 18, 2015." The petitioner also provided the name of a second individual who has used the same LCA as used for this petition as requested by the director.

Counsel asserted that the petitioner is developing multiple projects for its client, [redacted]. The record included a document with the heading "First Amendment to the Contract for Consulting Services" with the notation that the first amendment is for Contract # [redacted]. The effective date of the contract is noted as July 12, 2006 and the effective date of the amendment is August 25, 2006. The first amendment refers to the initial agreement and states that it remains in full force and effect, and indicates that the amendment is to add services per an attached Exhibit A-1. The Exhibit A-1 Statement of Work (SOW) attached to the amendment describes the specific project, notes that the petitioner must identify and inform [redacted] of the individuals assigned to the SOW, and is for work due by March 1, 2007.

The petitioner also submitted in response to the director's RFE:

- (1) two invoices prepared by the petitioner and issued to [redacted] Inc. for [redacted] [redacted] for the week ending June 23, 2013 and the week ending June 30, 2013;
- (2) two invoices prepared by the petitioner and issued to [redacted] Inc. for [redacted] [redacted] for the week ending June 23, 2013 and the week ending June 30, 2013; and
- (3) one invoice prepared by the petitioner and issued to [redacted] Inc. for [redacted] [redacted] for the week ending June 30, 2013.

Counsel noted that the petitioner had recently signed another purchase agreement and referenced the petitioner's submission of Purchase Order No. [redacted] dated July 22, 2013, which is addressed to the petitioner covering "Blanket Purchase Order – BPO Period: 7/19/2013 - 10/18/2015." The document references [redacted] Agreement No. [redacted]. The purchase order document referred to an Internet link and noted that the purchase order is subject to the Terms and Conditions referenced therein.<sup>3</sup> The "Item Material" is listed as [redacted] and the "Quantity Description" is "3,058,320." The purchase order also indicates that the "BPO shall not obligate [redacted] to make any purchase

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<sup>3</sup> The undated, unsigned, nine-page document titled: "[redacted] Inc. Purchase Agreement, Purchase Order Terms and Conditions" between [redacted] Inc. and "Seller" previously submitted and re-submitted in response to the director's RFE, apparently is the Terms and Conditions document referenced in the Internet link.

whatsoever, but merely establishes the terms and conditions controlling such purchases in the event they occur."

The record in response to the director's RFE included a document with the heading "Project Itinerary" which identified the project as [REDACTED] with the project location at [REDACTED] California and the duration as "July 19, 2013 – October 18, 2015." The project itinerary provided an outline for the different phases of the project including requirements gathering, design and planning timelines and deliverables, implementation of the project, project execution, resource training and knowledge transition, maintenance of SLA and delivery quality standards, and support in business development. This document did not identify the beneficiary or any other individuals dedicated to the project.

The record in response to the director's RFE further included: (1) the petitioner's 2012 Internal Revenue Service (IRS) Form 1120S, U.S. Income Tax Return for S Corporation, wherein it identifies itself as a "Computer Consulting" business; (2) the petitioner's July 1, 2012 lease for premises at [REDACTED] and (3) the petitioner's performance review policy.

The petitioner also re-submitted the undated, unsigned, nine-page document titled: "[REDACTED] Inc. Purchase Agreement, Purchase Order Terms and Conditions" between [REDACTED] Inc. and "Seller"; and the November 29, 2012 letter with an [REDACTED] logo at the top signed by [REDACTED] Development Manager – [REDACTED]. The petitioner further re-submitted its position description for the proffered position.

Upon review of the record, the director denied the petition, determining that the blanket purchase order submitted does not establish that there will be specialty occupation work immediately available upon the beneficiary's entry into the United States and through the entire requested validity period. The director noted the dates of the invoices, purchase orders and statements of work submitted had expired or did not include the entire requested validity period. The director also found that the information in the letter submitted on [REDACTED] letterhead and describing the duties was limited to generalized functional descriptions and had not been supplemented by documentation identifying specific projects. The director determined that the record was insufficient to establish "that the duties to be performed are those of a computer systems analyst and, thus a specialty occupation; and that the work will be available for the beneficiary through the duration of the requested H-1B validity period."

On appeal, counsel for the petitioner references a declaration signed by the petitioner's human resources manager on December 18, 2013. In the declaration, the petitioner asserts that it is not in the business of locating persons with computer related backgrounds and placing these individuals in positions with firms that use computer trained personnel to complete their projects but rather it develops software projects for its clients through its employees.

The petitioner also references a corrected blanket purchase order with a corrected delivery date and notes that the previously submitted BPO's incorrect delivery date was due to human error. The blanket purchase order submitted on appeal is identified as Purchase Order No. [REDACTED].

(not Purchase Order No: [REDACTED] and its date includes only the numbers "09/26/." The purchase order submitted on appeal is for [REDACTED] " not for [REDACTED] [REDACTED] The purchase order document is followed by an electronic transmission from the petitioner to its counsel indicating that the purchase order is attached and that the beneficiary is one of the resources that will be assigned to implement the [REDACTED] project.

Finally, the petitioner asserts that it provided documentation initially and in response to the director's RFE demonstrating in detail the specific duties the beneficiary would perform under the contract it has with its clients. The petitioner also emphasizes that the beneficiary has attained the equivalent of a four-year bachelor's of science degree in computer engineering from an accredited U.S. college or university and that she has been providing her expertise as a computer systems analyst since November 2009 to a different company. Counsel for the petitioner repeats the petitioner's description of proposed duties and asserts the position proffered here is a specialty occupation.

Counsel also adds that the petitioner and the beneficiary will face extreme and unusual hardship if the petition is denied. Counsel notes the petitioner has spent significant sums of money and the beneficiary of the approved labor certification is a very important and critical resource for the petitioner's business due to rare skills, experience and potential possessed by the beneficiary.

**II. Standard of Review and Appellate Jurisdiction**

In the exercise of its administrative review in this matter, as in all matters that come within its purview, the AAO follows the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010), unless the law specifically provides that a different standard applies. In pertinent part, that decision states the following:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

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The "preponderance of the evidence" of "truth" is made based on the factual circumstances of each individual case.

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Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director 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.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

*Id.* at 375-76.

Again, the AAO conducts its review of service center decisions on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d at 145. In doing so, the AAO applies the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon its review of the present matter pursuant to that standard, however, the AAO finds that the evidence in the record of proceeding does not support the petitioner's contentions that the evidence of record requires that the petition at issue be approved. Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, the AAO finds that the director's determination in this matter was correct. Upon its review of the entire record of proceeding, and with close attention and due regard to all of the evidence, separately and in the aggregate, submitted in support of this petition, the AAO finds that the petitioner has not established that its claims are "more likely than not" or "probably" true. As the evidentiary analysis of this decision will reflect, the petitioner has not submitted relevant, probative, and credible evidence that leads the AAO to believe that the petitioner's claims are "more likely than not" or "probably" true.

Regarding counsel's request on appeal for a determination that this matter presents "exceptional circumstances" warranting a reopening of the matter based on extreme and unusual hardship, such a request is not within the AAO's appellate jurisdiction. The director, a component part of U.S. Citizenship and Immigration Services (USCIS), is required to follow the statute and regulations when adjudicating H-1B classification. There is no element in the pertinent statutes or regulations that allow a discretionary determination on H-1B classification based on extreme and unusual hardship. The jurisdiction of the AAO is limited to that authority specifically granted to it by the Secretary of the U.S. Department of Homeland Security. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2004). The jurisdiction of the AAO is limited to those matters described at 8 C.F.R. § 103.1(f)(3)(E)(iii) (as in effect on February 28, 2003). The AAO, like the Board of Immigration Appeals, is without authority to preclude a component part of USCIS from undertaking a lawful course of action that it is empowered to pursue by statute or regulation. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991). Accordingly, the AAO has no authority to address the petitioner's request to enter a discretionary decision based on counsel or the petitioner's perceived exceptional circumstances or extreme and unusual hardship.

### III. LAW AND ANALYSIS

### A. Specialty Occupation

To meet its burden of proof on this issue, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

*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, supra*. To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

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), 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 ascertain the intent of a petitioner, USCIS must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, location of employment, proffered wage, *et cetera*. The petitioner provided an overly broad description of the proposed duties of the proffered position. On the certified LCA, the petitioner attested that the proffered position is a Level I computer systems analyst.

One consideration that is necessarily preliminary to, and logically even more foundational and fundamental than the issue of whether a proffered position qualifies as a specialty occupation, is whether the petitioner has provided substantive information and supportive documentation sufficient to establish that, in fact, the beneficiary would be performing services for the type of position for which the petition was filed (here, a computer systems analyst). Another such fundamental preliminary consideration is whether the petitioner has established that, at the time of the petition's filing, it had secured non-speculative work for the beneficiary that corresponds with the petitioner's claims about the nature of the work that the beneficiary would perform in the proffered position. The AAO finds that the petitioner has failed in each of these regards.

First, the AAO notes here 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.

The AAO reviewed the record in its entirety and concurs with the director's determination that the record is insufficient to establish that the duties of the proffered position comprise the duties of a specialty occupation. As recognized in *Defensor v. Meissner*, it is necessary for the end-client to provide sufficient information regarding the proposed job duties to be performed at its location(s), as well as any hiring requirements that it may have specified, in order to properly ascertain the minimum educational requirements necessary to perform those duties. See *Defensor v. Meissner*, 201 F.3d at 387-388. In other words, as the nurses in that case would provide services to the end-client hospitals and not to the petitioning staffing company, the petitioner-provided job duties and alleged requirements to perform those duties were irrelevant to a specialty occupation determination. See *id.*

Here, the petitioner initially provided an itinerary for the beneficiary indicating that she would work at [REDACTED] Inc.'s location and would gather requirements for an unnamed project, prepare the test plan and test strategy, develop test scripts, test the execution, and monitor and analyze test reports beginning in November 2013 and ending in July 2015. The November 29, 2012 letter from an [REDACTED] representative confirmed that [REDACTED] provides the requirements of a project and the petitioner provides software and application development and maintenance services on the company's various projects through its software professionals. The record does not include any information from [REDACTED] Inc. regarding specific requirements for any project and whether the petitioner's services include software and application development or maintenance services. Accordingly, it is not possible to ascertain the parameters of the work proposed for the beneficiary.

In response to the director's RFE, the petitioner submitted a second "Project Itinerary" which does not identify the beneficiary and lists [REDACTED] to be completed by October 18, 2015. The record in response also included a "First Amendment to the Contract for Consulting Services" between the petitioner and [REDACTED] Inc. that is effective August 25, 2006 and several invoices issued to [REDACTED] Inc. for performing work on various projects in the last two weeks of June 2013. The petitioner further submitted a blanket purchase order (BPO) it had entered into with [REDACTED] Inc. on July 22, 2013, which identified the "Item Material" of the BPO as [REDACTED] and the "Quantity Description" is "3,058,320." The BPO period is listed as July 19, 2013 to October 18, 2015. Other than the initial "Itinerary" prepared and submitted by the petitioner, these documents do not identify the beneficiary as a resource that will be assigned to a specific project. Moreover, when projects are listed in the invoices and the BPO, the projects do not detail the specific work to be performed. Further, the latest BPO submitted indicates the BPO period ends October 18, 2015, a year prior to the end of the petitioner's requested validity period on the Form I-129.

The BPO submitted on appeal, allegedly as a BPO with a corrected delivery date, includes a different Purchase Order Number and does not include a complete date. The BPO submitted on appeal also differs from the previously submitted BPO in that it does not include [REDACTED]

Although the record on appeal includes an electronic transmission from the petitioner's representative to its counsel indicating that the beneficiary will be one of the resources assigned to implement the [REDACTED] the record does not include any information confirming the assignment or attesting to the actual duties the beneficiary will perform as it relates to such assignment. The record in this matter includes titles of projects and generic overviews of the work to be performed on projects, but does not include documentary evidence establishing what duties the beneficiary will actually be required to perform relating to specific projects.

Further, the petitioner has not submitted a "Master Services Agreement" with [REDACTED] Inc. that sets out any restrictions or limitations regarding the "software professionals" used on any [REDACTED] Inc. projects. Although the petitioner submitted a nine-page Internet document listing Terms and Conditions, this document is unsigned and undated. It is insufficient to establish that this nine-page unsigned, undated document covers all the terms and conditions agreed to by the petitioner and [REDACTED] and is in effect. The "First Amendment to the Contract for Consulting Services" between the petitioner and [REDACTED] Inc. that is effective August 25, 2006, refers to the initial agreement and yet the petitioner has not provided this document for the record. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Accordingly, the record does not include sufficient supporting evidence establishing the actual relationship between the petitioner and [REDACTED] Inc.

Thus, upon review of the totality of the record, the petitioner has not provided substantive information and supportive documentation sufficient to establish that, in fact, the beneficiary would be performing services primarily as a computer systems analyst. The petitioner has also failed to establish that, at the time the petition was filed, it had secured non-speculative work for the beneficiary that corresponds with its claims regarding the nature of the work it described in its submitted position description. As the petitioner in this matter has not provided documentary evidence substantiating the beneficiary's actual work, the AAO cannot conclude that the petitioner established that it would employ the beneficiary in a specialty occupation.

That is, the petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for entry into the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4. Thus, the

petitioner has failed to establish that the proffered position is a specialty occupation under the applicable provisions.

Accordingly, as the petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation. The AAO affirms the director's determination that the petitioner has not provided a description of the actual work the beneficiary will perform for the end-client. For this reason, the appeal will be dismissed and the petition denied.

The material deficiencies in the evidentiary record are decisive in this matter and they conclusively require that the appeal be dismissed. However, we will continue our analysis in order to apprise the petitioner of additional deficiencies in that record that would also require dismissal of the appeal.

Assuming for the sake of argument that the proffered duties as generally described by the petitioner in its initial letter and reiterated on appeal would in fact be the duties to be performed by the beneficiary, the AAO will analyze them and the evidence of record to determine whether the proffered position as described would qualify as a specialty occupation.

To make its determination as to whether the employment described above qualifies as a specialty occupation, the AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position. The AAO recognizes the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>4</sup>

In this matter, the petitioner identifies the proffered position as a computer systems analyst. In the chapter on computer systems analysts, the *Handbook* provides the following overview of the occupation:

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.

The *Handbook* lists the typical duties of a computer systems analyst as:

- Consult with managers to determine the role of the IT system in an organization

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<sup>4</sup> The AAO references to the *Handbook*, are references to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

- 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

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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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-2015 ed., "Computer Systems Analysts," <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-2> (last visited June 18, 2014).

The petitioner in this matter has provided such a broad overview of duties without relating specific duties to the project to which the beneficiary will be assigned that it is not possible to conclude whether the beneficiary will be a programmer analyst, a software quality assurance analyst, or a general –purpose analyst. There is simply not enough information regarding the actual duties of the proffered position to assess the actual duties.

However, we observe that regarding the education and training of a computer systems analyst, the *Handbook* reports:

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.

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 of business administration (MBA) with a concentration in information systems. For more technically complex jobs, a master's degree in computer science may be more appropriate.

Although many 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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-2015 ed., "Computer Systems Analysts," <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-4> (last visited June 18, 2014).

Here, although the *Handbook* indicates that most systems analysts have a bachelor's degree in a computer or information science field it also indicates that some employers hire workers with business or liberal arts degrees. Accordingly, a bachelor's degree in a specific discipline is not the minimum requirement necessary to enter into the occupation. In addition, although most systems analysts get a degree in a computer or information science subject "most" is not indicative that a computer systems analysts position normally requires at least a bachelor's degree, or its equivalent, in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)). The first definition of "most" in *Webster's New College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of computer systems analysts positions require at least a bachelor's degree in computer or information science, it could be said that "most" computer systems analysts positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the generally described and limited position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States." Section 214(i)(1) of the Act.

To satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) the petitioner must demonstrate that a baccalaureate or higher degree in a specific discipline is normally the minimum requirement for entry into the particular position. Thus, the proffered position must require a precise and specific course of study that relates directly and closely to the position in question. Although a general-purpose bachelor's degree, or a degree in a variety of fields, may be acceptable for a particular occupation, such general requirements do not establish a standard, minimum requirement of at least a bachelor's degree *in a specific specialty* or its equivalent for entry into the particular position. Accordingly, the *Handbook* does not identify a degree in a specific discipline as required to perform the duties of a computer systems analyst as here described.

We observe as well that the petitioner claims that the usual minimum requirement to perform the duties for a computer systems analyst "is a Bachelor's degree in Science, computer science, computer engineering, electronics, engineering, physical sciences or equivalent." The petitioner's acceptance of a general degree in the physical sciences is tantamount to an admission that the proffered position is not in fact a specialty occupation.

We find, in general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Accordingly, as the evidence of record fails to establish a standard, minimum requirement of at least a bachelor's degree *in a specific specialty* or its equivalent for entry into the particular position, it does not support the proffered position as being a specialty occupation and, in fact, supports the opposite conclusion.

Therefore, absent evidence that the proffered position requires a degree in a specific discipline to perform the duties and responsibilities of the position, it cannot be found that the proffered position requires anything more than a general bachelor's degree. 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 a degree in business administration, 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). As such, even if the substantive nature of the work had been established, which it has not, the instant petition could not be approved for this additional reason.

As the *Handbook* does not support the proposition that the proffered position is one that normally requires a minimum of a bachelor's degree in a specific specialty, or the equivalent, to satisfy this first alternative criterion at 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 qualifies as a specialty occupation under this criterion, notwithstanding the absence of *Handbook* support on the issue. Although counsel for the petitioner references O\*NET and its and the petitioner's description of duties, counsel does not appear to claim that O\*NET supports a contention that a computer systems analyst occupation is a specialty occupation. In that regard, we note, however, that O\*NET does not state a requirement for a bachelor's degree. Rather, it assigns a computer systems analyst occupation a Job Zone "Four" rating, which groups it among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, O\*NET does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty directly related to the occupation. Therefore, O\*NET information is not probative of the position proffered here being a specialty occupation.

As the evidence in the record of proceeding does not establish that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position that is the subject of this petition, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common (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.

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

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. We acknowledge the petitioner's submission of two letters from

individuals who claim to work for companies that are in the petitioner's industry. However, while both individuals writing the letters attested that it is a standard practice in the IT industry to hire candidates with a bachelor's degree or equivalent, neither individual claimed that the bachelor's degree in a specific discipline is a minimum requirement to perform the duties of a computer systems analyst.

Accordingly, based upon a complete review of the record, the petitioner has not established that at least a bachelor's degree in a specific specialty is the norm for entry into positions that are (1) parallel to the proffered position; and (2) located in organizations similar to the petitioner. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree."

The petitioner in this matter provided a broad description of the duties of the proffered position. As determined above, it is not possible to ascertain what the beneficiary will actually do on a daily basis. Again, absent supporting documentary evidence the petitioner has not met its burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Thus, the petitioner fails to credibly demonstrate exactly what the beneficiary will do on a day-to-day basis such that complexity or uniqueness can even be determined. The petitioner fails to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position.

The AAO also observes that the petitioner submitted an LCA certified for a job prospect with a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation. Paying a wage-rate that is only appropriate for a low-level, entry position relative to others within the occupation, is inconsistent with the analysis of the relative complexity and uniqueness required to satisfy this criterion. Based upon the wage rate, the beneficiary is only required to have a basic understanding of the occupation. Moreover, that wage rate indicates that the beneficiary will perform routine tasks requiring limited, if any, exercise of independent judgment; that the beneficiary's work will be closely supervised and monitored; that she will receive specific instructions on required tasks and expected results; and that her work will be reviewed for accuracy. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs* (rev. Nov. 2009), which is accessible at the Department of Labor Internet site [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

Additionally, given the *Handbook's* indication that computer systems analysts positions do not normally require at least a bachelor's degree in a specific specialty, or the equivalent, for entry, it is not credible that a position involving limited, if any, exercise of independent judgment, close supervision and monitoring, receipt of specific instructions on required tasks and expected

results, and close review *would* contain such a requirement.<sup>5</sup> Thus, 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. Consequently, as the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other computer systems analysts positions 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).

Turning to the third criterion, the petitioner has not submitted evidence that it previously employed anyone to perform the duties of the proffered position. Accordingly, the petitioner's recruiting and hiring history cannot be examined. We also observe that while a petitioner may believe and assert that a proffered position requires a degree in a specific specialty, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. 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 the 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").

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that 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. 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 systems analysts positions that are not usually associated with attainment of at least a bachelor's degree in a specific specialty or its equivalent.

In addition, we again note that the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation.<sup>6</sup> This aspect of the petition is materially

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<sup>5</sup> It is noted that the petitioner would have been required to offer a significantly higher wage to the beneficiary in order to employ her at a Level II (qualified), a Level III (experienced), or a Level IV (fully competent) level. U.S. Dep't of Labor, Foreign Labor Certification Data Center, Online Wage Library, FLC Quick Search, "Computer Systems Analysts," <http://flcdatacenter.com/OesQuickResults.aspx?code=15-1121&area=16740&year=13&source=1> (last visited June 18, 2014).

<sup>6</sup> *See* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*,

inconsistent with a position whose duties' performance would require knowledge usually associated with at least a bachelor's degree in a specific specialty.

Upon review of the totality of the record, 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.

### **B. Speculative Employment**

The AAO also affirms the director's finding that the petitioner failed to establish that the petition was filed for non-speculative work for the beneficiary, for the entire period requested, that existed as of the time of the petition's filing. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248.

The agency made clear long ago that speculative employment is not permitted in the H-1B program. A 1998 proposed rule documented this position as follows:

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

63 Fed. Reg. 30419, 30419 - 30420 (June 4, 1998). While a petitioner is certainly permitted to change its intent with regard to non-speculative employment, e.g., a change in duties or job location, it must nonetheless document such a material change in intent through an amended or new petition in accordance with 8 C.F.R. § 214.2(h)(2)(i)(E).

The petitioner submitted a BPO that indicated the duration of work would be completed October 18, 2015. Even if the beneficiary were assigned to work in accordance with this purchase order and even if her duties would comprise the duties of a specialty occupation, (which the record has failed to establish), the record does not establish that the beneficiary would be employed for the duration of the requested employment period, October 1, 2013 to September 1, 2016. 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. The record does not contain evidence such as invoices, purchase orders, work orders, statements of work, and contracts which outline in sufficient detail the nature and scope of the beneficiary's intended employment with the petitioner (or any potential end-user) which would establish that the beneficiary will be employed by the petitioner in the capacity specified in the petition. The petitioner's statements regarding work projects is not corroborated by documentation substantiating that projects exist and that the project(s) will generate employment for the beneficiary even as a computer systems analyst.

Thus, the petitioner has failed to establish that the petition was filed for non-speculative work for the beneficiary that existed *as of the time of the petition's filing*, for the entire period requested.

#### IV. CONCLUSION

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*. 345 F.3d 683.

The petition must be denied for the above stated reasons, with each considered as an independent and alternate 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; *see e.g., Matter of Otiende*, 26 I&N Dec. at 128. Here, that burden has not been met.

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