

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: **NOV 03 2014** OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

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

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

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

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", written over a white background.

Ron Rosenberg
Chief, Administrative Appeals Office

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

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a two-employee "Health Science" business established in 2010. In order to employ the beneficiary in what it designates as a "Database Administrator" 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 on the grounds that the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

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

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

I. PROCEDURAL AND FACTUAL BACKGROUND

The petitioner indicated in the Form I-129 and supporting documentation that it seeks the beneficiary's services as a Database Administrator, to work on a full-time basis at a salary of \$60,632 per year. The petitioner stated that the dates of intended employment are from October 1, 2013 to September 19, 2016.

The petitioner appended the requisite Labor Condition Application (LCA) to the petition, which indicates that the occupational classification for the position is "Database Administrators" SOC (ONET/OES) Code 15-1141, at a Level II (qualified) wage. The LCA was certified for a validity period beginning September 20, 2013 to September 19, 2016.

In a letter of support, dated March 27, 2013 the petitioner explained that it is "engaged in the business of providing health and wellness consultation along with nutrition supplement, weight-loss program, and water filtration system." The petitioner stated that the beneficiary's duties will be as follows:

Consult to management on all aspects of applications and technology support for

¹ We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

multiple customer databases for global health and wellness products line. Work as part of a project team to coordinate database development and determine project scope and limitations. Build & modify existing databases. Specify users/user access levels for each segment of database. Review project requests describing database user needs to estimate time and cost required to accomplish project. Generate database user reports and answer questions so that the company can execute business decisions.

We note that the petitioner described many of the duties of the beneficiary's employment in the same general terms as those found in the O*NET Online Summary Report for the occupational category "Database Administrators," some of which were taken verbatim. See O*NET Online Summary Report for "Database Administrators" <http://www.onetonline.org/link/summary/15-1141.00> (last visited Oct. 30, 2014).

The petitioner stated that the proffered position requires, "at minimum, a Masters degree in Information Technology (IT), Information Management, Management Information Systems (MIS) or equivalent degree." The petitioner submitted evidence of the beneficiary's U.S. Master of Science degree in Information Systems Management.

The director issued an RFE on April 22, 2013. The petitioner was asked to submit evidence to establish that the proffered position qualifies as a specialty occupation.

In response to the director's RFE, the petitioner submitted a letter dated July 16, 2013 stating that it is a distributor of [REDACTED] products. The petitioner explained that it has an "immediate need" to create the position of and hire a Database Administrator in order to "develop and maintain a customer database." The petitioner further stated that "[o]ver time the job duties for the Database Administrator will be broken down into 2 phases of operations as the database is created." The petitioner described the two phases of development as follows:

Phase 1 Development

Work as part of a project team to coordinate database development and determine project scope and limitations. 25%;

Build & modify existing databases. 15%;

Specify users/user access levels for each segment of database. 2.5%

Clarification: #1: The database will be designed to be used by two classes of users divided into 1.) customers and 2.) distributors/sub-distributors who are independent contractors executing sales for the CEO for a profit and commission. The customers will have access to their previous purchase information as well as have the ability to reorder [REDACTED] products. The distributors/sub-distributors will have separate access to customer information and previous sales info, to identify and determine "hot-selling" products

based on seasonal timeframes as well as have the ability to look at their own sales and profit levels over different timeframe and/or seasons.

- Review project requests describing database user needs to estimate time and cost required to accomplish project. 7.5%

Clarification: #2: The CEO will direct the Database Administrator on project requests for enhancements to the database, ex: enhancements to the database based on expanding sales and expanding customer/distributor/sub-distributor network and user requirements. The Database Administrator will report to the CEO regarding estimated time and cost to make these changes and enhancements to the database.

Phase 2 Maintenance

- Build & modify existing databases. 15%;
- Specify users/user access levels for each segment of database. 10%
- Generate database user reports and answer questions so that the company can execute business decisions. 25%

Summary of Job Duties: Consult to management on all aspects of applications and technology support for multiple customer databases for global health and wellness product line. = 100%

Clarification: This is a summary of the overall job duties comprising phases one and two of the development and maintenance of the customer database. The Database Administrator will report only to Management consisting of only the CEO.

In the same letter, the petitioner explained that it currently has two employees, the CEO and a Research Analyst, the latter of which is an unpaid intern position. In addition, the petitioner stated that it previously had a Business Analyst position, also an unpaid intern position. The petitioner stated that the Business Analyst position was phased out, and the Research Analyst position will be phased out for the paid position of the Database Administrator. The petitioner submitted other documentation reflecting that the beneficiary held both the unpaid Research Analyst and Business Analyst positions.

The petitioner also explained that it has never employed a Database Administrator in the past and that the "need to create and offer this employment position has arisen as [the petitioner] has been growing steadily in its sales, profits, and customer base necessitating the need to begin the development and maintenance of a customer and distributor/sub-distributor database."

The petitioner submitted a separate letter asserting that the beneficiary will be relieved from performing non-qualifying functions in the company. The petitioner stated:

The purpose of hiring [the beneficiary] is to develop an online system for my customers and distributors. Although [the petitioner] only has two employees; we have over 50 distributors in US, Canada and China. My distributors are not my employees but [the petitioner] will receive commission base on the manufacture's compensation plan. Therefore, there is no need for [the beneficiary] to be involved in sale operation except gathering data for his assigned project.

[Errors in the original.]

Counsel for the petitioner also submitted a letter in response to the RFE. Counsel emphasized that the Database Administrator will be relieved from performing non-qualifying functions as his job responsibilities are separate from those of the CEO, who is directly responsible for the sales operations. Counsel explained that sub-distributors working as independent contractors will also be assisting the CEO with sales. Counsel stated that the CEO will also be responsible for executive and supervisory duties, leaving the Database Administrator to focus on qualifying duties. Counsel stated that: "The total number of employees at [the petitioner] will always remain at 2."

Counsel asserted that the position satisfies, at a minimum, the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2). With respect to 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), counsel submitted eleven advertisements "for similar positions that had the similar business scope of offering services/products to a broad range of customer bases where the unique job duties of a Database Administrator can be applied across various industries . . . in the greater IT umbrella industry." Counsel explained that "we attempted to focus our search to **similarly situated companies in terms of size and scope** in the same industry. However, the search yielded zero results in terms of similar size due to the fact that [the petitioner] is so small with only 2 employees." With respect to 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), counsel stated that the listed duties of the proffered position "are exact and/or similar to those reported in the ONET, Occupational Outlook Handbook, and Dictionary of Occupational Titles." Counsel then referenced the U.S. Department of Labor's *Occupational Outlook Handbook's (Handbook's)* description of the educational requirements of the proffered position, and the proffered position's Specific Vocational Preparation (SVP) ratings of 8 and 7.0 to <8.0 in the Dictionary of Occupational Titles and O*NET, respectively.

Upon review, the director denied the petition determining that the petitioner had not established that the proffered position is a specialty occupation within the meaning of the applicable statute and regulations.

On appeal, counsel submits a brief and additional evidence. Counsel claims that the director's denial of the petition was erroneous and contends that the evidence satisfies all four criteria at 8 C.F.R. § 214.2(h)(4)(iii). Counsel submits an opinion prepared by Professor [REDACTED], Department of Statistics and Computer Information Systems, [REDACTED], the [REDACTED] of [REDACTED] dated August 30, 2013, concluding the proffered position requires a minimum of a bachelor's degree in management information systems, information technology, computer science, and related fields. This letter will be discussed in more detail below.

Finally, counsel submits another letter from the petitioner, dated August 29, 2013, explaining its need to hire a Database Administrator to create a customized database system to be utilized by the petitioner's distributors. This letter provides a significantly more detailed and different description of the proffered position and its constituent job duties. Specifically, the petitioner's letter states that it is "planning to expand the IT division after the initial planning phase," which the petitioner states "should take no more than a year." The petitioner then states that it is "looking to hire programmers, analysts, and technicians to expand the division." The petitioner asserts that, after the initial planning phase, the proffered position's role "will switch to focus on specialty caliber enhancements of the system" to include these specific duties: "evaluate and simplify the system for the user according to user's input, additional features, as well as updating technology"; "providing support to other companies and introducing the new marketing technology to ensure our leadership in the industry"; "coordinate a team to support the database system as well as setup and enforce the standards and procedures for using the database, governing hardware performance and acquire knowledge of future appliance and technology"; and "make sure the system is compatible to the latest mobile device available at that time."

The sole issue on appeal is whether the petitioner has established that the duties of the proffered position comprise a specialty occupation.

II. LAW

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.

III. ANALYSIS

A. Preliminary Findings

We note that the petitioner provides significantly different descriptions of the proposed duties and the petitioner's overall operations on appeal. Specifically, on appeal, the petitioner states that it is planning to "expand the IT division" by hiring programmers, analysts, and technicians after the initial planning phase, which "should take no more than a year."² The petitioner then asserts that, after the initial planning phase, the proffered position's role will "coordinate a team to support the database system." However, in response to the RFE, counsel specifically stated that the "total number of employees at [the petitioner] will always remain at 2," i.e., the CEO and the Database Administrator. Similarly, in response to the RFE, the petitioner described its staffing solely in terms of the CEO and the Database Administrator (not including independent contractors). At no time prior to the appeal did the petitioner claim that it would hire additional employees in its "IT division," or that the beneficiary would be working with additional IT personnel to support the database system. Significantly, the petitioner does not explain what the job duties of the programmers, analysts, and technicians would be, as opposed to the duties of the proffered position.

Furthermore, on appeal the petitioner states that the proffered position would "provid[e] support to other companies and introduce[e] the new marketing technology to ensure [the petitioner's] leadership in the industry." These additional duties go beyond the scope of duties initially described by the petitioner.

On appeal, a petitioner cannot materially change a position's associated job responsibilities or its level of authority within the organizational hierarchy. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner on appeal adds new duties to the job description and changes the petitioner's overall staffing and structure. Therefore, our analysis will be based on the job descriptions submitted with the initial petition and in response to the RFE.

In the instant case, we find that the proposed duties, as described in the initial documentation and in response to the RFE, do not provide a sufficient factual basis for conveying the substantive nature of the proffered position and its constituent duties.

A crucial aspect of this matter is whether the petitioner has adequately and consistently described the duties of the proffered position, such that USCIS may discern the nature of the position and

² The petitioner is requesting to employ the beneficiary for a period of three years.

whether the position indeed 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. The petitioner has not done so here.

As previously mentioned, and as acknowledged by counsel, many of the stated duties of the proffered position were copied verbatim from the O*NET Online Summary Report for Database Administrators. We note that simply copying job descriptions from O*NET (or other sources) is not sufficient for establishing H-1B eligibility. While this type of generalized description may be appropriate when defining the range of duties that may be performed within an occupational category, it generally cannot be relied upon by a petitioner when discussing the duties attached to specific employment for H-1B approval.

The petitioner described the proposed duties in generalized and broad terms that fail to convey the substantive nature of the proffered position and its constituent duties. The abstract level of information provided about the proffered position and its constituent duties is exemplified by the petitioner's assertion that the beneficiary will "[b]uild & modify existing databases" and "[w]ork as part of a project team to coordinate database development and determine project scope and limitations." The petitioner's statements – as so generally described – do not illuminate what particular duties the beneficiary will perform on a day-to-day basis and the complexity of such duties (e.g., what is meant by "[b]uild & modify," "work" and "coordinate"). The petitioner's statement also fails to explain what substantive application of knowledge is involved or what particular educational attainment is associated with these duties. In addition, the petitioner claims that the beneficiary will "[g]enerate database user reports and answer questions so that the company can execute business decisions." Again, this statement fails to provide any particular details regarding the demands, level of responsibilities and requirements necessary for the performance of these duties (e.g., what is meant by "answer questions" and "business decisions").

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 satisfies 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 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.

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 appeal will be dismissed and the petition denied for this reason.

B. Expert Opinion Letter

Here, we will address why we find the expert opinion letter from Professor [REDACTED] Department of Statistics and Computer Information Systems, [REDACTED], to be unpersuasive in establishing the proffered position qualifies as a specialty occupation position.

First, Professor [REDACTED] states that, in assessing the proffered position, he is relying upon the petitioner's RFE response as well as "a supplement that was developed by the employer in order to expand upon the position's duties." While Professor [REDACTED] does not specify what supplemental response he is referring to, we assume he is referring to the petitioner's explanation submitted on appeal, as he references the petitioner's "plan to expand the IT division" by hiring "additional programmers, analysts, and technicians." However, as we discussed earlier, the petitioner's descriptions of the proffered position are significantly different on appeal than the initially proffered descriptions. We hereby incorporate our previous discussion on the matter. It is not apparent that Professor [REDACTED] is aware of these discrepancies and, thus, that he possesses the requisite information necessary to accurately assess the nature of the proffered position.

Second, we find that Professor [REDACTED] has not sufficiently explained the factual basis for his conclusions about the nature and educational requirements of the proffered position. For example, he states:

Generally speaking, the successful administration and support of multi-tier database environments – and design and implementation of original database models and security utilities – requires the application of technical concepts and methodologies taught in bachelor's programs in management information systems, information technology, computer science, and related fields. Accordingly, based on my review of the aforesaid job duties, I believe that the instant position of "database administrator" is a professional-level computing position entailing advanced responsibilities in database analysis, design, and configuration. I further believe that the position is "specialized" in nature, requiring, bachelor's-level educational training in management information systems, IT, computer science, or a related technical field, and the application of specialized knowledge in these fields.

By way of elaboration, it is my opinion that a database administrator who will be responsible for duties such as those described above – in the particular operating context that is specific to this time and place in the employer's business and technology development – would appropriately be required to demonstrate academic study in management information systems, computer science, or a related functional area, at no less than a bachelor's level, in order to competently execute the required job duties. Bachelor's-level training in these fields allows an individual to analyze and modify the types of database programs in accordance with external user requirements as well as internal business operations and plans (i.e., the long-term growth trajectory outlined above), and is required in order to successfully and reliably

execute post-implementation routines in such areas such areas as database administration, maintenance, enhancement, and security.

Specifically, even though Professor [REDACTED] concludes that the proffered position's duties are "specialized" and "advanced" such that a bachelor's degree in a computer-related specialty is required, he does not explain the factual basis for his conclusions. That is, he does not explain why the proffered position requires 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. He did not specifically identify what body or bodies of highly specialized knowledge is/are required to perform each particular duty, which particular course(s) of study provided such knowledge, and how these courses represent an established curriculum leading to a baccalaureate or higher degree in "management information systems, computer science, or a related functional area." As such, these are conclusory statements that have little to no probative value. 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)).

For all of the reasons discussed above, we conclude that Professor [REDACTED] opinion letter is not probative evidence to establish the proffered position as a specialty occupation. We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). As a reasonable exercise of our discretion, we discount the advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

C. Discussion of the Criteria

Assuming *arguendo* that the proffered duties as generally described by the petitioner in its initial letter and in response to the RFE would in fact be the duties to be performed by the beneficiary, and assuming *arguendo* that these duties all fall within the occupational category of "Database Administrators," as claimed by the petitioner on the LCA, we 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 whether the proffered position qualifies as a specialty occupation, we turn to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. 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.³

We have reviewed the chapter of the *Handbook* entitled "Database Administrators," including the section regarding the typical educational requirements for this occupational category. However, the *Handbook* does not indicate that "Database Administrators" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

The subchapter of the *Handbook* entitled "How to Become a Database Administrator" states, in pertinent part, the following about this occupational category:

Database administrators (DBAs) usually have a bachelor's degree in an information- or computer-related subject. Before becoming an administrator, these workers typically get work experience in a related field.

Education

Most database administrators have a bachelor's degree in management information systems (MIS) or a computer-related field. Firms with large databases may prefer applicants who have a master's degree focusing on data or database management, typically either in computer science, information systems, or information technology.

Database administrators need an understanding of database languages, the most common of which is Structured Query Language, commonly called SQL. Most database systems use some variation of SQL, and a DBA will need to become familiar with whichever programming language the firm uses.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Database Administrators, <http://www.bls.gov/ooh/computer-and-information-technology/database-administrators.htm#tab-4> (last visited Oct. 30, 2014).

Although the *Handbook* states that "[m]ost database administrators have a bachelor's degree in management information systems (MIS) or a computer-related field," it does not support a claim that "Database Administrators," as a category, comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. For instance, 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 Database Administrator positions require at least a bachelor's degree in a specific specialty, it could be said that "most" Database Administrator positions require such a degree. It cannot be found, therefore, that a particular degree requirement

³ 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.

for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States." § 214(i)(1) of the Act.

In addition, we find that the proffered position's SVP ratings in the Dictionary of Occupational Titles and O*NET are not probative of the proffered position being a specialty occupation. The SVP ratings are meant to indicate only the total number of years of training required for a particular position. The ratings do not describe how those years are to be divided among training, formal education, and experience, and do not specify the particular type of degree, if any, that a position would require. For all of these reasons, the SVP ratings referenced by counsel are of little evidentiary value to the issue presented.

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

Next, we review the record regarding 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 to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports an industry-wide requirement for 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.

The petitioner provided several job advertisements posted by companies including [REDACTED] (a telecommunications company), [REDACTED] (an insurance company), and [REDACTED] (a management consulting services/staffing company). Counsel specifically conceded that these advertisements were not placed by similarly situated companies in terms of size and scope. The record lacks sufficient evidence to establish the petitioner as being similar to the advertising companies in terms of its size and the type and level of services provided such that they could be found to be similar organizations.⁴ Consequently, the petitioner has failed to establish the first prong of the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that the particular position proffered in this petition is "so complex or unique" that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

In this matter, the petitioner has not provided sufficient documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent.

To begin with and as discussed previously, the petitioner failed to credibly demonstrate exactly what the beneficiary will do on a day-to-day basis such that complexity or uniqueness can even be determined. Furthermore, the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of Database Administrator. We note that with the initial documentation and the petitioner's response to the RFE, the petitioner did not make any express claim regarding the complexity or uniqueness of the proffered position. On appeal, the petitioner states the following:

Upon completion of the project, the DBA role will switch to focus on specialty caliber enhancements of the system. For example, evaluate and simplify the system for the user according to user's input, additional features, as well as updating technology to reduce redundancy. These are job tasks beyond basic database administrator duties and require a specialty caliber education and knowledge.

Other than the above, the petitioner does not make any other references to the complexity and uniqueness of the proffered position. The petitioner's assertions are conclusory, as the petitioner does not explain why the tasks of "evaluate and simplify the system for the user according to user's input, additional features, as well as updating technology to reduce redundancy," are "beyond basic database administrator duties." Instead, these generic duties fall within the range of duties for positions under the Database Administrator occupational category.

⁴ The petitioner provided a North American Industry Classification System (NAICS) Code of 4461, "Health and Personal Care Stores." U.S. Dept of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "4461, Health and Personal Care Stores," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited Oct. 30, 2014).

Nor does the petitioner provide any explanation of the knowledge required to perform the above tasks, which the petitioner claims are "beyond basic database administrator duties." Specifically, even though the petitioner asserts that the proffered position's duties "require a specialty caliber education and knowledge," the petitioner failed to demonstrate how these duties 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 it claims are so complex and unique.

Overall, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than other Database Administrator 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 same or similar 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).⁵

We will next review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), to determine whether the evidence establishes that the petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the position. In this regard, we usually review the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position. To satisfy this criterion, it should be noted that the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position.

While a petitioner may believe or otherwise assert that a proffered position requires a specific degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In

⁵ It must be noted that the petitioner has designated the proffered position as a Level II position on the submitted LCA, indicating that it is a position for an employee who has a good understanding of the occupation but who will only perform moderately complex tasks that require limited judgment. *See* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. Therefore, it is not credible that the position is one with complex and unique duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage.

other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree, or its equivalent, to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

Moreover, to satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally* *Defensor v. Meissner*, 201 F.3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty or its equivalent as the minimum for entry into the occupation as required by section 214(i)(1) of the Act. To interpret the regulation any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position – and without consideration of how a beneficiary is to be specifically employed – then any alien with a bachelor's degree in specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

Here, the petitioner stated that it has "never employed a Database Administrator in the past." While a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, it is unclear how an employer that has never recruited and hired for the position would be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position.

It is important to note that the petitioner has never expressly stated that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the position. Instead, under this criterion, the petitioner addresses its business growth and its immediate need to create and hire for the proffered position. However, the petitioner's business growth and staffing needs are not probative to whether it "normally" requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position.

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

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Upon review of the record of the proceeding, the petitioner has not provided probative evidence to satisfy this criterion of the regulations. As reflected in this decision's earlier comments and findings with regard to the generalized level at which the proposed duties are described, the petitioner has not presented the proposed duties with sufficient specificity and substantive content to even establish relative specialization and complexity as distinguishing characteristics of those duties, let alone that they are at a level that would require knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or its equivalent. In the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position.

Similar to our discussion of the second alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), we note that in the initial documentation and the petitioner's response to the RFE, the petitioner did not make any express claim regarding the specialized and complex nature of the duties of the proffered position. The only reference to the specialization and complexity of the duties is the petitioner's statements on appeal that the duties of "evaluate and simplify the system for the user according to user's input, additional features, as well as updating technology to reduce redundancy" are "beyond basic database administrator duties and require a specialty caliber education and knowledge." Again, these assertions are conclusory, as the petitioner does not explain why these tasks are "beyond basic database administrator duties." The petitioner has not established how these generic duties are more specialized and complex than other duties performed by other Database Administrator positions. In addition, the record lacks any explanation of the knowledge required to perform the above tasks, and how this knowledge is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Thus, the petitioner has not established that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Accordingly, the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).⁶

⁶ Again, it must be noted that the petitioner has designated the proffered position as a Level II position on the submitted LCA, indicating that it is a position for an employee who has a good understanding of the occupation but who will only perform moderately complex tasks that require limited judgment. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. Therefore, it is not credible that the position is one with specialized and complex duties, as such a higher-level position would likely be classified as a Level IV position, requiring a significantly higher prevailing wage.

For the reasons discussed above, 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 additional reason.

IV. CONCLUSION

The appeal will be dismissed 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; *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.