



U.S. Citizenship
and Immigration
Services

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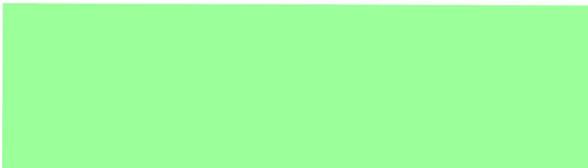


DATE: **NOV 20 2014** OFFICE: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

On the Form I-129 visa petition, the petitioner describes itself as a 450-employee nursing care facility established in [REDACTED]. In order to employ the beneficiary in what it designates as a "Computer Network Analyst" position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that the proffered position is a specialty occupation. The petitioner now files this appeal, asserting that the director's decision was erroneous.

As will be discussed below, we find that the evidence fails to establish that the proffered position is a specialty occupation. Beyond the director's decision, we find that the petitioner has not complied with its wage obligations. The appeal will be dismissed, and the petition will be denied for these reasons.

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

I. FACTUAL AND PROCEDURAL HISTORY

As noted above, the petitioner describes itself on the Form I-129 as a 450-employee nursing home facility established in [REDACTED]. According to the Form I-129, the petitioner seeks to employ the beneficiary full-time in what it designates as a "Computer Network Analyst" position at a salary of \$29,120 per year. The dates of intended employment are listed as May 2, 2012 to August 16, 2012.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position corresponds to Standard Occupational Classification (SOC) code and occupation title "15-1179, Information Security Analysts, Web Developers, and Computer Network Architects" from the Occupational Information Network (O*NET).¹ The LCA states that the proffered position is a Level I, entry-level, position. On the LCA, the petitioner listed the rate of pay as \$29,120. Also on the LCA, the petitioner listed the prevailing wage as \$27,997, and the source of the prevailing wage as the OFLC Online Data Center.²

¹ This code and occupation title is no longer in use by O*NET.

² The petitioner incorrectly listed the prevailing wage as \$27,997. According to the OFLC Online Data Center, the actual prevailing wage at the time of filing for the proffered position is \$37,149. See Foreign

In a letter dated May 7, 2012 submitted in support of the petition, the petitioner confirmed the rate of pay for the proffered position as \$29,120. In addition, the petitioner described the primary responsibility of the proffered position as "the overall set-up and design of data communication networks, including local area networks (LAN) and intranets." The petitioner listed the following duties for the proffered position:

1. Create a plan and layout for data communication network for the facility's electronic medical records both in the office and in the field;
2. Analyze data processing problems for application to electronic data processing and decide which hardware and software will be needed to support the network;
3. Ensure information security in the design of computer network and prepare technical specifications for all security software developed;
4. Review, analyze, design, develop & support software/engineering security functions including maintenance and regular troubleshooting for any systems/software flaws;
5. Provide IT support to all employees of the facility and address connectivity, hardware and software issues;
6. Analyze user requirements and problems and improve existing computer systems;
7. Review computer capabilities, workflow, and schedule limitations of computer systems;
8. Determine how cables are laid out in the facility and research new technology to determine what would best support the organization.

The director issued a request for evidence (RFE) instructing the petitioner to submit, *inter alia*, evidence establishing that the proffered job qualifies as a specialty occupation and a more detailed description of the job duties.

In response to the RFE, the petitioner submitted a letter dated January 23, 2014 in which it repeatedly refers to the proffered position as a "Computer Systems Analyst" position. The petitioner specifically referenced the description of "Computer Systems Analyst" positions in the Occupational Outlook Handbook (*Handbook*). The petitioner then reiterated the same job duties for the proffered position as previously listed.

With respect to the minimum educational requirement for the proffered position, the petitioner stated that the position requires "at least a bachelor's degree in Computer Science or computer-related field and significant expertise as Computer Systems Analysts [*sic*]." The petitioner attested that "a baccalaureate degree is normally the minimum requirement for entry into positions in the organization." The petitioner further attested to "the common hiring practices of many organizations in the United States of requiring at least a bachelor's degree for Computer Network Analyst positions," stating: "Various similar organizations hire Computer Network Analyst with similar annual income as our computer network analyst position."

In support of the RFE, the petitioner submitted an opinion letter from [REDACTED] who identifies himself as "Professor, Chair of the [REDACTED] Faculty," attesting to "the current academic standards of the computer network analyst profession in the United States." Professor [REDACTED] letter does not address his qualifications to render an opinion on this particular subject. The attached resume of [REDACTED] cannot be attributed to Professor [REDACTED] as the resume does not list any employment at [REDACTED]. As the evidence of record fails to establish Professor [REDACTED] qualifications to provide a reliable opinion on this matter, we will assign this opinion letter no weight and will not consider it further.

The petitioner submitted a letter dated January 24, 2014 from [REDACTED], who the petitioner identifies as an "Electronics and Communications Engineer" and its current "Billing and Network Administrator." Mr. [REDACTED] also attests to "the current academic standards of the computer network analyst profession in the United States" in substantially the same language as Mr. [REDACTED] letter. Also like Professor [REDACTED] letter, Mr. [REDACTED] letter does not address his qualifications to render an opinion on this particular subject. No supporting evidence was submitted to independently establish Mr. [REDACTED] qualifications. As the evidence of record fails to establish Mr. [REDACTED] qualifications to provide a reliable opinion on this matter, we will assign this letter no weight and will not consider it further.

The petitioner provided three job advertisements. The petitioner provided an internal job posting for a Computer Network Analyst position with a salary of \$36,000/year. In addition, the petitioner submitted the description of "Computer Systems Analyst" positions from the *Handbook*.

The director denied the petition, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation.

The petitioner filed an appeal. On appeal, the petitioner explains that that it has "an honest need for a Computer Network Analyst to help the Petitioner create a plan and layout for data communication network for the electronic medical records both in the office and in the field." The petitioner asserts that the proffered position is "appropriately covered by the occupational group of Computer Systems Analysts," and by this fact alone, should categorically qualify it as a specialty occupation.

II. SPECIALTY OCCUPATION

A. The 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.

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

B. Discussion

We find that the evidence of record does not establish the substantive nature of the proffered position.

More specifically, on the LCA, the petitioner listed the O*NET title and code of 15-1179, Information Security Analysts, Web Developers, and Computer Network Architects. According to

the petitioner's Form I-129 and initial supporting documentation, the petitioner described the proffered position's primary responsibility as "the overall set-up and design of data communication networks, including local area networks (LAN) and intranets." The petitioner specifically listed networking-related duties such as "[creating] a plan and layout for data communication network for the facility's electronic medical records both in the office and in the field," "[ensuring] information security in the design of computer network," "address[ing] connectivity . . . issues," and "[determining] how cables are laid out in the facility and research new technology to determine what would best support the organization."

However, in the petitioner's RFE response and on appeal, the petitioner repeatedly asserts that the position falls under the occupational classification of "Computer Systems Analysts," as described in the *Handbook*. The petitioner submits for the record a copy of the *Handbook's* description for "Computer Systems Analysts" positions, which lists the following duties:

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

We cannot find that the proffered position corresponds to a position under the "Computer Systems Analysts" occupational category, as the petitioner asserts. In particular, there is no express mention of networking-related duties for "Computer Systems Analysts" positions according to the *Handbook*. In contrast, the petitioner asserts that networking-related duties constitute the primary responsibility of the proffered position. The petitioner has not provided any explanation for why it believes the "Computer Systems Analysts" category is appropriate here. The petitioner's competing claims that the proffered position primarily involves networking duties, yet falls under the

"Computer Systems Analysts" occupational classification, without any further explanation, raises questions as to the nature of the position.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition, we find that the petitioner has not adequately described the duties of the proffered position with sufficient detail so that we may discern the nature of the position.

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. For example, we consider again the petitioner's statement that the beneficiary will "[c]reate a plan and layout for data communication network for the facility's electronic medical records both in the office and in the field." This statement fails to provide any detail or explanation of the specific day-to-day tasks needed to accomplish this overall duty, such as what specific tasks constitute "[c]reate a plan." In addition, the petitioner stated that the beneficiary will "[r]eview, analyze, design, develop & support software/engineering security functions including maintenance and regular troubleshooting for any systems/software flaws." Again, this statement fails to explain the specific day-to-day tasks needed to accomplish this duty, such as what specific tasks constitute "[r]eview, analyze, design, develop & support."

We note that the director specifically advised the petitioner to provide a more detailed description of the duties of the proffered position. In response to the RFE, the petitioner re-submitted the exact same list of duties as initially provided.³ The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

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.

³ In the RFE, the petitioner resubmitted the same list of duties as initially provided. The only new information provided in response to the RFE with respect to the job duties was the percentages of time spent on each duty.

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.⁴

III. CONCLUSION

The evidence of record fails to establish that the proffered position is a specialty occupation. Accordingly, the petition will be denied.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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

⁴ Further, even if the proffered position were established as being that of a computer systems analyst, a review of the *Handbook* does not indicate that, as a category, such a position qualifies as a specialty occupation in that the *Handbook* does not state a normal minimum requirement of a U.S. bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation of computer systems analyst. Although the *Handbook* indicates that a bachelor's degree in a computer or information science field is "common," the *Handbook* also states that such a degree is "not always a requirement." In fact, the *Handbook* indicates that some analysts "have liberal arts degrees and have gained programming or technical expertise elsewhere." Accordingly, the *Handbook* does not support the proposition that a bachelor's degree in a specific computer-related discipline is the minimum requirement necessary to enter into the occupation. At most, the *Handbook* indicates that a bachelor's degree in a computer-related field may be a common preference, but not a standard occupational, entry requirement. U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Computer Systems Analysts," <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-4> (last visited Nov. 19, 2014).