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

(b)(6)

DATE: SEP 0 8 2014 OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). 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 software product development and information technology (IT) consulting organization established in 1996. In order to employ the beneficiary in what it designates as a programmer analyst position, the petitioner seeks 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, finding that the petitioner failed to establish (1) that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions and (2) that it has sufficient work for the requested period of intended employment. On appeal, the petitioner asserts that the director's bases for denial of the petition were erroneous and contends that it satisfied all evidentiary requirements.

The record of proceeding before us 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 and supporting materials. We reviewed the record in its entirety before issuing our decision.[1]

For the reasons that will be discussed below, we agree with the director that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed.[2] The appeal will be dismissed, and the petition will be denied.

I. PROCEDURAL AND FACTUAL BACKGROUND

In the Form I-129, the petitioner indicated that it wishes to employ the beneficiary as a programmer analyst on a full-time basis. In the support letter, the petitioner stated that the beneficiary "will be working on an internal project for [the petitioner] at the company facility located at IL ." In addition, the petitioner stated the beneficiary: "will be responsible for the design, development and support of mobile application." The petitioner provided an overview of the beneficiary's main tasks and responsibilities, listing the following:

- Design, develop and deliver new features with existing applications as well as new applications, maintaining high-quality in all areas throughout development
- Work with UI designers and product managers to create applications that satisfy

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

[2] The director appears to imply that "a *bona fide* position of programmer analyst requires a beneficiary to have a baccalaureate degree." To the extent this implication suggests that all programmer analyst positions by virtue of their occupational classification qualify as specialty occupations, such implication is withdrawn.

user needs with simplicity and robustness

- Collaborate with other developers, provide mentorship to members of the team and work to efficiently achieve the team's goals
- Complete unit testing, functional testing and bug fixes, performance and memory fine tuning and deploying to appStore
- Follow, maintain and evolve the team's development process, code libraries and methodologies
- Stay current with mobile technology and its usage [the beneficiary] will be a team member, provding required assistance in the development and rollout of product and working with offshore team to co-ordinate feature development and testing performing product design, systems analysis, development and implementation.

The petitioner did not identify any specific requirements for the proffered position.[3]

With the initial petition, the petitioner submitted a copy of the beneficiary's foreign diploma and transcript, however, the petitioner did not submit an educational evaluation of the beneficiary's academic credentials.

The petitioner also submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. We note that the LCA designation for the proffered position corresponds to the occupational classification of "Computer Systems Analysts" - SOC (ONET/OES Code) 15-1121, at a Level II (qualified) wage.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE. The director outlined the specific evidence to be submitted.

The petitioner submitted the following in response to the RFE:

- An employment agreement, dated March 4, 2013.[4]
- A document entitled "[The petitioner – Company Policies and procedures for FULL-TIME Employees (FTE)."
- An offer of employment letter, dated March 4, 2013.
- A letter from the petitioner to dated May 10, 2013. The

[3] The petitioner does not claim that the position requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as the minimum requirement for entry into the occupation, as required by the Act.

[4] We observe that the employment agreement was not signed by the beneficiary until October 31, 2013, which is approximately four months after the submission of the Form I-129 petition.

letter was signed by President of the petitioning company on May 10, 2013, and by CEO of on November 5, 2013.[5]

- A Master Services Agreement between the petitioner and dated December 6, 2010.[6] The agreement states the following:

  > (b) Work Orders. Client shall, from time to time, identify any Services, which Client desires to be performed by [the petitioner]. Following consultation between the Client and [the petitioner] and the decision by [the petitioner] to provide the identified Services, Client and [the petitioner] shall prepare a proposed work order ....

- A job description for programmer analyst – android technologies. Notably, the job description indicates that the successful candidate will "[p]ossess at least 4 years of programing experience" as well as knowledge and experience with several technologies. The job description does not state that there are any academic requirements for the position.

- An organizational chart.

- Brochures and pamphlets regarding the petitioner's products and services.

- Photos of the petitioner's offices.

The director reviewed the response, and found the evidence insufficient to establish eligibility for the benefit sought. The director denied the petition. The petitioner submitted an appeal of the denial of the H-1B petition. With the appeal, the petitioner submitted a letter from CEO of , dated February 6, 2014.

II. PREPONDERANCE OF THE EVIDENCE STANDARD

On appeal, counsel for the petitioner references the preponderance of the evidence standard. We affirm that, in the exercise of our appellate review in this matter, as in all matters that come within

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[5] Notably, the letter from the petitioner to is dated approximately one month after the submission of the Form I-129 petition. In addition, the letter was executed after the director's RFE and thus, does not pre-date the filing of the petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). 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).

[6] We observe that the Master Services Agreement lists the petitioner's address as , Illinois .

our purview, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010). 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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> * * *
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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.
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> 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.

We again note that we conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In doing so, we apply the preponderance of the evidence standard as outlined in *Matter of Chawathe.* Upon our review of the present matter pursuant to that standard, however, we find that the evidence in the record of proceeding does not support counsel'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*, we find that the director's ultimate determinations in this matter were correct. Upon our 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, we find 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 us to believe that the petitioner's claims are "more likely than not" or "probably" true.

III. REVIEW OF THE DIRECTOR'S DECISION

A. Material Findings

When determining whether a position is a specialty occupation, USCIS must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, USCIS looks 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, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

Accordingly, USCIS must determine, *inter alia*, whether the petitioner (1) has provided sufficient evidence to establish that the beneficiary will perform the duties of the proffered position as stated in the petition; and (2) has established that, at the time of filing, it had secured non-speculative work for the beneficiary that is in accordance with the petitioner's claims about the nature of the work that the beneficiary would perform in the proffered position.

The petitioner in this matter provided a list of the beneficiary's proposed duties. As observed above, USCIS in this matter must review the actual duties the beneficiary will be expected to perform to ascertain whether those duties require at least a baccalaureate degree in a specific specialty, or its equivalent, as required for classification as a specialty occupation. To accomplish that task in this matter, USCIS must analyze the actual duties in conjunction with the specific project(s) to which the beneficiary will be assigned. To allow otherwise, results in generic descriptions of duties that, while they may appear to comprise the duties of a specialty occupation, are not related to any actual services the beneficiary is expected to provide.

In that regard, we have reviewed the information in the record regarding the petitioner's software product development and IT consulting business. Upon review of this information, we find that the record of proceeding lacks documentation regarding the actual work that the beneficiary will perform to sufficiently substantiate the claim that the petitioner has H-1B caliber work for the beneficiary for the period of employment requested in the petition. That is, the record does not include any work product or other documentary evidence to confirm that the petitioner has ongoing projects to which the beneficiary will be assigned. Thus, the petitioner has not provided the underlying documentation necessary to corroborate that the beneficiary would perform the claimed duties set out in the petitioner's letter of support. 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)).

Furthermore, as noted above, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). Evidence that the petitioner creates after the issuance of an RFE is not considered independent and objective evidence for establishing eligibility

for the benefit sought.

The agency made clear long ago that speculative employment is not permitted in the H-1B program. For example, 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).

Without statements of work describing the specific duties the petitioner requires the beneficiary to perform, as those duties relate to specific projects, USCIS is unable to discern the nature of the position and whether the position indeed requires the theoretical and practical application of a body of highly specialized knowledge attained through a baccalaureate program. Again, going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Without a meaningful job description within the context of non-speculative employment, the petitioner may not establish any of the alternate criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner provides a letter from of . In the letter, Mr. states that " does not necessarily rely on the Work Order or SOW to be generated in order to work with [the petitioner's] resources as the Master Services Agreement is already in place between our organizations." However, as previously discussed, the Master Services Agreement states, "Following consultation between the Client and [the petitioner] and the decision by [the petitioner] to provide the identified Services, Client and [the petitioner] shall prepare a proposed work order." Accordingly, the MSA signed by both parties and apparently in effect, requires that a proposed work order be prepared. Such a work order would provide some evidence of the expectations between the two parties regarding the work and the duties and responsibilities of the petitioner and its resources in performing the work. Again, without some evidence of the work to be performed, USCIS is unable to discern the nature of the position and whether the position indeed requires the theoretical and practical application of a body of highly specialized knowledge attained through a baccalaureate program.

Moreover, the petitioner in this matter does not require any academic qualifications to perform the duties of the proffered position. The failure to require a baccalaureate degree in a specific specialty to perform the duties of the position is tantamount to an admission that the position proffered here, is in fact, not a specialty occupation position.

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 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.

While the petitioner submitted an employment agreement, a document regarding its policies and procedures, an offer of employment letter, a letter from itself to a Master Services Agreement, a job description, an organizational chart, brochures and pamphlets regarding its products and services, and photos of its offices, those documents do not establish the substantive nature of the work to be performed by the beneficiary.

Upon review of these documents, it is not evident that the proposed duties as described, and the position that they comprise, merit recognition of the proffered position as qualifying as a specialty occupation. That is, to the extent that they are described, the proposed duties do not provide a sufficient factual basis for conveying the substantive matters that would engage the beneficiary in the performance of the proffered position for the entire period requested. The generic job description does not persuasively support the claim that the position's day-to-day job responsibilities and duties would require the theoretical and practical application of a particular educational level of highly specialized knowledge in a specific specialty directly related to those duties and responsibilities. The overall responsibilities for the proffered position contain generalized functions without providing sufficient information regarding the particular work, and associated educational requirements, into which the duties would manifest themselves in their day-to-day performance within the petitioner's operations. Thus, the petitioner has failed to demonstrate how the performance of the duties of the proffered position, as described by the petitioner, would require the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent.

For the reasons discussed above, it cannot be found that the proffered position qualifies as a specialty occupation. For this reason, the appeal must be dismissed and the petition denied.

B. Specialty Occupation

The above discussion sets out material deficiencies in the record of proceeding and requires denial of the petition. As the director noted in her decision, the issue of *bona fide* employment is viewed within the context of whether the petitioner has offered the beneficiary a position that is determined

to be a specialty occupation. Therefore, the petitioner must provide sufficient evidence to establish that the services to be performed by the beneficiary are those of a specialty occupation. Assuming for the sake of argument that the petitioner adequately described the duties of the proffered position and provided corroborating evidence it had work for the beneficiary when the petition was filed, which it did not, we will now discuss the proffered position in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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;
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> *(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;
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> *(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 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 387. To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

We will now discuss the proffered position in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*), 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.

As previously mentioned, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Computer Systems Analysts."

We recognize the U.S 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.[7] We reviewed the chapter of the *Handbook* entitled "Computer Systems Analysts" including the sections regarding the typical duties and requirements for this occupational category.[8] However, the *Handbook* does not indicate that "Computer Systems Analysts" 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. The information on the educational requirements in the "Computer Systems Analysts" chapter of the 2014-2015 edition of the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (the *Handbook*) indicates at most that a bachelor's or higher degree in a computer or information science field may be a common preference, but not a standard occupational, entry requirement. *See* 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 August 25, 2014). The *Handbook* indicates that there is a spectrum of degrees acceptable for positions in this occupation, including general purpose degrees such as business and liberal arts. *See id.*

That is, according to the *Handbook*, many systems analysts have liberal arts degrees and have gained programming or technical expertise elsewhere. The *Handbook* reports that many analysts have technical degrees but does not specify a degree level (e.g., associate's degree, baccalaureate) for these technical degrees. Moreover, the *Handbook* specifically states that such a degree is not always a requirement. Thus, the *Handbook* does not support the claim that the proffered position falls under an occupational group for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent.[9]

In the instant case, 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

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[7] All of our references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site http://www.bls.gov/OCO/.

[8] For additional information regarding the occupational category "Computer Systems Analysts," *see* U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, Computer Systems Analysts, on the Internet at http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-1 (last visited August 25, 2014).

[9] We again note the director's implication that a *bona fide* position of programmer analyst requires a beneficiary to have a baccalaureate degree, however, as found above, the director is incorrect if she meant to convey that all programmer analyst positions by virtue of their occupational classification qualify as specialty occupations.

the record of proceeding and as stated by the petitioner 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 will review the record of proceeding 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. 1095, 1102 (S.D.N.Y. 1989)).

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports a standard, industry-wide requirement of at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. The petitioner did not submit any documentation from its industry's professional association stating that it has made a degree a minimum entry requirement. The petitioner also did not submit any letters or affidavits from firms or individuals in the industry in support of this criterion of the regulations. Accordingly, the petitioner has not established 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. The petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

We will 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 its particular position 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 support of its assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted various documents, including evidence regarding its business operations and services. We reviewed all of the evidence submitted; however, we find that the petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. 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 may believe are so complex and unique. While a few related courses may be beneficial, or even required, in performing certain duties of the position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position. The

description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, the LCA indicates a wage level based upon the occupational classification "Computer Systems Analysts" at a Level II (qualified) wage, 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. Without further evidence, it is simply not credible that the petitioner's proffered position is complex or unique in comparison to others within the occupation, as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage.

The petitioner and its counsel do not sufficiently explain or clarify which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. Upon review of the record of proceeding, we find that the petitioner has failed to establish the proffered position as satisfying the second prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. We usually review the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position when considering this criterion.

To merit approval of the petition under this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency in its prior recruiting and hiring for the position. Further, 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. In the instant case, the record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or the equivalent. Thus, 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, we note that the petitioner has not provided probative evidence to satisfy this criterion of the regulations. In the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than positions that are not usually associated with at

least a bachelor's degree in a specific specialty, or its equivalent.

Furthermore, we note again that the petitioner designated the proffered position in the LCA as a Level II position. Without further evidence, it is simply not credible that the petitioner's proffered position is one with specialized and complex duties compared to others within the occupation as such a position would likely be classified at a higher-level, such as a Level III (experienced) or IV (fully competent) position, requiring a substantially higher prevailing wage. For instance, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."[10]

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. 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, or its equivalent. We, therefore, conclude that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

For the reasons related in the preceding discussion, 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, for this additional reason, it cannot be found that the proffered position qualifies as a specialty occupation.

C. Bona Fide Offer of Employment

Here we reiterate that the petitioner failed to establish that it had sufficient specialty occupation work during the requested validity period for the beneficiary to perform when the petition was filed. By not submitting evidence corroborating the work that the beneficiary will perform during the requested H-1B validity dates, the petitioner has not submitted a *bona fide* offer of employment to the beneficiary available upon her entry into the United States. Accordingly, the petitioner has not established that it has sufficient work for the beneficiary to perform for the totality of the duration of the petition. Furthermore, the record does not include contracts or other evidence specifically demonstrating what particular work exists for the requested employment period. Therefore, the petitioner has failed to establish that it has made a *bona fide* offer of employment to the beneficiary. The petition must also be denied on this additional basis.

IV. BENEFICIARY'S QUALIFICATIONS

We do not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the proffered position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.

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[10] For additional information on wage levels, *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.

As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty, or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree, or its equivalent. Therefore, we need not and will not address the beneficiary's qualifications further, except to note that, in any event, the petitioner did not submit an evaluation of the beneficiary's foreign degree or sufficient evidence to establish that her degree is the equivalent of a U.S. bachelor's degree in a specific specialty. As such, since evidence was not presented that the beneficiary has at least a U.S. bachelor's degree in a specific specialty, or its equivalent, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

V. CONCLUSION AND ORDER

An application or petition that fails to comply with the technical requirements of the law may be denied by us even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143 (noting that the AAO conducts appellate review on a *de novo* basis).

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

The appeal will be dismissed 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, 8 U.S.C. § 1361; *see e.g.*, *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.