



U.S. Citizenship  
and Immigration  
Services

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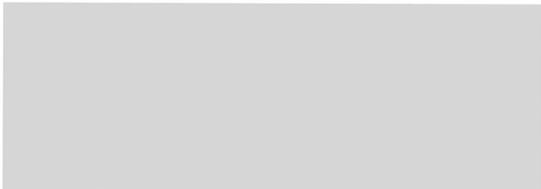


DATE: **APR 20 2015** OFFICE: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(H)(15)(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 ("the director") denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a four-employee "Information Technology" business established in [REDACTED]. In order to employ the beneficiary in a position in what it designates as a "Computer Programmer" 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 determining that the petitioner failed to establish that the duties of the proposed position comprise the duties of a specialty occupation. The director found that the petitioner had not substantiated it had H-1B caliber duties for the beneficiary to perform. On appeal, the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements. The petitioner submits a brief in support of this assertion.

The record of proceeding before this office 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 denial letter; and (5) the Notice of Appeal or Motion (Form I-290B), a brief and supporting documentation. We reviewed the record in its entirety before issuing our decision.<sup>1</sup>

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. The appeal will be dismissed, and the petition will be denied.

## I. FACTUAL AND PROCEDURAL BACKGROUND

In this matter, the petitioner states on the Form I-129 petition that it seeks the beneficiary's services as a computer programmer to work onsite on a full-time basis at an annual salary of \$65,000. In a letter, dated March 31, 2014, the petitioner stated that the beneficiary will work on specific programming projects that involve the following skills and duties:

### **Duties:**

Beneficiary is responsible for writing, updating and maintaining computer programs or latest software packages. He will analyze, review, and rewrite software programs, using workflow chart and diagram, and applying knowledge of computer applications, packages and symbolic logic. He will periodically be correcting errors by making appropriate changes and rechecking the program to ensure that the desired results are produced.

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

Beneficiary will also be involved in conducting trial runs of programs and software applications to be sure they will extract the desired information and that the instructions are correct. He should also revise, repair, fine tune the expansion of existing programs to increase operating efficiency and move to other database platforms. He would also perform systems analysis and programming tasks to maintain and control the use of computer systems software as a computer programmer.

His duties would require him to consult with managerial, engineering, and business analyst personnel to clarify program intent, client requirement, identify problems, and fine-tune the performance. He will then prepare detailed workflow charts and diagrams that describe input, output, and logical operation, and convert them into a series of instructions to be coded in a programming language.

**ii) Maintenance and Technical Duties**

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

**iii) Documentation and Reporting Duties**

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

**iv) Non-Technical Description of Job Duties**

In layperson's terms, Beneficiary will enter program codes into the computer systems and enter commands into the computer to run and test the programs. He will replace, delete or modify codes to correct errors. He will provide technical support, solve problems and troubleshoot systems.

He will specialize in developing programs for specific applications to certain industries. He will be involved in systems integration, debugging, troubleshooting and installation. Beneficiary will offer solutions for various software and hardware problems and compatibility of various systems.

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

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

The petitioner indicated that the beneficiary is qualified to perform services in the proffered position and that he has obtained a Bachelor of Technology from [REDACTED] in India. The petitioner provided the beneficiary's provisional certificate and transcript and issued by [REDACTED] and a course completion certificate from [REDACTED] – affiliated with [REDACTED] however, an evaluation of the beneficiary's foreign credentials was not provided.

The petitioner provided a Labor Condition Application (LCA) in support of the instant H-1B petition. The LCA designation for the proffered position corresponds to the occupational classification "Computer Programmer" - SOC (ONET/OES) code 15-1131, at a Level I (entry level) wage.

In support of the Form I-129, the petitioner submitted a document titled [REDACTED] " [REDACTED] In this document, the petitioner stated that its "mission is to deliver strategic IT solutions and services that enhance business systems by proving competitive advantages in innovation, reliability, and time to market" and that "[w]e create, implement and operate [REDACTED] provide Professional Services and Project Consulting to deliver rapid returns on investment and tangible long-term benefits." The "Itinerary" document indicates that the listed "itinerary of services will be assigned to all proposed employees for the [REDACTED] " The document lists duties for "analysts" and in a separate group of duties lists duties of developers and a generic "Beneficiary." This document does not identify the beneficiary in this matter by name.

In the petitioner's offer letter to the beneficiary, dated March 4, 2014, and signed by the beneficiary and the petitioner's representative, the petitioner offered the beneficiary employment as an "IT Professional." The petitioner indicated that as a professional the beneficiary will perform "computer programming, software development, systems analysis, professional engineering, consulting and technical writing." The petitioner also submitted its organizational chart depicting a chief executive officer and chief technology officer by name showing that three project managers and one programmer analysts department reported to the chief technology. The organizational chart showed 21 computer programmer positions assigned to different [REDACTED] projects as well as four sub-contracted consultants, and a systems administrator position.<sup>2</sup>

The initial record also included three letters from parties interested in the petitioner's software development services, an unsigned and undated statement of work covering consulting services purchased by the petitioner, invoices issued by the petitioner for consulting services it performed,

<sup>2</sup> The petitioner does not identify any employees, other than the chief executive officer and chief technology officer by name and does not indicate how many of the positions listed have been filled. We observe that the petitioner claimed on the Form I-129 that it employed four persons when the petition was filed.

the beneficiary's resume and work experience letters, and a partial uncertified Internal Revenue Services (IRS) Form 1120S, U.S. Income Tax Return for an S Corporation, for 2013.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE. The director requested that the petitioner submit probative evidence to establish eligibility for the benefit sought, and outlined the evidence to be submitted, including evidence that the petitioner had specialty occupation work available for the entire requested H-1B validity period and copies of a position description that described the skills required to perform the job offered, the tools needed to perform the job, the product to be developed or the service to be provided, among other things.

In a letter, dated July 3, 2014, in response to the RFE, the petitioner repeated the initial description of duties and claimed that the beneficiary will provide his services to the petitioner's in-house project [REDACTED] and that his services will be required through the requested validity period. The petitioner re-submitted the [REDACTED] document, the petitioner's offer letter to the beneficiary, two of the three letters from parties interested in the petitioner's software development services, the unsigned and undated statement of work covering consulting services purchased by the petitioner, and the partial IRS Form 1120S for 2013. The petitioner also submitted a copy of its performance evaluation worksheet, and partial IRS Forms 1120S, for the 2011 and 2012 years.

The director reviewed the information provided in the initial H-1B petition and in response to the RFE. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish eligibility for the benefit sought and denied the petition.

On appeal, the petitioner asserts that it is unfair that the director did not request specific evidence to establish that the proffered position is a specialty occupation in the RFE.<sup>3</sup> The petitioner contends that the evidence submitted demonstrates that the proffered position is a specialty occupation and submits two letters from employers in the IT industry, job advertisements from other employers, and information on its other employees, in support of this contention.

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<sup>3</sup> Here we note that there is no requirement for U.S. Citizenship and Immigration Services to issue an RFE or to issue an RFE pertinent to a ground later identified in the decision denying the visa petition. Title 8 C.F.R. § 103.2(b)(8) clearly permits the director to deny a petition for failure to establish eligibility without having to request evidence regarding the ground or grounds of ineligibility identified by the director. Second, even if the director had erred as a procedural matter in not issuing an RFE or Notice of Intent to Deny relative to the petitioner's failure to establish the proffered position as a specialty occupation, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner yet another additional opportunity to supplement the record with new evidence. Again, we conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

## II. MATERIAL FINDINGS

The issue here is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, we will make some preliminary findings that are material to the determination of the merits of this appeal.

### A. The Petitioner's In-House Project

To ascertain the intent of a petitioner, USCIS must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, 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."

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

In the instant case, the duties of the proffered position, as described by the petitioner in support of the Form I-129 petition and in response to the director's RFE, have been stated in generic terms that fail to convey the actual tasks the beneficiary will perform on a day-to-day basis. Although the petitioner claims that the beneficiary will perform services related to a specific project, the petitioner has provided a broad task list that apparently includes duties for analysts and the proposed 21 "computer programmers" listed on the petitioner's organizational chart. The petitioner does not identify the specific duties this beneficiary will perform for the petitioner on the [REDACTED] project or for any other project or entity. Notably, the petitioner, in its offer letter to the beneficiary, indicated the beneficiary was being hired as an "IT Professional" and would perform "computer programming, software development, systems analysis, professional engineering, consulting and technical writing" tasks. The petitioner does not offer any explanation or clarification regarding the beneficiary's particular tasks associated with these disparate occupations.

Upon review of the information in the record regarding the proposed project, the petitioner does not include probative information regarding the labor requirements needed to complete, test, implement and release the [REDACTED] product. The petitioner did not provide an estimate of the

time required to deliver each phase of the project, the number of resource hours dedicated to each phase of the project, the identity of current or proposed resources dedicated to the project, and their specific duties related to the project. The record, thus, lacks substantive information regarding the continued viability of work to be performed on this project and evidence that any work to be completed requires the knowledge of a specialty occupation worker as the term is interpreted according to the applicable statutes and regulations.

Moreover, the petitioner did not provide detailed information regarding the beneficiary's expected duties as those duties relate specifically to its claimed in-house project. The duties as described are general and thus insufficient to demonstrate that the 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. Upon review of the totality of the record, the petitioner has not provided substantive information and supportive documentation sufficient to establish that, in fact, the beneficiary would be performing services primarily as a computer programmer. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Accordingly, the record lacks substantive evidence establishing that, at the time the petition was filed, the petitioner had secured non-speculative work for the beneficiary that corresponds with its claims regarding the nature of the work it described in its submitted position description. That is, other than the project identified, the petitioner provided no evidence that it had work for the beneficiary to perform. Again, without supporting documentary evidence, the petitioner has not met its burden of proof. *Id.* As noted above, the documents submitted regarding the claimed project do not establish with probative evidence that the project will require the requested three years of H-1B classification to complete and the petitioner has not submitted other evidence that it has work available for the beneficiary to perform. As the petitioner in this matter has not provided documentary evidence substantiating the beneficiary's actual work for the duration of the requested period, we cannot conclude that the petitioner has established that it will employ the beneficiary in a specialty occupation for that period.

Upon review, 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 job descriptions do 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 not demonstrated 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.

#### B. The Petitioner's Requirements to Perform the Duties of the Position

Additionally, the petitioner in this matter, states that its usual minimum requirement to perform the job duties of its computer programmer is a bachelor's degree in a variety of fields, such as science, computer science, computer engineering, electronics, engineering, physical sciences or the equivalent. Thus, the petitioner's own claimed entry requirement does not denote a requirement in a specific specialty. Furthermore, the claimed requirement of a degree in a general field such as "Science" or "Physical Sciences" for the proffered position, without specialization, is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree in science or the physical sciences, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

Further, the petitioner states that a bachelor's degree in the general field of "engineering" is also acceptable to perform the duties of the proffered position. The issue here is that the field of engineering is a broad category that covers numerous and various specialties, some of which are only related through the basic principles of science and mathematics, e.g., nuclear engineering and aerospace engineering. Therefore, besides a degree in electrical engineering, it is not readily apparent that a general degree in engineering or one of its other sub-specialties, such as chemical engineering or nuclear engineering, is closely related to computer science or that engineering or any and all engineering specialties are directly related to the duties and responsibilities of the particular position proffered in this matter.

The petitioner's acknowledgment that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in science, is tantamount to an admission that the proffered position is not in fact a specialty occupation. As such, even if the substantive nature of the work had been established, the instant petition could not be approved for this additional reason.

#### C. The Beneficiary's Qualifications

Finally, we note that we need not 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. As discussed in this decision, the petitioner did not submit sufficient evidence to establish that it requires 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 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 his 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.

### III. SPECIALTY OCCUPATION

As noted above, we must determine whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, including the evidence submitted on appeal, and for the specific reasons described below, we agree with the director and find that the evidence does not establish that the position as described constitutes a specialty occupation.

#### A. The Law

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)(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 at 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 at 147 (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. Analysis

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

We now turn to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). As explained earlier in this decision, the petitioner has not established the nature of the proffered position and in what capacity the beneficiary will actually be employed within the petitioner's business operations. 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.

Nevertheless, assuming, *arguendo*, that the petitioner had adequately and consistently described the duties of the proffered position, 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 Programmers."

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.<sup>4</sup> We reviewed the chapter of the *Handbook* entitled "Computer Programmers" including the sections regarding the typical duties and requirements for this occupational category.<sup>5</sup>

<sup>4</sup> 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/>.

<sup>5</sup> For additional information regarding the occupational category "Computer Programmers," see U.S. Dept of

However, the *Handbook* does not indicate that "Computer Programmers" 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 subchapter of the *Handbook* entitled "How to Become a Computer Programmer" states the following about this occupational category:

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

### **Education**

Most computer programmers have a bachelor's degree; however, some employers hire workers who have an associate's degree. Most programmers get a degree in computer science or a related subject. Programmers who work in specific fields, such as healthcare or accounting, may take classes in that field to supplement their degree in computer programming. In addition, employers value experience, which many students gain through internships.

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, Computer Programmers, available on the Internet at <http://www.bls.gov/ooh/computer-and-information-technology/computer-programmers.htm#tab-4> (last visited April 8, 2015).

The *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for these positions, rather the *Handbook* indicates "[m]ost computer programmers have a bachelor's degree in computer science or a related subject; however, some employers hire workers with an associate's degree." Thus the *Handbook* indicates that an associate's degree is also an acceptable avenue to attain a position as a computer programmer. We also observe that "most" is not indicative that a computer programmer position normally requires at least a bachelor's degree, or its equivalent, in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)), or that a computer programmer position is so specialized and

Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, Computer Programmers, on the Internet at <http://www.bls.gov/ooh/computer-and-information-technology/computer-programmers.htm#tab-2> (last visited April 8, 2015).

complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)).<sup>6</sup>

When reviewing the *Handbook*, it also must be noted that the petitioner designated the proffered position as a Level I (entry level) position on the LCA.<sup>7</sup> The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance."<sup>8</sup> A Level I wage rate is described as follows:

**Level I** (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at

<sup>6</sup> The first definition of "most" in *Webster's New College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of computer programmer positions require at least a bachelor's degree in computer science or a closely related field, it could be said that "most" computer programmer positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the 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." Section 214(i)(1) of the Act.

<sup>7</sup> Wage levels should be determined only after selecting the most relevant O\*NET code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.

<sup>8</sup> Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

[http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

Thus, in designating the proffered position at a Level I wage, the petitioner has indicated that the proffered position is a comparatively low, entry-level position relative to others within the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that he would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results. Based upon the petitioner's designation of the proffered position as a Level I (entry) position, it does not appear that the beneficiary will be expected to serve in a senior or leadership role. As noted above, according to DOL guidance, a statement that the job offer is for a research fellow, worker in training or an internship is indicative that a Level I wage should be considered.

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 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 evidence of record does not 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 bachelor's or higher degree in a specific specialty, or its equivalent, is common (1) to the petitioner's industry; and (2) for positions within that industry that are both: (a) parallel to the proffered position, and (b) located in organizations that are similar to the petitioner.

In determining whether there is 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. Also, there are no submissions from the industry's professional associations indicating that a degree is a minimum entry requirement for a computer programmer position.

On the Form I-129, the petitioner stated that it is an information technology company established in 2011, and that it has four employees. The petitioner stated its gross annual income as approximately \$584,800 and did not provide its net annual income. The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 541511. According to the U.S. Census Bureau, NAICS is used to classify business establishments according to type of economic activity and each establishment is classified to an industry according to the primary business activity taking place there. See <http://www.census.gov/eos/www/naics/> (last visited April 8, 2015). The NAICS code specified by the petitioner is designated for "Custom Computer Programming Services," and is defined by the U.S. Department of Commerce, Census Bureau as follows:

This U.S. industry comprises establishments primarily engaged in writing, modifying, testing, and supporting software to meet the needs of a particular customer.

U.S. Dep't of Commerce, U.S Census Bureau, 2012 NAICS Definition, 541511 – Custom Computer Programming Services, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited April 8, 2015).

On appeal, the petitioner provides printouts of 11 online job announcements. However, this documentation does not establish that the proffered position qualifies as specialty occupation. As a preliminary matter, we note that the petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers' recruiting history for the type of jobs advertised. Further, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices.

For the petitioner to establish that an organization is similar, it must demonstrate that it shares the same general characteristics with the advertising organization. Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the advertising organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

Upon review of the documentation, none of the advertisements provide sufficient information regarding the advertising organizations to establish that the advertising organizations are similar to the petitioner. The advertisers range from a university, the State of Montana, an educational service, an appliance leasing company, to a physical therapy practice. Further, four of the five advertisers that appear to be staffing or software companies, are advertising positions that appear to be more senior than the proffered position. Each of the four advertisements lists between two and ten years of required experience in addition to a degree. As previously noted, the petitioner has characterized the proffered position as a Level I (entry-level) position on the LCA. DOL guidance

states that Level I positions are appropriate for a worker-in-training or an individual performing an internship.<sup>9</sup> Thus, the advertised positions do not appear to be parallel to the proffered position.

Additionally, contrary to the purpose for which the advertisements were submitted, the postings do not establish that at least a bachelor's degree in a *specific specialty*, or its equivalent, is required for the positions. For example, two advertisers do not identify a specific degree as required, another advertiser notes a preference for a degree in computer science, and the majority of advertisers indicate that a bachelor's degree in computer science or engineering or other fields as acceptable academic preparation for the advertised positions. USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose degree may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).<sup>10</sup> Thus, advertisements that request a general-purpose degree or accept degrees in disciplines that do not require a precise course of study, are not probative to the issue of whether the petitioner's proffered position requires a degree in a *specific specialty*.

The job advertisements do not establish that similar organizations in the petitioner's industry routinely employ individuals with degrees in a specific specialty, in parallel positions in the petitioner's industry. Further, it must be noted that even if all of the job postings indicated that a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations in the petitioner's industry (which they do not), the petitioner does not demonstrate what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations.<sup>11</sup>

<sup>9</sup> For additional information regarding wage levels, see DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at [http://www.foreignlaborcert.doleta.gov/pdf/Policy\\_Nonag\\_Progs.pdf](http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf).

<sup>10</sup> Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. See, e.g., *Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; cf. *Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

*Id.*

<sup>11</sup> See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection

In support of the assertion that the proffered position qualifies as a specialty occupation, the petitioner also submitted letters from [REDACTED], of [REDACTED], and [REDACTED] of [REDACTED]. In identical letters, both letter-writers confirm that the minimum qualification required for the position of computer programmer in their company is a bachelor's degree and knowledge of computer-related skills. The letter-writers claim that they employ individuals in this position who have "Bachelor's or equivalent degrees in Science, Computer Applications, Math or Information Technology, or Computer information Systems or Computer Science or Engineering or related field."

Neither letter-writer describes their company business or explains how it is similar to the petitioner. They do not state any familiarity with the proffered position, thus it is not apparent that the positions they identify as computer programmer positions are parallel to the proffered position. We observe that the letter-writers for these two companies do not provide any documentary evidence to corroborate that their company currently or in the past employed individuals in parallel positions to the proffered position, nor did they provide any documentation to substantiate the companies' claimed academic requirements (e.g., copies of diplomas/transcripts, employment records, job vacancy announcements). Further, as noted, while the letter-writers provide general statements that their company has employed individuals to serve in positions like the proffered position, they fail to provide the actual job duties and day-to-day responsibilities of the positions that they claim are the same or parallel to the proffered position. In addition, the petitioner has not supplemented the record with information regarding the companies to establish that they are similar to the petitioner.

We may, in our discretion, use as advisory opinions or statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). As a reasonable exercise of our discretion we decline to regard the advisory opinion letters as probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, we hereby incorporate the above discussion and analysis regarding the opinion letters into the analysis of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Thus, based upon a complete review of the record of proceeding, the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common (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.

offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position (for organizations similar to the petitioner) required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

Thus, for the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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. For example, the petitioner submitted letters from prospective clients, a consulting agreement wherein it had hired the consulting company, invoices for consulting staff that it had provided to third parties, a claimed in-house project, and copies of portions of uncertified federal tax returns for 2011, 2012, and 2013.

However, a review of the record of proceeding confirms that the petitioner has failed to credibly demonstrate the duties the beneficiary will be responsible for or perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty, or its equivalent. Furthermore, the petitioner has not established why a few related courses or industry experience alone is insufficient preparation for 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. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.<sup>12</sup>

The petitioner has indicated that the beneficiary's educational background will assist him in carrying out the duties of the proffered position. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself qualifies as a specialty occupation. In the instant case, the petitioner has not established this

<sup>12</sup> This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. As noted above, the certified LCA for this position indicates a wage level at a Level I (entry level) wage. This wage level only requires a basic understanding of the occupation; the performance of routine tasks that require limited, if any, exercise of judgment; close supervision and work closely monitored and reviewed for accuracy; and the receipt of specific instructions on required tasks and expected results.

essential element. The petitioner fails to demonstrate 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. Consequently, 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).

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. To this end, USCIS reviews the petitioner's past recruiting and hiring practices, information regarding employees who previously held the position, as well as any other documentation submitted by a petitioner in support of this criterion of the regulations.

To merit approval of the petition under this criterion, 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. 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 as the minimum for entry into the occupation as required by the Act. According to the Court in *Defensor*, "To interpret the regulations any other way would lead to an absurd result." *Id.* at 388. 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.*

In support of the petitioner's assertion that the proffered position qualifies as a specialty occupation under this criterion of the regulation, the petitioner provided documentation regarding the education and employment of four of its employees. The petitioner submitted copies of the foreign diplomas issued to the four employees but did not provide evaluations of the degrees or any supporting documents establishing that the degrees were the equivalent of a bachelor's degree in a specific discipline. Moreover, the petitioner indicated that these individuals hold similar positions with the petitioner as the proffered position: "Computer Programmer." We observe, however, that the petitioner submitted its invoices to various companies for three of these individuals. The invoices showed that these three individuals performed services for different companies located in Massachusetts, Michigan, and Texas. The petitioner does not establish that the title it gives to any of these positions reflects the actual duties of these positions. The job duties for the positions that these individuals hold, as described by the end-clients where they are employed, were not provided. Notably, the pay statements for individuals that the petitioner identifies as holding the same position as the proffered position have addresses in Massachusetts, North Carolina, and Texas. The beneficiary allegedly will work in-house in New Jersey. As the record does not demonstrate that

these positions are the same as the proffered position, the petitioner has not submitted probative evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered 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.

The petitioner does not assert on appeal that the duties of the proffered position are 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. We nonetheless reviewed all of the evidence in the record, and also considered the petitioner's statements regarding the proffered position. We find, that in the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position.

Furthermore, we also reiterate our earlier comments and findings with regard to the implication of the petitioner's designation of the proffered position in the LCA as a Level I (the lowest of four assignable levels). That is, the Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category, and hence one not likely distinguishable by relatively specialized and complex duties.

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

#### IV. CONCLUSION

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.<sup>13</sup>

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

<sup>13</sup> As the identified grounds of ineligibility are dispositive of the petitioner's appeal, we need not address any additional issues in the record of proceeding.