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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: AUG 0 5 2015 PETITION RECEIPT #:

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:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition. The petitioner filed a combined motion to reopen and motion to reconsider. The Director reviewed the combined motion and affirmed the prior decision. The matter is now before the Administrative Appeals Office (AAO) on appeal. The Director's decision will be withdrawn, and the matter will be remanded to the Director for action consistent with this decision.

I. PROCEDURAL HISTORY

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129). In the H-1B petition, the petitioner describes itself as a company serving the technology staffing industry. In order to employ the beneficiary in what it designates as a business analyst position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The Director denied the petition, concluding that the petitioner did not establish that the beneficiary is qualified to perform services in a specialty occupation. Thereafter, the petitioner filed a combined motion to reopen and motion to reconsider the decision. The Director affirmed its prior decision.

The record of proceeding contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the Director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the Director's decision dated August 8, 2014; (5) the Notice of Appeal or Motion (Form I-290B) ; (6) the Director's decision dated December 5, 2014; and (7) the Form I-290B and supporting documentation. We reviewed the record in its entirety before issuing our decision.[1]

II. BENEFICIARY'S QUALIFICATIONS

The Director denied the petition, concluding that the petitioner did not establish that the beneficiary is qualified to perform the services in a specialty occupation.[2] A beneficiary's credentials to perform

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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 petitioner has provided widely divergent explanations as to the reason that it believes that the beneficiary is qualified for the proffered position. For example:

- In the March 14, 2014 letter of support the petitioner claimed that the beneficiary was qualified for the proffered position based upon his bachelor's degree in food technology and management from a foreign university and his master's degree in agribusiness from a United States institution.
- In response to the RFE, the petitioner asserted that the beneficiary has the United States educational equivalency of a master of business administration degree and a bachelor's degree in business administration with a concentration in computer information systems.

a particular job, however, are relevant only when the job is found to qualify as a specialty occupation. U.S. Citizenship and Immigration Services (USCIS) is required to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether an alien beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation]."). In the instant case, the record of proceeding does not establish that the proffered position qualifies as a specialty occupation. Thus, the matter will be remanded to the Director for review and issuance of a new decision.

III. SPECIALTY OCCUPATION

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.

A. Legal Framework

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

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- On motion, the petitioner claimed the beneficiary's academic credentials combined with his prior work experience and certifications qualify him for the proffered position.
- On appeal, the petitioner asserts that the beneficiary holds the equivalent of a United States bachelor of science degree with a dual major in management information systems and business administration.

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 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 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), 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.

Furthermore, we note that, as recognized by the court in *Defensor*, *supra*, where the work is to be performed for entities other than the petitioner, evidence of the client's job requirements is critical. *See Defensor v. Meissner*, 201 F.3d at 387-388. That is, it is necessary for the end-client to provide sufficient information regarding the proposed job duties to be performed at its location in order to properly ascertain the minimum educational requirements necessary to perform those duties. *Id* at 387-388. The court held that the legacy INS had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. *Id.* at 384. Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

B. Proffered Position

The petitioner states that it is seeking the beneficiary's services as a business analyst on a full-time basis. The petitioner stated on the Labor Condition Application (LCA) that the proffered position falls under the occupational category "Computer Systems Analysts" and corresponds to a Level I wage (the lowest of four assignable wage levels).[3] The petitioner also reports that the beneficiary

[3] The "Prevailing Wage Determination Policy Guidance" issued by the U.S. Department of Labor (DOL) provides a description of the wage levels. A Level I wage rate is described by DOL 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

will work at a client location, specifically at Ohio In the letter of support, the petitioner asserts that the beneficiary will be responsible for the following duties:

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

Upon review of the duties, we observe that the tasks are recited virtually verbatim from the Occupational Information Network (O*NET) OnLine Summary Report's list of duties associated with computer systems analysts.[4] Providing job duties for a proffered position from O*NET or other

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job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

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.

Thus, the petitioner's designation of the proffered position as a Level I position indicates that it is a low, entry-level position compared to other positions within the occupational category.

[4] The O*NET Online Summary Report provides, in part, the following duties for the occupational category "Computer Systems Analysts":

- Expand or modify system to serve new purposes or improve work flow.
- Test, maintain, and monitor computer programs and systems, including coordinating the installation of computer programs and systems.
- Develop, document and revise system design procedures, test procedures, and quality

Internet source is generally not sufficient for establishing H-1B eligibility. That is, while this type of description may be appropriate when defining the range of duties that may be performed within an occupational category, it cannot be relied upon by a petitioner when discussing the duties attached to specific employment for H-1B approval as this type of generic description fails to adequately convey the substantive work that the beneficiary will perform on a day-to-day basis. In establishing a position as qualifying as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in the context of the petitioner's (or client's) business operations, demonstrate that a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition.

In response to the RFE, the petitioner submitted a letter from , which provides a wholly new set of job duties for the proffered position. Specifically, states that the beneficiary is responsible for the following tasks:

- Collaborating with end-users and stakeholders to bring form and clarity to multitude of data sources, enabling data to be displayed in meaningful, analytic manner.
- Responsible for generating innovative solutions to bridge the gap between business and IT.
- Performing the tasks of gathering, analyzing, storing and reporting financial information using Business intelligence tools (Oracle Hyperion Business Web forms).
- Handling the responsibilities of analyzing and documenting business requirements.
- Assisting Senior Business Analyst, Hyperion Architect's and developer, in planning, designing, programming, testing and implementing client projects.
- Responsible for generating accurate data on company performance and project expense.

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standards.

- Provide staff and users with assistance solving computer related problems, such as malfunctions and program problems.
- Review and analyze computer printouts and performance indicators to locate code problems, and correct errors by correcting codes.
- Consult with management to ensure agreement on system principles.
- Confer with clients regarding the nature of the information processing or computation needs a computer program is to address.
- Read manuals, periodicals, and technical reports to learn how to develop programs that meet staff and user requirements.
- Coordinate and link the computer systems within an organization to increase compatibility and so information can be shared.
- Determine computer software or hardware needed to set up or alter system.

- Providing supports to supervisors by documenting organizational structures, internal processes and clients.
- Delivering innovative ideas to key decision makers and handled functions of financial data management.

Notably, the petitioner and the client do not provide any information with regard to the order of importance and/or frequency of occurrence with which the beneficiary will perform the tasks. That is, the record does not specify which duties are major functions of the proffered position, and the evidence does not establish the frequency with which each of them will be performed (e.g., regularly, periodically or at irregular intervals). As a result, the record does not establish the primary and essential functions of the proffered position.

Further, the responsibilities as described contain general 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 client's business operations. The abstract level of information provided about the proffered position and its constituent duties is exemplified by the claim that the beneficiary will "assist" the Senior Business Analyst, Hyperion Architect's and developer with "client projects." The duty, as stated, does not sufficiently define how this translates to specific duties and responsibilities as the term "assists" does not delineate the actual work the beneficiary will perform and how such work will be conducted and/or applied.

The client also claims that the beneficiary will be responsible for "collaborating with end-users and stakeholders to bring form and clarity to multitude of data sources." The record does not make sufficient reference to the client's specific business operations such that we may ascertain the daily tasks that the beneficiary is expected to perform. Furthter, it does not demonstrate how the performance of this duty would require the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent.

According to the client, the beneficiary will be responsible for "delivering innovative ideas" and "responsible for generating innovative solutions to bridge the gap between business and IT." To the extent that they are described, we find these proposed duties do not provide a sufficient factual basis to persuasively support the claim that the position's actual work would require the theoretical and practical application of any particular educational level of highly specialized knowledge in a specific specialty directly related to the demands of the proffered position.

The client also asserts that the beneficiary will be "responsible for generating accurate data on company performance and project expense." The phrase could cover a range of issues, and without additional information, does not provide insights into the beneficiary's day-to-day work.

The job descriptions in the record of proceeding do not communicate (1) the actual work that the beneficiary would perform on a day-to-day basis; (2) the complexity, uniqueness and/or

specialization of the tasks;[5] and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty or its equivalent. The statements do not convey the complexity of the job duties, the amount of supervision required, and the level of judgment and understanding required to perform the duties. The assertions in the record with regard to the educational requirements for the position are therefore unpersuasive, as they are not supported by the job description or probative evidence.

The 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.

For the reasons discussed, 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.

IV. CONCLUSION AND ORDER

As stated above, the matter will be remanded to the Director for review and issuance of a new decision.[6]

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[5] Moreover, the petitioner designated the proffered position as a Level I (entry) position on the LCA. This designation undermines the petitioner's claim in the record that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*.

Nevertheless, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), an entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty or its equivalent. That is, a position's wage level designation may be a consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

[6] The Director may, of course, address any additional issues that it determines are relevant in the adjudication of the petition.

ORDER: The Director's decision is withdrawn. The matter is remanded to the Director for action consistent with this decision.