



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: FEB 19 2015

OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a 30-employee "IT Consulting" firm established in [REDACTED]. In order to employ the beneficiary in what it designates as a full-time "Sr. Technical Specialist" position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, we have determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

We base our decision upon our review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and the petitioner's submissions on appeal.

II. THE LAW

The issue before us is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics,

physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in

a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

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 companies' job requirements is critical. *See Defensor v. Meissner*, 201 F.3d at 387-388. The court held that the former Immigration and Naturalization Service 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.

III. EVIDENCE

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a "Sr. Technical Specialist" position, and that it corresponds to Standard Occupational Classification (SOC) code and title 15-1121, Computer Systems Analysts, from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level II position.

With the visa petition, the petitioner submitted evidence that the beneficiary received a bachelor's degree in physics, a master's degree in business administration, and a master's degree in computer applications, all from [REDACTED] in India. An evaluation in the record states that the beneficiary's master's degree in computer applications is equivalent to a U.S. master's degree in computer science.

The petitioner also submitted a letter, dated December 26, 2013, from [REDACTED] signing as the petitioner's vice president for business development.¹ It states the following as the duties of the proffered position:

[The beneficiary] will be involved in the design, development and coding of several applications of the [REDACTED] software in Customer Service Management and Sales & Distribution modules. He will perform the business analysis, requirement definition and business process implementation using the [REDACTED]. He will design and develop Interfaces for multiple types of business transactions and integrate them with [REDACTED] system. He will participate in all phases of the product life cycle, including analysis, design, develop, test and documentations, post-production & on-going support. He will analyze high-level business initiatives/objectives, gather business requirements, relate them to system capabilities, define and build/develop end-to-end solutions according to overall IT strategy. He will provide [REDACTED] troubleshooting support, interfacing with customers or vendors and working closely with end users for problem solving. He will develop interactive versions and UBEs from functional specifications following the OMW process of [REDACTED].

As to the educational requirements of the proffered position, Mr. [REDACTED] stated:

The position has a minimum requirement of a Bachelor's Degree in Computer Science, Electronics Engineering, Computer Engineering, Computer Applications, Business Administration, or other related fields of study.

On March 7, 2014, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements.

In response, the petitioner submitted, *inter alia*, (1) copies of vacancy announcements the petitioner placed on its website; (2) copies of the petitioner's 2010, 2011, and 2012 Form 1065, U.S. Returns of Partnership Income; (3) a document entitled, "Internal Project Details, 2013-2014, [REDACTED]"; (4) a description of the [REDACTED] application; (5) a copy of an e-mail, dated November 1, 2011, from [REDACTED] director of [REDACTED] and (6) a letter, dated April 11, 2014, from counsel.

The descriptions of the petitioner's internal projects and the [REDACTED] applications do not reveal the duties the beneficiary would perform if the visa petition were approved. They do indicate

¹ The petitioner submitted another December 26, 2013 letter from Mr. [REDACTED] signing as the petitioner's "Sr. VP, Strategy & Operations."

that the petitioner "is a full-service [REDACTED] service provider," and that it is therefore approved by [REDACTED] for installing, maintaining, and servicing [REDACTED] products. The description of the [REDACTED] application also states:

[REDACTED] is a very advanced batch process scheduling tool developed using standard [REDACTED]. Setup is easy and needs very minimal knowledge to maintain.

In his November 1, 2011 e-mail, [REDACTED] thanked [REDACTED] for a presentation and demonstration of a solution, and outlined steps necessary for [REDACTED] validation of that program.

In his April 11, 2014 letter, counsel did not elaborate on the educational requirements of the proffered position, but stated:

All the [petitioner's] technical positions, including the [proffered position] all [sic] require [REDACTED] technical expertise and skills since the Petitioner is a specialized firm in [REDACTED] technologies. The Beneficiary must possess skill of [REDACTED] Technologies. The beneficiary was recruited by the Petitioner because of his skills and experience in [REDACTED] Technologies.

The director denied the petition on May 3, 2014, finding, that the petitioner is a staffing firm and had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

On appeal, the petitioner submitted (1) additional copies of evidence previously provided; (2) evidence pertinent to an agreement to provide services to Sound Transit, and (3) a brief.

One document pertinent to [REDACTED] is headed, "On-Call Information Technology Support Services Agreement." It is dated March 13, 2014 and was executed by [REDACTED] and a representative of [REDACTED] of which [REDACTED] is apparently a part. That agreement indicates that the petitioner would provide services to [REDACTED] during the term of that agreement, which is one year from the effective date of that contract. That agreement also states, "Total compensation for this agreement will not exceed **\$100,000.00.**"

Another document pertinent to [REDACTED] purports to be a letter, dated March 13, 2014, from a contracts supervisor at [REDACTED] to the attention of [REDACTED] at the petitioner's address. It is headed, "Notice to Proceed." Identifying numbers on that letter and on the services agreement previously discussed indicate that this letter refers to the previously described service agreement. It purports to authorize the petitioner to proceed pursuant to the terms

of the service agreement. It states that its term is one year with four additional one-year options. Handwritten on that letter is the phrase, "Sample of Contract."²

In the appeal brief, counsel did not argue that the petitioner had provided contracts or similar evidence sufficient to show that the petitioner has sufficient work to employ the beneficiary as a systems analyst throughout the period of requested employment.³ Rather, counsel stated, "The Petitioner has experienced a rapid business development in the recent years," and:

In addition, the Petitioner's business development and its business model shows [sic] that the Petitioner has sufficient work for the period of intended employment, which does not depend on a particular customer or customer work order.

Counsel cited the petitioner's tax returns as evidence that the petitioner has sufficient specialty occupation work to which to assign the beneficiary. Counsel also disputed the director's finding that the petitioner is a staffing firm.

IV. ANALYSIS

As a preliminary matter, we observe that [REDACTED] asserted, in his December 26, 2013 letter, that an otherwise unspecified bachelor's degree in business administration would be a sufficient educational qualification for the proffered position. A degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. The assertion that an otherwise unspecified bachelor's degree in business administration would be a sufficient educational qualification for the proffered position is tantamount, therefore, to an admission that the proffered position does not require a minimum of a bachelor's degree in a specific specialty or its equivalent and, therefore, does not qualify as a specialty occupation position. The appeal must be denied and the visa petition dismissed on this basis alone. Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we turn next to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

[REDACTED] December 26, 2013 letter contains a list of duties the beneficiary would purportedly perform. However, as will be explained below, the petitioner has not demonstrated with sufficient documentary evidence that it has either in-house application development projects or work to perform for other companies that would entail the performance of those listed duties and keep the

² Whether that document was meant to be effective or was merely provided with the services agreement, as an example of the form in which [REDACTED] might issue work authorizations, is unclear.

³ The petitioner proposes to employ the beneficiary from December 26, 2013 to December 25, 2016.

beneficiary employed at those specified duties full-time throughout the period of requested employment.

The 2011 e-mail from [REDACTED] suggests that the petitioner developed an in-house project, either before or during 2011, which it presented to [REDACTED]. However, whether the petitioner has continued to develop such projects through the present and, more to the point, will continue to have such projects to develop in the future, throughout the period of requested employment, is not demonstrated by the evidence.

The petitioner's 2010, 2011, and 2012 tax returns are in the record and do, in fact, show that the petitioner's gross receipts have almost doubled in that short span. They do not reveal, however, the type or complexity of the work the petitioner has to which it could assign the beneficiary if the instant visa petition were approved. Those tax returns are insufficient to show that the proffered position is a specialty occupation position.

The evidence pertinent to the petitioner's agreement with [REDACTED] also fails to make clear the type and complexity of the work the petitioner has to which it could assign the beneficiary. Further, the services agreement is dated March 13, 2014. It is not an indication that, when the petitioner filed the instant visa petition on December 31, 2013, it had any work to which it could assign the beneficiary. 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). Evidence that the petitioner acquired work after it filed the visa petition cannot be considered in the determination of whether the visa petition was approvable when it was submitted.

Further still, the term of the agreement between [REDACTED] and the petitioner is one year beginning on March 13, 2014. Although the service agreement in the record indicates that [REDACTED] has the option of renewing that agreement annually, there is insufficient evidence in the record that [REDACTED] has exercised that option. Even if it were evidence of specialty occupation work to which the petitioner could assign the beneficiary, it would not be evidence of work that would continue through to the end of the requested employment, i.e., December 25, 2016.

Other evidence indicates that the petitioner is an [REDACTED] service provider, that is, that it installs, maintains, and services [REDACTED] products with [REDACTED] consent. However, documentation pertinent to the [REDACTED] application states, "Setup is easy and needs very minimal knowledge to maintain." The assertion that the work the petitioner has that pertains to [REDACTED] products would require the performance of the services described in [REDACTED] December 26, 2013 letter is uncorroborated.

As such, the substantive nature of the work the beneficiary would perform if the visa petition were approved has not been established. 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. The appeal must be dismissed and the visa petition denied for this reason.

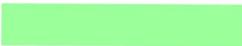
Nevertheless, we continue our analysis of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). This additional analysis will be based on the assumption, made *arguendo*, that the duties attributed to the proffered position in [REDACTED] December 26, 2013 letter are the duties the beneficiary would actually perform if the visa petition were approved, notwithstanding that the evidence in the record is insufficient to support that assumption.

We turn to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors we consider when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* on which we routinely rely for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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)).

We will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁴

The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 15-1121, Computer Systems Analysts, from O*NET. We reviewed the chapter of the *Handbook* entitled "Computer Systems Analysts," including the sections regarding the typical duties and requirements for this occupational category. The *Handbook* states the following with regard to the duties of computer systems analysts:

⁴ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online.



What Computer Systems Analysts Do

Computer systems analysts study an organization's current computer systems and procedures and design information systems solutions to help the organization operate more efficiently and effectively. They bring business and information technology (IT) together by understanding the needs and limitations of both.

Duties

Computer systems analysts typically do the following:

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

Computer systems analysts use a variety of techniques to design computer systems such as data-modeling, which create rules for the computer to follow when presenting data, thereby allowing analysts to make faster decisions. Analysts conduct in-depth tests and analyze information and trends in the data to increase a system's performance and efficiency.

Analysts calculate requirements for how much memory and speed the computer system needs. They prepare flowcharts or other kinds of diagrams for programmers or engineers to use when building the system. Analysts also work with these people to solve problems that arise after the initial system is set up. Most analysts do some programming in the course of their work.

Most computer systems analysts specialize in certain types of computer systems that are specific to the organization they work with. For example, an analyst might work predominantly with financial computer systems or engineering systems.

Because systems analysts work closely with an organization's business leaders, they help the IT team understand how its computer systems can best serve the organization.

In some cases, analysts who supervise the initial installation or upgrade of IT systems from start to finish may be called IT project managers. They monitor a project's progress to ensure that deadlines, standards, and cost targets are met. IT project managers who plan and direct an organization's IT department or IT policies are included in the profile on computer and information systems managers.

Many computer systems analysts are general-purpose analysts who develop new systems or fine-tune existing ones; however, there are some specialized systems analysts. The following are examples of types of computer systems analysts:

Systems designers or **systems architects** specialize in helping organizations choose a specific type of hardware and software system. They translate the long-term business goals of an organization into technical solutions. Analysts develop a plan for the computer systems that will be able to reach those goals. They work with management to ensure that systems and the IT infrastructure are set up to best serve the organization's mission.

Software quality assurance (QA) analysts do in-depth testing of the systems they design. They run tests and diagnose problems in order to make sure that critical requirements are met. QA analysts write reports to management recommending ways to improve the system.

Programmer analysts design and update their system's software and create applications tailored to their organization's needs. They do more coding and debugging than other types of analysts, although they still work extensively with management and business analysts to determine what business needs the applications are meant to address. Other occupations that do programming are computer programmers and software developers.

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-2> (last visited Feb. 18, 2015).

Some of the duties attributed to the proffered position are too abstractly phrased to permit a meaningful analysis of whether they are computer systems analyst duties. For instance, a position in which one is "involved in the design, development and coding of . . . applications" may be, but is not necessarily, a systems analyst position. Systems analysts are certainly involved in the design, development and coding of applications, but so are computer programmers and computer software developers.

Similarly, although systems analysts "participate in . . . analysis, design, develop[ment], test[ing], . . . documentation[], . . . [and] support," so do programmers and developers. Without a more concrete description of the analysis, design, development, coding, testing, documentation, and support duties the beneficiary would perform if the visa petition were approved, we are unable to determine that the proffered position is a systems analyst position, rather than, for instance, a programmer or developer position.

However, for the purpose of continuing the analysis of whether the proffered position qualifies as a specialty occupation position pursuant to any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A), we will assume, again, *arguendo*, that the proffered position has been shown to be a computer systems analyst position.

The *Handbook* states the following about the educational requirements of computer systems analyst positions:

How to Become a Computer Systems Analyst

A bachelor's degree in a computer or information science field is common, although not always a requirement. Some firms hire analysts with business or liberal arts degrees who have skills in information technology or computer programming.

Education

Most computer systems analysts have a bachelor's degree in a computer-related field. Because these analysts also are heavily involved in the business side of a company, it may be helpful to take business courses or major in management information systems.

Some employers prefer applicants who have a master's degree in business administration (MBA) with a concentration in information systems. For more technically complex jobs, a master's degree in computer science may be more appropriate.

Although many computer systems analysts have technical degrees, such a degree is not always a requirement. Many analysts have liberal arts degrees and have gained programming or technical expertise elsewhere.

Many systems analysts continue to take classes throughout their careers so that they can learn about new and innovative technologies and keep their skills competitive. Technological advances come so rapidly in the computer field that continual study is necessary to remain competitive.

Systems analysts must understand the business field they are working in. For example, a hospital may want an analyst with a background or coursework in health management, and an analyst working for a bank may need to understand finance.

Advancement

With experience, systems analysts can advance to project manager and lead a team of analysts. Some can eventually become information technology (IT) directors or chief technology officers. For more information, see the profile on computer and information systems managers.

Important Qualities

Analytical skills. Analysts must interpret complex information from various sources and be able to decide the best way to move forward on a project. They must also be able to figure out how changes may affect the project.

Communication skills. Analysts work as a go-between with management and the IT department and must be able to explain complex issues in a way that both will understand.

Creativity. Because analysts are tasked with finding innovative solutions to computer problems, an ability to "think outside the box" is important.

Id. at <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-4> (last visited Feb. 18, 2015).

The *Handbook* makes clear that computer systems analyst positions do not, as a category, require a minimum of a bachelor's degree or the equivalent, as it indicates that many systems analysts have a liberal arts degree and programming knowledge, rather than a degree in a specific specialty directly related to systems analysis.

Where, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies this criterion by a preponderance of the evidence standard, notwithstanding the absence of the *Handbook's* support on the issue. In such a case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. 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." Again, 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. at 165. In this case, the

Handbook does not support the proposition that the proffered position satisfies 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), and the record of proceeding does not contain persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in this occupational category would be sufficient in itself to establish that a bachelor's or higher degree in a specific specialty or its equivalent "is normally the minimum requirement for entry into [this] particular position."

Further, we find that, even assuming that the duties of the proffered position have been accurately described, to the extent that they are described in the record of proceeding, they indicate a need for a range of knowledge in the computer/IT field, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree in a specific specialty, or the equivalent, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we find that the petitioner has not satisfied 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 for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

In determining whether there is 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions. Thus, 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 to positions that are (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner, and does not satisfy the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The evidence of record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties that comprise the proffered position, even if they were accurately described in the December 26, 2013 letter from [REDACTED], entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties that collectively constitute the proffered position require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While related courses may be beneficial, or even required, in performing certain duties of the proffered 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 particular position here.

Finally, as was noted above, the petitioner has designated the proffered position as a Level II position on the LCA, indicating that it is a position for an employee who performs 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. Even if the proffered position had been demonstrated to be a computer systems analyst position, in order to attempt to show that parallel positions require a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged to demonstrate that other Level II systems analyst positions, positions performing moderately complex tasks that require limited judgment, require a minimum of a bachelor's degree in a specific specialty or its equivalent, the proposition of which is not supported by the *Handbook* or by any other authority.

Therefore, even if the proffered position is assumed to be a computer systems analyst position, the evidence of record does not establish that this position is significantly different from other systems analyst positions such that it refutes the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for such positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the systems analyst occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.⁵

The petitioner provided copies of vacancy announcements it has placed for various positions, including positions the petitioner designates as Technical Lead, Senior Programmer Analyst, and Software Engineer positions. None are for positions the petitioner designates as "Sr. Technical Specialist," as it designates the proffered position. Further, none has a duty description sufficient to designate that it is a position similar to the proffered position. As such, the evidence does not show that the educational requirements of those positions are relevant to the issue of the educational requirements the petitioner places on the proffered position. Further, the record contains insufficient evidence pertinent to anyone the petitioner has previously hired to fill a Senior Technical Specialist position. The petitioner has not, therefore, provided any evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, we will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position, such as being involved in the design, development and coding of applications; performing business analysis, requirement definition and business process implementation; designing and developing interfaces; participating in analysis, design, development, testing, documentation, and support; analyzing business initiatives and objectives; gathering business requirements and relating them to system capabilities; defining, developing, and building IT solutions; providing troubleshooting support; working closely with customers, vendors, and end-users; and developing interactive versions and UBEs from functional specifications contain insufficient indication of a nature so specialized and complex they require knowledge usually associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent.

⁵ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

In other words, even assuming that the duties described demonstrate the proffered position to be a systems analyst position, they have not been described with sufficient specificity to show that they are more specialized and complex than the duties of systems analyst positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.⁶ The evidence of record does not, therefore, satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

V. CONCLUSION

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

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

⁶ The petitioner contends on appeal that the proffered position qualifies as a specialty occupation on the basis that its duties are so specialized and complex. However, the duties as described lack sufficient specificity to distinguish the proffered position from other positions for which a bachelor's or higher degree in a specific specialty, or its equivalent, is not required to perform their duties.

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