

(b)(6)

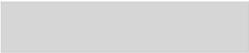
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
Administrative Appeals Office  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

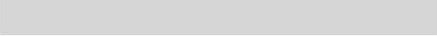


U.S. Citizenship  
and Immigration  
Services



DATE: **JUL 28 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.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

## I. PROCEDURAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a 30-employee "IT Services delivery firm" established in [REDACTED]. In order to employ the beneficiary in a position it designates as a "Programmer 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 determining that the evidence of record did not establish that the petitioner had specialty occupation work available for the beneficiary for the entire requested H-1B validity period; thus, the record did not establish that the job offered qualifies as a specialty occupation.

The record of proceeding includes: (1) the Form I-129 and supporting documentation; (2) the service center's RFE; (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Notice of Appeal or Motion (Form I-290B), the petitioner's brief and additional documentation.

Upon review of the totality of the evidence, we find that the evidence of record does not overcome the Director's grounds for denying this petition.<sup>1</sup> Accordingly, the appeal will be dismissed, and the petition will be denied.

## II. THE PROFFERED POSITION

The petitioner identified the proffered position as a "Programmer Analyst" on the Form I-129, and indicated the beneficiary would work off-site. The petitioner attested on the required Labor Condition Application (LCA) that the occupational classification for the position is "Computer Programmers," SOC (ONET/OES) Code 15-1131, at a Level III (experienced) wage.<sup>2</sup> The LCA was certified on March 25, 2014, for a validity period from September 1, 2014 to December 31,

---

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

Also, in light of the petitioner's references to the requirement that U.S. Citizenship and Immigration Services (USCIS) apply the "preponderance of the evidence" standard, we affirm that, in the exercise of our appellate review in this matter, as in all matters that come within our purview, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010).

<sup>2</sup> 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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

2016. The LCA identified the beneficiary's employment location as [REDACTED] New York, the petitioner's office location, and no other.

In a letter, dated March 24, 2014, the petitioner stated that the proffered position is a "Programmer Analyst with the responsibilities of an SAP Technical Developer." The petitioner noted that it "develops custom software solutions as specified by the customers and renders IT services" and that it is seeking "to hire the beneficiary to support various SAP implementations and projects in the capacity of a SAP Technical Developer" at its office location. The petitioner described the beneficiary's duties for the proffered position as:

- While reporting to a team lead, provide technical and functional support services to the enterprise software solutions using SAP packaged software.
- Work with different business unit teams to gather functional and operational requirements and prepare technical and functional specifications and configuration documents.
- Document the enhancements, customizations, and configuration changes in the enterprise SAP packaged software and review the changes with the stakeholders.
- Customize and upgrade existing business processes in the SAP system.
- Develop custom Web forms, Smart Forms, and Adobe Forms using SAP programming skills such as ABAP, OOABAP, WebDynpros, ALE, RFC, BAdi, BAPI, IDoc, CRM WebUI, GENIL, BSP, BDC, and Interaction Center.
- Migrate and deploy custom SAP applications to different test and production environments.
- Monitor different test and production systems for high availability and provide on call support services to the SAP enterprise support teams.
- Work with other functional team members and functional leads to reconcile batch transactions including accounts payables, accounts receivables, sales, distribution, invoices.
- Monitor the different nightly SAP batch processes and ensure successful completion of master data, client master, customer master, and interaction center updates.
- Participate in team meetings to review the daily production issues with the technical support team and delegate them as needed to the functional business users.
- Document Systems and User Acceptance test cases, test plans, and test strategies to test the new deployments through different test cycles.
- Execute user acceptance and functional test cases at different levels of the application development lifecycle and document the test results.
- Work with different project teams to perform user acceptance testing and review the test results with technical teams to formally signoff on code migration to production.
- Work as part of 24x7 on-call support team to service the different finance business functions and batch processes in production.

- Provide instant solutions to different functional process issues in production and document the solutions in the case management tool.

The petitioner identified the educational requirements for the proffered position as follows:

The minimum requirement for entry into the Programmer Analyst, SAP Technical Developer position with [the petitioner] is attainment of a Bachelor's degree in Business Administration, Computer Science, Engineering or related plus at least two years of relevant work experience.

### III. SPECIALTY OCCUPATION

The principle issue in this matter is whether the proffered position qualifies as a specialty occupation.

#### A. Legal Framework

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 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), 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.

### B. Analysis

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. 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 first that the record in this matter does not include sufficient evidence that the petitioner has work that would engage the beneficiary for the duration of the petitioner's requested employment period.<sup>3</sup> The petitioner references some of its customers and projects initially and updates this list in response to the service center's RFE. However, the petitioner does not submit

---

<sup>3</sup> We also note that the petitioner does not explain why it attested on the Form I-129 that the beneficiary would work offsite and attested on the LCA that the beneficiary would work only at its office location. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

the underlying agreements documenting its relationship, and any limitations, expectations, and restrictions on its relationship with these companies. For example, the SOW supplied by the petitioner, indicates that it is subject to the agreement referenced or if no specific agreement is referenced, the applicable [REDACTED] purchase order. Neither an agreement nor purchase order is included in the record. Thus, we are unable to ascertain all the terms and conditions of the petitioner's relationship with [REDACTED], or any of its other customers. Moreover, even if considering the [REDACTED] SOW to demonstrate that the petitioner has work for the beneficiary, we find: (1) the SOW allows [REDACTED] to immediately terminate the agreement if any listed individual (referring to the types of key personnel required) ceases employment with the petitioner or ceases performance of services under the SOW; and (2) that [REDACTED] does not require the petitioner's contractors/consultants to possess a bachelor's degree in a specific specialty.

The petitioner on appeal submits a letter on [REDACTED] letterhead, dated November 20, 2014, wherein [REDACTED] confirms that [REDACTED] awarded a contract to the petitioner "to develop the CMS solution" and asserts that [REDACTED] "expect[s] to retain the services of the petitioner for the duration of the program through at least until December 31, 2017, with possible extensions." [REDACTED] adds that the current phase of the CMS program to which the petitioner's consultant is being assigned is expected to be complete by June 30, 2015, and upon completion of this phase the petitioner is expected to work on integration until the end of 2016, and then continue to provide technical support services. The letter does not identify [REDACTED] particular position, authority, or place in the official hierarchy at [REDACTED]. Additionally, [REDACTED] references work for the petitioner's consultant only lasting until June 30, 2015. Again, even if [REDACTED] authority to speak on behalf of [REDACTED] had been established, which it has not, the petitioner does not include the underlying documents creating its relationship with [REDACTED] including any restrictions or limitations on the continued validity of the petitioner's agreement. 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)). Of more significance, neither the SOW submitted nor [REDACTED] letter includes any requirement that the beneficiary possess a bachelor's degree in a specific specialty, or its equivalent, to perform the deliverables it outlines.

Upon review, the record does not include sufficient probative evidence describing particular projects or work that would require the services of the beneficiary for the duration of the requested employment period. 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 general nature of the work described in the submitted position descriptions. Again, without supporting documentary evidence, the petitioner has not met its burden of proof. *Id.* Additionally, the only information in the record regarding the customer's requirements for the position do not identify a bachelor's degree in a specific specialty, or its equivalent, as necessary to perform the services set out in the SOW. Rather, the customer identifies only basic technological skills as the requirements necessary to perform the tasks set out in the SOW. Thus, the position that the petitioner anticipates that it will place the beneficiary in, for even a limited amount of time, does not require a bachelor's degree in a

specific specialty, or its equivalent, according to the customer. As the record in this matter is insufficient to substantiate that the petitioner has specialty occupation work for the beneficiary for the duration of the requested period, we cannot conclude that the petitioner has overcome the Director's decision on this issue.

The material deficiencies in the record as set out above require the dismissal of this appeal. However, assuming for the sake of argument that the proffered position is a computer programmer position as the petitioner claimed in the LCA, we will continue our analysis pursuant to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).<sup>4</sup>

*A baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position*

We will first address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). This criterion 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. We recognize the Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>5</sup>

The petitioner attests on the LCA that the duties of the proffered position fall within the parameters of the occupational category of computer programmers. We have reviewed the *Handbook's* chapter on the occupation of "Computer Programmers" and more specifically, the *Handbook's* report on "How to Become a Computer Programmer." While the *Handbook* reports that "most computer programmers have a bachelor's degree in computer science or a related subject;" it also reports that "some employers hire workers with an associate's degree."<sup>6</sup>

Thus, the *Handbook* does not support the claim that the occupational category of computer programmer is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent. Even if it did, the record lacks sufficient evidence to support a finding that the particular position proffered here would normally have such a minimum, specialty degree requirement or its equivalent.

---

<sup>4</sup> To the extent that the Director found that a programmer analyst position categorically is a specialty occupation, we withdraw the Director's conclusion based on the analysis in this decision.

<sup>5</sup> All of the references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>. The excerpt of the *Handbook* regarding the duties and requirements of the referenced occupational category is hereby incorporated into the record of proceeding.

<sup>6</sup> U.S. Dept't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Computer Programmers, <http://www.bls.gov/ooh/computer-and-information-technology/computer-programmers.htm#tab-4> (last visited June 25, 2015).

Moreover, the petitioner indicates in its March 24, 2014 letter that its minimum requirement for entry into the proffered position is the attainment of a bachelor's degree in business administration, computer science, or engineering.<sup>7</sup> The petitioner's claimed entry requirement of a variety of degrees does not denote a requirement in a specific specialty. Furthermore, the acceptance of a bachelor's degree in business administration 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 with a generalized title, such as business administration, 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).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, 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 bachelor's degree, such as a degree in business administration, 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). Without more, the petitioner's assertion alone indicates that the proffered position is not in fact a specialty occupation.

The duties and requirements of the position as described in the record of proceeding do not indicate that this particular position proffered by the petitioner is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

*The requirement of a baccalaureate or higher degree in a specific specialty,  
or its equivalent, is common to the industry in parallel  
positions among similar organizations*

Next, we will review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common 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.

---

<sup>7</sup> On appeal, the petitioner's director, in an unsworn declaration, revises the petitioner's requirements to perform the duties of the proffered position when stating "it is imperative that the applicant has a Bachelor's degree in Computer Science, Engineering, or a directly related field or the equivalent." However, the petitioner does not provide a basis for this revision. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

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)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative source) reports an industry-wide requirement for 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 association indicating that it has made a degree a minimum entry requirement. Furthermore, the petitioner did not submit any letters or affidavits from similar firms or individuals in the petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals."

The record in this matter does not include probative evidence establishing an industry standard for companies similar to the petitioner for positions parallel to the proffered position. The petitioner has not satisfied the first alternate prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

*The particular position is so complex or unique that it can be performed only by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent*

A review of the record of proceeding indicates that the petitioner has not credibly demonstrated that 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. Even when considering the petitioner's general description of duties, the petitioner has not established why a few related courses or industry experience alone is insufficient preparation for the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the position, the petitioner has not demonstrated 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. Rather, the duties as described appear to incorporate tasks that can be performed by any individual with experience and/or the appropriate certifications in SAP functionality. 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.

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that some such positions may require only an associate's degree or experience and the

petitioner's acknowledgment that a degree of general application is acceptable for such positions. 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 evidence of record does not demonstrate how the proffered position is so complex or unique relative to other positions within the same 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).

*The employer normally requires a baccalaureate or higher degree in a specific specialty, or its equivalent, for the position*

The petitioner has included information for the record to demonstrate it has employees who perform the duties of a SAP Functional Analyst or a SAP Technical Developer, among other occupations. However, the record does not include evidence of the specific duties these individuals provide to the petitioner or to its clients. Additionally, the record does not include evidence that these individuals have bachelor's degrees in a specific discipline directly related to those duties.<sup>8</sup>

Furthermore, 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. While a petitioner may assert that a proffered position requires a degree or even a degree in a specific specialty, such statements 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 the 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* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). Here, the evidence of record does not establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on the petitioner's normal hiring practices.

---

<sup>8</sup> While the petitioner's list of employees identifies some individuals that have been approved for H-1B classification, the record does not include the records underlying those approvals.

*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 in a specific specialty, or its equivalent*

The petitioner in this matter has not submitted a job description that persuasively supports 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. The petitioner has not demonstrated how the SAP Technical Developer would engage in specialized and complex duties that require the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent.

In the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. Based upon a complete review of the record of proceeding, we conclude that the evidence does not establish that the position, as described, more likely than not constitutes a specialty occupation. The petitioner has not described the duties of the position in such a way that establishes that the duties require more than the technical expertise of an individual trained and certified in SAP methodology. Although the petitioner may desire a candidate that has a bachelor's degree, the petitioner does not explain in detail how or why the duties are so complex or specialized that they require a bachelor's degree in a specific specialty, or its equivalent. The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Accordingly, as the evidence does not satisfy any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation.

#### IV. CONCLUSION

As set forth above, we find that the evidence of record does not establish that the proffered position qualifies for classification as a specialty occupation. Accordingly, the petition will be denied. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *see e.g., Matter of Otiende*, 26 I&N Dec. at 128. Here, that burden has not been met.<sup>9</sup>

**ORDER:** The appeal is dismissed.

---

<sup>9</sup> As the identified grounds of ineligibility are dispositive of the petitioner's appeal, we need not address the additional issues in the record of proceeding that also preclude approval of the petition.