



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF M-S-, INC.

DATE: FEB. 8, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, an information technology services firm, seeks to employ the Beneficiary as a “Systems Administrator” under the H-1B nonimmigrant classification. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The Director, California Service Center, denied the petition. The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal.

I. ISSUES

The issues before us are whether (1) the proffered position qualifies as a specialty occupation; and (2) the Labor Condition Application (LCA) corresponds to the visa petition.

II. SPECIALTY OCCUPATION

We will first address the specialty occupation basis for the Director’s decision of denial.

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. Fed. 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

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*Matter of M-S-, Inc.*

individuals 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 individual, 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 or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

#### B. The Proffered Position

The Petitioner claims in the LCA submitted to support the visa petition that the proffered position corresponds to Standard Occupational Classification (SOC) code and title 15-1142, Network and Computer Systems Administrators, from the Occupational Information Network (O\*NET).<sup>1</sup>

In a letter dated October 23, 2014, the Petitioner stated that the Beneficiary would be working on an in-house project and provided the following description of the duties to be performed by him:

[The Beneficiary's] job duties will include Working through all phases of the software development life cycle, including analysis, design, implementation, testing. Analyze and address reported defects in a timely manner, solutions to these problems could include code changes, data updates, or configuration modifications[.] The following will be the breakdown of [the Beneficiary's] work in percentages:

System Analysis	20%
System Design	20%
System Administration	40%

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<sup>1</sup> The Form I-129 indicates that the petition was filed for "New Employment" and that the Beneficiary does not currently reside in the United States. However, in the appeal brief, the Petitioner refers to the instant visa petition as an "extension petition" and indicates that the Petitioner is currently employing the Beneficiary in H-1B employment. In that letter, the Petitioner stated (verbatim), "[A]s the record states, Petition currently is directly supervising the Beneficiary working on a day-to-day basis for the in-house [REDACTED] & is being directly supervised by the Petitioner." As USCIS records contain no indication that the Beneficiary has ever been approved for employment with the Petitioner, we assume that the statements pertinent to the Petitioner's current employment of the Beneficiary pertain to a different beneficiary and were included in the appeal brief in error.

Quality Assurance	10%
Implementation and Documentation	10%

As to the educational requirements of the proffered position, that letter states that it requires, “at least a Bachelor’s degree in Computer Science, or a closely related field.”

In a letter dated November 4, 2014, the Petitioner provided the following description of the duties of the proffered position:

In the position of Systems Administrator, [the Beneficiary] will be responsible for developing and programming software systems using various hardware and operating systems. This will include converting symbolic statements of scientific, engineering, and other technical problem formulations and administrative data to detailed logical flow charts for coding into computer language. He will develop and write computer programs to store, locate, and retrieve specific documents, data, and information, in addition to developing or modifying restart procedures and writing macros and sub-routines to be used by other programming personnel.

Using his knowledge of software development, program construction, distributed processing and familiarity of debugging tools, he will assist in analyzing business procedures and problems to redefine data and convert them into programmable forms of EDP, along with planning and preparing technical reports, memoranda, and instructional manuals to document program development.

[The Beneficiary] will be responsible for the development and maintenance of required system documentation, reports, system tables, and process flows within assigned areas of primary responsibility and serve as a support/backup resource for other areas as assigned within specified departments.

[The Beneficiary] may also be called upon to handle the following duties:

- Developing and programming computer software applications using various software and interface with the technical staff in the complex programming needs and document modification concerning the systems software; - 30%
- Responsible for improvements in software computer utilization and determine necessity for modifications; - 10%
- Reviewing software programs for compliance with company standards and requirements and assisting in identifying deficiencies of computer runs and perform specialized programming assignments; - 5%
- Developing and enhancing the software systems for wider applications and customize it for specific requirements; - 5%

- Using RDBMS to log system change orders and analyze, develop and implement new applications with GUI and analyze software requirements to determine feasibility of design with time and cost constraints; - 15%
- Identifying deficiencies, troubleshooting problems and supporting user needs with professional knowledge for test planning, defect tracing and provide assistance in use of RDBMS; - 10%
- Analysis and Design of system which includes Preparation of Process Flow Diagrams, Entity Relationship Diagrams, File design, Program Specification and Design Document; - 10%
- Database and application analysis/design and logical and physical database; - 5%
- Interacting with other technical staff in researching and interpreting technical data; - 5%
- Assisting as part of team to resolve technical problems requiring good judgement and creativity in developing solutions.- 5%

As to the educational requirements of the position, the Petitioner stated that it requires: “either a Bachelor’s or a Master’s degree in Computer Science, Information Systems, Management Information Systems, Electrical/Electronics Engineering, Physics, or a closely related field . . . .”

In a letter dated February 25, 2015, the Petitioner provided the following list of the duties of the proffered position:

[The Beneficiary’s] job duties will include Working through all phases of the software development life cycle, including analysis, design, implementation, testing. Analyze and address reported defects in a timely manner, solutions to these problems could include code changes, data updates, or configuration modifications[.]

The following will be the breakdown of [the Beneficiary’[s] work in percentages:

System Analysis	20%
VM/Infrastructure	50%
Quality Assurance	20%
Implementation and Documentation	10%

As to the educational requirements of the proffered position, that letter states that the Petitioner’s requirements “includes at least a Bachelor’s degree in Computer Science, or a closely related field.”

### C. Analysis

*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 discuss the record of proceedings in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

As was noted above, the Petitioner claims in the LCA that the proffered position corresponds to SOC code and title 15-1142, Network and Computer Systems Administrators, from O\*NET. The LCA further states that the proffered position is a wage Level I, entry-level, position.

We recognize the U.S. 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>2</sup> The *Handbook* states the following with regard to the duties of Network and Computer Systems Administrators:

#### **What Network and Computer Systems Administrators Do**

Computer networks are critical parts of almost every organization. Network and computer systems administrators are responsible for the day-to-day operation of these networks. They organize, install, and support an organization's computer systems, including local area networks (LANs), wide area networks (WANs), network segments, intranets, and other data communication systems.

#### **Duties**

Network and computer systems administrators typically do the following:

- Determine an organization's network and computer system needs before setting one up
- Install all network hardware and software and make needed upgrades and repairs
- Maintain network and computer system security and ensure that all systems are operating correctly
- Collect data in order to evaluate and optimize network or system performance
- Add users to a network and assign and update security permissions on the network

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<sup>2</sup> 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 2016 -- 2017 edition available online.

- Train users in the proper use of hardware and software
- Interpret and solve problems when a user or an automated monitoring system alerts them that one exists

Administrators manage an organization's servers and desktop and mobile equipment. They ensure that email and data storage networks work properly. They also make sure that employees' workstations are working efficiently and stay connected to the central computer network. Some administrators manage telecommunication networks.

In some cases, administrators help network architects design and analyze network models. They also participate in decisions about buying future hardware or software to upgrade their organization's network. Some administrators provide technical support to computer users, and they also may supervise computer support specialists who help solve users' problems.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Network and Computer Systems Administrators," <http://www.bls.gov/ooh/computer-and-information-technology/network-and-computer-systems-administrators.htm#tab-2> (last visited Feb. 3, 2016).

The duty descriptions the Petitioner provided do not correspond to the *Handbook* description of the duties of network and computer systems administrators. They contain insufficient indication that the Beneficiary would determine network and system needs; set up networks and systems; install, maintain, and upgrade hardware and software; add and train users; etc. We find that the proffered position is not a network and systems administrator position as described in the *Handbook*.<sup>3</sup>

However, the *Handbook* describes the duties of systems analysts as follows:

### **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.

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<sup>3</sup> Even if the proffered position were established as being that of a network and computer systems administrator, a review of the *Handbook* does not indicate that, as a category, such a position qualifies as a specialty occupation in that the *Handbook* does not state a normal minimum requirement of a U.S. bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation. That is, the Petitioner designated the proffered position as a wage Level I, entry-level Network and Systems Administrator position, and the *Handbook* indicates that workers with only a postsecondary certificate, rather than a minimum of a bachelor's degree in a specific specialty or its equivalent, may fill lower-level network and systems administrator positions. Thus, the *Handbook* is not probative evidence of the occupational category "network and systems administrators" being a specialty occupation.

## **Duties**

Computer systems analysts typically do the following:

- Consult with managers to determine the role of IT systems 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 IT systems and computing infrastructure upgrades are financially worthwhile
- Devise ways to add new functionality to existing computer systems
- Design and implement 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 systems' end users and write instruction manuals

Computer systems analysts use a variety of techniques such as data modeling to design computer systems. Data modeling allows analysts to view the processes and data flows even before programs have been written.

Once programs have been written, 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 computer systems.

Systems analysts help other IT team members understand how computer systems can best serve an organization by working closely with the organization's business leaders.

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 specific types of hardware and software systems. 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 and diagnose problems of the systems they design in order to make sure that critical requirements are met. They also write reports to management recommending ways to improve the systems.

**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*, 2016-17 ed., "Computer Systems Analysts," <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-4> (last visited Feb. 3, 2016).

The various duties the Petitioner attributes to the proffered position conform closely to the duties of a computer systems analyst. That is, the Beneficiary's duties with respect to software development would include "analysis, design, implementation, [and] testing." Even more specifically, as the duties described include programming, testing, and debugging, the duties appear to include the duties of a programmer analyst and a system QA analyst, both of which positions are described in the *Handbook* chapter pertinent to computer systems analysts. On the balance, we find that the proffered position is a computer systems analyst position as described in the *Handbook*.

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

## **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.

*Id.* at <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-4> (last visited Feb. 3, 2016).

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.

When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the Petitioner to provide persuasive evidence that the proffered position more likely than not satisfies this or one of the other three criteria, notwithstanding the absence of the *Handbook*'s support on the issue. In such cases, it is the Petitioner's responsibility to provide probative evidence (e.g., documentation from other objective, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation. However, we note that the Petitioner has not cited any objective, authoritative source.

Further, we find that, to the extent that they are described in the record of proceedings, the numerous duties that the Petitioner ascribes to the proffered position 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.

The *Handbook* does not support the claim that the occupational category of computer systems analysts 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. The duties and requirements of the position as described in the record of proceedings 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 of proceedings with regard to 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: (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 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."

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 parallel positions with organizations that are in the Petitioner's industry and otherwise similar to the Petitioner. The Petitioner has not, therefore, satisfied the criterion of the first alternative 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*

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 of proceedings 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 descriptions of the proffered position’s duties, the evidence of record does not establish 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. 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 there is a spectrum of degrees acceptable for such positions, including degrees not in a specific specialty. As the Petitioner did 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 third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor’s degree in a specific specialty, or its equivalent, for the position. To this end, we usually review a petitioner’s past recruiting and hiring practices, as well as information regarding employees who previously held the position.

In its October 23, 2014, and February 25, 2015, letters the Petitioner asserted that it requires a bachelor’s degree in computer science or a closely related field for the proffered position. In its November 4, 2014, letter, the Petitioner asserted that it believes that the proffered position requires a

minimum of a bachelor's degree in computer science, information systems, management information systems, electrical/electronics engineering, physics, or a closely related field.

While a petitioner may believe or otherwise assert that a proffered position requires a specific 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 petitioner 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 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if 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").

Although the Petitioner stated that it was established in 2003 and has 12 employees, it provided insufficient evidence to show that it has ever employed anyone in the proffered position. While a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) requires a demonstration that the Petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position. It is unclear how an employer could satisfy the criterion without providing evidence of people it has previously employed in the proffered position. We cannot conclude that the Petitioner has satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

*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 fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

We reviewed the Petitioner's statements regarding the proffered position; however, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. For these reasons, the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation.

### III. NON-CORRESPONDING LCA

The remaining basis for the decision of denial is the Director's finding that the LCA submitted has not been demonstrated to correspond to the proffered position.

#### A. Legal Framework

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) stipulates the following:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

While the U.S. Department of Labor (DOL) is the agency that certifies LCAs before they are submitted to USCIS, the DOL regulations note that it is within the discretion of the U.S. Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) to determine whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part:

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification. . . .*

[Italics added]

#### B. Analysis

The LCA was submitted for a Network and Computer Systems Administrator position. For the reasons explained in detail above, we have found the proffered position to be a Computer Systems Analyst position. We therefore find that the Petitioner has not demonstrated that the LCA submitted corresponds to the visa petition. The appeal will be dismissed for this additional reason.

#### IV. CONCLUSION

When we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of the enumerated grounds. *See Spencer Enters., Inc. v. United States*, 229 F. Supp. 2d at 1037; *see also BDPCS, Inc. v. FCC*, 351 F.3d 1177, 1183 (D.C. Cir. 2003) (“When an agency offers multiple grounds for a decision, we will affirm the agency so long as any one of the grounds is valid, unless it is demonstrated that the agency would not have acted on that basis if the alternative grounds were unavailable.”).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the Petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013) (citing *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966)). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of M-S-, Inc.*, ID# 15626 (AAO Feb. 8, 2016)