



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

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

MATTER OF K-M-, INC.

DATE: SEPT. 14, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an information technology firm, seeks to temporarily employ the Beneficiary as a “computer systems analyst” under the H-1B nonimmigrant classification for specialty occupations. See Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director, California Service Center, denied the petition. The Director concluded that the Petitioner had not demonstrated that the Beneficiary is qualified to work in the proffered position.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the evidence submitted satisfies all evidentiary considerations.

Upon *de novo* review, we will dismiss the appeal.

I. SPECIALTY OCCUPATION

Although the Director stated that the only issue is whether the Beneficiary is qualified to work in the proffered position, and denied the visa petition based solely on that issue, the Director also discussed, at length, the issue of whether the proffered position qualifies for treatment as a specialty occupation. We will also discuss that issue.

A beneficiary’s credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. U.S. Citizenship and Immigration Services (USCIS) is required to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether an alien beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. Cf. *Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm’r 1988) (“The facts of a beneficiary’s background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].”). Therefore, the preliminary issue is whether the evidence in the record of proceedings has demonstrated by a preponderance of the evidence that the Petitioner will employ the Beneficiary

in a specialty occupation position.¹ In the instant case, the record of proceedings does not establish that the proffered position qualifies as a specialty occupation.

A. The Law

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) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

- (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.

8 C.F.R. § 214.2(h)(4)(iii)(A). USCIS has consistently interpreted 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 proposed 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”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

¹ The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant’s claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r 1989)).

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B. The Proffered Position

With the H-1B petition, the Petitioner submitted the following list of duties:

- Write programs in a variety of computer languages using ASP.Net, CSharp, Visual C#, Java, J2EE, and WebMethods
- Update and expand existing programs using ASP.Net, CSharp, Visual C# , Java and WebMethods
- Debug programs by testing for and fixing errors
- Build and use computer-assisted software engineering (CASE) tools to automate the writing of some code
- Use code libraries, which are collections of independent lines of code, to simplify the writing
- Design and develop code for applications provided through the Internet in order to work on different systems platforms such as LINUX, Windows or OS X applications.

The Petitioner also stated, “Minimum requirements for this professional position are at least a Bachelor’s degree in Engineering or a related field or its equivalent and relevant work experience.”²

C. Analysis

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.³ Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.⁴

1. First Criterion

We turn first 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. To inform this inquiry, we recognize the U.S. Department of Labor’s

² In a subsequent submission, the Petitioner stated that the proffered position requires a minimum of a bachelor’s degree in computer science or a related field. However, in that submission, the Petitioner asserted that the Beneficiary has a bachelor’s degree in Technology and Information Technology from the [REDACTED] and a master’s degree in computer science from [REDACTED] in India. As the Beneficiary does not have those degrees, we believe that the inclusion of those degrees and associated degree requirement were included inadvertently. Therefore, we will not consider those requirements.

³ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

⁴ The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

(DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁵

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category “Computer Systems Analysts” corresponding to the Standard Occupational Classification code 15-1121.⁶

We reviewed the chapter entitled “Computer Systems Analysts,” including the section regarding the typical duties for this occupational category. The *Handbook* states the following with regard to the duties of computer systems analyst positions:

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

⁵ All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

⁶ The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). We will consider this selection in our analysis of the position. The “Prevailing Wage Determination Policy Guidance” issued by the DOL provides a description of the wage levels. A Level I wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. This wage rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that he will be closely supervised and his work closely monitored and reviewed for accuracy; and (3) that he will receive specific instructions on required tasks and expected results. U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdatcenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf. A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner’s job opportunity. *Id.*

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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-2> (last visited Sep. 9, 2016).

The duties of the proffered position, as described by the Petitioner, do not appear to align with the *Handbook's* description of the typical duties of a systems analyst. The *Handbook* states that systems analysts consult with a company's management to ascertain what it needs from its computer system and they then either adapt that company's current system or design and implement a new system. The duties of the proffered position, however, center around writing, updating, expanding, and debugging computer codes.

The *Handbook* describes the duties of computer programmers as follows:

Computer programmers typically do the following:

- Write programs in a variety of computer languages, such as C++ and Java
- Update and expand existing programs
- Test programs for errors and fix the faulty lines of computer code responsible
- Create and test code in an integrated development environment (IDE)
- Use code libraries, which are collections of independent lines of code, to simplify the writing

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Computer Programmers," <http://www.bls.gov/ooh/computer-and-information-technology/computer-programmers.htm#tab-2> (last visited Sept. 9, 2016).

The duties the Petitioner attributes to the proffered position, writing, updating, expanding, testing, and debugging computer codes, are consistent with the duties of a computer programmer as described in the *Handbook*. On the balance, we find that the position proffered would more accurately be placed within the "Computer Programmers" occupational category.

As to the education required by computer programmer positions, the *Handbook* states:

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

Id. at <http://www.bls.gov/ooh/computer-and-information-technology/computer-programmers.htm#tab-4> (last visited Sept. 9, 2016).

According to the *Handbook*, the occupation accommodates a wide spectrum of educational credentials, including less than a bachelor's degree in a specific specialty. For example, the *Handbook* states that some employers hire workers who have an associate's degree. Furthermore, while the *Handbook's* narrative indicates that most computer programmers obtain a degree (either a bachelor's degree or an associate's degree) in computer science or a related field, the *Handbook* does not report that a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. Moreover, the *Handbook* also reports that employers value computer programmers who possess experience, which can be obtained through internships.

However, had we agreed with the Petitioner that the proffered position is a computer systems analyst position, this also would not have demonstrated that it is a specialty occupation position pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). The section of the *Handbook* describing "Computer Systems Analysts" begins by stating that a bachelor's degree in a related field is not a requirement. The *Handbook* continues by stating that there is a wide-range of degrees that are acceptable for positions in this occupation, including general-purpose degrees such as business and liberal arts. While the *Handbook* indicates that a bachelor's degree in a computer or information science field is common, it does not report that such a degree is normally a minimum requirement for entry. "Computer Systems Analysts," <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-4> (last visited Sept. 9, 2016).

According to the *Handbook*, many systems analysts have liberal arts degrees and have gained programming or technical expertise elsewhere. It further reports that many analysts have technical degrees. We observe that the *Handbook* does not specify a degree level (e.g., associate's degree, baccalaureate) for these technical degrees. Moreover, it specifically states that such a degree is not always a requirement. Thus, the *Handbook* does not support the claim that the computer systems analyst occupational category 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, an entry-level computer systems analyst position, would normally have such a minimum, specialty degree requirement or its equivalent.

For all of these reasons, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

2. Second Criterion

The second criterion presents two, alternative prongs: "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[.]" 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong casts its gaze upon the common industry practice, while the alternative prong narrows its focus to the Petitioner's specific position.

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a. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the “degree requirement” (i.e., a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

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.

The Petitioner did provide two letters from companies purporting to conduct business in the Petitioner’s industry. One is from [REDACTED] which is in Florida, and the other is from [REDACTED] which is in Illinois. The letters are largely identical. Both recite the duty description provided by the Petitioner and state, “A Bachelor’s degree in Computer Science or related, Information Technology, ore [sic]⁷ related, Electrical Engineering or a related field is required to perform the duties of a Computer Systems Analyst.”

Other than repeating the Petitioner’s duty description, these letters do not evince much knowledge of the Petitioner’s business operations or how the duties of the position would actually be performed in the context of the Petitioner’s business enterprise. For instance, there is no evidence that the writers visited the Petitioner’s business, observed the Petitioner’s employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job.

These letters assert a general industry educational standard for computer systems analysts without referencing any supporting authority or any empirical basis for the pronouncement. They do not relate their conclusion to specific, concrete aspects of the Petitioner’s business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue. Accordingly, the very fact that they attribute a degree requirement to such a generalized treatment of the proffered position undermines the credibility of their opinion. Further, as we stated above, the duty description shows that the proffered position is a computer

⁷ The same typographical error occurs in both letters, which suggests one was derived from the other, or that a third party, dictated the content of both letters. In any event, it diminishes the persuasive value of both letters.

programmer position. The general industry standard for systems analysts is of no direct relevance to any material issue in this cases.

Furthermore, even if the proffered position were a systems analyst position, the record contains no indication that the Petitioner advised these letter-writers that the Petitioner characterized the proffered position as a low, entry-level computer systems analyst position, for a beginning employee who has only a basic understanding of the occupation systems analysis (as indicated by the wage-level on the LCA) relative to other positions within the occupational category. It appears that the letter writers would have found this information relevant for their opinion letters. Moreover, without this information, the Petitioner has not demonstrated that those letter writers possessed the requisite information necessary to adequately assess the nature of the Petitioner's position and appropriately determine parallel positions based upon job duties and responsibilities. We consider this a significant omission.

In summary, and for each and all of the reasons discussed above, we conclude that the opinion letters rendered by others in the Petitioner's industry do not establish that the proffered position qualifies as a specialty occupation. The conclusions presented in those letters lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which the conclusions were reached. There is an inadequate factual foundation established to support the opinion and we find that the opinion expressed in those letters is not in accord with other information in the record.

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

The Petitioner also provided four vacancy announcements placed by other firms. Two pertain to positions entitled, "Computer Systems Analyst," another is entitled, "Technical Specialist – Computer Systems Analyst," and the fourth advertises a position entitled "Systems Analysts, Software Engineers, DBAs, and Systems/Network Administrators." Again, evidence pertinent to the educational requirements of systems analyst positions is not directly relevant here.

Placing that deficiency aside, we note further that only one of those vacancy announcements states a requirement for a bachelor's degree in computer science or a related field. The others state a requirement for a bachelor's degree, but not for one in a specific specialty. The letters that do not specify a field of study do not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further still, although the Petitioner stated that the proffered position is a Level I, entry-level position, three of those vacancy announcements state a requirement for experience. Even if the

proffered position were a systems analyst position, to demonstrate that similar organizations in the Petitioner's industry require a minimum of a bachelor's degree in a specific specialty or its equivalent for positions parallel to the proffered position, the Petitioner would have to demonstrate that Level I positions have such a requirement.

Finally, even if all of the vacancy announcements involved parallel positions with organizations similar to the Petitioner and in the Petitioner's industry and required a minimum of a bachelor's degree in a specific specialty or its equivalent, the Petitioner has not demonstrated what statistically valid inferences, if any, could be drawn from so few announcements with regard to the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995).

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).

b. Second Prong

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the Petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

The essence of the Petitioner's description of the duties of the proffered position is that the Beneficiary would write, update, expand, test, and debug computer programs. The evidence of record does not establish why a few related courses or industry experience alone would be insufficient to perform these duties. 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. 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 did not

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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).

3. Third Criterion

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.

The Petitioner provided evidence pertinent to the educational qualifications of seven people. [REDACTED] has a bachelor's degree in computer engineering; [REDACTED] has a bachelor's degree in engineering; [REDACTED] has a master's degree in computer applications; [REDACTED] has a master's degree in software systems; [REDACTED] has a master of computer applications degree; [REDACTED] has a bachelor's degree in computer science and engineering; and [REDACTED] has a bachelor's degree in electronics and communication engineering.

The Petitioner stated that its organizational chart would confirm that it employs all seven of these individuals as systems analysts. However, while the organizational chart indicates that [REDACTED] works for the Petitioner as a "software application developer," it does not indicate whether any of the remaining six individuals also work for the Petitioner.

Further, if the Petitioner had established that the proffered position is a systems analyst position, it still would not have demonstrated that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position. The Petitioner's organizational chart indicates that it employs five people as systems analysts. However, no information was provided pertinent to the educational qualifications of any of the systems analysts the Petitioner named in its organizational chart. In any event, we have found that the proffered position is actually a computer programming position, and the Petitioner's organizational chart does not list any computer programmers. The evidence is insufficient to show that the Petitioner employs any other computer programmers or that it has in the past.

At a more foundational level, and setting all of these deficiencies aside, we find that the Petitioner has simply not provided enough information regarding the duties that any of its employees – past or present – perform, or performed. In other words, because the Petitioner has not submitted meaningful descriptions of the duties its other employees perform, or performed, such that we can ascertain whether any of them hold, or held, the same position as the one proffered here, which precludes analysis under the third criterion.

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For all of these reasons, the Petitioner has not demonstrated that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position and has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).⁸

4. Fourth Criterion

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.

In the instant case, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. The duties of writing, updating, expanding, and debugging computer programs are generic computer programmer duties. They do not appear to be so much more specialized and complex than the duties of other computer programmer positions that we can find that the position requires a minimum of a bachelor's degree in a specific specialty or its equivalent, notwithstanding that some computer programmer positions do not. We also incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the position in the LCA as a Level I position (the lowest of four assignable wage-levels) relative to others within the same occupational category.⁹ The evidence of record does not, therefore, satisfy the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation. For this reason, the H-1B petition may not be approved.

II. BENEFICIARY'S QUALIFICATIONS

The Director based her decision of denial on her finding that the Petitioner has not demonstrated that the Beneficiary is qualified to work in the proffered position. However, a beneficiary's credentials

⁸ In fact, the organizational chart indicates that five people, [REDACTED] and [REDACTED] work for the Petitioner as computer systems analysts. The Petitioner provided no evidence pertinent to their educational qualifications. Even if the Petitioner had established that the proffered position is a systems analyst position, it still would not have demonstrated that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

⁹ The Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I, entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty, or its equivalent. That is, a position's wage-level designation may be a relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the evidence of record does not establish that the proffered position requires a baccalaureate or higher degree in a specific specialty, or its equivalent. However, in order to address the Director's decision, we will discuss whether the evidence submitted shows that, if the proffered position required a minimum of a bachelor's degree in a specific specialty or its equivalent, the Beneficiary would have a degree in that specific specialty.

A. The Law

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 degree referenced by section 214(i)(1)(B) of the Act, 8 U.S.C. § 1184(i)(1)(B), means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position.

A bachelor's degree does not, *per se*, qualify a beneficiary for employment in a specialty occupation. Rather, the position must require a degree in a specific specialty. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558,560 (Comm'r 1988). Further, the beneficiary must have a degree in that specific specialty. *See Matter of Ling*, 13 I&N Dec. 35 (Reg'l Comm'r 1968).

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C)
 - (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that a beneficiary must meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have [a] education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and [b] have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In addition, 8 C.F.R. § 214.2(h)(4)(v)(A) states:

General. If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

Therefore, to qualify a beneficiary for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary possesses the requisite license or, if none is required, that he or she has completed a degree in the specialty that the occupation requires. Alternatively, if a license is not required and if the beneficiary does not possess the required U.S. degree or its foreign degree equivalent, the petitioner must show that the beneficiary possesses both (1) education, specialized training, and/or progressively responsible experience in the specialty equivalent to the completion of such degree, and (2) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Next, in order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require one or more of the following:

(b)(6)

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- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;¹⁰
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . . .

B. Analysis

The record of proceedings does not establish that the Beneficiary is qualified to work in a specialty occupation.

With the H-1B petition, the Petitioner stated, "Minimum requirements for this professional position are at least a Bachelor's degree in Engineering or a related field or its equivalent and relevant work experience." The duties of the proffered position, however, involve writing, updating, expanding, testing, and debugging computer programs. The Petitioner has not sufficiently established that engineering is directly related to the duties of the proffered position. If the proffered position were a specialty occupation that requires a minimum of a bachelor's degree in a specific specialty or its equivalent, it would likely require a degree in computer science or a closely-related subject such as management information systems, information technology, software development, etc. The evidence shows that the Beneficiary was awarded a bachelor's degree in mechanical engineering by [REDACTED]. Therefore, the Beneficiary does not appear to have a degree closely related to computer science. With this in mind, we will proceed with an analysis of the Beneficiary's qualifications pursuant to the salient regulations.

¹⁰ The Petitioner should note that, in accordance with this provision, we will accept a credentials evaluation service's evaluation of *education only*, not training or experience.

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The Beneficiary does not have a U.S. bachelor's degree. As mentioned, the evidence shows that the Beneficiary was awarded a bachelor's degree in mechanical engineering in India. Therefore, the Beneficiary's has not satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(C)(1).

The Petitioner has not established that the Beneficiary is qualified to serve in a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) for a beneficiary holding a foreign degree determined to be equivalent to a U.S. accredited college or university baccalaureate or higher degree required by the pertinent specialty occupation. As was explained above, if it were established that the proffered position required a minimum of a bachelor's degree in a specific specialty or its equivalent, the required degree would be in computer science or a closely-related subject. The Petitioner provided an evaluation prepared by [REDACTED] which states that the Beneficiary's foreign degree is equivalent to a bachelor's degree in engineering awarded in the United States. The Petitioner has not sufficiently established how the Beneficiary's foreign degree in engineering is directly related to the duties of the proffered position.

The Beneficiary also does not meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(3), as there is no evidence of an unrestricted state license, registration, or certification which authorizes him to fully practice and be immediately engaged in a specialty occupation in the state of intended employment.

To show that the Beneficiary has the equivalent of a U.S. bachelor's degree pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the Petitioner must satisfy one of the five criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D).

With regard to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), we find that the record has not established that the evaluator has "authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience," as required by this criterion.

The Petitioner provided an evaluation prepared by [REDACTED] an associate professor in the [REDACTED] at the [REDACTED] which opines that the Beneficiary's education and employment experience, when considered together, equivalent to a bachelor's degree with a dual major in management information systems and engineering. The evaluator stated, "I have authority to grant college-level credit for [REDACTED] based on a candidate's foreign educational credentials, training, and/or employment experience in Computer Science, and sub-disciplines including Information Systems and Computer Engineering." That evaluation was accompanied by a letter from the Registrar at [REDACTED] which states that faculty members at that college "have the authority to *recommend* college-level credit for training and experience." (Emphasis added.) It does not confirm [REDACTED] assertion that he possesses the authority to grant such credit.

On appeal, the Petitioner provides an updated evaluation of the Beneficiary's education, training, and experience prepared by [REDACTED] This evaluation document reiterates [REDACTED]

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opinion that the Beneficiary's education and employment experience, considered together, are equivalent to a U.S. bachelor's degree with a dual major in management information systems and engineering.

The employment-experience component of [REDACTED] evaluation is an essential element of this evaluator's ultimate opinion that the addition of the Beneficiary's work experience to his U.S. bachelor-degree-equivalent in mechanical engineering equates to the equivalent of a U.S. bachelor's degree with a dual major in management information systems and engineering.

To establish the relevance of [REDACTED] evaluation of the Beneficiary's, the Petitioner relies upon this criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) as providing for USCIS consideration of an evaluation of training and/or work experience from "an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience." That reliance is misplaced.

In his evaluation document submitted on appeal – entitled "Updated Evaluation of Education, Training, and Experience (With Positional Analysis and Expanded Discussion of Equivalency Formulation)," dated February 19, 2016 – [REDACTED] asserts that he "ha[s] authority to grant college level credit for the university based on a candidate's foreign educational credentials, training, and/or employment experience in Computer Science, and subdisciplines including Information Systems and Computer Engineering."

To support the accuracy of [REDACTED] assertion, the Petitioner includes a copy of a February 1, 2016, letter from [REDACTED] signing as the Chair, [REDACTED] at [REDACTED]. While [REDACTED] closes his letter with the hope that it suffices "to support the conclusion that [REDACTED] has the authority to assess, evaluate, and grant credit for training and experience," the letter's content does not support the proposition that [REDACTED] has the authority to *grant* college credit at [REDACTED] on the basis of a person's work experience and/or education. In this regard, we note that [REDACTED] letter refers to [REDACTED] faculty members' authority "to recommend college level credit for training and experience," and the letter acknowledges "[i]nput by faculty [as] an important component of evaluating the appropriateness of credit assigned for work or other life experience." So, too, the letter asserts that [REDACTED] "regards faculty members as appropriate evaluators of academic and professional work experience for the purpose of admissions, advising, placement in degree programs, substitutions of courses, assessments of internships, and other routine college or university evaluations."

We find that [REDACTED] goes no further than endorse [REDACTED] as one with "authority to *make determinations concerning the granting of college-level credit* for training and experience" in the academic areas within the scope of his academic duties. In short, the [REDACTED] submission does not establish that [REDACTED] is a credit-authorizing official as defined at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Accordingly, the Petitioner not established that [REDACTED] evaluations of the Beneficiary's work experience merit any probative weight regarding the Beneficiary's

qualifications to perform the duties of a specialty-occupation-level computer systems analyst position.

The criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(2) and (4) are not factors in this proceeding, as the record contains no evidence related to them.

With regard to 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), we observe that the evaluations that considered the Beneficiary's education alone, without considering the Beneficiary's employment experience, found the Beneficiary's foreign degree equivalent to a U.S. degree in engineering which, as was explained above, would not be a sufficient educational qualification for a specialty-occupation position within the computer systems analysts occupational group.

The remaining criterion for review is 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), which allows recognition of a beneficiary's qualification by a USCIS (as opposed to an evaluator) determination that his or her training or work experience is equivalent to U.S. baccalaureate coursework in a specific specialty. This criterion provides that, for each year of college-level training a beneficiary lacks:

[I]t must be clearly demonstrated [1] that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; [2] that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and [3] that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or

¹¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The letters from the Petitioner's former employer identify the period during which they employed the Beneficiary, the duties of the positions he held, and his computer skills. Neither the letters nor any other evidence of record satisfies the regulatory requirement to *clearly demonstrate* the extent of the theoretical and practical application of specialized knowledge in any specialty that was involved in the Beneficiary's work; that the Beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in any particular specialty occupation; or that the Beneficiary has recognition of expertise in any specialty, as evidenced by at least one type of documentation such as those listed in this criterion. Consequently, the Petitioner has not established that the Beneficiary satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

The petition does not establish that, if, as claimed, the proffered position were a specialty-occupation-level position within the computer systems analysts occupational group, the Beneficiary would be qualified to perform the services of such a position. The appeal must, therefore, be dismissed because the evidence is insufficient to show that the Beneficiary is qualified under 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).¹²

III. CONCLUSION

The burden is on the Petitioner to show 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.

Cite as *Matter of K-M-, Inc.*, ID# 17876 (AAO Sept. 14, 2016)

¹² Since the identified bases for denial is dispositive of the Petitioner's appeal, we need not address another ground of ineligibility we observe in the record of proceedings including whether the LCA corresponds to the petition.