



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

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

In Re: 8804194

Date: JUNE 30, 2020

Appeal of California Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (H-1B)

The Petitioner seeks to temporarily employ the Beneficiary as a “systems engineer” 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 California Service Center Director denied the petition, concluding that the record did not establish that the proffered position is a specialty occupation.

The petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.¹ The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*.² Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

Section 101(a)(15)(H)(i)(b) of the Act defines an H-1B nonimmigrant as a foreign national “who is coming temporarily to the United States to perform services . . . in a specialty occupation described in section 214(i)(1) . . .” (emphasis added). Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires “theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(1) of the Act but adds a non-exhaustive list of fields of endeavor. In addition, 8 C.F.R. § 214.2(h)(4)(iii)(A) provides that the

¹ Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

² *See Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

proffered position must also meet one of the following criteria to qualify as a specialty occupation position:

- (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). As this regulation must be read with the statutory and regulatory definitions of a specialty occupation under section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii), we construe the term “degree” 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, 387-88 (5th Cir. 2000).

II. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, 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.

A. First Criterion

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), 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 consider the information contained in the U.S. Department of Labor’s (DOL) *Occupational Outlook Handbook (Handbook)* regarding the duties and educational requirements of the wide variety of occupations it addresses.⁴

³ On appeal the Petitioner challenges the Director’s decision on the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), the first prong of (2), (3) and (4). The Petitioner does not address the Director’s assessment and decision on the second prong of criterion (2) of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, we will limit our analysis of the evidence as it relates to criteria challenged as well as the statutory and regulatory definitions, section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii).

⁴ We do not maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered an aspect in establishing the general tasks and responsibilities of a proffered

On the certified labor condition application (LCA),⁵ the Petitioner designated the proposed position as a Standard Occupation Classification (SOC) code 15-1142 “Network and Computer Systems Administrators” occupation at a Level II wage. On appeal, the Petitioner asserts that the *Handbook* reports that “[m]ost employers require network and computer systems administrators to have a bachelor’s degree in a field related to computer or information science”⁶ and that the Beneficiary has the requisite education.⁷ The *Handbook* recognizes in the next sentence, however, that “[o]thers may require only a postsecondary certificate or an associate’s degree.”⁸ Thus, the *Handbook* identifies a range of methods to enter the occupation, from a postsecondary certificate to an associate’s degree to a bachelor’s degree in a field related to computer or information science. It is the imprecise and varied information in the *Handbook* regarding the ways to enter this occupation that precludes a conclusion that there is categorically a normal minimum educational requirement for entry into the occupation.

The Petitioner also refers to the DOL’s Occupational Information Network (O*NET) summary report for “Network and Computer Systems Administrators” as establishing that such a position requires a bachelor’s degree. However, the O*NET does not state a requirement for a bachelor’s degree for this occupation. Rather, it assigns this occupation a Job Zone “Four” rating, which groups it among occupations for which “most . . . require a four-year bachelor’s degree, but some do not.” Significantly, O*NET does not indicate that Job Zone Four occupations require that a bachelor’s degree must be in a specific specialty directly related to the occupation. That is, it does not refer to any specific discipline as required, therefore the information is not probative of the proffered position being a specialty occupation.

The Petitioner has not provided probative evidence establishing that the “Network and Computer Systems Administrators” occupation is categorically a specialty occupation. It also has not established that a bachelor’s degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into its particular position. The duties, as described involve tasks that are generic and routine and while some technology knowledge of various software, platforms, and environments may be

position, and we regularly review the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. Nevertheless, to satisfy the first criterion, 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.

⁵ A petitioner is required to submit an LCA to the Department of Labor to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the area of employment or the actual wage paid by the employer to other employees with similar duties, experience, and qualifications. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

⁶ See Bureau of Labor Statistics, U.S. Dep’t of Labor, *Occupational Outlook Handbook*, Network and Computer Systems Administrators, <https://www.bls.gov/ooh/computer-and-information-technology/network-and-computer-systems-administrators.htm> (last visited Jun. 22, 2020).

⁷ The Petitioner refers to the Beneficiary’s academic qualifications throughout the appeal in its discussion of the nature of the proposed position. We point out here that the Beneficiary’s qualifications do not establish that a position is a specialty occupation. We are required to follow long-standing legal standards and determine first, whether the proffered position qualifies for classification as a specialty occupation, and second, whether the Beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. Cf. *Matter of Michael Hertz Assocs.*, 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].”).

⁸ *Handbook* at <https://www.bls.gov/ooh/computer-and-information-technology/network-and-computer-systems-administrators.htm> (last visited Jun.22, 2020).

required, there is insufficient probative detail to conclude that the duties require the body of highly specialized knowledge that is attained through bachelor's-level study in a specific discipline.⁹ Again, the Petitioner has the burden to demonstrate that the particular position offered to the Beneficiary is among the "Network and Computer Systems Administrators" or other technology occupations for which a bachelor's degree in a specific specialty, or its equivalent, is normally required. The Petitioner has not established this component of the specialty occupation requirements.

B. First Prong of the 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 contemplates common industry practice, while the alternative prong narrows its focus to the Petitioner's specific position.¹⁰

We generally consider the following sources of evidence to determine if there is such a common degree requirement: 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 establish 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) (considering these "factors" to inform the commonality of a degree requirement)). As discussed above, the *Handbook* does not report that these positions comprise an occupational group for which there is a common industry specialty degree requirement for parallel positions among similar organizations.

On appeal the Petitioner submits numerous job-posting summaries for software developer positions. However, the Petitioner has designated the proffered position as a "Network and Computer Systems Administrators" occupation on the certified LCA. Thus, it is not clear that the job postings submitted on appeal are relevant to the position proffered here.¹¹ On appeal, the Petitioner also refers to one of the job postings submitted in response to the Director's request for evidence (RFE), as evidence of an

⁹ On appeal, the Petitioner asserts that configuring and maintaining Red Hat Linux 4.x, 5.x, 6.x involves a level of complexity that requires an extensive background in the field, something that is not available in a certificate program. The Petitioner does not cite to any authority or submit evidence to support this assertion.

¹⁰ As noted above, the Petitioner does not challenge the Director's decision on the second prong of this criterion.

¹¹ If the proffered position should be classified as a software developer occupation or involves software development duties in addition to the typical duties of a "Network and Computer Systems Administrators" occupation, the Petitioner has not designated the proper occupational code on the certified LCA. If the proffered position includes a combination of two different, but related occupations, the Petitioner must select the higher-paying SOC code occupation for the certified LCA. 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. The occupations of "Software Developers, Applications" SOC code 15-1132 and "Software Developers, Systems Software" SOC code 15-1133, both require a higher paying wage, than the position designated on the certified LCA submitted in support of the proffered position. See <https://www.flcdatacenter.com/OesQuickResults.aspx?code=15-1132&area=47894&year=19&source=1> and <https://www.flcdatacenter.com/OesQuickResults.aspx?code=15-1133&area=47894&year=19&source=1>, respectively.

employer that is similar to it and for which a bachelor's degree in computer science, or the equivalent is desired for a level I or level II systems engineer.¹² However, the advertisement, like the majority of the other advertisements submitted to establish this criterion, does not describe the duties of the advertised position with any specificity. Additionally, this advertisement, like many of the other advertisements submitted, lists 3+ years of experience, as either desired or required. Here, the Petitioner does not require any experience in order to perform the duties of its position. Accordingly, it does not appear that the Petitioner's particular position is parallel to the positions listed in the advertisements submitted, as the advertised positions appear more senior than the position proffered here. Further, the limited information in the job postings appears to confirm that there are different methods available to enter into the occupation, including experience and skill with different third-party technology, or a general bachelor's degree. In sum, the job postings are insufficiently detailed to provide persuasive evidence that there is a common industry standard requiring a bachelor's degree in a specific specialty, or its equivalent, for positions that are parallel to the proffered position.¹³

We also reviewed the five letters from companies ostensibly similar to the Petitioner. Each of these three-page letters includes virtually verbatim language, deviating only in the claimed number of employees. The letters do not provide any information regarding the duties of any of the companies' technology positions, rather all technology positions are grouped into one category with the accompanying claim that the company only hires individuals with a bachelor's degree in computer science or narrowly related disciplines. There is no evidence of recruitment, hiring, or position descriptions. It appears from the verbatim language used, that the companies were asked to confirm a preconceived notion in lieu of providing objective evidence to support their claims. The generality of the letters does little to establish that there is a common industry requirement for positions parallel to the position proffered here, among similar companies.

The Petitioner also refers to a position evaluation authored by [redacted] senior faculty, School of Management, [redacted] University, to support this criterion. [redacted] repeats the *Handbook* and the ONET's discussion of the "Network and Computer Systems Administrators" occupation and refers to employment and career preparation websites. He repeats monster.com's generic description for a network administrator which does not discuss academic requirements to perform the occupation, provides an overview of study.com's essential information for this occupation which indicates that "many employers look for applicants who have computer-related bachelor's degrees . . . ," and notes that payscale.com indicates it is important to have extensive technical knowledge as well as important to have a bachelor's degree in computer science, information systems, mathematics, or another related field, and that according to careerexplorer.com a few network administrator positions may be performed by individuals with an associate's degree, but that

¹² The job posting does not indicate if this is a requirement or a preference. We observe that a preference is not synonymous with a requirement.

¹³ Even if all of the job postings indicated that a requirement of a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the Petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

employers prefer to hire individuals with a bachelor's degree. He also refers to salary portals for the proposition that individuals with a bachelor's in computer science, or other closely related fields fill positions requiring duties related to a systems engineer. However, the brief information [redacted] repeats does not include persuasive argument or analysis establishing a common industry requirement for the network administrator's occupation; rather the information listed appears to confirm the *Handbook's* report that the minimum entry-level requirements for this occupation varies. The generic information submitted regarding this occupation does not include detail of duties that are parallel to the proposed position or discuss hiring requirements for organizations similar to the Petitioner.

Later in [redacted]'s position evaluation, he concludes, based on his experience in the information technology field and his analysis of the job duties and core position function, "that the prerequisite of a Bachelor of Science degree, or its equivalent, in relevant discipline for such a position is common in the industry for a position of this nature." He does not offer analysis distinguishing his conclusion which is based on his experience from the websites, the *Handbook*, or other sources, that provide a different conclusion. He also opines based on his contact with various recruiters at the university that recruiters consistently advise that a bachelor's degree, or its equivalent in computer science is the requisite background for this particular position. However, while he may have anecdotal information regarding recruitment by employers for students who study computer science, the record does not include relevant research, studies, surveys, or other authoritative publications which demonstrate that a "Network and Computer Systems Administrators" occupation categorically requires a bachelor's degree in a specific discipline, or its equivalent, in order to perform the duties of the occupation.

The record does not include persuasive evidence to establish that, more likely than not, there is a common industry requirement for a bachelor's degree in a specific specialty, or its equivalent, for parallel positions among similar organizations.

C. 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.

In support of this criterion, the Petitioner submits documentation that was provided to U.S. Citizenship and Immigration Services (USCIS) in support of an H-1B extension petition for another employee. The Petitioner asserts that this documentation demonstrates that this employee has a master's degree, not a postsecondary degree or an associate's degree. Although the H-1B documentation for the other employee includes a certified LCA for a "Network and Computer Systems Administrators" occupation,¹⁴ the description of duties is not parallel to the duties of this position. Additionally, current USCIS records do not show that this petition was approved. Further, the Petitioner does not include the total number of people it has employed to serve in the proffered position. Consequently, it cannot be determined how representative the Petitioner's claim regarding *one individual* is of the Petitioner's normal recruiting and hiring practices. The Petitioner has not persuasively established that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the position.

¹⁴ We observe that the wage level designated on the LCA is for a wage level I position. Based on the H-1B documentation for the Petitioner's other employee that is included in this record, it does not appear this petition is approvable. However, we do not have the full record before us and thus will not comment further on this other petition.

Finally, we emphasize that to satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. Even if the Petitioner always requires a bachelor's degree in a specific specialty to perform the duties of the proffered position, which it has not corroborated in this record, this could possibly satisfy the regulatory requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). However, the Petitioner must still satisfy the statutory requirement that the position itself requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as the minimum for entry into the occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). In this matter, the Petitioner has not satisfied this criterion and has not established that the proffered position qualifies as a specialty occupation under the statutory requirements.

D. 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.

On appeal, the Petitioner asserts that the position evaluation authored by [] is sufficient to confirm that the duties of the position are specialized and that they align with a systems engineer role. We first reviewed the duties the Petitioner states the Beneficiary will perform while working at the end-client offsite facility.¹⁵ The Petitioner, here, provides a broad description which primarily describes the type of equipment and environments the Beneficiary will use when performing his duties. For example, the Petitioner states that the Beneficiary will migrate applications from older Sun/Solaris hardware to a newer environment running RedHat. He will also setup full networking services and protocols including NIS/NFS, DNS, SSH, DHCP, NIDS, TCP/IP, ARP, applications, and print servers to insure optimal networking, application, and printing functionality. The jargon-laden description does little to provide insight into the Beneficiary's actual tasks, so that we may ascertain the level of specific knowledge that is required to perform those duties and the scope and level of complexity or demands

¹⁵ The Petitioner describes the contractual chain as follows: Petitioner — [] (vendor) → [] (end client). As recognized by the court in *Defensor*, 201 F.3d at 387-88, where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. Here, the information from the end-client regarding the proposed position creates ambiguity in the record. For example, the end-client in a letter states that the duties, which generally paraphrase the Petitioner's and the vendor's descriptions, requires at least a bachelor's degree in computer science or a related field. In its project agreement with the vendor, however, the end-client provides a list of technical knowledge, experience, and expertise that resources assigned to the project should have in order to deliver the services to the end-client. The list identifies a bachelor's or master's degree in computer science or information technology (software), and a minimum of 7 years of experience or an exception granted by the end-client. It is not clear from this record that an exception has been granted regarding the required experience or that less than 7 years of experience is acceptable. As noted above, the Petitioner does not require any experience to perform the position and it has designated the position as requiring only a level II wage. Any experience requirement of more than 3 years of experience requires additional increases in the wage level. *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. The Petitioner must resolve this ambiguity with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

associated with the proposed duties.¹⁶ The Petitioner does not sufficiently detail specific job duties, supervisory duties (if any), independent judgment required, or the amount of supervision received for the position. The record lacks consistent, probative information regarding the nature of the proposed position.

The Petitioner also indicates that the Beneficiary will audit user roles and profile definitions with different third-party programs, as well as perform daily backups, restore data as requested using a third-party program, and provide production support. These duties also appear routine and while they may require some technical knowledge of the third-party programs and software, the record does not include probative evidence that this knowledge is gained through bachelor's-level study in a specific discipline rather than through certifications in third-party technology or experience in the industry.

We again reviewed [redacted]'s position evaluation for insight into the particular position and the academic requirements to perform the duties described. [redacted] begins by listing 18 "knowledge areas" from the *2013 Curriculum Guidelines for Undergraduate Programs in Computer Science*, published by the Association for Computing Machinery (ACM).¹⁷ [redacted] opines that because most, if not all, of the proposed duties fall within the scope of the topics taught in a university level bachelor's degree field, such as computer science or another closely related field curriculum, the position must be considered sufficiently specialized and complex to require a bachelor's degree or the equivalent, in a field such as computer science. [redacted] however, does not offer a cogent analysis correlating the duties of the particular position to the broadly described corresponding knowledge areas for a potential curriculum. Other than referring to the curriculum guidelines, he does not discuss their relevance in establishing that the particular position offered here requires a specific bachelor's degree. Moreover, he does not refer to the *Handbook's* more recent information on this occupation or attempt to distinguish the *Handbook's* report that several paths, including less than a bachelor's degree in a specific specialty, are available as a minimum to enter this occupation.

[redacted] repeats the six-bullet point description of duties for the position, and opines that: "[t]he proposed job duties of the position are indicative of a complex network development and system engineering role, requiring a relevant academic background in the applicable procedures and technologies of network design and development, network database design, and user support." However, he does not offer a persuasive analysis of the actual proposed duties and a meaningful explanation of why the duties require a bachelor's degree in a specific specialty, rather than a general degree or experience and certifications in the third-party technology that will be used to perform the duties. We do not disagree

¹⁶ We have reviewed the Petitioner's response to the Director's RFE and what appears to be an elaboration of the duties initially provided. Much of the elaboration appears to relate to past performed duties. The Petitioner concludes this description by stating that the Beneficiary is responsible for managing an organization's servers and desktop and mobile equipment, ensuring that email and data storage networks work properly, and for making sure that employees' workstations work efficiently and stay connected to the central computer network. The information provided does not add to the complexity or specialization of the duties, but rather reinforces a conclusion that these duties do not require a bachelor's degree in a specific specialty, or its equivalent, in order to perform them.

¹⁷ The knowledge areas are not sufficiently concise to correlate particular courses in an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, that is required to perform the duties of the proffered position. The guidelines for potential curriculums are too broad to establish a particular position requires a body of highly specialized knowledge attained in a bachelor's degree program in a specific specialty, or its equivalent. The relevance of these guidelines in establishing this position is a specialty occupation is not evident from the opinion's reference to them.

that an individual may take one, two, or several courses and gain sufficient knowledge to perform the duties of the proposed position, but neither the Petitioner nor [REDACTED] have demonstrated how an established curriculum of 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. Overall, [REDACTED]'s evaluation does not offer a logical analysis of the duties of the Petitioner's particular position sufficient to demonstrate that the duties are specialized and complex or that they comprise the duties of a specialty occupation. Put simply, stating that a person with a bachelor's degree in computer science could perform the duties of the proffered position is not the same as establishing that such a degree is required to perform those duties.

On appeal, the Petitioner includes articles and journals discussing the discipline of computer science. While these articles provide interesting background information on this particular discipline and computer technology in general, the information does not assist in establishing that the Petitioner's particular position is specialized and complex and that the position requires a bachelor's degree in a specific discipline, or the equivalent, in order to perform it. The Petitioner does not offer argument on why these articles are relevant to the position proffered here.

Upon review, the record lacks sufficiently detailed information to distinguish the proffered position as more specialized and 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. The "Network and Computer Systems Administrators" occupation encompasses a broad base of responsibilities and duties and the required education and experience to adequately perform these duties also varies. However, if an individual with an associate's degree or a general bachelor's degree may enter the occupation, as described in the *Handbook*, the Petitioner must offer some evidence distinguishing its particular position from such positions within this occupation. The Petitioner's choice of a level II wage does not assist but rather hinders a conclusion that the Petitioner's particular position is distinguishable from those positions that do not require a bachelor's degree in a specific specialty, or its equivalent.¹⁸ In other words, if typical positions located within the occupational category do not require a bachelor's degree in a specific specialty, or the equivalent, then it is unclear how a position with Level II characteristics would, regardless of the Petitioner's assertions. The record lacks sufficiently detailed and unambiguous information to distinguish the proffered position as unique from or more specialized and complex than other closely related positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

Upon review of the totality of the evidence submitted, the Petitioner has not established that more likely than not, the proffered position is a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Moreover, the record does not establish that the duties of the proffered position require the theoretical and practical application of highly specialized knowledge and attainment of at least

¹⁸ DOL's wage-level guidance specifies that a Level II designation is reserved for positions involving only moderately complex tasks requiring limited judgment. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://fledatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

a bachelor's degree in a specific specialty, or its equivalent. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

ORDER: The appeal is dismissed.