U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. 3000
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: EAC 07 151 50673 Office: VERMONT SERVICE CENTER Date: MAR 04 2009

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The petitioner is a corporation engaged in software development and consulting services. To employ the beneficiary as a programmer analyst, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on each of several grounds, namely, that the petitioner: (1) failed to establish that the proffered position is a specialty occupation; (2) failed to establish that the beneficiary is qualified to serve in a specialty occupation; (3) previously filed an "identical" H-1B petition for the same beneficiary and position in the same fiscal year; and (4) used the same Labor Condition Application for this petition as it had for that H-1B petition previously filed for the beneficiary.

At the outset, the AAO withdraws the director's finding that, at the time it filed the present petition, the petitioner was limited to filing only one petition per fiscal year on behalf of a particular beneficiary. In April 2007, when the petitioner filed the present petition, there was no such limitation.[1]

The AAO also withdraws the director's finding that the Labor Condition Application (LCA) submitted with the present petition was not valid because it had been submitted with the previous H-1B petition that had been filed for the beneficiary for the same employment period as covered by that LCA. The Department of Labor's certification of an LCA is valid for the period of employment indicated on the certified LCA, and the certified period is not affected or otherwise diminished by the employer's failure to obtain approval of an H-1B petition with which the LCA was previously submitted. The AAO also withdraws the director's comment that the LCA was certified for only one nonimmigrant. Counsel correctly notes that the LCA in this proceeding was filed to support the H-1B employment of ten nonimmigrants, not one as stated by the director. *See* Item 4 of Part D of the LCA.

The only two remaining bases for the denial of the appeal are the director's findings that the petitioner failed to establish (1) that the proffered position is a specialty occupation, and (2) that the beneficiary is qualified to serve in the specialty occupation that the petitioner claims to be the subject of this petition.

On appeal, counsel contends that, contrary to the director's decision, the evidence of record establishes both that the petitioner is proffering a specialty-occupation position and that the beneficiary is qualified to serve in that type of specialty-occupation position.

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[1] However, for future reference, the petitioner should note that, by an interim rule effective on March 24, 2008, U.S. Citizenship and Immigration Services issued a new regulatory provision, at 8 C.F.R. § 214.2(h)(2)(i)(G), that precludes a petitioner from filing, during the course of any fiscal year, more than one H-1B petition on behalf of the same alien beneficiary if he or she is subject to the 65,000 cap or qualifies for the master's degree cap-exemption. *See* 73 Fed. Reg. 15389, 15394 (Mar. 24, 2008).

As will be discussed below, the AAO finds that the petitioner has established neither that the proffered position is a specialty-occupation position nor that the beneficiary is qualified to serve in a specialty occupation. Accordingly, the director's decision to deny the petition shall not be disturbed. The AAO bases its decision upon its review of the entire record of proceedings, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief and attached exhibits in support of the appeal.

The AAO will first address the specialty-occupation issue.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184 (i)(l), 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a 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, the 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, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

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. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

On the Form I-129, the petitioner states that it was established in 1998, is engaged in the business of software development and consulting services, currently employs 65 persons, and has a gross annual income of $7,000,000 and a net annual income $1,500,000.

In one of its April 1, 2007 letters filed with the Form I-129, the petitioner states that it "mainly deals with sectors in Banking and Financial Services, Insurance, Securities, Trading, Telecommunications,

Healthcare, Manufacturing, Technical Support Services, eCommerce, Systems Engineering, Geographical Information Systems, Life Sciences, IT Consulting, Management Consulting, & Higher Education." The letter states that the petitioner has "4 lines of businesses," namely, Business Intelligence, Data Warehousing, Web Technologies, and ERP technologies.[2] According to the letter, "the main Domains of the business" are Health Check, Product Evaluation, Consulting Services, Project Based Solutions, Application Development, Product Development, Support and Maintenance, Technology Transfer, Corporate Training, [and] Offshore. The letter identifies "the main authorized clients" as [redacted].

The same April 1, 2007 letter also asserts that the beneficiary's engineering degrees may become necessary to meet the software-development needs of a high-tech client:

> A high tech engineering firm may have issues regarding development of software for analysis of research data or for automation of design process and simulation. In order to understand the highly technical and specific need, the programmer analyst should have to have a solid and thorough background in engineering, physical scinces and/or advanced applied quantitative methodologies or mathematics and statistics.
>
> Accordingly, it is critical for the company to devise high quality computer systems and programs which will meet the needs of our customers and which are free of technical and operational errors. It is essential that we employ highly qualified computer professionals with the experience and ability to write, develop, and implement software programs.

The AAO has considered all of the record's position and job-duty descriptions, which appear primarily in the petitioner's March 29, 2007 letter to the beneficiary; the petitioner's two April 1, 2007 letters submitted to the service center with the Form I-129; the petitioner's August 9, 2007 letter in response to the RFE; and counsel's November 29, 2007 letter submitted on appeal.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*), which assigns specialty-occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

The AAO recognizes the Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. The AAO finds that the proposed duties described in the record substantially comport with the general duties that the 2008-2009 edition of the *Handbook* identifies with its Programmer Analyst occupational category, which is discussed in the *Handbook* chapters entitled "Computer

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[2] The AAO notes that the petitioner does not explain the acronym "ERP."

Programmers" and "Computer Systems Analysts." The "Computer Programmers" chapter describes programmer-analysts as workers responsible for both systems analysis and programming. The chapter describes the systems-programmer aspect as follows:

> Computer programmers often are grouped into two broad types—applications programmers and systems programmers. Applications programmers write programs to handle a specific job, such as a program to track inventory within an organization. They also may revise existing packaged software or customize generic applications purchased from vendors. Systems programmers, in contrast, write programs to maintain and control computer systems software for operating systems, networked systems, and database systems. These workers make changes in the instructions that determine how the network, workstations, and central processing unit of a system handle the various jobs they have been given, and how they communicate with peripheral equipment such as terminals, printers, and disk drives. Because of their knowledge of the entire computer system, systems programmers often help applications programmers determine the source of problems that may occur with their programs.

The "Computer Programmers" chapter indicates that computer-systems-analyst component of the programmer-analyst occupation involves providing a computer-software design which will then be coded, in the programming phase, into a logical series of instructions that computers can follow, using "a conventional programming language such as COBOL; an artificial intelligence language such as Prolog; or one of the more advanced object-oriented languages, such as Java, C++, or ACTOR." The "Computer Programmers" chapter refers to the *Handbook's* "Computer Systems Analysts" chapter for "[a] more detailed description of the work of programmer-analysts."

The "Nature of the Work" segment of the *Handbook's* "Computer Systems Analysts" chapter includes this relevant information:

> Computer systems analysts solve computer problems and use computer technology to meet the needs of an organization. They may design and develop new computer systems by choosing and configuring hardware and software. They may also devise ways to apply existing systems' resources to additional tasks. Most systems analysts work with specific types of computer systems—for example, business, accounting, or financial systems or scientific and engineering systems—that vary with the kind of organization. Analysts who specialize in helping an organization select the proper system software and infrastructure are often called system architects. Analysts who specialize in developing and fine-tuning systems often are known as systems designers.
>
> To begin an assignment, systems analysts consult managers and users to define the goals of the system. Analysts then design a system to meet those goals. They specify the inputs that the system will access, decide how the inputs will be processed, and

> format the output to meet users' needs. Analysts use techniques such as structured analysis, data modeling, information engineering, mathematical model building, sampling, and cost accounting to make sure their plans are efficient and complete. They also may prepare cost-benefit and return-on-investment analyses to help management decide whether implementing the proposed technology would be financially feasible.
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> When a system is approved, systems analysts determine what computer hardware and software will be needed to set it up. They coordinate tests and observe the initial use of the system to ensure that it performs as planned. They prepare specifications, flow charts, and process diagrams for computer programmers to follow; then they work with programmers to "debug," or eliminate errors, from the system. Systems analysts who do more in-depth testing may be called software quality assurance analysts. In addition to running tests, these workers diagnose problems, recommend solutions, and determine whether program requirements have been met.
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> In some organizations, programmer-analysts design and update the software that runs a computer. They also create custom applications tailored to their organization's tasks. Because they are responsible for both programming and systems analysis, these workers must be proficient in both areas. . . .

The *Handbook's* information on educational requirements in the programmer-analyst occupation indicates that a bachelor's or higher degree, or the equivalent, in a specific specialty is not a normal minimum entry requirement for this occupation. Rather, the occupation accommodates a wide spectrum of educational credentials, as indicated in the following excerpt from the "Educational and training" subsection of the *Handbook's* "Computer Systems Analyst" chapter:

> When hiring computer systems analysts, employers usually prefer applicants who have at least a bachelor's degree. For more technically complex jobs, people with graduate degrees are preferred.
>
> The level and type of education that employers require reflects changes in technology. Employers often scramble to find workers capable of implementing the newest technologies. Workers with formal education or experience in information security, for example, are currently in demand because of the growing use of computer networks, which must be protected from threats.
>
> For jobs in a technical or scientific environment, employers often seek applicants who have at least a bachelor's degree in a technical field, such as computer science, information science, applied mathematics, engineering, or the physical sciences. For jobs in a business environment, employers often seek applicants with at least a bachelor's degree in a business-related field such as management information systems

> (MIS). Increasingly, employers are seeking individuals who have a master's degree in business administration (MBA) with a concentration in information systems.
>
> Despite the preference for technical degrees, however, people who have degrees in other majors may find employment as systems analysts if they also have technical skills. Courses in computer science or related subjects combined with practical experience can qualify people for some jobs in the occupation.
>
> Employers generally look for people with expertise relevant to the job. For example, systems analysts who wish to work for a bank should have some expertise in finance, and systems analysts who wish to work for a hospital should have some knowledge of health management.

As indicated above, the information in the *Handbook* does not indicate that programmer-analyst positions normally require at least a bachelor's degree in a specific specialty.

The AAO acknowledges counsel's references to the Department of Labor's *Occupational Information Network (O*NET™ Online)* assignment of Job Zone 4 and SVP [Specialized Vocational Preparation] 7-8 codes to the Programmer-Analyst occupation. The AAO first notes that counsel is incorrect in his assertion that a Job Zone 4 code indicates that the rated occupation "requires a four-year bachelor's degree." Actually, the Education segment of this coding reads: [3]

> **Education** Most of these occupations require a four - year bachelor's degree, but some do not[.]

Counsel's assertion that an SVP 7 rating "requires a minimum of a bachelor's degree" is also incorrect. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require.

The AAO also acknowledges counsel's statements that the Department of Labor assigns the programmer analyst occupation to the "Educational and Training Code for Professional Occupations," and that "the job duties of Programmer Analyst is [sic] categorized as Code 5, which requires completion of a bachelor's degree." Counsel does not provide a citation to support this claim, but the AAO notes that the Department of Labor's Foreign Certification Data Center provides a five-tier scale of Education and Training Codes for Professional Occupations (ETCPO), the fifth of which reads: [4]

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[3] For an explanation of the Job Zone, SVP, and other *O*NET™* terms, access *O*NET™ Online Help* summary section, at *http://online.onetcenter.org/help/online/summary.*

4 These codes appear at the Internet site *www.flcdatacenter.com/TrainingCodes.aspx.*

Five: Bachelor's Degree

Completion of the degree program generally requires at least 4 years but not more than 5 years of full-time equivalent academic work.

These codes are provided for an employer's use in calculating the prevailing wage for LCA purposes. They are not statements of objective educational requirements of a particular position, but are intended as a tool for an employer's use in calculating the prevailing wage for a position designated on the LCA that the employer asserts as requiring a bachelor's degree, whether or not in a specific specialty. Further, an ETCPO level does not distinguish between degrees that are in a specific specialty directly related to a proffered position and those that are not.

In short, counsel's assertions about the codes he references are not persuasive. The codes do not specify the particular type of degree that a job would normally require; do not indicate whether a baccalaureate or higher degree in a specific specialty is a minimum for entry into the type of position proffered here; and do not rebut the *Handbook's* information that such positions do not normally require a degree in a specific specialty.

Not only does the *Handbook* and the Department of Labor sources cited by counsel not support the programmer-analyst occupation as one that normally requires at least a bachelor's degree in a specific specialty, but the evidence about the duties that the beneficiary would perform is insufficient to satisfy any specialty-occupation criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

To determine whether a particular job qualifies as a specialty occupation, the AAO does not simply rely on the position's title or the extent to which the petitioner's descriptions of the position and its underlying duties correspond to occupational descriptions in the *Handbook.* Critical factors for consideration are the record's evidence about specific duties of the proffered position and the particular business matters upon which the duties are to be performed. In this pursuit, the AAO must examine the evidence about the substantive work that the alien will likely perform for the entity or entities ultimately determining the work's content. In the present petition, the petitioner's business is providing software-development and consulting services for clients contracting for those services. In this context, the clients are the entities determining the actual content of the beneficiary's work.

As recognized by the court in *Defensor v. Meissner*, 201 F. 3d 384, evidence of the client companies' job requirements is critical where the work is to be performed for entities other than the petitioner. The court held that the legacy Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. Such evidence must be sufficiently detailed and explained as to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work. The record of proceedings lacks such substantive evidence from the end-user entities, whose business needs directly determine what the beneficiary would actually do on a day-to-day basis. In the present petition, the business entities who would

determine the substantive nature of the beneficiary's work have not provided evidence delineating the specific components of the work that the beneficiary would perform for them. Therefore, the AAO is unable to determine whether the proffered position incorporates the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree, or its equivalent, in the specific specialty as the minimum for entry into the occupation as required by the Act. Accordingly, the petitioner has not established that the proffered position is a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) or that the beneficiary would be coming temporarily to the United States to perform the duties of a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(1)(B)(1).

The AAO will now address the issue of the beneficiary's qualifications to serve in a specialty occupation.

The AAO notes that the issue is moot in the sense that the petitioner has not established that the position that is the subject of this petition is a specialty occupation. However, the issue does deserve comment on the import of the evidence presented on the beneficiary's qualifications.

As will be discussed below, by virtue of the record's copies of the beneficiary's academic transcripts and their evaluation in the Evaluation of Academic Credentials by Morningside Evaluations and Consulting (MEC), the petitioner has established that the beneficiary holds the foreign equivalents of a U.S. Bachelor's Degree in Mechanical Engineering and a U.S. Master's Degree in Engineering. However, contrary to counsel's assertion, the evaluation presented by [redacted] for International Credentials Evaluation and Translation Services (hereinafter referred to as the Edelson/ICETS evaluation) does not establish that the beneficiary has attained the equivalency of a U.S. Bachelor of Science Degree in Engineering and Computer Science. Therefore, if the petitioner had established the proffered position as one requiring at least a bachelor's degree in mechanical engineering, the record of proceedings would establish the beneficiary as qualified to serve in such a position, in accordance with the criteria at section 214(i)(2) of the Act and its implementing regulations at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). However, if the petitioner had established the proffered position as one requiring at least a bachelor's degree in computer science, or in engineering and computer science, the beneficiary would not qualify for such a position, in light of the evidentiary deficiencies of the Edelson/ICETS evaluation, which will be discussed below. Ultimately, though, the beneficiary's qualifications are irrelevant in the context of the evidentiary record in this particular proceeding, because the petitioner has failed to establish that the proffered position is one that requires at least a U.S. bachelor's degree, or the equivalent, in a specific specialty.

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, 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.

The degree referenced by section 214(i)(l)(B) of the Act 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.

In implementing 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 an alien 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 [1] 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 [2] have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

By application of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), the MEC evaluation of the beneficiary's formal academic coursework in India establishes the beneficiary as holding foreign degrees that are equivalent to a U.S. bachelor's degree in Mechanical Engineering and a U.S. master's degree in Engineering. Likewise, under that same criterion, as with the MEC evaluation of the same academic information, the Edelson/ICETS evaluation of the beneficiary's foreign bachelor's of science degree is sufficient to establish that he holds the equivalent of a U.S. bachelor's degree in Mechanical Engineering. However for the reasons discussed below, the additional conclusion of the Edelson/ICETS evaluation, about the educational equivalency of the beneficiary's work experience, has little evidentiary weight.

The portion of the Edelson/ICET evaluation that opines on the educational equivalent of the beneficiary's work experience is subject to the analytical framework 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(4) and (D) for establishing that education less than a degree, specialized training, and/or progressively responsible experience is equivalent to completion of a U.S. degree in a specific specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's non-degree credentials to a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*) would require one or more of the following:

> *(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; [5]
>
> *(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. . .

Dr. Edelson states that he provides his evaluation "as a consultant for ICETS based on [his] experience" outlined in the resume that he attached to the evaluation. He neither claims nor demonstrates that he is "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" as specified at 8 C.F.R. § 214.2(h)(4)(iii)(C)(1). The Edelson/ICETS comments on the beneficiary's experience are obviously neither "results of recognized college-level equivalency examinations or special credit

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[5] The petitioner should note that, in accordance with this provision, USCIS accepts a credentials evaluation service's evaluation of *education only*, not experience.

programs" identified at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), nor evidence of certification or registration from a type of professional society or association specified at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). The Edelson/ICETS evaluation of the beneficiary's work experience is obviously not an evaluation of education, for which 8 C.F.R. § 214.2(h)(4)(iii)(C)(3) recognizes foreign-education-credential evaluating services as competent evaluators. Accordingly, the Edelson/ICETS evaluation merits no evidentiary weight under any criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1) through (h)(4)(iii)(D)(4).

Next, to satisfy the beneficiary-qualification criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*), a petitioner must demonstrate three years of specialized training and/or work experience for each year of college-level training the alien lacks. However, the express terms of this provision provide that time in specialized training and/or work experience will be counted only to the extent that "[i]t is 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." Further, this criterion states that the recognition of evidence in the specialty must be 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 occupation[6];
>
> (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
>
> (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The AAO finds that the Edelson/ICETS evaluation is not probative of any element of this criterion. It is a conclusory document that provides no substantive analysis as to how the generalized

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[6] *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).

information in the record's documents regarding the beneficiary's prior employment support the conclusion that the beneficiary's work "was at a bachelor's-level of practical experience." Further, the AAO notes that the Edelson/ICETS document's conclusory language about the beneficiary's prior employment fails to exactly track with the regulatory language in 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*) that it partially copies. The relevant section of the Edelson/ICETS document states that the beneficiary's work experience was "characterized by increasingly advanced responsibility and complexity under the supervision of managers, and together with peers, at a bachelor's-level of practical experience," but the regulatory language sets a different threshold, namely, that the beneficiary's work experience "was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation." The evidence of record does not establish the educational credentials of those with whom the beneficiary worked. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). As a reasonable exercise of its discretion the AAO discounts the professor's opinion as not probative of any criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) or (D). Consequently, the record of proceedings has no probative evidence that the beneficiary's work experience elevates the beneficiary's educational credentials to a degree in computer science.

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.

As always, in visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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