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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: OCT 0 2 2013 OFFICE: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Michael T. Kelly
Ron Rosenberg
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.

On the Form I-129 visa petition, the petitioner describes itself as a computer consulting company[1] established in 2004. In order to employ the beneficiary in what it designates as a full-time programmer analyst position at a salary of $61,000 per year,[2] the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, concluding that the petitioner failed to demonstrate that the beneficiary is qualified to perform the duties of the proffered position.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's letter denying the petition; and (5) the Form I-290B and supporting documentation.

Upon review of the entire record of proceeding, the AAO finds that the petitioner has failed to overcome the director's ground for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

The statutory and regulatory framework that the AAO must apply in its consideration of the evidence of the beneficiary's qualification to serve in a specialty occupation follows below.

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

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[1] The petitioner provided a North American Industry Classification System (NAICS) Code of 541511, "Custom Computer Programming Services." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "541511 Custom Computer Programming Services," http://www.census.gov/cgi-bin/sssd/naics/naicsrch (accessed Sep. 5, 2013).

[2] The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for use with a job prospect within the "Computer Programmers" occupational classification, SOC (O*NET/OES) Code 15-1131, and a Level I (entry-level) prevailing wage rate, the lowest of the four assignable wage-levels.

(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also 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 education, specialized training, and/or progressively responsible experience that are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and 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 the following:

> 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 an alien 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.

As evidence of the beneficiary's qualifications to perform the duties of the proffered position, the record contains, *inter alia*, two documents that are presented as educational-equivalency evaluations of the beneficiary's education and work experience. The first of these documents submitted by the

petitioner was prepared by Assistant Professor and Director of the Graduate Program of Design Business Management at the In this April 18, 2012 document, Professor opined that the beneficiary's education and work experience was equivalent to a bachelor's degree in Computer Information Systems from an accredited institution of higher education in the United States.

The second such document was prepared by Dr. Professor Emeritus of Computer Science at the In this undated document, Dr. opined that that the beneficiary's education and work experience equivalent to a bachelor's degree in Computer Science from an accredited institution of higher education in the United States.

As will be discussed below, USCIS regulations governing beneficiary qualifications provide for consideration of what is presented as an educational-equivalency of training and/or experience only if, and to the extent that, it was rendered by a person for whom the evidence of record establishes that, at the time when the author produced that document, in whole or in part, as an evaluation of training and/or experience, he or she was, in the words of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*):

> [A]n 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 will also be discussed below, the evidence of record fails to establish that either Professor or Dr. is so qualified as a person whose opinion merits any consideration or weight on the issue of educational equivalency based upon a beneficiary's training and/or experience. In fact, such consideration would conflict with and violate the clear, unambiguous regulatory standard at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*). Accordingly, the training and/or experience components of their purported evaluations of education and work experience will not be considered; and, therefore, the related documents' ultimate conclusions regarding the educational equivalency of the combination of the beneficiary's educational credentials and work experience will have no evidentiary weight or probative value, as those conclusions, in material part, depend upon opinions regarding training and/or work experience that were rendered by persons whose opinions in these areas are outside the zone of consideration set by 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*).

The AAO will now address the application of each alternative criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(C) to the evidence in this record of proceeding.

As the beneficiary did not earn a baccalaureate or higher degree from an accredited college or university in the United States, he does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*1*).

As the beneficiary does not possess a foreign degree, it naturally follows, as is the case here, that the record contains no determination that the beneficiary holds a degree as is equivalent to a baccalaureate or higher degree from an accredited college or university in the United States. Thus,

the beneficiary does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*2*), either.[3]

In this regard, the petitioner should note that, regardless of whether or not he was providing an opinion on behalf of a foreign-credentials evaluation agency, neither Professor nor Dr. evaluated a foreign degree. Consequently, as a foreign degree was not the subject of either Professor or Dr. s evaluation, neither evaluation qualifies for consideration under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(*2*). That criterion clearly limits its applicability only to instances where a beneficiary holds a "foreign degree," and such is not the case here.

Next, as the petitioner has not demonstrated that the beneficiary holds an unrestricted state license, registration or certification to perform the duties of a specialty occupation, he does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*3*), either.

It follows that 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*) remains as the only avenue for the petitioner to demonstrate the beneficiary's qualifications to perform the duties of the proffered position.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*) provides an avenue for beneficiary qualification only open to those, who, in the exact language of this criterion:

> 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 have [(*b*)] recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*) is determined by at least one 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

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[3] It should be noted that although Professor and Dr. evaluated the beneficiary's academic credentials, neither evaluator found those credentials equivalent to a bachelor's degree awarded by an accredited institution of higher education in the United States. Instead, they found the *combination* of the beneficiary's academic studies and work experience equivalent to such a degree. Accordingly, neither evaluation satisfies 8 C.F.R. § 214.2(h)(4)(iii)(C)(*2*).

In order to be relevant under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*2*), an evaluation must be based upon academic credentials alone.

Program on Noncollegiate Sponsored Instruction (PONSI);

(*3*) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;[4]

(*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.

The evaluations from Professor and Dr. do not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*), as the evidence of record does not establish that, when they produced their evaluations for the petitioner, either person was an official with the 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 an analytical aid to this discussion, the AAO notes that the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*) can be broken down into several evidentiary elements which must be satisfied for a submission to merit consideration as an educational-equivalency evaluation of training and/or experience under that criterion, namely, that the submission establishes:

- That, at the time of the evaluation, the person who made it was an official of an accredited U.S. college or university;
- That, at the time of the evaluation, said college or university official had authority to grant not just any college-level credit for training and/or experience, but "college-level credit for training and/or experience *in the specialty*" (emphasis added) at that educational institution; *and*
- That, at the time of the evaluation, that accredited college or university had "a program for granting such credit based upon an individual's training and/or work experience".

Also, it should be noted, that the AAO requires that the evidence of record include persuasive documentary evidence from an appropriate official at the referenced college or university - such as

[4] The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.

a dean or provost – that substantiates that, *at the time when the person rendered the evaluation of training and/or work experience*: he or she was an official at that college or university; that he or she was authorized to award college-level credit *in the particular specialty* pertinent to the petition; and that, at that same time, that accredited college or university *had a program for granting such credit in the pertinent specialty* based on an individual's training and/or work experience.

With regard to Professor 's evaluation, the record contains a February 18, 2011 letter from Dr. Dean of the School of Design Strategies at the Dr. states that the has programs which award credit based upon work experience, and that Professor is experienced in evaluating work experience in order to determine academic equivalence and authorize credit for such experience. The AAO specifically finds that Dr. s language neither establishes that, nor even addresses whether, at the time he authored his work-experience opinion, Professor was an official at Dr. 's college or university; at the time Professor produced the document in question, he was authorized to award college-level credit in the particular specialty pertinent to the petition – or, for that matter, even authorized to award any college-level credit at all; and that, at that same time, that accredited college or university had a program for granting such credit in the pertinent specialty based on an individual's training and/or work experience.

Additionally, the AAO notes that, in his December 6, 2012 decision denying the petition, the director noted that the website of the does not indicate that the school has a curriculum in Computer Information Systems or Computer Science. Consequently, the director found that the petitioner had failed to establish that Professor possesses the 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. It is noted that the petitioner does not dispute this finding on appeal.

For all of the reasons discussed above, the AAO concurs with the director's determination that the training and/or work experience component of Professor s submission does not meet the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*). Accordingly, the AAO accords no evidentiary value to Professor 's opinion as to the U.S. degree equivalency of the beneficiary's education and work experience.

It is on appeal that the petitioner submits the aforementioned opinion from Dr. As evidence that Dr. 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 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*), the petitioner submits several documents.

First, the petitioner submits a printout from the "Life Experience Credit" portion of the website of This printout states, in part, the following:

> Life Experience Credit is credit given in recognition of knowledge obtained in ways other than study in a two- or four-year accredited college. The knowledge must be equivalent to what would be learned in a C.W. Post undergraduate course. . . .[5]

Next, the petitioner submits an excerpt from the As highlighted by the petitioner, Dr. is named as a Professor Emeritus of Computer Science.

Finally, the petitioner submits two letters, neither of which is dated, from Dr. Chairperson of the Computer Science Department at

In his first letter, Dr. states that Dr. is a Professor Emeritus, and that with this status Dr. is permitted to teach available courses. Dr. also states that, over his thirty year career at Dr. has made determinations and recommendations for the granting of college-level coursework for training and experience.

In his second letter, Dr. states again that Dr. is a Professor Emeritus at that he is teaching a graduate-level course in his area of expertise, and that faculty can make determinations and recommendations for the granting of college-level credit for training and experience in their areas of expertise.

Upon review, the AAO finds that the evaluation from Dr. and the evidence submitted in its support does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*) in that it does not establish that he possesses the 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.

First, as noted above, the "Life Experience Credit" excerpt from s website states that the "[t]he knowledge must be equivalent to what would be learned *in a undergraduate course* (emphasis added)." While Dr. is clearly associated with that association appears limited to the . There is no information in the record to suggest any association with the campus or any undergraduate courses offered on that campus. Even if the record did establish such an association his evaluation would still be deficient because it does not reference, in the words of the printout submitted by counsel, any specific ' undergraduate course[s]" to which the beneficiary's work experience is equivalent.

Nor do the letters from Dr. establish that Dr. possesses the 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 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*).

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[5] (accessed Sep. 6, 2013)) indicates that it has at least five physical campuses:

First, it is noted that neither of Dr. 's letters is dated, which undermines their probative value. Without a date of execution, the AAO is unable ascertain the age of these letters and therefore make a determination as to their relative evidentiary value based upon whether or not the letters were authored at a time contemporaneous with Dr. s submission, and therefore also based upon whether or not there is a basis for accepting the letters as accurately reflecting the pertinent facts as of the date that Dr. produced his submission. Furthermore, the fact that these letters do not appear contemporaneous to one another[6] raises further questions as to their age and, therefore, their evidentiary value.

However, even absent these evidentiary deficiencies Dr. 's letters still would not establish that, at the time he authored his submission, Dr. possessed the 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 noted above, in his first letter Dr. stated that Dr. "has made determinations and recommendations for the granting of college[-]level credit." The fact that Dr. "has made" such "determinations and recommendations" in the past does not even attest to authority to grant college-level credit at any time, let alone at the time that Dr. Edelson authored his submission. Moreover, and again, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*) specifically requires a showing that Dr. himself "possesses the authority to grant college-level credit." Dr. fails to describe in any detail the "determinations and recommendations" that he references. Dr. s first letter, therefore, does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*).

As noted above, Dr. stated in his second letter that Faculty "can make determinations and recommendations for the granting of college[-]level credit." However, it is not clear that Dr. s "Professor Emeritus" status qualifies him as a member of 's faculty. Even if it did, the AAO again emphasizes that 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*) specifically requires a showing that Dr. himself "possesses the authority *to grant* college-level credit." The AAO finds that neither Dr. s letters nor any other evidence in the record of proceeding establish that whatever "determinations and recommendations" Dr. may have been making were, in fact, the granting of college-level credit, in a specialty pertinent to the petition here in question, as an exercise of authority granted to him by a particular accredited U.S. college or university to award such college-level credit and as part of a program at that college or university for granting such credit based on an individual's training and/or work experience.

Thus, even if Dr. 's letters did not contain the evidentiary deficiencies described above, the substantive comments Dr. makes in those letters would still not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*).

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[6] Although ostensibly prepared by the same individual, it is not clear that these letters are contemporaneous with one another. The logos appearing in their letterheads do not match, and Dr. e-mail address is not the same, either.

The AAO also notes that the lack of probative value of Dr. s input is emphasized by the fact that, in addition to the generalized, imprecise, and vague language of Dr. s endorsement of Dr. as an evaluator of experience and/or training, neither Dr. 's letter nor its attached Resume even asserts that, at the time of his assessment, Dr. qualified as an authorized official within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*). In fact, closely read, Dr. 's submission only claims that the *educational institution* where he is Professor Emeritus has the authority to grant college-level credit.[7]

For all of these reasons, the petitioner has failed to establish that, when he authored his submission, Dr. possessed the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which had a program for granting such credit based on an individual's training and/or work experience, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*).

As the evidence of record has failed to demonstrate that Professor or Dr. had the authority to grant college-level credit for training and/or experience in a pertinent specialty at an accredited college or university which then had a program for granting such credit based on an individual's training and/or work experience, the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*).

Next, the AAO observes that no evidence has been submitted to establish, and the petitioner does not assert, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(*2*), which requires submission of 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).

Nor does the beneficiary qualify under 8 C.F.R. § 214.2(h)(4)(iii)(D)(*3*), that is, by virtue of an "evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials."

As already reflected in this decision, the findings and ultimate conclusion of the degree-equivalency opinions submitted by Professor and by Dr. are, in material part, based upon assessments of training/work experience. To the extent that they are so based, those submissions and, most decisively, their ultimate opinions on educational equivalency, lie beyond consideration of the criterion at 8 C.F.R. §214.2(h)(4)(iii)(D)(*3*). That criterion is framed only for consideration

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[7] In pertinent part, the submission states: "I am the founding Quondam Chair and a professor Emeritus in the Computer Science Department of an accredited educational institution in the United States with the authority to grant college level credits." "An accredited educational institution in the United States" is clearly the antecedent phrase which the phrase "which is modified by the prepositional phrase "with the authority to grant college level credits."

of "[a]n evaluation of education [*not training and/or experience*] by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials."[8]

No evidence has been submitted to establish, and the petitioner does not assert, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(*4*), which requires that the beneficiary submit 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*) states the following with regard to USCIS analyzing an alien's qualifications:

> For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; 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 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 occupation;[9]
>
> (*ii*) Membership in a recognized foreign or United States association or society in the specialty occupation;

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[8] Of course, there is no creditable evaluation in this record of proceeding that even opines that the beneficiary's foreign education is in itself equivalent to more than three years of college-level study towards attainment of the equivalent of U.S. bachelor's degree in any specific specialty.

Further, as already discussed, the AAO accords no weight to the attempted training and/or experience supplementation of the foreign-education components of the Professor and the Dr. evaluations: those training and/or experience components were not shown to be produced by a person who, at the time of the assessment, was, in the words of 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*), "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."

[9] *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. *See* 8 C.F.R. § 214.2(h)(4)(ii).

(*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.

Although the record contains some information regarding the beneficiary's work history, it does not establish that this work experience included the theoretical and practical application of specialized knowledge required by the proffered position; that it was gained while working with peers, supervisors, or subordinates who held a bachelor's degree or its equivalent in the field; and that the beneficiary achieved recognition of her expertise in the field as evidenced by at least one of the five types of documentation delineated in 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*)(*i*)-(*v*).

Accordingly, the beneficiary does not qualify under any of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*)(*i*)-(*v*), either, and therefore does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*). As such, the petitioner has failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation.[10] Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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

[10] As the director's decision was justified and the appeal will be dismissed, the AAO will not discuss any additional issues or deficiencies it has observed in this record of proceeding.