



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE:

APR 04 2014

OFFICE: CALIFORNIA SERVICE CENTER

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:

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,


Ron Rosenberg
Chief, Administrative Appeals Office

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

I. FACTUAL AND PROCEDURAL BACKGROUND

The petitioner, which describes itself as a 16-employee developer, marketer, and distributor of computer software products established in 1981, seeks approval of this Petition for a Nonimmigrant Worker (Form I-129) so that it may continue to employ the beneficiary as an H-1B temporary 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), and the related regulations at 8 C.F.R. § 214.2(h).

The petitioner filed the instant petition for a full-time petition to which it assigned the job title "Senior Engineer." In support of this petition, the petitioner submitted a Labor Condition Application (LCA) certified for a job offer falling within the "Software Developers, Systems Software" occupational category, SOC (O*NET/OES) Code 15-1133, at a Level III (experienced) prevailing wage rate.

The petitioner filed the instant petition on June 7, 2012. On the Form I-129 and in the LCA, the petitioner attested that it would employ the beneficiary at the petitioner's facility at a salary of \$95,000 per year. The petitioner identified an address in [REDACTED] (Minneapolis-St. Paul-Bloomington, Minnesota Metropolitan Statistical Area) as the beneficiary's place of employment.¹ The petitioner did not request any other worksites and did not submit an itinerary. See 8 C.F.R. § 214.2(h)(2)(i)(B) (requiring an itinerary for services performed in more than one location). Based upon this record, the director approved the petition on June 16, 2012.

U.S. Citizenship and Immigration Services (USCIS) subsequently selected the petitioner, at random, for a post-adjudicative site visit. A USCIS officer conducted the site visit at the petitioner's Spring Lake Park facility, the place of employment specified in the H-1B petition and supporting documents.² The USCIS officer's site visit revealed that the beneficiary was not working at the [REDACTED]

¹ With certain limited exceptions, the applicable Department of Labor regulations define the term "place of employment" as the worksite or physical location where the work actually is performed by the H-1B nonimmigrant. See 20 C.F.R. § 655.715. The Office of Management and Budget established Metropolitan Statistical Areas to provide nationally consistent geographic delineations for collecting, tabulating and publishing statistics. See 44 U.S.C. § 3504(e)(3); 31 U.S.C. § 1104(d); Exec. Order No. 10,253, 16 Fed. Reg. 5605 (Jun. 11, 1951); 75 Fed. Reg. 37,246, 37,246-252 (Jun. 28, 2010) (discussing and defining, *inter alia*, Metropolitan Statistical Areas).

² Although the petitioner bears the burden to establish eligibility for the benefit sought, USCIS may verify information submitted to meet that burden. Agency verification methods may include but are not limited to: review of public records and information; contact via written correspondence, the Internet, facsimile or other electronic transmission, or telephone; unannounced physical site inspections of residences and places of employment; and interviews. See generally sections 103, 204, 205, 214, 291 of the Act; 8 U.S.C. §§ 1103, 1154, 1155, 1184, 1361; 8 C.F.R. § 103.2(b)(7).

facility, but was instead working full-time from his residence, which is located in a suburb of Atlanta.

On the basis of these findings, the director issued a notice of intent to revoke (NOIR) approval of the petition on March 18, 2013. The NOIR provided a detailed statement of the related revocation ground, and afforded the petitioner an opportunity to provide a rebuttal. See 8 C.F.R. § 214.2(h)(11)(iii)(B).

In response, the petitioner confirmed that the beneficiary was no longer working at the address specified on the Form I-129 and in the LCA and submitted, *inter alia*, a new LCA certified for employment in (Minneapolis-St. Paul-Bloomington, Minnesota Metropolitan Statistical Area) and (Atlanta-Sandy Springs-Marietta, Georgia Metropolitan Statistical Area).

In its April 2, 2013 letter, the petitioner stated the following:

The role and job function that [the beneficiary] performs does not require him to be deskbound in Minnesota. . . .

[The beneficiary] comes to headquarters in Minnesota at least 4 or 5 times a year . . . [he] works out of his house and has an established address, not a PO box.³

In his April 15, 2013 letter, prior counsel conceded that a new LCA should have been filed:

Petitioner understands now that the LCA should have disclosed [the] Beneficiary's home office as an additional work location. Petitioner never intended to mislead USCIS and this was an oversight. A new certified LCA is enclosed that has both Petitioner's address and Beneficiary's home address. Petitioner hopes this corrects the previous error and misunderstanding.

After considering the response to the NOIR, the director concluded that the change in the beneficiary's place of employment constituted a material change to the terms and conditions of the beneficiary's employment as specified in the original petition. Consequently, pursuant to 8 C.F.R. § 214.2(h)(2)(i)(E), the director concluded that the petitioner was required to file an amended Form I-129 reflecting these changes and to which the new LCA corresponded. Because the petitioner failed to take that action, the director revoked approval of the petition on June 12, 2013 pursuant, generally, to 8 C.F.R. § 214.2(h)(11)(i)(A) (failure to notify USCIS of any changes in the terms and conditions of employment) and 8 C.F.R. § 214.2(h)(11)(iii)(A)(3) (violation of terms and conditions of approved petition). The instant appeal followed on July 9, 2013.

³ The petitioner also explained that the beneficiary "was based in Minnesota for the first 18 months he worked for [the petitioner]." Given that the beneficiary's first grant of H-1B status for employment with the petitioner was effective October 1, 2009, the petitioner's statement indicates that the beneficiary ceased working in Minnesota on or around April 1, 2011, more than one year prior to the filing of the instant petition.

For the reasons discussed below, the AAO concludes that the director's revocation of the approval of the petition was correct. Accordingly, the petitioner's appeal will be dismissed, and approval of this petition will remain revoked.

Beyond the decision of the director, the AAO finds an additional issue which, though not addressed in the director's decision, nevertheless would have also been a proper basis for revocation of the approval of the petition, namely, the failure of the evidence of record to demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation.⁴ Although the director did not revoke approval of the petition on this ground, this would not preclude the director from again initiating revocation-on-notice proceedings with regard to this issue pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(5), as approval of an H-1B petition on behalf of a beneficiary who has not been shown to qualify to perform the duties of a specialty occupation is a violation of 8 C.F.R. § 214(h).

The AAO bases its decision upon its review of the entire record of proceeding, which includes the following: (1) the Form I-129 and supporting documentation; (2) the director's notice of intent to revoke approval of the petition (NOIR); (3) counsel's response to the NOIR; (4) the director's letter revoking approval of the petition; and (5) the Form I-290B and supporting documentation.

II. REVOCATION AUTHORITY

In general, the authority to revoke approval of an H-1B petition is found at 8 C.F.R. § 214.2(h)(11), which states, in pertinent part, the following:

Revocation of approval of petition.

(i) *General.*

- (A) The petitioner shall immediately notify the Service of any changes in the terms and conditions of employment of a beneficiary which may affect eligibility under section 101(a)(15)(H) of the Act and paragraph (h) of this section. An amended petition on Form I-129 should be filed when the petitioner continues to employ the beneficiary. . . .
- (B) The director may revoke a petition at any time, even after expiration of the petition.

* * *

⁴ The AAO reviews service center decisions on a *de novo* basis (*See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)), and it was in the course of this review that the AAO identified this issue.

(iii) *Revocation on notice—*

(A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

- (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition. . . .; or
- (2) The statement of facts contained in the petition . . . was not true and correct, inaccurate, fraudulent, or misrepresented a material fact; or
- (3) The petitioner violated terms and conditions of the approved petition; or
- (4) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or
- (5) The approval of the petition violated [paragraph] (h) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. . . .

III. THE LCA AND H-1B VISA PETITION PROCESS

In pertinent part, the Act defines an H-1B nonimmigrant worker as:

[A]n alien . . . who is coming temporarily to the United States to perform services . . . in a specialty occupation described in section 214(i)(1) . . . who meets the requirements for the occupation specified in section 214(i)(2) . . . and with respect to whom *the Secretary of Labor determines and certifies to the [Secretary of Homeland Security] that the intending employer has filed with the Secretary [of Labor] an application under section 212(n)(1)*

Section 101(a)(15)(H)(i)(b) of the Act (emphasis added).⁵

In turn, section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A), requires an employer to 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 experience and qualifications who are performing the same services.⁶ See 20 C.F.R. § 655.731(a); *Venkatraman v. REI Sys., Inc.*, 417 F.3d 418, 422 & n.3 (4th Cir. 2005); *Michal Vojtisek-Lom & Adm'r Wage & Hour Div. v. Clean Air Tech. Int'l, Inc.*, No. 07-97, 2009 WL 2371236, at *8 (Dep't of Labor Admin. Rev. Bd. Jul. 30, 2009).

Implemented through the LCA certification process, section 212(n)(1) is intended to protect U.S. workers' wages by eliminating economic incentives or advantages in hiring temporary foreign workers. See, e.g., 65 Fed. Reg. 80,110, 80,110-111, 80,202 (Dec. 20, 2000). The LCA currently requires petitioners to describe, *inter alia*, the number of workers sought, the pertinent visa classification for such workers, their job title and occupational classification, the prevailing wage, the actual rate of pay, and the place(s) of employment.

To promote the U.S. worker protection goals of a statutory and regulatory scheme that allocates responsibilities sequentially between DOL and the U.S. Department of Homeland Security (DHS), a prospective employer must file an LCA and receive certification from DOL before an H-1B petition may be submitted to USCIS. 8 C.F.R. § 214.2(h)(4)(i)(B)(1); 20 C.F.R. § 655.700(b)(2).⁷ If an employer does not submit the LCA to USCIS in support of a new or amended H-1B petition, the process is incomplete and the LCA is not certified to the Secretary of Homeland Security. See section 101(a)(15)(H)(i)(b) of the Act; 8 C.F.R. § 214.2(h)(4)(i)(B)(1); 20 C.F.R. § 655.700(b); see also 56 Fed. Reg. 37,175, 37,177 (1991); 57 Fed. Reg. 1316, 1318 (1992) (discussing filing sequence).

⁵ In accordance with section 1517 of title XV of the Homeland Security Act of 2002 (HSA), Pub. L. No. 107-296, 116 Stat. 2135, any reference to the Attorney General in a provision of the Act describing functions which were transferred from the Attorney General or other Department of Justice official to DHS by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. See 6 U.S.C. § 557 (2003) (codifying HSA, tit. XV, § 1517); 6 U.S.C. § 542 note; 8 U.S.C. § 1551 note.

⁶ The prevailing wage may be determined based on the arithmetic mean of the wages of workers similarly employed in the area of intended employment. 20 C.F.R. § 655.731(a)(2)(ii).

⁷ Upon receiving DOL's certification, the prospective employer then submits the certified LCA to USCIS with an H-1B petition on behalf of a specific worker. 8 C.F.R. § 214.2(h)(2)(i)(A), (2)(i)(E), (4)(iii)(B)(1). DOL reviews LCAs "for completeness and obvious inaccuracies," and will certify the LCA absent a determination that the application is incomplete or obviously inaccurate. Section 212(n)(1)(G)(ii) of the Act. In contrast, USCIS must determine whether the attestations and content of an LCA correspond to and support the H-1B visa petition, including the specific place of employment. 20 C.F.R. § 655.705(b); see generally 8 C.F.R. § 214.2(h)(4)(i)(B).

In the event of a material change to the terms and conditions of employment specified in the original petition, the petitioner must file an amended or new petition with USCIS with a corresponding LCA. Specifically, the pertinent regulation requires:

The petitioner shall file an amended or new petition, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or training or the alien's eligibility as specified in the original approved petition. An amended or new H-1C, H-1B, H-2A, or H-2B petition must be accompanied by a current or new Department of Labor determination. *In the case of an H-1B petition, this requirement includes a new labor condition application.*

8 C.F.R. § 214.2(h)(2)(i)(E) (emphasis added). Furthermore, petitioners must "immediately notify the Service of any changes in the terms and conditions of employment of a beneficiary which may affect eligibility" for H-1B status and, if they will continue to employ the beneficiary, file an amended petition. 8 C.F.R. § 214.2(h)(11)(i)(A).

A change in the place of employment of a beneficiary to a geographical area requiring a corresponding LCA be certified to DHS with respect to that beneficiary may affect eligibility for H-1B status and is, therefore, a material change for purposes of 8 C.F.R. § 214.2(h)(2)(i)(E) and (11)(i)(A). When there is a material change in the terms and conditions of employment, the petitioner must file an amended or new H-1B petition with the corresponding LCA. 8 C.F.R. § 214.2(h)(2)(i)(E).

IV. ANALYSIS

As noted above, the petitioner claimed in both the Form I-129 petition and the certified LCA that the beneficiary's place of employment was located in [REDACTED] (Minneapolis-St. Paul-Bloomington, Minnesota Metropolitan Statistical Area). After conducting the site visit, USCIS determined that the beneficiary was not employed at that designated place of employment. In response to the director's NOIR, the petitioner indicated the beneficiary's places of employment as [REDACTED] (Minneapolis-St. Paul-Bloomington, Minnesota Metropolitan Statistical Area) and [REDACTED] (Atlanta-Sandy Springs-Marietta, Georgia Metropolitan Statistical Area).⁸ No other locations were provided.

A change in the terms and conditions of employment of a beneficiary which may affect eligibility under section 101(a)(15)(H) of the Act is a material change. *See* 8 C.F.R. § 214.2(h)(2)(i)(E); *see*

⁸ The record here indicates that the new place of employment was not a short-term placement. *See generally* 20 C.F.R. §§ 655.715, 655.735. As will be discussed *infra*, the AAO does not find that this new work location falls under "non-worksites" locations as described at 20 C.F.R. § 655.715. Nor does it constitute a short-term placement or assignment as described at 20 C.F.R. § 655.735.

also id. § 214.2(h)(11)(i)(A) (requiring that a petitioner file an amended petition to notify USCIS of any material changes affecting eligibility of continued employment or be subject to revocation).

Because section 212(n) of the Act ties the prevailing wage to the "area of employment," a change in the beneficiary's place of employment to a geographical area not covered in the original LCA would be material for both the LCA and the Form I-129 visa petition, as such a change may affect eligibility under section 101(a)(15)(H) of the Act. *See, e.g.*, 20 C.F.R. § 655.735(f). If, for example, the prevailing wage is higher at the new place of employment, the beneficiary's eligibility for continued employment in H-1B status will depend on whether his or her wage for the work performed at the new location will be sufficient. As such, for an LCA to be effective and correspond to an H-1B petition, it must specify the beneficiary's place(s) of employment.⁹

Here, the Form I-129 and the originally submitted LCA identified the [REDACTED] facility as the place of employment. The LCA did not cover the [REDACTED] addresses requested in response to the NOIR. Such changes in the terms and conditions of the beneficiary's employment may, and in this case did, affect eligibility under section 101(a)(15)(H) of the Act.

Having materially changed the beneficiary's authorized place of employment to a geographical area not covered by the original LCA, the petitioner was required to immediately notify USCIS and file an amended or new H-1B petition, along with a corresponding LCA certified by DOL, with both documents indicating the relevant change.¹⁰ 8 C.F.R. § 214.2(h)(2)(i)(E), (h)(11)(i)(A). By failing to file an amended petition with a new LCA, or by attempting to submit a preexisting LCA that has never been certified to USCIS with respect to a specific worker, a petitioner may impede efforts to verify wages and working conditions. Full compliance with the LCA and H-1B petition process, including adhering to the proper sequence of submissions to DOL and USCIS, is critical to the U.S. worker protection scheme established in the Act and necessary for H-1B visa petition approval.¹¹

For all of these reasons, the AAO finds that the director properly revoked approval of this petition.

⁹ A change in the beneficiary's place of employment may impact other eligibility criteria, as well. For example, at the time of filing, the petitioner must have complied with the DOL posting requirements at 20 C.F.R. § 655.734. Additionally, if the beneficiary will be performing services in more than one location, the petitioner must submit an itinerary with the petition listing the dates and locations. 8 C.F.R. § 214.2(h)(2)(i)(B); *see also id.* § 103.2(b)(1).

¹⁰ Here the petitioner submitted a new LCA certified for the beneficiary's places of employment in [REDACTED] in response to the NOIR. This LCA was not previously certified to USCIS with respect to the beneficiary and, therefore, it had to be submitted to USCIS as part of an amended or new petition before the beneficiary would be permitted to begin working in those places of employment. *See* 8 C.F.R. § 214.2(h)(2)(i)(E).

¹¹ The AAO is not persuaded by counsel's assertion that "no purpose is served by filing another LCA in this situation."

On appeal counsel requests that the appeal "be reviewed by an examiner or supervisor familiar with the Starter [sic] 101 Training of the Entrepreneur in Residence Program," and submits information regarding Startup 101 training. However, counsel has not established the relevance of Startup 101 training, as the petitioner is not a "startup." As noted above, the petitioner stated on the Form I-129 that it was established in 1981. Counsel does not explain how the petitioner, a 33-year-old company, could be considered a "startup."

Counsel also argues that the beneficiary should be considered a "roving telecommuter" and that, as such, the petitioner's corporate headquarters in Minnesota should be considered to be his worksite. In support of his argument, counsel cites the definition of "place of employment" located at 20 C.F.R. § 655.715, which defines that term as "the worksite or physical location where the work is actually performed." According to counsel, the beneficiary's home office in [REDACTED] "is not a realistic interpretation of a 'worksite.'" The AAO does not agree. The regulation at 20 C.F.R. § 655.715 does, as indicated by counsel, state that a location at which a beneficiary may work might not necessarily qualify as his or her "place of employment." However, that regulation also makes explicit the circumstances pursuant to which a worksite would not so qualify and provides for two exceptions.

The first exception is for employee developmental activity. It states, in pertinent part, the following:

An H-1B worker who is stationed and regularly works at one location may temporarily be at another location for a particular individual or employer-required developmental activity such as a management conference, a staff seminar, or a formal training course (other than "on-the-job-training" at a location where the employee is stationed and regularly works).

There is no indication in this case that the beneficiary's activity at his home office is confined to such conferences, seminars, or training and, in any event, the petitioner has conceded that the beneficiary regularly works at home. For both reasons, the beneficiary's home workplace is not excepted from the definition of "place of employment" pursuant to the developmental activity exception.

The remaining exception to the general rule that the site at which a beneficiary works shall be considered the "place of employment" provides that a particular location "would not be considered a 'place of employment' or 'worksite'" if three requirements are met. In this case, neither of the first two of those three requirements – one, a demonstration that "[t]he nature and duration of the H-1B worker's job functions mandates his/her short-term presence at the location," and two, that "[t]he H-1B worker's presence at the location . . . is on a casual, short-term basis" – has been met. As noted above, the petitioner stated that the beneficiary worked at the Minnesota office for only the first 18 months of his employment with the petitioner. Given that the beneficiary's first grant of H-1B status for employment with the petitioner was effective October 1, 2009, this statement indicates that the beneficiary has been working from his home office in Marietta since approximately April 1, 2011, more than one year prior to the filing of the instant petition, which is not indicative of a short-term presence at the [REDACTED] location. Accordingly, the AAO finds that the beneficiary's "place of employment" is [REDACTED].

As explained above, a change in the location of the beneficiary's employment is a material change requiring the filing of a new LCA and an amended visa petition. Absent those filings, the beneficiary was working in Georgia pursuant to an H-1B visa permitting him to work in [REDACTED] and the surrounding area. The visa petition was supported by an LCA certified and valid for that same area of Minnesota and for no other area. The petitioner violated terms and conditions of the approved petition, and approval of the visa petition was correctly revoked pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(3). The appeal will be dismissed and approval of the visa petition will remain revoked on that basis.

V. ADDITIONAL ISSUE NOT IDENTIFIED BY DIRECTOR

The AAO will now address an issue not raised by the director, but which would nonetheless have been a proper basis for revocation of the approval of this petition pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(5) because the director's approval of the petition violated section (h) of that paragraph. Specifically, the evidence of record does not demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation.

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

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

In implementing section 214(i)(2) of the Act, 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.

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.

The record of proceeding contains no evidence that the beneficiary earned a baccalaureate or higher degree from an accredited college or university in the United States. Accordingly, it does not establish that he qualifies to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1).

Nor does the record of proceeding contain any evidence that the beneficiary possesses a foreign degree that has been determined to be equivalent to a baccalaureate or higher degree from an accredited college or university in the United States. Accordingly, it does not establish that he qualifies to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), either.

Nor does the evidence of record demonstrate that the beneficiary holds an unrestricted state license, registration or certification to perform the duties of a specialty occupation. As such, the evidence of record does not establish that the beneficiary is qualified to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3), either.

Accordingly, 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) requires a demonstration that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary also has recognition of that 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 Program on Noncollegiate Sponsored Instruction (PONSIS);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;¹²
- (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 record contains an evaluation of the beneficiary's work experience prepared by [REDACTED], an evaluator employed by [REDACTED], dated March 13, 2009. According to [REDACTED] the beneficiary's work experience is equivalent to a U.S. bachelor's degree in computer engineering.

However, [REDACTED] evaluation does not demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), as the petitioner has not demonstrated that [REDACTED] currently possesses the authority to grant college-level credit for training and/or experience at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

For all of these reasons, the beneficiary does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(I).

¹² 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.

No evidence has been submitted to satisfy 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). As was the case under 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1) and (2), the beneficiary is unqualified under this criterion because the record contains no evidence that he earned a baccalaureate or higher degree from an accredited college or university in the United States; and the beneficiary does not possess a foreign degree that has been determined to be equivalent to a baccalaureate or higher degree from an accredited college or university in the United States.

No evidence has been submitted to satisfy 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 [USCIS] 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;¹³
- (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;

¹³ *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).

- (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) 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, and reinitiation of revocation proceedings on this additional ground, pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(5), would be within the director's discretion.

VI. CONCLUSION

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. Approval of the petition is revoked.