



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **DEC 05 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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)

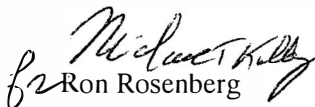
ON BEHALF OF PETITIONER:

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 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 "software solutions provider to high tech manufacturing" established in [REDACTED]. In order to employ the beneficiary in what it designates as a "Senior Associate, Solution Architect position" at an annual salary of \$86,000 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 evidence of record does not demonstrate that the beneficiary is qualified to perform the duties of the particular type of specialty occupation claimed in the petition.

The record of proceeding before us 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, brief, and supporting documentation.

We find that upon review of the entire record of proceeding, the evidence of record does not overcome the director's ground for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

I. PRELIMINARY COMMENTS

As a preliminary matter, we note that U.S. Citizenship and Immigration Services (USCIS) is required to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether an alien beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].")

In the case before us, however, we see that the director's decision did not explicitly conclude that the particular position which is the subject of this decision qualifies as a specialty occupation. The director's decision is silent on the specialty occupation issue, and it proceeds directly to the beneficiary occupation issue, stating that "[t]he overarching issue to be discussed here is whether the beneficiary is qualified to perform services in the specialty occupation." However, given that the petitioner asserted that the proffered position belonged within the occupational group of Software Developers, Applications, it behooves us to note that neither the information within the Department of Labor's *Occupational Outlook Handbook (Handbook)*, nor the information within the *O*NET*, nor any authoritative source cited in this record of proceeding supports the proposition that a position's inclusion within the Software Developers occupational group is in itself sufficient

to establish a particular position as one for which a bachelor's or higher degree in a specific specialty would normally be the minimum requirement for entry. If, indeed, a director were to base his or her specialty-occupation determination on the mistaken premise that Software Developers constitute a categorical class of specialty-occupation positions, that determination would be erroneous.

As noted above, the petitioner claims that the beneficiary would perform the services of a position within the Software Developer, Applications occupational group. As also reflected in our preliminary comments above, a position's inclusion within the Software Developers occupational group is not in itself sufficient to establish a position as a specialty occupation. However, the information in the *Handbook's* "Software Developers" chapter indicates that, if the proffered position had been established as that of a specialty-occupation-level software developer, the position would require a bachelor's or higher degree in Computer Science, Software Engineering, or a related field for entry. See U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Software Developers," <http://www.bls.gov/ooh/computer-and-information-technology/software-developers.htm#tab-4> (last accessed December 2, 2014). Therefore, for the purpose of a full adjudication of the beneficiary qualification issue, we will analyze the beneficiary's qualifications in relation to the type of specialty occupation claimed by the petitioner. Accordingly, if the evidence of record established - as claimed - that the beneficiary had actually attained, by a combination of foreign education and experience and/or training, the equivalent of a U.S. bachelor's or higher degree in one of the computer-related specialties asserted in this record's evaluation documents (i.e., Management Information Systems or Information Technology), we would conclude that the beneficiary was qualified to serve in such a specialty occupation. However, such is not the case here.

We need not address the specialty-occupation issue, because, as will now be discussed at length, the evidence of record does not establish that the beneficiary would be qualified to serve in a Software Developer position if it were, as the petitioner claims, a specialty-occupation-caliber position. If, however, the beneficiary were so qualified, which is not the case, remand to the director for a decision on the merits of the specialty occupation claim would be appropriate.

We will now address the single basis which the director specified for denying the petition, namely, her determination that the evidence of record had not established that the beneficiary is qualified to perform the services of a specialty-occupation-caliber Software Developer position. For the sake of adjudicating the beneficiary-qualification issue, we shall assume that the evidence of record had established the proffered position as a specialty-occupation position within the Software Developers occupational category, as claimed by the petitioner.

II. LAW

A. Criteria for Qualifying a Beneficiary to Serve in an H-1B Specialty-Occupation Position

For the statutory and regulatory framework that we must apply to the evidence of the beneficiary's qualification to serve in the asserted specialty occupation, we look to section 214(i)(2) of the Act,

8 U.S.C. § 1184(i)(2), and to the regulatory provisions at 8 C.F.R. § 214.2(h)(4)(iii)(C) and 8 C.F.R. § 214.2(h)(4)(iii)(D).

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.

8 C.F.R. § 214.2(h)(4)(iii)(C), *Beneficiary qualifications*, provides for beneficiary qualification by satisfying one of four criteria. They require that the evidence of record establish that, at the time of the petition's filing, the beneficiary was a person either:

- (1) Hold[ing] a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold[ing] 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[ing] 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) *Hav[ing] [(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 hav[ing] [(B)] recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.*

[Emphasis added.]

Only the fourth criterion is relevant to the appeal now before us, as the petitioner bases its beneficiary-qualification claim upon a combination of the beneficiary's foreign coursework (acknowledged to be less than a bachelor's degree), work experience, and training.

B. The Two General Requirements at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4)

It is important to recognize that, as indicated by our above parenthetical demarcation of "A" and "B" segments to the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), this regulation specifies two separate and independent evidentiary thresholds, both of which must be met for beneficiary qualification under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

The *first* mandatory threshold requires that the petitioner establish that, at the time of the petition's filing, the beneficiary had attained "the equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation."

The *second* mandatory threshold additionally requires that the petitioner establish that, at the time of the petition's filing, the beneficiary had *also* achieved "recognition of expertise in the specialty through progressively responsible positions directly related to the specialty."

Therefore, to succeed in establishing a beneficiary as qualified to serve in a particular H-1B specialty-occupation position by application of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the petitioning employer must establish *not only* (1) that the beneficiary attained "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," *but also* (2) that the beneficiary had achieved "recognition of expertise in the specialty through progressively responsible positions directly related to the specialty."

Satisfying only one of the two requirements will not suffice, as is clear in the unambiguous language at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and at section 214(i)(2)(C) of the Act, which stipulates that for classification as an H-1B nonimmigrant worker not qualifying by virtue of licensure in the pertinent specialty occupation or by attainment of a qualifying degree, a beneficiary must possess:

- (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.

1. The first requirement at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4): degree equivalence

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) requires the petitioner to satisfy the U.S.-degree-equivalence requirement by evidence of the beneficiary's "education, specialized training, and/or progressively responsible experience." In that pursuit the regulatory provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D), *Equivalence to completion of a college degree*, come into play. That portion of the regulations states that "for purposes of paragraph (h)(4)(iii)(C)(4) of this section," 8 C.F.R. § 214.2(h)(4)(iii)(D) is to be used to determine "equivalence to completion of a United States baccalaureate or higher degree." The provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) read:

Equivalence to completion of a college degree. For purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of [(1)] knowledge, [(2)] competence, and [(3)] practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by 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;¹
- (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. . . .

2. The second requirement at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4): recognition of expertise

Again, as clearly reflected in the Act and in the regulation, this 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) recognition-of-expertise requirement is additional to the degree-equivalence requirement stipulated earlier in the same paragraph. It is also important to note that the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D), *Equivalence to completion of a college degree*, are introduced as addressing *only* the degree-completion requirement of section 214(i)(2)(C) of the Act and 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), and *not* their second, recognition-of-expertise requirement. This fact is clearly conveyed by reading 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) together with the introductory paragraph at 8 C.F.R. § 214.2(h)(4)(iii)(D) to its degree-equivalence criteria.

¹ The petitioner should note that, in accordance with this provision, we will accept a credentials evaluation service's evaluation of *education only*, not training and/or work experience.

Again, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) sets two requirements, as it reads:

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.

However, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D) focuses only on the first requirement, as seen in its introduction to its criteria, which reads:

Equivalence to completion of a college degree. For purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of [(1)] knowledge, [(2)] competence, and [(3)] practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following

As will be reflected in our analysis of the documentary evidence, the evidence of record does not satisfy either the degree-equivalency or the recognition-of-expertise requirements.

C. Scope of Analysis

The nature of the petitioner's beneficiary-qualification claim in this record of proceeding will require us to address several provisions of the above-cited beneficiary-qualification regulations for H-1B specialty-occupation positions. These provisions are:²

- 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), which is the overarching regulation that encompasses and applies to every petitioner's endeavors to establish a beneficiary as qualified for an H-1B specialty-occupation position under any criterion, or combination of criteria, at 8 C.F.R. § 214.2(h)(4)(iii)(D);

² Because they are not relevant to the beneficiary-qualification issues before us on appeal, we will not further discuss either the second or the fourth criterion of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D). The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(2) is not pertinent to this appeal because the record does not include "[t]he 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)." The provision at 8 C.F.R. § 214.2(h)(4)(iii)(D)(4) is not relevant because the petitioner has not presented "[e]vidence 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."

- 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), as it governs evaluations submitted to establish that the beneficiary has attained the equivalent of U.S. college or graduate-level credits by his or her training and/or experience in the pertinent specialty;
- 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), which governs evaluations of foreign education and which restricts that role to a "reliable credentials evaluation service which specializes in evaluating foreign educational credentials"; and
- 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), because, as we shall discuss at length, the evaluations submitted by the petitioner misstate and misapply this provision, which (1) reserves itself exclusively for USCIS use, and which also (2) specifies several evidentiary requirements that the educational-equivalency evaluations submitted into this record have not addressed.

III. EVIDENCE OVERVIEW

In its endeavor to establish the beneficiary's qualifications by a combination of (1) foreign education and (2) training and/or work experience, the petitioner has submitted three separate evaluations of those aspects of the beneficiary's background. As we shall see, all three of the evaluations are materially deficient, and none of them establish the beneficiary as qualified to serve in the type of specialty occupation asserted by the petitioner.

A. The Three Degree-Equivalency Evaluations

There are three sets of evaluation documents (with enclosures), each of which the petitioner submitted as a combined evaluation of both the beneficiary's foreign education and his work experience and training. In chronological order of submission, these documents are:

1. A March 12, 2013 "Evaluation of Training, Education, and Experience" produced by [REDACTED] as an evaluator for [REDACTED] a credentials evaluation service specializing in evaluating foreign educational credentials. This submission (hereinafter, "the [REDACTED] evaluation") concluded that the beneficiary "completed the equivalent of a Bachelor of Science Degree, with a dual major in Management Information Systems and Accounting from an accredited institution of higher education in the United States." (Submitted with the petition at its filing.)
2. A February 14, 2014 "Expert Opinion Evaluation of Academics and Work Experience," prepared for the petitioner by Dr. [REDACTED] Ph.D., Professor of Computer Science at [REDACTED] Dr. [REDACTED] concluded that, based upon his review of the beneficiary's academics and work experience, the beneficiary holds "no less than the equivalent of a Bachelor's Degree in Management Information Systems." (Submitted in response to the RFE.)

3. A third evaluation, this one dated February 19, 2014, and prepared for the petitioner under the title "Expert Opinion Evaluation of Academic and Work Experience" by Dr. [REDACTED] Ph.D., an Associate Professor of Computer Applications and Information Systems at the [REDACTED] Dr. [REDACTED] evaluation concludes that the beneficiary's combined academic achievements and work experience are equivalent to a bachelor's degree in Information Technology from an accredited college or university in the United States. (First submitted on appeal.)

B. Documentary Bases of the Evaluations

The evidence of record indicates that each of the three evaluations was based upon the academic records and other documents submitted into the record of proceeding. With regard to the experience-and-training assessments in the evaluations, there is no evidence that the evaluators had inquired beyond those documents for more specific details about the beneficiary's work experience or training.

The array of documentary evidence referenced in one or more of the aforementioned evaluations includes the following:

1. *Regarding academic attainment:*

- Copies of academic documents related to the beneficiary's coursework for two foreign degrees from [REDACTED] in India, namely: (1) a three-year Bachelor of Commerce Degree and (2) a two-year Master's Degree in Business Administration (MBA). Interestingly, the [REDACTED] evaluation, the one evaluation submitted by a foreign-education evaluating service, does not even mention the asserted MBA. The record also includes a document issued by the [REDACTED] [REDACTED] indicating that the beneficiary completed a one-year program at [REDACTED] which culminated in the award of a certificate stating that the beneficiary "has passed" the Institute's Intermediate Examination. We find that neither the [REDACTED] documents nor the [REDACTED] documentation provided by the petitioner indicates any concentration or substantial amount of coursework in Computer Science or any related specialty, including Information Technology or Information Management Systems.

2. *Regarding work experience*

- A March 8, 2013 letter from the Director of [REDACTED] [REDACTED] to which we will hereafter refer to as "the [REDACTED] experience letter." It states that the beneficiary "has been employed full-time by [REDACTED] from June 2008 through the present" and that he "currently serves in the position of Sr. Associate, Solution Architect." The letter also provides a list of what the letter's author termed "advanced level duties" that the beneficiary was performing as of the date of the letter. It is important to note that we find that this letter does not establish any

progression in duties and responsibilities, let alone such progression through increasingly responsible positions that would meet the requirement, at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), to show recognition of expertise in the specialty through progressively responsible positions directly related to the specialty in question.

3. *Regarding training*

- Both the [REDACTED] evaluations reference the beneficiary's training documentation, and in exactly the same language, that is:

[The beneficiary] has also completed professional development programs in a variety of computer technology and accounting-related subject[s]. He has completed training certificates in Oracle General Accounting Implementation Proficiency, PI/SQL, and accounting from several professional development institutions.

IV. THE [REDACTED] EXPERIENCE LETTER

The aforementioned [REDACTED] experience letter is a prominent reference for the experience and/or training assessment in each of the three degree-equivalency evaluations. Therefore, the letter's content is critical to establishing the probative value of the evaluations and their ultimate conclusions. However, we find that the [REDACTED] experience letter itself provides an insufficient evidentiary foundation for a persuasive correlation between the beneficiary's work at [REDACTED] on the one hand, and, on the other, achievement of any particular amount and level of U.S. college-level coursework in Computer Science or the related fields of Management Information Systems and Information Technology, upon which the evaluators focused.

The letter is signed by [REDACTED] Director, who states that he has knowledge of the beneficiary's employment because, as the Director, he "oversee[s] the operations of the office and [has] access to all employment records."

The letter states that [REDACTED] has employed the beneficiary full-time from June 2008 to the present, and that he "currently serves the position of Sr. Associate, Solution Architect."

The letter further states:

In this position, [the beneficiary] exercises hands-on training on [the petitioner's] proprietary software solutions and is proficient in all the complex technical aspects of our internally-developed software.

The letter then provides the following list as "advanced-level duties" that the beneficiary performs at the [REDACTED] offices in India:

- Implementing supplier integration of shop floor transactions with [REDACTED] for clients using [the petitioner's] proprietary products, including the [REDACTED] [REDACTED] Report Reviewer, and others.
- Working as part of [REDACTED] product development team to upgrade [REDACTED] proprietary products and to fill in any gap areas identified to suit clients' requirements.
- Enhancing existing integration solutions to cope with new conventions and product flows.
- Identifying gap areas for [the petitioner's] proprietary products to address new requirements of clients.
- Guiding and training new employees on [the petitioner's] proprietary products.
- Resolving daily transactional issues directly related to supplier integration.
- Coordinating with clients regarding new developments and enhancements with respect to [the petitioner's] proprietary products.
- Coordinating with [the petitioner's] clients' suppliers regarding transaction issues, including:
 - ⇒ Checking for incorrect data sent in transaction files
 - ⇒ Checking for missing transactions
 - ⇒ Obtaining the information for new product family's new conventions followed at supplier's end

The letter also states that the beneficiary "has so far been directly involved with developing solutions and providing supplier integration and support in a number of client assignments, including, but not limited to, [REDACTED]". The substantive extent of the beneficiary's "direct involvement" is not further described, nor is the beneficiary's level of responsibility.

The letter closes with the statement that the beneficiary "contributed much to [the petitioner's] continued success with respect to the implementation of our proprietary software."

The letter does not indicate the position for which the beneficiary had been initially hired, whether the beneficiary's current position is the same for which he was initially hired (obviously without any of the [REDACTED] work experience), or whether the beneficiary's current position represents a promotion

or series of promotions. Nor does the letter otherwise convey any promotions with increased responsibility or independence of action. The letter attests to (1) the period of time that the beneficiary had been working for [REDACTED] (i.e., June 2008 to the March 8, 2013 date of the letter), (2) the beneficiary's job title as of the date of the letter, and (3) the general functions that the beneficiary was performing in that current job. However, the letter (1) identifies and generally describes only the beneficiary's "current" position, (2) does not state how long the beneficiary has been assigned to that particular position, (3) does not recount any prior positions held by the beneficiary within the organization, and as naturally follows, also does not describe the duties and responsibilities of any such prior position, and (5) does not establish that the beneficiary has achieved progressively responsible positions that would indicate recognition of expertise in the pertinent specialty, as the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) include as an essential element for establishing a beneficiary's qualifications through a combination of education, training, and/or experience.

Further, we find that this [REDACTED] document describes the beneficiary's work experience only in relatively abstract terms of generalized functions. As some representative examples, we point to the following generalized descriptions: (1) "Implementing supplier integration of shop floor transactions with [REDACTED] for clients using [the petitioner's] proprietary products"; (2) "Working as part of [REDACTED] product development team to upgrade [REDACTED] proprietary products and to fill in any gap areas," a phrase not supplemented by discussion of the beneficiary's level of participation, substantive contributions, or the levels of related knowledge and competency that was required of him for that role; (3) "Resolving daily transactional issues directly related to supplier integration," without any explanation that relates such resolutions to the application of any particular level of attainment of knowledge in the specialties specified by the evaluations; and (4) "Coordinating with clients regarding new developments and enhancements with respect to [the petitioner's] proprietary products," where the letter provides no details about either the substantive nature of that "coordinating" or any applications of substantive knowledge employed in the coordination.

As such, the [REDACTED] letter does not explain the beneficiary's work experience in sufficient detail to communicate to us either (1) the substantive nature of the particular work in which the beneficiary engaged, or (2) whatever substantive elements of a body of highly specialized knowledge in a computer or IT related specialty the beneficiary had to apply to perform the general functions described in the [REDACTED] work.

As reflected in our discussion above regarding the [REDACTED] experience letter, we find that the generalized nature of the letter's content about the beneficiary's work experience provides an inadequate factual basis to support the evaluators' conclusions about the nature and level of college-course-equivalent knowledge that the beneficiary gained through his work at [REDACTED]

The [REDACTED] experience letter is a major and indispensable part of each evaluation's factual foundation. However, we find that the letter's content about the beneficiary's work experience at [REDACTED] is relatively abstract and only relates the beneficiary's employment in terms of numerous but generally described functions. As such, the letter's information about the beneficiary's work experience and associated applications of pertinent knowledge is not sufficiently detailed for us to

reasonably determine that the conclusions that the evaluators have extrapolated from the letter were accurate and reliable, even if the work experience assessments had been provided by persons recognized by the regulations as competent to provide such assessments.³ Significantly, the letter has no substantive discussion of the extent and depth of specialty-occupation-pertinent knowledge that the beneficiary applied on the job, and it does not establish a progression in job responsibilities sufficient to show the recognition of expertise required by 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

The evaluations basically paraphrase or summarize the generalized functions presented in the former employer's letter and then - without any substantive analysis specifically correlating any particular aspects of the beneficiary's work to specifically related college-course content - opine on the college-level equivalency of the beneficiary's work experience. We find such evaluations to be perfunctory and unpersuasive. They lack factual and analytical content sufficient to persuade us that the work-experience assessments in question are well founded and reliable. This common aspect of the evaluations is alone enough to deprive their work-experience evaluations of any probative value.

We also find that the [REDACTED] experience letter does not provide sufficient information for us to render a USCIS evaluation of the beneficiary's work experience that would credit the beneficiary with any period of U.S. college-equivalency credit in accordance with the so called three-for-one rule specified for USCIS exclusive use at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

V. THE TRAINING DOCUMENTATION

We see no independent evidence in the record as to the extent of substantive theoretical and practical knowledge conveyed by the aforementioned "professional development programs" referenced in the evaluations. And none of the evaluations remedy this lack of concrete explanatory information about the substantive nature of those programs and what their completion may have contributed in terms of equivalent U.S. college-level coursework. The only evidence of the referenced development programs in "computer technology" subjects are in fact (1) a Certificate of Completion of "pl/Sql training" that only extended from March 18, 2010 to April, 2010 and (2) an [REDACTED] document, dated October 10, 2008, that simply states that [REDACTED] certifies that the beneficiary "has completed the necessary coursework and passed the assessment for accreditation as an [REDACTED] [REDACTED] (Archived)." Neither the evaluations nor any other evidence within the record of proceeding explains the acronyms "pl/Sql" or what the term of art [REDACTED] [REDACTED] (Archived)" means. Nor do the evaluations or

³ As we shall discuss, the evidence of record does not establish that any of the experience and/or training assessments qualified for USCIS consideration, that is, as the product of a person whom the evidence of record establishes as "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," in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). As such, those assessments merit no probative weight or deference.

any other evidence within the record correlate the achievements recognized by those certificates to attainment of any particular college-level coursework pertinent to the proffered position.

VI. BENEFICIARY'S RESUME

We see no probative value to the beneficiary's resumé, which the evaluations reference but do not assess in any substantive detail. The resumé represents a claim by the beneficiary, rather than evidence to support that claim. As such, its evidentiary weight does not exceed the cumulative corroborative information other documents of record provide about the beneficiary's work experience. As already discussed, the [REDACTED] experience letter, the chief evidence about the beneficiary's work experience, contains only generalized descriptions of the beneficiary's work. Consequently, that prior-employer letter does not infuse any substantive depth into the resumé's list of job assignments.

VII. THE [REDACTED] CERTIFICATE

As we noted, the record also includes a document issued by the [REDACTED]. It is a single-page "Intermediate Examination Certificate," issued on July 30, 2001, to certify that the beneficiary "has passed the Intermediate Examination held by [REDACTED] in the month of May 2001." Whether characterized as evidence of training or formal education, we see no probative weight to this certificate towards establishing the beneficiary as qualified to perform the services of software developer position that is claimed, as here, to require at least the equivalent of a U.S. bachelor's degree in Management Information Systems or Information Technology. Not only is the certificate related to a different specialty, but it is not accompanied by any transcript substantiating the nature and extent of studies or training for which the certificate was issued. Further, the [REDACTED] evaluation, which is the only one issued by a foreign credentials evaluating service, does not even mention the [REDACTED] certificate. In any event, the [REDACTED] documentation provided by the petitioner does not indicate any concentration or substantial amount of coursework in Computer Science or any related specialty, including Information Technology or Information Management Systems.

VIII. THE [REDACTED] DOCUMENTS

We accept only so much of the [REDACTED] evaluation's assessment that the beneficiary's [REDACTED] Bachelor of Commerce degree is the equivalent of "three years of academic studies towards a Bachelor's-level Degree in Accounting from an accredited institution of higher learning in the United States," as that assessment appears to comport with the record and was rendered by an entity recognized under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) as competent for assessments of foreign education as a credentials evaluation service which specializes in evaluating foreign educational credentials.

Further, we find that even if all of the [REDACTED] documents are taken at face value, they do not indicate any concentration or substantial amount of coursework in Computer Science or any related specialty, including Information Technology or Information Management Systems.

IX. ANALYSIS OF THE THREE EVALUATIONS

As a preliminary matter, we incorporate into the foregoing analysis our earlier comments and findings with regard to the evaluations themselves and the documentary evidence upon which they are based.⁴

As all of the three evaluations base their conclusions upon their assessment of a combination of the beneficiary's foreign education and his training and/or experience, we will separately address both the foreign-education component and the training and/or experience component of those evaluations. Before doing so, however, we will first address a material error infecting all three of the evaluations.

A. Erroneous Application of the So-Called "Three-for-One Rule" Reserved for USCIS Officers

Aside from the other evidentiary defects that our decision addresses, the evaluations base their conclusions upon a misinterpretation and misapplication of the so-called "three-for-one" rule.

The [REDACTED] evaluation purports to apply a three-for-one rule which apparently the evaluator sees as empowering him to recognize any three years of work experience in a relevant specialized field as equivalent to attainment of one-year of college credit in that specialty at an accredited U.S. institution of higher learning. We see [REDACTED] erroneous formulation in the following summation of the educational equivalency of the beneficiary's work experience (emphasis added):

At the equivalency ratio of three years of work experience for one year of college training, promulgated by the United States Citizenship and Immigration Services ("USCIS") of the United States Department of Homeland Security, [the beneficiary] completed, in time equivalence, at least one year (but closer to two years) of the baccalaureate-level educational study required in connection with the attainment of a bachelor's degree, in addition to his completion of a Bachelor of Commerce Degree at [REDACTED]

Dr. [REDACTED] evaluation document presents a similar statement regarding his methodology for determining the educational-equivalency of the beneficiary's work experience (emphasis added):

Based on the accepted ratio of 3 years of progressive experience being the equivalent of one year of academic coursework in conjunction with my subjective analysis of

⁴ Neither our assessment of the training and/or work experience component of the educational-equivalency document produced by Dr. [REDACTED] nor our assessment of that component in Dr. [REDACTED] educational-equivalency document affects our earlier finding that, because they were not produced by a credentials evaluation agency as specified at 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), the foreign-education-evaluation components of those documents do not merit any significant weight.

[the beneficiary's] five years of work history as evidenced by his resume and work letters, it is my expert opinion that [the beneficiary] has no less than the equivalent of a Bachelor's Degree in Management Information Systems.

In the same vein, now on appeal Dr. [REDACTED] evaluation of the beneficiary's work experience invokes substantially the same inaccurate simplification of the three-to-one ratio that the regulations reserve for USCIS application, at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The relevant part of Dr. [REDACTED] evaluation is this statement (emphasis added):

Additionally, [USCIS] ha[s] established that three years of work experience or and/or specialized training is equivalent to one year of university level-training. [The beneficiary] completed the time equivalent of at least one and one half years of university level academic training in Information Technology. [That] work experience and training in Information and Technology in Information Technology, and related areas, affirm that [the beneficiary's] academic and experiential qualifications are equivalent to university-level training in Information Technology.

Only one segment of the H-1B beneficiary-qualification regulations provides for the application of three-for-one ratio, and that is the provision at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), which reserves the application exclusively for USCIS agency-determinations.⁵ However, that portion of the regulations requires substantially more than simply equating any three years of work experience in a specific field to attainment of a year's worth of college credit in that field or specialty.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) – which, as we have seen, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) introduces as one of the avenues towards establishing a beneficiary's qualifications - reads as follows:

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

⁵ That the application is exclusively a measure for USCIS is clear in the language of the regulation. Additionally, the supplementary comments to the Final Rule that first introduced the ratio into agency regulations include the following statements:

For the benefit of petitioners and applicants who may have difficulty in seeking and obtaining a determination of equivalency through authoritative sources, the Service adopted its own standard for substituting specialized training and/or experience for college-level training, and for assuring that the alien is recognized as a member of the profession. The three-for-one formula which will be used is based on a survey of relevant precedent decisions which reflect the number of years of experience held by aliens who did not have degrees, but were regarded by the Service as members of their profession. . . .

the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. 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* [(1)] that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; [(2)] that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; *and* [(3)] that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
- (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.

[Emphasis added.]

Thus, we see that the evaluators appear to have adopted as their standard of measure only the numerical section of the ratio segment of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), that is "three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks." The work-experience components ignore the rest of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), which limits application of the so called "three-to-one ratio" *only* when USCIS finds that the evidence of record about the "the alien's training and/or work experience" has:

1. "Clearly demonstrated" that it "included the theoretical and practical application of specialized knowledge required by the specialty occupation";
2. "Clearly demonstrated" that it "was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation"; *and*

3. "Clearly demonstrated" that "the alien 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;
 - (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.

Upon review of the evidence which the evaluations reference, we find that it does not meet the three 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) thresholds discussed immediately above. Accordingly, we cannot conclude that the evidence of the beneficiary's work experience qualifies for recognition of any years of college-level credit by correct application of the H-1B beneficiary-qualification regulations' "three-for-one" standard. We also find that the evaluations' reliance upon their application of a truncated and materially incomplete version of the true "three-for-one" rule is in itself sufficient grounds for dismissing the appeal and denying the petition.

B. The Evaluations' Assessments of the Beneficiary's Foreign Education

Dr. [REDACTED] and Dr. [REDACTED] assessments of foreign education are outside the scope of foreign-education evaluations recognized as acceptable by the pertinent regulation

We find that evidence of record does not establish either Dr. [REDACTED] or Dr. [REDACTED] assessment of the beneficiary's foreign education as an evaluation of education by "a reliable credentials evaluation service which specializes in evaluating foreign educational credentials." Consequently, the foreign-education-assessments of those two evaluations do not merit any probative weight: they do not meet the threshold for consideration as an assessment of the U.S. educational equivalency of foreign education at 8 C.F.R. § 214.2(h)(4)(iii)(D)(3).

The [REDACTED] evaluation of foreign education

The foreign-education component of the [REDACTED] "Evaluation of Training, Education, and Experience," is the product of a credentials evaluation service specializing in evaluation of foreign educational credentials. The foreign-education assessment component of the [REDACTED] document assessed only the beneficiary's three-years of Bachelor's of Commerce studies at [REDACTED]

and opined that they amounted to completion of "the equivalent of three years of academic studies toward a Bachelor's degree level in Accounting from an accredited institution of higher education in the United States." Obviously, attainment of that U.S. education-equivalency level in Accounting falls short of attainment of at least the equivalency of a U.S. bachelor's degree in a specific specialty that a beneficiary would need in order to qualify to serve in a Software Developer position that would qualify as an H-1B specialty occupation.

As we mentioned above, because they are not the product of a credentials evaluation service which specializes in evaluating foreign educational credentials, neither Dr. nor Dr. assessment of the beneficiary's foreign studies merit any probative weight. However, even if we were to accept both of these foreign-education assessments at face value, neither would establish the beneficiary as qualified to serve in a Software Developer position that would qualify as an H-1B specialty-occupation position.

In the above regard, we see that, closely read, the academic-assessment component of Dr. evaluation document does not conclude that the beneficiary's foreign coursework is equivalent to the attainment of a U.S. bachelor's degree in any specific specialty, let alone in a specialty closely related to the duties of the proffered position. Rather, Dr. concludes only as follows (emphasis added):

Having reviewed [the beneficiary's] academic history, it becomes apparent that [he] has satisfied requirements which are substantially similar to those required *toward the completion of a Bachelor's Degree* from an accredited institution of higher learning in the United States.

Likewise, Dr. concludes his assessment of the beneficiary's "academic qualifications" by opining that the combination of the beneficiary's (1) coursework leading to a Bachelor of Commerce degree from and (2) year of studies at of India is "certainly equivalent to the attainment of a Bachelor of Science Degree in Accounting from a university in the United States." Such a degree-equivalency would also fall short of the credentials necessary to qualify the beneficiary to perform the services of an H-1B specialty-occupation within a Software Developers occupational group.

By way of review of our analysis of the *foreign-education-assessment portions* of the combined foreign-education, training, and work-experience equation that the petitioner presents as the basis for the beneficiary's qualification to serve in the type of specialty occupation position claimed by the petitioner, we find (1) that only the assessment of the beneficiary's foreign education merits consideration; and (2) that the academic-assessment portion of the evaluation opines only that the beneficiary attained "three years of academic studies toward a Bachelor's degree level in Accounting from an accredited institution of higher education in the United States."

The evaluations by both Dr. and Dr. lie outside the scope of the criterion at 8 C.F.R. §214.2(h)(4)(iii)(D)(3). That criterion is framed only for consideration of "[a]n evaluation of education [*not training and/or experience*] by a reliable credentials evaluation service which

specializes in evaluating foreign educational credentials." However, the evidence of record establishes neither as the product of such a credentials evaluation service.

We will now address the training and experience components of the three evaluations, as the three evaluators rely not just upon the beneficiary's foreign coursework, but also upon the beneficiary's training and/or work experience.

C. The Evaluations' Assessments of Training and/or Experience

The [REDACTED] assessment of training and experience

The [REDACTED] evaluation's training and work-experience assessment merits no evidentiary weight. This is because the evidence of record does not establish that [REDACTED] evaluator, Mr. [REDACTED] is a member of that specific class of persons which the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I) recognizes as competent to evaluate a beneficiary's training and/or experience within the context of beneficiary-qualification determinations for the H-1B specialty-occupation program. That is to say, the evidence of record does not establish that the [REDACTED] person opining on the educational-equivalency of the beneficiary's work experience was at the time of his evaluation "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."

We therefore discount Mr. [REDACTED] findings and conclusions with regard to the educational equivalency of the beneficiary's training and/or work experience. Accordingly, we accept only the [REDACTED] foreign-credential-evaluation-agency assessment that, by the beneficiary's foreign "academic history" the beneficiary "has satisfied requirements which are substantially similar to those required toward the completion of a Bachelor's Degree from an accredited institution of higher learning in the United States." This [REDACTED] conclusion, however, is obviously not in itself sufficient to establish the beneficiary as qualified to serve in a specialty occupation position by virtue of his foreign education, as this component does not even conclude that the beneficiary's foreign education equates to a U.S. bachelor's degree or higher in a specific specialty.

Dr. [REDACTED] assessment of training and/or experience

Next, for several reasons we find that the experience/training component of Dr. [REDACTED] evaluation also merits no evidentiary weight towards establishing the beneficiary as qualified to serve in a software developer position of specialty-occupation caliber.

We accord no weight to the June 2, 2009 endorsement letter from the Chairman of the Department of Computer Science at [REDACTED] – the educational institution employing Dr. [REDACTED]. We dismiss the letter, and we need not address its content, because the letter was written four years before the date of Dr. [REDACTED] evaluation. Consequently, the letter is not probative evidence that, at the time of Dr. [REDACTED] August 21,

2013 evaluation in question, Dr. [REDACTED] satisfied the threshold for evaluating the educational equivalency of a beneficiary's training and/or experience at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I).

Next, we find that the [REDACTED] Registrar's letter of March 1, 2012 also has no probative weight. We note in particular that the letter states that its purpose is to "confirm" that [REDACTED] faculty members have the authority "to recommend [(but, we note, not to *grant*] college-level credit for training and experience" in the implementation of a policy that, the Registrar says, is "not explicitly documented in any course catalog, due to the fact that the credit-granting policies may vary on a department-by-department and student-by-student basis." Thus, whatever its intent, the Registrar's letter does not endorse or corroborate either (1) the proposition that Dr. [REDACTED] had the authority to *grant* college-level credit or (2) the proposition that, at the time of Dr. [REDACTED] evaluation, [REDACTED] had in place a program for granting college-level credit in the particular specialty in which Dr. [REDACTED] evaluation purports to find the beneficiary's experiential background worthy of college-level credit.

In the same vein, we note that the Registrar's letter describes Dr. [REDACTED] role as one with "the authority to make determinations concerning" – but, we note, again not with the authority to *grant* – "college level credit for training and experience in the concentrations of Computer Science and related fields that the University offers." Read as a whole, then, the Registrar's letter does not confirm that Dr. [REDACTED] accredited institution of higher learning, [REDACTED] had a program in operation for granting college credit in a pertinent specialty on the basis of training and/or work experience, or that Dr. [REDACTED] was an official authorized to grant college-level credit in that specialty as part of such a program.

Additionally, we note that even the language of Dr. [REDACTED] letter does not assert that Dr. [REDACTED] was a [REDACTED] official authorized to *grant* college-level credit. The most that Dr. [REDACTED] claimed was authority to "determine" such credit, and neither he nor the letters from the Registrar and the Department Chair provided any concrete information about the substantive nature of the experience-evaluation program in which Dr. [REDACTED] was involved, such as the specific role that he played, whether his role part of a joint or committee effort, and the specific extent of his authority. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Also, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The above discussed aspects of the record preclude us from accepting Dr. [REDACTED] as the type of U.S. college or university official whom the controlling USCIS regulations recognize as competent, under the training and/or experience evaluator-threshold specified at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), to present an evaluation of a beneficiary's training and/or experience for USCIS consideration. Accordingly, for this reason also (as well as the earlier discussed deficient factual foundation for Dr. [REDACTED] conclusions about the educational equivalency of the

beneficiary's work and training background) we accord no probative weight to Dr. [REDACTED] assessment of the beneficiary's training and/work experience.⁶

Also, given this record's lack of affirmative documentary evidence as to the actual evaluation process used at [REDACTED] for awarding credit based upon experience, we cannot even discern the nature and extent of that program.

⁶ We based the above determination exclusively upon the nature and weight of the pertinent evidence presented within the record of proceeding. However, in light of the absence of a substantive and affirmative evidence from Dr. [REDACTED] or the authors of the aforementioned Registrar and Computer Science Department Chairman letters, as to the specific nature of the credit program in which Dr. [REDACTED] may be a participant, we see an informational benefit in noting for the Director the following pertinent information presented in [REDACTED] Program Catalog for its Baccalaureate in Unique and Interdisciplinary Studies, which is a searchable PDF publically accessible on the Internet at [REDACTED] (accessed by us on November 11, 2014). We present this information for its own value and without comment, as it was not considered by us in reaching our decision.

At pages 25-26, the section "Life Experience Credits," reads as follows (with emphasis added by us to highlight particularly interesting aspects of the information):

Although most experience involves some learning, not all learning can or should be credited towards a college degree. The purpose of the life experience assessment process is to provide a mechanism for recognizing appropriate non-collegiate learning experiences that have taken place prior to a student's entry into college or during a hiatus of at least one year in the college career. In [REDACTED] Baccalaureate, that mechanism consists of attendance at a seminar followed by the preparation of an outline and then a portfolio. Credits earned at non-accredited institutions can be considered for academic credit through this process as well. The determination of the award of credits for life experience is based on faculty evaluation of the student's portfolio documenting what she/he has done and learned on the college level. *The final credit decision rests with the Academic Director, who may require a personal interview and defense.*

Portfolios may only be submitted by students who have completed at least 45 and not more than 90 credits. Students are strongly advised not to wait until their last semester to submit their portfolio, relying on earning life experience credits to graduate. *A maximum of 15 credits can be awarded.* Credit cannot be granted for work that duplicates courses that have been or will be taken. The portfolio can cover work related to the student's Area of Concentration only if it can be verified that no duplication of course work exists. *The credits awarded are noncollegiate, elective credits, and cannot be used to satisfy Area of Concentration or Liberal Arts and Sciences requirements.*

We also find that the Registrar letter's weight is even further devalued by the fact that it was not produced as a contemporaneous document but rather predates Dr. [REDACTED] evaluation by more than a year.

As the foreign-education assessment component of Dr. [REDACTED] evaluation also merits no probative weight, for the reasons earlier discussed, we see no probative value in this document overall.

The "Professional Experience" component of Dr. [REDACTED] "Expert Evaluation of Academics and Work Experience."

The assessment of the beneficiary's "Professional Experience" in Dr. [REDACTED] "Expert Evaluation of Academics and Work Experience" also merits no probative weight.

We note that, in his "Brief Summary" of his own credentials as an evaluator (at page 6 of Dr. [REDACTED] "Expert Evaluation of Academics and Work Experience"), Dr. [REDACTED] asserts that his responsibilities "include granting academic credit for work experience through [the [REDACTED] [(i.e., "Innovative Degree Excellence in Accelerated Learning")] program, an adult continuing education program, by assessing whether knowledge attained during a period of employment in a certain field corresponds to the knowledge attained during college courses in the same field."

However, neither Dr. [REDACTED] letter nor the documents he submits in support persuade us that he has the status of an 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) evaluator of a beneficiary's training and/or work experience. Consequently, we accord no weight to his evaluation of the beneficiary's "Professional Experience."

As corroboration of Dr. [REDACTED] self-endorsement, the submissions on appeal include a September 11, 2013 "To Whom It May Concern" letter from the Dean of the [REDACTED] of Business. It states in pertinent part that Dr. [REDACTED] is "authorized and qualified to grant 'life experience credits' through the [REDACTED] degree-completion program offered through the School of Continuing and Professional Studies."

However, there is no evidence anywhere in the record of proceeding of the extent of the Business School Dean's participation in or personal knowledge of the [REDACTED] program, which the Dean's own letter acknowledges as one administered by an entity other than the Business School, namely, the School of Continuing and Professional Studies. We find that this is in itself sufficient reason for us to accord no significant weight to the letter from the Dean of the Business School, particularly as this Dean presents no substantive information or documentation to support his conclusory declaration that Dr. [REDACTED] is "authorized and qualified to grant 'life experience credits' through the [REDACTED] degree-completion program" at the [REDACTED]. As noted earlier, 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

Further, we find that, even taken at face value, the letter from the Business School Dean does not establish that Dr. [REDACTED] involvement in the [REDACTED] program cloaked him with the status of a U.S. college or university official whom, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), USCIS recognizes as competent to evaluate a beneficiary's training and/or work experience for USCIS consideration. That is, the letter does not establish Dr. [REDACTED] as "an official who has authority to grant college-level credit for training and/or experience in the specialty" in a [REDACTED] "program for granting such credit based on an individual's training and/or work experience."

In this regard, we find that the Dean of the Business School states that Dr. [REDACTED] is authorized to grant "life experience" credits, *not* "college-level credit" and *not* "college-level credit in the [pertinent] specialty" as specified at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). We will not speculate as to the nature, qualifying grounds, or academic weight of whatever the Dean meant by "life-experience" credits, and the record of proceeding throws little light on this aspect of the [REDACTED] program. It is the petitioner's burden to establish both what constitutes "life experience" as defined for credit-assessment in the [REDACTED] program, that "life experience" evaluated for credit in the [REDACTED] program is substantially the same as "training and/or work experience" which must be the basis of college-credit awarded by a person whom a petitioner holds out as qualifying as an 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) official. The petitioner has not met that burden.

We also look to the record's next document after the September 11, 2013 Business School Dean's letter. That document is a copy of a later, March 5, 2014 printout of a three-page "FAQS" document regarding the [REDACTED] program. We find that this document's information actually weighs heavily against finding Dr. [REDACTED] to be an official within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The "FAQS" document speaks in terms of "[e]xperiential learning credit," which "may be available for those students who have met the outcomes of a course through career and life experiences." Thus, the award standards and evaluative process used by [REDACTED] evaluators of "career and life experience" appear to be broader than those to be used by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) college-credit-award officials: the regulation limits their focus solely to a beneficiary's training and/or work experience.

Also, while the "FAQS" document states that "[e]xperiential learning is assessed through the development of a portfolio which is evaluated by UB faculty members," neither the "FAQS" document nor any other evidence of record describes the substantive requirements of the portfolios, how portfolios' credit-value is assessed, and what school official or group of officials actually awards credit for portfolio contents.

Thus, the evidence of record precludes us from recognizing Dr. [REDACTED] "Professional Experience" assessment as one that comports with an evaluation of training and/or experience under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Accordingly, we see no probative value in this component of Dr. [REDACTED] evaluation either.

Shared foundational deficiencies

Even if the evidence of record had established any or all of the evaluators as "authorized officials" within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), which is not the case, their evaluations of training and/or experience would carry no probative weight. This is because of the limitations and deficiencies that we earlier noted in the documentary bases for the evaluators assessments of training and/or experience. The evaluations of work experience and training simply do not provide substantive and persuasive analyses of how they derived their conclusions from the documentation upon which they depended.

X. EVIDENCE INSUFFICIENT FOR BENEFICIARY QUALIFICATION BY APPLICATION OF 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)

We here reaffirm our finding that the evidence of record does not justify USCIS recognition of any years of college-credit for the beneficiary's training and work experience under the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). We can apply the "three-to-one ratio" *only* when the evidence of record about the "the alien's training and/or work experience" has:

1. "Clearly demonstrated" that it "included the theoretical and practical application of specialized knowledge required by the specialty occupation";
2. "Clearly demonstrated" that it "was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation"; *and*
3. "Clearly demonstrated" that "the alien 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;
 - (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.

Upon review of the totality of the evidence which the evaluations reference about the beneficiary's training and experience, we find that it does not meet the three 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) thresholds discussed immediately above. Accordingly, we cannot conclude that the evidence of the beneficiary's work experience qualifies for recognition of any years of college-level credit by correct application of the H-1B beneficiary-qualification regulations' "three-for-one" standard.

XI. LACK OF RECOGNITION OF EXPERTISE

The appeal would still be dismissed for the reasons discussed above even if the petitioner had established the recognition of expertise that we earlier identified as required by the Act and by the call at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) for "recognition of expertise in the specialty through progressively responsible positions directly related to the specialty." However, as we noted earlier in our review of the evidence of record, the documentary evidence does not support a favorable finding with regard to this requirement either. This aspect of the record also precludes approval of the petition. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

XII. SUMMATION AND CONCLUSION

For the reasons discussed above, we find that the totality of the evidence about the combination of the beneficiary's foreign education and his training and work experience establishes no more than that, as attested in the [REDACTED] analysis of his foreign education, by his coursework leading to his [REDACTED] Bachelor of Commerce degree the beneficiary achieved the equivalent of "three years of academic studies towards a Bachelor's-level Degree in Accounting from an accredited institution of higher learning in the United States," as that assessment appears to comport with the record and was rendered by an entity recognized 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) as competent for assessments of foreign education as a credentials evaluation service which specializes in evaluating foreign educational credentials.

As a matter of discretion, USCIS may accept expert opinion testimony. However, USCIS will reject an expert opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Matter of Caron International, Inc.*, 19 I&N Dec. at 795. USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence or to determine a fact in issue.'").

As the petitioner has not established that the beneficiary is qualified to serve in the alleged specialty occupation in accordance with the requirements at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D), the director's decision will not be disturbed. The appeal will be dismissed and the petition will be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by us even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that we conduct appellate review on a *de novo* basis).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of our enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

It is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361 (2012); *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.⁷

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

⁷ As the identified ground of ineligibility is dispositive of the petitioner's appeal, the AAO need not address any additional issues in the record of proceeding, including whether the evidence of record established the proffered position as a specialty occupation.