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U.S. Department of Homeland Security

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



U.S. Citizenship  
and Immigration  
Services

DATE: JUN 06 2014

OFFICE: VERMONT 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*  
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.

## I. INTRODUCTION

On the Form I-129 visa petition, the petitioner describes itself as five-employee financial services business<sup>1</sup> established in 2008. In order to employ the beneficiary in what it alternatively designates as a full-time and part-time information systems manager position<sup>2</sup> at a salary of \$2,185.20 per week,<sup>3</sup> 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 proffered position qualifies for classification as a specialty occupation.

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

Upon review of the entire record of proceeding, the AAO finds that the 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.

Beyond the decision of the director, the AAO finds additional aspects which, although not addressed in the director's decision, nevertheless also preclude approval of the petition. First, the petitioner failed to demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation. In addition, the record reflects that the petitioner did not file the petition for an extension within the required time frame. Lastly, the Form I-129 petition was not properly signed by the petitioner, as the petitioner failed to certify that it would be liable for the reasonable costs of return transportation

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<sup>1</sup> The petitioner provided a North American Industry Classification System (NAICS) Code of 541519, "Other Computer Related Services." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "541519 Other Computer Related Services," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited May 14, 2014).

<sup>2</sup> As will be discussed below, the record contains conflicting information from the petitioner as to whether it intends to employ the beneficiary on a part-time or full-time basis.

<sup>3</sup> The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for use with a job prospect within the "Computer and Information Systems Managers" occupational classification, SOC (O\*NET/OES) Code 11-3021, and a Level II prevailing wage rate.

if the beneficiary is dismissed from its employment prior to the period of authorized stay. For these additional reasons, the petition must also be denied.<sup>4</sup>

## II. LAW

As noted, the director's sole basis for denying this petition was his determination that the proffered position is not a specialty occupation. To meet its burden of proof in establishing the proffered position as a specialty occupation, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires [(1)] theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires [(2)] the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

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<sup>4</sup> The AAO conducts appellate review 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 these additional grounds for denial.



- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not rely simply upon a proffered position's title. The specific duties of the position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the beneficiary, and determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F. 3d at 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.



### III. SPECIALTY OCCUPATION

The AAO will now address the director's finding that the proffered position is not a specialty occupation. Based upon a complete review of the record of proceeding, the AAO agrees with the director and finds that the evidence of record fails to establish that the position as described constitutes a specialty occupation.

In response to the February 23, 2012 RFE, the petitioner submitted a document, entitled "Beneficiary's Duties and Responsibilities" which states:

The position offered is in a specialty occupation[.] As an information system manger [sic] will be responsible for the design architecture, development, security evaluation, testing and implementation of new application designed for commercial and business computer systems. Beneficiary will be required to coordinate and guide a team working under the beneficiary through the development process. The beneficiary duties will include security, data analysis, software design, coding activities. Beneficiary will also be responsible for coordinating application testing strategies and implementing software modification as necessary. Further the [sic] evaluate user requirements procedure and problem to automate processing or to improve existing computer systems for our customers[.] [T]he beneficiary will confer with technical and management personnel of our customer to analyze current operational procedure[,], identify problems and learn specific requirements.

The beneficiary will be responsible for software and maintenance support for computerized maintenance management system [and] the beneficiary will write detailed description[s] for organization needs and step[s] required to develop or modify computer systems to perform with maximum functionality and efficiency. Further the beneficiary will review computer system capabilities and limitation to determine if requested program or program changes is [sic] possible within existing system.

Beneficiary will write manuals, technical documentation on the security features for entire network system for the organization to meets [sic] the users/clients requirement[.] [B]eneficiary will formulate plans outlining the steps required to programs, using structured analysis and design.

Beneficiary will specify in detail logical and mathematical operations to be performed and will be required to prepare technical manuals by other [sic]. Beneficiary's educational background, knowledge of the field and professional work experience will enable [sic] to carry out the professional responsibilities of the position.

Beneficiary will identify problems and learns [sic] specific output requirements, such as forms of data input, how data is to be summarized, and formats for report. Beneficiary will study existing system to evaluate effectiveness and develop new systems to improve production or workflow.

The detailed nature of the beneficiary duties include preparing flow chart[s] and diagrams to illustrate sequence of steps the program must follow and describe the logical operations involved the beneficiary will be required to carry out security steps in the computer system as well as networks in the organization using a flow charts [sic] and diagrams into sequence of detailed instruction[s] and logical steps for the procedure.

Additional duties and responsibilities:

- Develop easy work with co-worker [and] illustrate them to the system of business how to carry out work in timely manner with computer system.
- [W]rite detailed description of user needs and document step[s] required to develop or modify computer application or computer system.
- Study existing information processing system to evaluate effectiveness and develop new systems to improve production or work flow as required.
- [C]onduct studies pertaining to development of new information systems to meet current and projected needs.
- Promote efficient user utilization of the system.
- [C]o-operate with and provide technical support to IT staff and members and associates[.]
- Develop and maintain proficiency in utilizing technical and analytical tools to give optimum results to the management and business.

**Percentage of Time in Each Duty the Beneficiary Will Perform**

We anticipate that Mr. [REDACTED] will spend approximately 80% of his time on issues related to analysis, design the complexity of network security in the computer system in the organization and 20% of his time dedicated to attending meetings with administrative and seniors of organization, and communicating with the staff of the IT department documenting the technical issues and gathering requirements.

He will scheduled [sic] his work with IT Department to discuss his theory of maintaining secure connection with networks in the organization against vulnerable viruses, hackers of the internet, strong security to implement in the computer and server in the organization[,and] he will also provide the instruction how to maintain low cost of maintainning[sic][.]

Organization will utilized [sic] the beneficiary with his wide experience in the information technology[,], which he is qualified for [sic] the [REDACTED] LLC[.] [H]e will look

after the security department in the entire IT Department and remote operative connection where senior and department employees can access the office server to retrieve data for his knowledge maintain secure connection when connecting outside network[.] [H]e will be designing the security features to the IT department[.]

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.<sup>5</sup> As noted above, the LCA that the petitioner submitted in support of this petition was certified for a job offer falling within the "Computer and Information Systems Managers" occupational category.

The *Handbook* states the following with regard to the duties of positions falling within the "Computer and Information Systems Managers" occupational category:

Computer and information systems managers, often called information technology (IT) managers, or IT project managers, plan, coordinate, and direct computer-related activities in an organization. They help determine the information technology goals of an organization and are responsible for implementing computer systems to meet those goals.

#### **Duties**

Computer and information systems managers typically do the following:

- Analyze their organization's computer needs and recommend possible upgrades to top executives
- Plan and direct installing and upgrading computer hardware and software
- Ensure the security of an organization's network and electronic documents
- Assess the costs and benefits of a new project and justify spending on the project to top executives
- Learn about new technology and look for ways to upgrade their organization's computer systems
- Determine short- and long-term personnel needs for their department

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<sup>5</sup> The *Handbook*, which is available in printed form, may also be accessed online at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are from the 2014-15 edition available online.



- Plan and direct the work of other IT professionals, including computer systems analysts, software developers, information security analysts, and computer support specialists
- Negotiate with vendors to get the highest level of service for their organization's technology

Few managers carry out all of these duties. There are various types of computer and information systems managers, and the specific duties of each are determined by the size and structure of the firm. Smaller firms may not employ every type of manager.

The following are types of computer and information systems managers:

**Chief information officers (CIOs)** are responsible for the overall technology strategy of their organizations. They help determine the technology or information goals of an organization and then oversee planning to implement technology to meet those goals.

CIOs may focus on a specific area, such as electronic data processing or information systems, but they differ from chief technology officers (CTOs; see next) in that the CIO is more focused on long-term, or "big picture," issues. At small organizations a CIO has more direct control over the IT department, while at larger organizations other managers under the CIO may handle the day-to-day activities of the IT department.

CIOs who do not have technical expertise and who focus solely on the business aspects of creating an overall company vision are included in a separate profile on top executives.

**Chief technology officers (CTOs)** evaluate new technology and determine how it can help their organization. When both CIOs and CTOs are present, the CTO usually has more technical expertise.

The CTO is responsible for designing and recommending the appropriate technology solutions to support the policies and directives issued by the CIO. CTOs also work with different departments to implement the organization's technology plans.

The CTO usually reports directly to the CIO and also may be responsible for overseeing the development of new technologies or other research-and-development activities. When a company does not have a CIO, the CTO determines the overall technology strategy for the firm and presents it to top executives.

**IT directors**, including management information systems (MIS) directors, are in charge of their organizations' information technology (IT) departments, and they directly supervise other employees. IT directors help to determine the business requirements for IT systems, and they implement the policies that have been chosen by top executives. IT directors often have a direct role in hiring members of the IT

department. It is their job to ensure the availability of data and network services by coordinating IT activities. IT directors also oversee the financial aspects of their department, such as budgeting.

*IT security managers* oversee their organizations' network and data security. They work with top executives to plan security policies and promote a culture of information security throughout the organization. They develop programs to keep employees aware of security threats. These managers must keep up to date on IT security measures. They also supervise investigations if there is a security violation.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Computer and Information Systems Managers," <http://www.bls.gov/ooh/management/computer-and-information-systems-managers.htm#tab-2> (last visited May 8, 2014).

Although the petitioner states that the proffered position is an information systems manager, and the LCA is certified for that position, there are numerous inconsistencies and discrepancies related to the proffered position. As noted, the job description from the petitioner involves managerial duties. Specifically, it states that the beneficiary will be required to coordinate and guide a team working under the beneficiary through the development process; the beneficiary will confer with technical and management personnel of the petitioner's customer; and 20% of his time will be dedicated to attending meetings with administrative and seniors of organization, and communicating with the staff of the IT department. In its August 3, 2011 letter, the petitioner states that the beneficiary would "assign projects to staff members" and "He will be in charge of facilities that has [sic] programmers, systems analysts..." The petitioner's organizational chart states that there are a total of seven employees in the company. The Form I-129 reflects that there are five employees in the company. The organizational chart places the beneficiary above the "IT Department Mr[.] [REDACTED]" Thus, although the job description refers to a team working under the beneficiary and an IT Department, there appears to be only one individual that the beneficiary would actually manage. There is no evidence of a facility with programmers and systems analysts that the beneficiary would be in charge of. The petitioner has also provided conflicting information as to whether this will be a full-time or part-time position.

Furthermore, the NAICS code provided on the LCA and Form I-129, 541519, is for Other Computer Related Services. However, the Form I-129 lists the petitioner as a financial services company. Documents in the record reflect that the petitioner is a check cashing business doing business as [REDACTED]

These inconsistencies and discrepancies do not permit the AAO to ascertain what the beneficiary would actually be doing because the evidence of record does not establish the substantive nature of the work. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*



The failure of the evidence of record to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

These inconsistencies and discrepancies do not permit the AAO to ascertain what the beneficiary would actually be doing because the evidence of record does not establish the substantive nature of the work. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

Accordingly, as the petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will therefore be dismissed and the petition denied for this reason.

#### IV. BENEFICIARY QUALIFICATIONS

As noted at the outset of this discussion, the AAO also finds, beyond the decision of the director, that the evidence of record fails to demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation. Thus, even if the petitioner had overcome the director's ground for denying the petition, which it did not, the petition still could not be approved because the evidence of record does not demonstrate the beneficiary's qualifications to perform the duties of the proffered position.

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.

In addition, 8 C.F.R. § 214.2(h)(4)(v)(A) states:

General. If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the evidence of record 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 evidence of record 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 includes an evaluation of the beneficiary's academic credentials, dated March 24, 2008, from [REDACTED]. The evaluator states that the beneficiary holds a bachelor's degree from [REDACTED] based on a three-year course of study, and that he

holds a master's degree from [REDACTED] based on a two-year course of study. The evaluator determined that the beneficiary's aforementioned foreign education is the equivalent of a master's degree in Chemistry from an accredited institution of higher education in the United States. Although the record includes a postgraduation diploma in computer application from [REDACTED] it cannot be considered because the record does not include a credentials evaluation for the postgraduation diploma. Counsel stated in his September 16, 2011 letter that the proffered position requires a "minimum of a Bachelor's degree in Computer and Mathematical Sciences in a related field." However, the evidence of the record does not establish that the beneficiary meets this minimum requirement.<sup>6</sup>

#### V. FAILURE TO FILE TIMELY PETITION EXTENSION

As mentioned previously, the record reflects that the petitioner did not file the petition for an extension within the required time frame. The regulation at 8 C.F.R. § 214.2(h)(14) provides, in pertinent part, that a petition extension may be filed only if the validity of the original petition has not expired. In the present case, the prior H-1B petition expired on August 3, 2011. However, the instant petition extension was filed on October 5, 2011, more than two months after the expiration of the petition it sought to extend. As the extension petition was not timely filed during the validity period of the prior petition, it must be denied for this additional reason.

#### VI. FAILURE TO PROPERLY COMPLETE PETITION

As discussed above, the Form I-129 petition was not properly signed by the petitioner. More specifically, the petitioner failed to certify that it would be liable for the beneficiary's reasonable costs of return transportation if he is dismissed from its employment prior to the expiration of the period of authorized stay.

The regulation at 8 C.F.R. § 103.2(a)(1) states, in pertinent part, the following:

Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary, and such instructions are incorporated into the regulations requiring its submission.

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<sup>6</sup> The petitioner asserts that the beneficiary has over eight years of experience in the information technology field. The record does not include supporting documentary evidence of this experience. 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'r 1972)). Therefore, the AAO will not address whether the beneficiary has "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."

The instructions for Form I-129 state that the petition must be properly signed. The instructions further indicate that a petition that is not properly signed will be rejected. Moreover, according to the instructions, a petitioner that fails to completely fill out the form will not establish eligibility for the benefit sought and the petition may be denied.

The regulation at 8 C.F.R. § 103.2(a)(2), which concerns the requirement of a signature on applications and petitions, states the following:

An applicant or petitioner must sign his or her benefit request. . . . By signing the benefit request, the applicant or petitioner . . . certifies under penalty of perjury that the benefit request, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on [a] benefit request that is being filed with the USCIS [United States Citizenship and Immigration Services] is one that is either handwritten or, for benefit requests filed electronically as permitted by the instructions to the form, in electronic format.

Pursuant to 8 C.F.R. § 103.2(a)(7)(i) and (iii), an application or petition which is not properly signed shall be rejected as improperly filed, and will not retain a filing date.

The regulation at 8 C.F.R. § 103.2(b)(1) provides, in pertinent part, the following:

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. Each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions.

The petitioner bears the burden of establishing eligibility for the benefit sought. A petitioner must establish that it is eligible for the requested benefit at the time of filing the petition. All required petition forms must be properly completed and filed with any initial evidence required by applicable regulations and the form instructions. *See* 8 C.F.R. § 103.2(b)(1).

In the instant case, the petitioner failed to comply with the signature requirement. More specifically, the Form I-129 (page 12) contains a signature block that is devoid of any signature from the petitioning employer. This section of the form reads as follows:

As an authorized official of the employer, I certify that the employer will be liable for the reasonable costs of return transportation of the alien abroad if the alien is dismissed from employment by the employer before the end of the period of authorized stay.

By failing to sign this signature block of the Form I-129, the petitioner has failed to attest that it will comply with section 214(c)(5) of the Act, which states the following:



In the case of an alien who is provided nonimmigrant status under section 101(a)(15)(H)(i)(b) or 101(a)(15)(H)(ii)(b) and who is dismissed from employment by the employer before the end of the period of authorized admission, the employer shall be liable for the reasonable costs of return transportation of the alien abroad.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(E) further states, in pertinent part, the following:

The employer will be liable for the reasonable costs of return transportation of the alien abroad if the alien is dismissed from employment by the employer before the end of the period of authorized admission pursuant to section 214(c)(5) of the Act. . . . Within the context of this paragraph, the term “abroad” refers to the alien's last place of foreign residence. This provision applies to any employer whose offer of employment became the basis for an alien obtaining or continuing H-1B status.

Thus, the petition has not been properly filed because the petitioning employer did not sign the signature block certifying that it would be liable for the reasonable costs of return transportation if the beneficiary is dismissed from its employment prior to the period of authorized stay. Pursuant to 8 C.F.R. § 103.2(a)(7)(i), an application or petition which is not properly signed shall be rejected as improperly filed, and no receipt date can be assigned to an improperly filed petition. While the Service Center did not reject the petition, the AAO is not controlled by service center decisions. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 at 3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001). The AAO notes that the integrity of the immigration process depends on the employer signing the official immigration forms. Thus, for this reason as well, the petition may not be approved.

In addition, we note several discrepancies and concerns in the record. The LCA, page 1, lists the basis of classification as “New employment” whereas the Form I-129, page 2, lists the basis of classification as “Change of employer.” The LCA lists the position as full-time, however, the Form I-129 lists the position as part-time. The LCA lists the salary as \$54.63 to \$66.76 per hour; the Form I-129 lists the salary as \$2,185.20 per week; the petitioner’s letter in support of the Form I-129 lists the salary as \$70,019; and a document from the petitioner in response to the RFE lists the position as full-time with a salary of \$80,000 per year.<sup>7</sup> It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

## VII. CONCLUSION AND ORDER

As set forth above, the AAO agrees with the director's findings that the evidence of record fails to

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<sup>7</sup> \$54.63 to \$66.76 per hour is equivalent to an annual salary, based on a 40 hour work week, of \$113,630.40 to \$138,860.80. \$2,185.20 per week is equivalent to an annual salary of \$113,630.40. These amounts are inconsistent with the other annual salaries represented by the petitioner.

demonstrate that the proffered position qualifies for classification as a specialty occupation. Accordingly, the director's decision will not be disturbed.

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

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