



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAR 31 2014**

OFFICE: VERMONT SERVICE CENTER

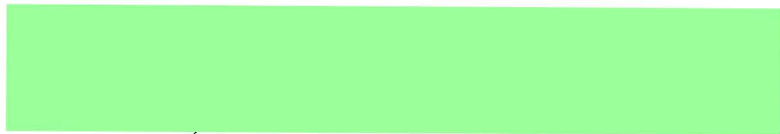
IN RE:

Petitioner:

Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The director initially approved the nonimmigrant visa petition. Upon subsequent review of the record, the director issued a notice of intent to revoke (NOIR), and ultimately revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The approval of the petition will remain revoked.

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the Vermont Service Center on April 18, 2011. In the Form I-129 visa petition, the petitioner described itself as a wholesale jewelry business established in 1995. In order to employ the beneficiary in what it designated as an accountant position, the petitioner sought 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 petition was approved on May 18, 2011. Subsequent to the petition's approval, the United States Consulate in Mumbai returned the petition to the director for review. The Consulate notified U.S. Citizenship and Immigration Services (USCIS) that during the course of the visa interview the beneficiary presented information that was not available to USCIS at the time the petition was approved. Specifically, the Consulate indicated that the beneficiary's description of his position with the petitioner was inconsistent with the description of the proffered position that had been provided with the Form I-129 petition. The Consulate further indicated that beneficiary did not appear to be qualified to perform duties in an accountant position.

Thereafter, the director issued a NOIR to the petitioner. The NOIR contained a copy of the Consulate's report, and notified the petitioner that it was afforded an opportunity to provide evidence to overcome the stated grounds for revocation. Counsel responded to the NOIR with a brief and additional evidence. The director reviewed the response but found the information submitted insufficient to refute the findings in the NOIR. The director revoked approval of the petition on April 17, 2013. Thereafter, counsel filed an appeal.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's NOIR; (3) the response to the NOIR; (4) the director's revocation notice; and (5) the Form I-290B and supporting documents. The AAO reviewed the record in its entirety before issuing its decision.

As will be discussed below, the AAO finds that the petitioner has not overcome the specified grounds for revocation. Accordingly, the appeal will be dismissed, and the approval of the petition will remain revoked.

I. FACTUAL AND PROCEDURAL BACKGROUND

In this matter, the petitioner stated on the Form I-129 that it seeks the beneficiary's services as an accountant on a full-time basis at the rate of pay of \$43,077 per year. In a support letter dated March 1, 2011, the petitioner stated that the beneficiary will perform the following duties in the proffered position:

In this position, [the beneficiary's] responsibilities consists of: (i) compiling and analyzing financial information and preparing financial reports by applying principles of generally accepted accounting standards; (ii) preparing entries and reconciling general ledger accounts, documenting transactions, and summarizing current and projected financial position; (iii) maintaining payable and receivable records, detailing assets, liabilities, capital, and preparing detailed balance sheet, profit & loss, and cash flow statement; (iv) Auditing orders, contracts, individual transactions and preparing depreciation schedules to apply to capital assets; (v) preparing compliance reports for taxing authorities; and (vi) analyzing operating statements, review cost control programs, and make strategy recommendations to management.

In its letter of support accompanying the initial Form I-129 petition, the petitioner stated the following regarding the requirements of the proffered position:

Due to the complex and demanding requirements of the position of an Accountant, only a person of exceptional ability and skills in business administration, accounting, and/or financial management is capable of qualifying as an Accountant for [the petitioner]. These minimum prerequisites for the offered position require a skilled professional with a Bachelor's degree in Business Administration, Accounting, Finance, or a related field.

The petitioner indicated that the beneficiary is qualified to perform services in the proffered position by virtue of his foreign degree and work experience, and further indicated that the beneficiary has been employed by the petitioner in the proffered position since 2007. The petitioner provided an evaluation of the beneficiary's credentials prepared by [redacted] Inc. The evaluation indicates that based on the beneficiary's academic qualifications, which consist of a three-year bachelor of commerce degree and a one-year certificate in hotel management and catering services, he has "attained the equivalent of a Bachelor's degree in Accounting from an accredited college or university from the United States of America." The petitioner also provided documents relating to the beneficiary's qualifications.

In addition, the petitioner submitted an LCA in support of the instant H-1B petition. The AAO notes that the LCA designation for the proffered position corresponds to the occupational classification "Accountants and Auditors" - SOC (ONET/OES) code 13-2011, at a Level I (entry level) wage.

The director approved the petition on May 18, 2011. Thereafter, the beneficiary was interviewed by the Consulate in Mumbai, India. In a memorandum dated May 1, 2012, the consular officer advised USCIS that the beneficiary stated that he had been working as an "accounts manager" for the petitioner for five years. The memo further stated that the beneficiary was unable to describe his duties in detail. In addition, the beneficiary was unable to explain the duties of the proffered position, as described by the petitioner in support of the Form I-129 petitioner. The Consulate indicated that the beneficiary failed to substantiate his employment with samples of his work product. Finally, the Consulate

observed that the evidence submitted did not establish that the beneficiary has attained the equivalent of a bachelor's degree in accounting, as claimed by the petitioner.

The director reviewed the memorandum and issued a NOIR to the petitioner on February 13, 2013. Enclosed with the NOIR was a copy of the memorandum from the U.S. consulate in Mumbai. The NOIR contained a detailed statement regarding the deficiencies of the petition and notified the petitioner that it was afforded an opportunity to provide evidence to overcome the stated grounds for revocation.

The petitioner's counsel responded to the NOIR on March 18, 2013, by submitting a brief and additional evidence, including (1) a new evaluation of the beneficiary's credentials, dated March 14, 2013; (2) a letter from the beneficiary's previous employer, dated January 4, 2004; (3) an affidavit signed by the beneficiary; (4) an excerpt from the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* regarding "Accountants and Auditors"; (5) a printout of the O*NET Online summary report for "13-2011.01- Accountants"; (6) printouts from the internet containing the petitioner's corporate information; (7) printouts from the petitioner's online catalog; (8) copies of several job postings;¹ (9) selected tax documents pertaining to the petitioner; and (10) copies of previously submitted documents.

The director reviewed the response but found the information submitted insufficient to refute the findings in the NOIR. Specifically, the director indicated that the evidence (1) failed to establish that the beneficiary would be employed in a specialty occupation position, and (2) failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation. The director revoked approval of the petition on April 17, 2013.

Thereafter, the petitioner's counsel submitted an appeal. On appeal, counsel asserts that the evidence submitted establishes that the proffered position qualifies as a specialty occupation, and that the beneficiary is qualified to perform services in the proffered position. In support of the appeal, the petitioner provided a letter from the petitioner dated May 1, 2013, and an affidavit from the beneficiary's prior employer.

II. REVOCATION – REGULATORY PROVISIONS

USCIS may revoke the approval of an H-1B petition, on notice and an opportunity to rebut, pursuant to 8 C.F.R. § 214.2(h)(11)(iii), which states the following:

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

¹ Some of the photocopies of job announcements provided in the response are partially or completely illegible. The AAO will not attempt to decipher the meaning or the probative value of information provided in illegible photocopies.

- (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as specified in the petition; or
 - (2) The statement of facts contained in the petition was not true and correct, inaccurate, fraudulent, or misrepresented a material fact; or
 - (3) The petitioner violated terms and conditions of the approved petition; or
 - (4) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or
 - (5) The approval of the petition violated paragraph (h) of this section or involved gross error.
- (B) Notice and decision. The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

The AAO finds that the bases specified for the revocation action in the instant matter are proper grounds for such action. The director's statements in the NOIR indicating that the beneficiary was unable to explain the proffered position, that he is not qualified to perform services in a specialty occupation position, and that the proffered position does not appear to be a specialty occupation were adequate to notify the petitioner of the intent to revoke the approval of the petition in accordance with the provisions at 8 C.F.R. § 214.2(h)(11)(iii)(A)(I)-(5).

III. DISCUSSION

A. Specialty Occupation

The AAO reviewed the record of proceeding in its entirety, including the documents submitted with the petition, in response to the NOIR and in support of the appeal. The AAO notes that the record of proceeding contains material discrepancies regarding the beneficiary's duties and in what capacity he is employed, and the petitioner has not sufficiently resolved the inconsistencies. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *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. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth,

in fact, lies, will not suffice. *Id.* As will be discussed, the petitioner has not met its burden of proof in this regard.

The petitioner submitted an affidavit from the beneficiary (dated March 13, 2013) and a letter from the petitioner (dated May 1, 2013), which provide descriptions of the duties of the proffered position.² However, the letters do not provide sufficient information regarding such aspects of the beneficiary's work as his daily responsibilities, the complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. The duties are described in the same general terms as those used from various sources on the Internet, including excerpts from the *Dictionary of Occupational Titles (DOT)*. That is, the AAO notes that the wording of the duties as provided by the petitioner for the proffered position is recited almost verbatim from various public sources. This type of generalized description may be appropriate when defining the range of duties that may be performed within an occupational category, but it fails to adequately convey the substantive work that the beneficiary performed within the petitioner's business operations. That is, the written statements provide general duties of the occupation rather than specific information regarding the beneficiary's actual daily duties in the context of the petitioner's business enterprise. The petitioner failed to describe the specific duties and responsibilities performed by the beneficiary, demonstrate a legitimate need for his work exists, and substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition. In the instant case, the petitioner failed to establish nature of the proffered position and in what capacity the beneficiary was actually employed.

Furthermore, while the written statements may provide some insight into the beneficiary's duties, the petitioner should note that the written statements represent a claim, rather than evidence to support the claim. The beneficiary had been employed by the petitioner for approximately five years when he was interviewed at the Consulate. The petitioner failed to submit documentary evidence to establish the actual day-to-day duties performed by the beneficiary and to corroborate the tasks being performed by the beneficiary were in accordance with the job description provided in the initial petition. In the instant case, the only financial documentation provided was the petitioner's 2011 federal tax return and an extension request for the petitioner's state tax return. The AAO observes that the petitioner employed an outside accounting firm in Texas to prepare the forms. Upon review, there is a lack of substantive, documentary evidence to substantiate the petitioner's claim that the beneficiary was performing H-1B caliber of work. The record of proceeding does not establish that the beneficiary has been employed in the capacity specified in the petition. Accordingly, the petitioner did not overcome the basis for the revocation of the petition.

² Counsel submitted a brief in response to the NOIR and a brief with the appeal. In the briefs, counsel makes various assertions regarding the beneficiary's job duties and credentials, as well as the proffered position. The AAO reviewed the assertions but notes that the briefs are not endorsed by the petitioner and counsel does not provide the source of the information to demonstrate a sound factual basis for the conclusions. 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).

When a petitioner fails to resolve discrepancies after USCIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. The record of proceeding lacks documentary evidence that establishes or corroborates the substantive nature of the beneficiary's duties. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As previously mentioned, 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. at 591-92.

Based upon a complete review of the appeal and the record of proceeding, the petitioner has failed to overcome the revocation ground specified in the NOIR and the subsequent revocation decision. The petitioner has not established that it would employ the beneficiary in the capacity specified in the approved petition. Accordingly, the appeal is dismissed. The approval of the petition remains revoked.

B. Beneficiary Qualifications

As previously noted, in support of the Form I-129 the petitioner initially provided an evaluation of the beneficiary's credentials prepared by IndoUS Technology & Educational Services, Inc. This evaluation indicates that based solely on his academic qualifications, which consisted of a three-year bachelor of commerce degree and a one-year certificate in hotel management and catering services, the beneficiary has "attained the equivalent of a Bachelor's degree in Accounting from an accredited college or university from the United States of America."³

In support of the assertion, the petitioner provided a copy of the beneficiary's foreign diploma and transcript. The documentation indicates that the beneficiary was a student from 1998 to 2001, and was awarded a diploma on August 17, 2002. In addition, the petitioner submitted a letter from [REDACTED] dated January 1, 2002. The letter states that the beneficiary was previously employed as a part-time "trainee" in an accounting department from August 1, 1998 to December 2001. No further documentation was provided.

In response to the NOIR, counsel for the petitioner provided a new evaluation prepared by [REDACTED]

[REDACTED] concludes that the beneficiary has attained the equivalent of a bachelor's degree in accounting by virtue of his three-year foreign "Bachelor of Commerce in Accounting and Auditing" and specialized training and work experience in accounting and related areas.⁴

³ The evaluator (who is not named) indicates that the evaluation is based upon documents provided by the beneficiary indicating that he obtained a bachelor of commerce degree in 2001 and a one-year certificate in hotel management and catering services in 2002.

[REDACTED] references the beneficiary's employment with [REDACTED] and states that the beneficiary worked as a part-time trainee from August 1998 to December 2001, and then as an accountant from January 2002 to December 2004.

In support of this evaluation, the petitioner resubmitted the beneficiary academic diploma, transcript and letter from [REDACTED] dated January 1, 2002. In addition, the petitioner submitted a letter from [REDACTED] dated January 4, 2004. The letter states that the beneficiary was previously employed on a full-time basis as an accountant from January 15, 2002 to December 15, 2004. Although the letter is dated several years prior to the submission of the H-1B petition, no explanation was provided for failing to previously submit the document to USCIS.

On appeal, counsel provides an affidavit from [REDACTED] dated May 17, 2013. The document indicates that the beneficiary served as a trainee from August 1, 1998 to December 31, 2001, and as an accountant from 2002 to 2005. No explanation for the variance in the dates of employment from the prior letter was provided by [REDACTED] or by the petitioner.

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.

The degree referenced by section 214(i)(1)(B) of the Act means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that a beneficiary 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.

For purposes of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require one or more of the following to determine whether a beneficiary has achieved a level of knowledge, competence, and practice in the specialty occupation that is equal to that of an individual who has a baccalaureate or higher degree in the specialty:

- (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 (PONS);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;⁵
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . . .

The petitioner initially sought to satisfy the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) by providing the evaluation prepared by IndoUS Technology & Educational Services, Inc. However, this evaluation found equivalency of a U.S. bachelor's degree in accounting based on the beneficiary's three-year degree in commerce, and one-year certificate program in "Hotel and Catering Management." While the petitioner provided a transcript for the beneficiary's degree in commerce, no documentation was provided regarding the certificate program in hotel and catering management. The evaluation does not describe the certificate program or the academic courses completed by the beneficiary in the program. Thus, the facts upon which the evaluation service

⁵ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.

made its determination have not been established. The AAO therefore finds that the director properly concluded that the documentation upon which the original approval was based was insufficient to establish that the beneficiary is qualified to perform services in a specialty occupation position.

In response to the NOIR, the petitioner submitted a new evaluation, attempting to demonstrate that the beneficiary attained the equivalent of a bachelor's degree in a specific specialty by virtue of his foreign education, training and/or work experience in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). However, the AAO notes that pursuant to the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), a petitioner may provide 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." However, the petitioner has not provided any evidence to establish that Mr. [REDACTED] has authority to grant college-level credit, or that the [REDACTED] has a program from granting college credit based on training or work experience. The evaluation includes a summary of the "Evaluator's Credentials," which states that [REDACTED] is familiar with foreign educational systems and has experience reviewing foreign academic and work experience credentials that fall within his area of teaching and expertise. However, the summary does not suggest, and the petitioner has not provided any evidence to establish, that [REDACTED] has the authority to grant college-level credit at the [REDACTED] or any other college or university. Thus, the petitioner has not established that [REDACTED] is competent to evaluate the educational equivalency of the beneficiary's training and/or work experience for the purpose of this proceeding. Accordingly, the AAO concludes that the director did not err in finding that the petitioner failed to establish that the beneficiary is qualified to perform services in a specialty occupation position.

Further, the AAO observes that even if the petitioner had provided evidence to establish that Mr. [REDACTED] has authority to grant college-level credit, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), the documentation of the beneficiary's training and/or work experience provides insufficient support for the conclusions reached. [REDACTED] based his evaluation of equivalency on two letters from the beneficiary's prior employer, [REDACTED]. The first letter is dated January 1, 2002, and certifies that the beneficiary "[was] working as a trainee in [the company's] Accounts department on a part time basis from 1st August 1998 to 31st December 2001." The second letter states that the beneficiary was employed as "a full time Accountant" from January 15, 2002 until December 15, 2004. While the letter is written in the past tense, the letter is dated January 4, 2004. Thus, the letter is dated over eleven months *prior* to the termination of the beneficiary's employment. No explanation for this discrepancy was provided.

The January 4, 2004 letter states that the beneficiary "was responsible for preparing employee payrolls, budgeting, account reconciliation[,] balance accounts, reporting, auditing, inventory, equipment recording, and investment recommendations." Additionally, the letter indicates that the beneficiary's employment involved "[m]aking use of computer technology, preparing forms and manuals for accounting and book keeping personnel and directing their work activities, develop[ing] or maintain[ing] solution[s] to business and financial problems and advising management about issue[s] such as resource utilization and tax strategy."

The AAO observes that neither employment verification letter considered by [REDACTED] provides sufficient information regarding the beneficiary's work history and duties (i.e., complexity of the job duties, level of judgment and understanding required to perform the job, amount and nature of supervision received, and supervisory responsibilities) to support [REDACTED] conclusion that the beneficiary's work experience is equivalent to one year of academic study. Thus, the record does not reflect an adequate factual foundation for the evaluator to determine that the beneficiary has the 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 that he has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. See 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

The petitioner failed to satisfy any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1)-(4), and the AAO observes that based on the evidence of record, the petitioner is unable to demonstrate that the beneficiary is qualified to perform services in a specialty occupation position pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) allows USCIS to make its own determination on the beneficiary's qualifications based on the evidence of record. By the clear terms of the regulation, a beneficiary's work experience will merit a positive determination only to the extent that the record of proceeding establishes all of the qualifying elements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) – including, but not limited to, a type of professional recognition.

In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5):

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation⁶;
- (ii) Membership in a recognized foreign or United States association or society in

⁶ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

the specialty occupation;

- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The AAO has reviewed the documentation submitted by the petitioner regarding the beneficiary's qualifications, including the previously submitted employment verification letters, and the affidavit describing the beneficiary's employment with [REDACTED], submitted for the first time on appeal. The AAO observes that the employment verification letters and the affidavit regarding the beneficiary's prior employment provide insufficient information regarding the beneficiary's work history and duties (i.e., complexity of the job duties, level of judgment and understanding required to perform the job, amount and nature of supervision received, and supervisory responsibilities). Further, there are discrepancies in the dates of employment with [REDACTED]. Specifically, the second letter, dated January 4, 2004, indicates that the beneficiary was employed until December 15, 2004.⁷ However, the affidavit states that the beneficiary was employed until 2005. As previously mentioned, 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. at 591-92.

Moreover, when USCIS determines a beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), it must be demonstrated that the beneficiary's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the beneficiary has documented recognition of expertise in the specialty. The AAO observes that the letters and affidavit are devoid of information regarding the requirements (if any) for the past positions held by the beneficiary. Furthermore, the record lacks probative evidence regarding the academic credentials of the beneficiary's peers, supervisors and/or subordinates in his prior employment. The documentation provided does not establish that the beneficiary's prior work experience included the theoretical and practical application of specialized knowledge and that his experience was gained while working with peers, supervisors, or subordinates who have a degree in the specialty occupation, or its equivalent. Additionally, the petitioner did not submit probative documentation establishing that the beneficiary has recognition of expertise in the specialty. Thus, upon review of the record of proceeding, the AAO finds that the petitioner has failed to establish

⁷ The AAO again notes that the letter is inexplicably dated over 11 months prior to the termination of the beneficiary's employment.

that the beneficiary has at least a bachelor's degree in a specific specialty, or its equivalent. Thus, for this reason also, the appeal is dismissed and the petition revoked.

IV. CONCLUSION AND ORDER

Based upon a complete review of the record of proceeding, the petitioner has failed to overcome the grounds for revocation. Approval of the petition therefore remains revoked.

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

ORDER: The appeal is dismissed. Approval of the petition remains revoked.