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



U.S. Citizenship  
and Immigration  
Services

DATE: **OCT 24 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 on appeal. The appeal will be dismissed. The petition will be denied.

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a fourteen-employee information technology consulting and staffing company established in [REDACTED] In order to employ the beneficiary in what it designates as a full-time Systems Analyst (Business) position at a salary of \$68,827 per year, 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 a specialty occupation.

The record of proceeding contains the following: (1) the Form I-129 and supporting documentation; (2) the director's two requests for evidence (RFE); (3) the petitioner's responses to the RFE requests; (4) the director's notice of intent to deny (NOID); (5) the petitioner's response to the NOID; (6) the director's decision denying the petition; and (5) the Form I-290B, Notice of Appeal or Motion, and supporting documentation. We reviewed the record in its entirety before issuing our decision.<sup>1</sup>

Upon review of the entire record of proceeding, we find that the evidence of record does not overcome the director's ground for denying this petition. Beyond the decision of the director, we will enter an additional ground that precludes approval of the petition, i.e., the failure to establish that the proffered position qualifies as a specialty occupation. For all these reasons, the appeal will be dismissed, and the petition will be denied.

## I. FACTS AND PROCEDURAL HISTORY

The petitioner filed the Form I-129 on April 4, 2013, requesting to employ the beneficiary as a Systems Analyst (Business) from October 1, 2013 to September 14, 2016. In Section 1 of the Form I-129 Supplement H, H Classification Supplement to Form I-129, the petitioner described the proposed duties as: "Evaluate current business systems and procedures, user requirements, communicate with software developers and programmers for implementing new systems."

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 Systems Analyst" occupational classification, SOC (O\*NET/OES) Code 15-1121, and a Level II prevailing wage rate.<sup>2</sup>

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<sup>1</sup> We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

<sup>2</sup> On the LCA, the petitioner provided a North American Industry Classification System (NAICS) Code of 541511, "Custom Computer Programming Services." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "541511 Custom Computer Programming Services," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited Oct. 22, 2014).

In support of the petition, the petitioner submitted a letter, dated March 24, 2013, describing its business as an information technology consulting and staffing provider that specializes in application development and staffing solutions for its customers. The petitioner explained that it has been selected by [REDACTED] (the "end-client") to "develop a robust application to meet the goals and objectives of [their] strategic plan." The petitioner asserted that the beneficiary will be employed as a Systems Analyst (Business), whose "primary focus is on capturing the [end-client's] business requirements and providing the documentation needed for [the petitioner's] technical team to produce applications." The petitioner listed the following specific duties for the proffered position:

- Preparing of the draft Project Plan[;]
- Prototyping and User Interfacing modeling[;]
- Preparing Functional Specification document highlighting Business Use cases and process flow[;]
- Translating the business requirements to the technical team for development[;]
- Providing Functional Specification documents & Query resolution to the team[;]
- Performing Functional and Regression Testing[;]
- Analyzing Change Requests through Impact Study[; and]
- Producing documentation for the technical team to convert into working models[.]

The petitioner stated that the proffered position "requires either a) a bachelor's degree or higher in business and some technical experience, or 2) a bachelor's degree or higher in an IT field and business analysis experience." The petitioner asserted that the beneficiary qualifies for the proffered position through his educational background and technical experience in business systems analysis.

With the visa petition, the petitioner submitted evidence that the beneficiary received a Bachelor of Commerce from [REDACTED] India, and a Degree of Master of Business Administration from [REDACTED] India. An evaluation in the record states that the beneficiary's degree is equivalent to a U.S. Bachelor of Business Administration degree.

In response to the director's first RFE, the petitioner submitted, *inter alia*, a letter, dated September 12, 2013, elaborating that the beneficiary will serve as a Business Systems Analyst to complete the software project, Automation in Supplies and Inventory (ASI), for the end-client. In this position, the beneficiary will analyze the end-client's "complex hardware and software environment in order to determine functional and technical requirements and create project plans," specifically, responsibility for "analyzing user requirements, requirements analysis, business modeling, and capacity and functional testing." Counsel also submitted a letter, dated October 23, 2013, explaining that the beneficiary will be a part of a team of programmers and systems analysts creating new software for the end-client. Counsel stated that this team "will work under a Project Manager who is also an employee of the petitioner."

The petitioner submitted its Master Services Agreement, made on July 16, 2012, between the petitioner ("contractor") and [REDACTED] ("client"), effective as of July 16, 2012 and remaining in effect for an initial period of one year. The Master Services Agreement specifically



states that the agreement "shall not automatically renew." Accompanying the Master Services Agreement was Work Order [REDACTED] for the ASI project and another project, Mobile Application for Suppliers and Buyers (MASB), combined. Under the section entitled "Number of Resources Required," the Work Order lists the number of resources required for the ASI project as "1 Lead Programmer, 4 Computer Programmers, 2 Systems Analyst[s]." Under the section entitled "Project Schedule," the Work Order states that the ASI project will start on October 1, 2013 and end on June 30, 2015. Under the section entitled "Identity of Vendor's Employees Performing Services or Role/Title," the Work Order lists the following seven roles, whose identities have yet to be decided: one lead programmer, three computer programmers, one systems analyst (business), and two systems analysts (computer). The Work Order also describes the general objectives/deliverables.

In response to the director's second RFE, the petitioner submitted another letter, dated December 13, 2013, affirming that the beneficiary will be working on the API project for the end-client. The petitioner provided a more detailed description of the proffered position and its constituent duties.

The director issued a NOID, stating that the evidence does not show that the beneficiary possess education, specialized training, and/or progressively responsible experience that is equivalent to completion of a U.S. baccalaureate or higher degree in the specialty occupation, which it identified in this case as a "computer related discipline."

In response to the director's NOID, the petitioner submitted an evaluation from Dr. [REDACTED] Ph.D., Professor of Computer Science, [REDACTED] Dr. [REDACTED] concludes that the beneficiary has attained no less than the equivalent of a Bachelor's degree in Management Information Systems from an accredited institution of higher learning in the United States.

The petitioner submitted a letter from the Office of the Registrar, [REDACTED] confirming that "faculty members have the authority to recommend college-level credit for training and experience," that the College regards faculty members such as Dr. [REDACTED] as "appropriate evaluators of academic and professional credentials and work experience." This letter also states that the College "has a program for granting credit to students based upon specific industry-related experience and training," but that the "credit-granting policies may vary on a department-to-department or student-by-student basis."

The petitioner submitted a letter from Professor [REDACTED] Chair, Department of Computer Science, [REDACTED] confirming that the College has a program "where credit is granted to students for specific industry-related experience and training." Dr. [REDACTED] further states: "This program is conducted in work study fashion for matriculated students."

The director denied the petition, concluding that the evidence of record does not demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation.

The petitioner subsequently filed the instant appeal. On appeal, the petitioner asserts that the beneficiary is qualified to perform the duties of the proffered position.



In support of the appeal, the petitioner submits, *inter alia*, a letter and a separate evaluation of academics and professional experience from Dr. [REDACTED] Department Chair of Journalism and Multimedia Arts, [REDACTED] expressing recognition of the beneficiary's expertise and attainment of the equivalent of a bachelor's degree in the field of Management Information Systems, respectively.

The petitioner also submits a letter from the Dean of [REDACTED] asserting that: Dr. [REDACTED] is currently the Department Chair of Journalism and Multimedia Arts at [REDACTED] departments at [REDACTED] may award credit to students for specific industry-related life experience; and that professors, including Dr. [REDACTED] evaluate credentials and determine whether the school is to award or recognize credit based upon students' foreign education and industry experience.

The petitioner also submits letters from the beneficiary's former co-workers attesting to his prior work experience and responsibilities.

## II. SPECIALTY OCCUPATION

As a preliminary matter, we will discuss whether the proffered position qualifies as a specialty occupation. U.S. Citizenship and Immigration Services (USCIS) is required to follow long-standing legal standards and determine first, whether the proffered position is a specialty occupation, and second, whether an alien beneficiary is qualified for the position at the time the nonimmigrant visa petition is 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 this matter, however, it appears the director did not analyze the proffered position to determine whether it met the definition of a specialty occupation. Therefore, we will first determine whether the proffered position is a specialty occupation.

### A. The Law

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;
- (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), 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.

#### B. Analysis

As recognized in *Defensor v. Meissner*, it is necessary for the end-client to provide sufficient information regarding the proposed job duties to be performed at its location(s) in order to properly ascertain the minimum educational requirements necessary to perform those duties. *See Defensor v. Meissner*, 201 F.3d at 387-388. In other words, as the nurses in that case would provide services to the end-client hospitals and not to the petitioning staffing company, the petitioner-provided job duties and alleged requirements to perform those duties were irrelevant to a specialty occupation determination. *See id.*

Here, the record of proceeding in this case is similarly devoid of sufficient information from the end-client, [REDACTED] regarding the specific job duties to be performed by the beneficiary for that company. While the petitioner has provided descriptions of the beneficiary's proposed job duties, the petitioner has not submitted reliable evidence from the end-client itself describing the proffered position and its job duties.

The only document from the end-client relating to the proffered position is the Work Order dated July 16, 2012. However, we find that this Work Order is insufficient for purposes of establishing the substantive nature of the work to be performed by the beneficiary. Foremost, the Work Order contains no detailed information about the work to be performed by the beneficiary. The Work Order only lists the project's needed "resources" in terms of the position titles (i.e., a systems analyst (business)), but does not provide any detailed information about the position such as the scope of work, responsibilities, and specific job duties to be performed. We note that the Work Order describes the overall objectives/deliverables of the ASI and MASB projects, but this description is

generalized and has broad terms that do not identify which project each objective/deliverable pertains to, nor which particular person is responsible for completing each objective/deliverable. Moreover, the Work Order does not identify the beneficiary or any of the petitioner's assigned employees by name.<sup>3</sup>

In addition, the Work Order contains inconsistencies and deficiencies that undermine the credibility of the overall document. Specifically, the Work Order contains inconsistent descriptions of the required resources for the API project. In one section of the document, the required resources for the API project are listed as "1 Lead Programmer, 4 Computer Programmers, 2 System Analyst." In another section, however, the required resources are listed as one lead programmer, three computer programmers, one systems analyst (business), and two systems analysts (computer). Furthermore, while the petitioner states that it has designated one of its employees, [REDACTED] to be the project manager as well as the beneficiary's direct supervisor on the ASI project, the Work Order does not list nor authorize a project manager position as a required resource.

With respect to the validity dates of the Work Order, the Work Order states that the ASI project will end on June 30, 2015. However, the petitioner asserts that it will employ the beneficiary to perform services on the API project until September 14, 2016. In addition, the Work Order does not appear consistent with the "Term of Agreement" specified in the Master Services Agreement, which, notably, was purportedly executed on the same day as the Work Order. Specifically, the Master Services Agreement became effective on July 16, 2012 and remained in effect for an initial period of one year, and "shall not automatically renew." The petitioner submitted no evidence that it renewed the Master Services Agreement beyond the first year, as would appear necessary to encompass the Work Order's stated end date in 2015. Nor has the petitioner submitted evidence that it obtained a new Work Order, as would appear necessary to encompass the beneficiary's purported employment on the API project until September 14, 2016, the last day of the requested validity period of the instant petition.

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

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<sup>3</sup> In contrast, the petitioner submitted another Work Order between it and [REDACTED] dated July 17, 2012, authorizing the petitioner's employee, [REDACTED] to perform "onsite services" for the end client. Unlike the Work Order for the API and MASB projects, this Work Order contains detailed information regarding the actual terms of employment, such as the specific individual assigned (Mr. [REDACTED]), the location of the work (on-site at the end client's address at [REDACTED] California), and the scope of work/roles and responsibilities (setup, configure, and support of internal and external networks, etc.). As discussed above, the Work Order for the API project to which the beneficiary would purportedly be assigned contains no such details.

We also note that the two Work Orders differ significantly in format, content, and even with respect to whom signed the Work Orders on behalf of [REDACTED], even though the two Work Orders were purportedly executed one day apart.



course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

Based on the inconsistencies and deficiencies discussed above, the Work Order, alone, is insufficient to establish the substantive nature of the work to be performed by the beneficiary. The petitioner submitted no other documentation from the end-client with respect to the proffered position. The record of proceeding thus contains insufficient evidence establishing the substantive nature of the work to be performed by the beneficiary.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary, therefore, 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.

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. For this reason, the appeal will be dismissed and the petition denied.

Also, at a more basic level, the Work Order raises questions as to whether the petitioner has secured H-1B caliber work for the beneficiary in the manner and for the entire period of employment requested in the petition. As discussed earlier, the Work Order states that the ASI project will end on June 30, 2015, but the petitioner asserts that it will employ the beneficiary to perform services on the API project through September 14, 2016. In addition, the Master Services Agreement ostensibly expired one year after its initial issuance, and was not subject to automatic renewal. The petitioner submitted no documentation from the end-client establishing the existence of work on the API project beyond the end dates stated on the Master Services Agreement and Work Order. The petitioner's bare assertion that it expects to employ the beneficiary for the entire H-1B period, alone, is insufficient. 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).

Although the petitioner requested the beneficiary be granted H-1B classification for a three-year period, the evidence does not establish that the petitioner would be able to employ the beneficiary at the level required for the H-1B petition to be granted for the entire period requested. In other words, the petitioner failed to establish that the petition was filed on the basis of definite and non-speculative H-1B employment for the entire period specified in the Form I-129.<sup>4</sup> USCIS

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<sup>4</sup> The agency made clear long ago that speculative employment is not permitted in the H-1B program. A 1998 proposed rule documented this position as follows:

regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Thus, even if the petitioner had established the position proffered here is a specialty occupation, which it has not, the petition must still be denied for this additional reason.

Further still, even if the petitioner had established the substantive nature of the work to be performed by the beneficiary and had shown that there was definite, non-speculative H-1B employment for the entire period requested, a review of the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* does not indicate that, simply by virtue of its occupational classification, the proffered position qualifies as a specialty occupation. More specifically, the information on the educational requirements in the "Computer Systems Analysts" chapter of the 2014-2015 edition of the *Handbook* indicates at most that a bachelor's or higher degree in a computer or information science field may be a common preference, but not a standard occupational, entry requirement. See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Computer Systems Analysts," <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-4> (last visited Oct. 22, 2014). In fact, this chapter indicates that some computer systems analysts may only have liberal arts degrees and programming or technical experience. See *id.*

Finally, the petitioner's assertion that the proffered position requires either a bachelor's degree or higher in business or a bachelor's degree or higher in an IT field is further evidence that a degree in a specific specialty is not a minimum for entry into the occupation. As such, and in consideration of all the other factors discussed above, it cannot be found that the proffered position qualifies as a

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Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. See section 214(i) of the Immigration and Nationality Act (the "Act"). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.



specialty occupation. We will withdraw the portions of the director's decision referencing a degree in a computer-related field as a minimum requirement for entry for the proffered position.

### III. BENEFICIARY QUALIFICATIONS

Assuming *arguendo* that the proffered position qualifies as a specialty occupation requiring a degree in a computer-related field as a minimum requirement for entry, the director correctly determined that the beneficiary is not qualified to perform the duties of such a specialty occupation.<sup>5</sup>

#### A. The Law

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

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

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C)
  - (i) experience in the specialty equivalent to the completion of such degree, and
  - (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:

- (I) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

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<sup>5</sup> For clarification, we disagree with the director that the proffered position constitutes a specialty occupation. However, assuming *arguendo* that the proffered position constitutes a specialty occupation, we agree with the director that the minimum requirement for entry would necessarily be a bachelor's degree in a computer-related field, and not general-purpose bachelor's degree such as a business administration degree. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (stating that a business administration degree is a general-purpose bachelor's degree).

- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

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

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

#### B. Analysis

To qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary possesses the requisite license or, if none is required, that he or she has completed a degree in the specialty that the occupation requires. Alternatively, if a license is not required and if the beneficiary does not possess the required U.S. degree or its foreign degree equivalent, the petitioner must show that the beneficiary possesses both (1) education, specialized training, and/or progressively responsible experience in the specialty equivalent to the completion of such degree, and (2) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

As the beneficiary did not earn a baccalaureate or higher degree from an accredited college or university in the United States, he does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1). As he does not possess a foreign degree that has been determined to be equivalent to a baccalaureate or higher degree required by the specialty occupation from an United States accredited college or university, he does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).<sup>6</sup> As the petitioner has not demonstrated that the beneficiary holds an unrestricted state license, registration or certification to perform the duties of a specialty occupation, he does not qualify to perform the duties of a specialty

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<sup>6</sup> The evaluation of the beneficiary's academic credentials concludes that he has the equivalent of a bachelor of business administration degree.



occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3). Accordingly, 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) remains as the only avenue for the petitioner to demonstrate the beneficiary's qualifications to perform the duties of the proffered position.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) requires a demonstration that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary also has recognition of that expertise in the specialty through progressively responsible positions directly related to the specialty. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) is determined by at least one of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the [REDACTED] or [REDACTED];
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;<sup>7</sup>
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The record contains an evaluation of the beneficiary's academics and work experience prepared by Dr. [REDACTED] Professor of Computer Science, [REDACTED]. According to Dr. [REDACTED] the beneficiary's foreign education and work experience are collectively equivalent to a U.S. Bachelor's degree in Management Information Systems.

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<sup>7</sup> The petitioner should note that, in accordance with this provision, we will accept a credentials evaluation service's evaluation of *education only*, not experience.

However, Dr. [REDACTED] evaluation is insufficient to establish the beneficiary's qualification under 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). As noted by the director, the documents relied upon by Dr. [REDACTED] (i.e., the beneficiary's resume and experience letters) were of limited evidentiary value, and Dr. [REDACTED] did not sufficiently explain the factual basis for his conclusions. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Moreover, we find that the petitioner has not demonstrated that [REDACTED] has a program for granting college level credit based on an individual's training and/or work experience in the particular specialty, as required by the plain language of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). While the letters from Dr. [REDACTED] the Office of the Registrar, and Dr. [REDACTED] all assert that the College has "a program" for granting credit based upon an individual's training and/or work experience, they do not specify that such a program exists in the particular specialty, i.e., in Management Information Systems or a computer-related field. Specifically, the letter from the Office of the Registrar states that "credit-granting policies may vary on a department-to-department or student-by-student basis." The letter from Dr. [REDACTED] Chair of the Department of Computer Science, states that they have a program "in work study fashion for matriculated students." Thus, it appears that, for a degree in Management Information Systems or a computer-related field, the program is limited to matriculated students who are also enrolled in a work study program. Based on the limitations imposed on this particular program, we cannot find that it fully equates to a program for granting college level credit "based on an individual's training and/or work experience in the particular specialty," as required by the plain language of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I).

On appeal, the petitioner submits a new evaluation of academics and work experience from Dr. [REDACTED] Department Chair of Journalism and Multimedia Arts, [REDACTED] opining that the beneficiary has obtained the equivalent to a U.S. Bachelor's degree in Management Information Systems.

However, Dr. [REDACTED] evaluation is also insufficient to establish the beneficiary's qualification under 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). Specifically, the petitioner has not provided sufficient evidence establishing that Dr. [REDACTED] has authority to grant college-level credit for training and/or experience in the specialty. While the letter from the Dean of [REDACTED] asserts that Dr. [REDACTED] has the authority to evaluate credentials, it does not state that he has the authority to grant college-level credits. Moreover, the petitioner has neither established that Dr. [REDACTED] as the Department Chair of Journalism and Multimedia Arts, has the authority to grant college level credit for training and/or work experience in the specific specialty of Management Information Systems or a computer-related field, nor that the school offers such a program for this specific specialty.<sup>8</sup>

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<sup>8</sup> The petitioner submitted a letter explaining the process by which the Journalism and Multimedia Arts Department at [REDACTED] grants experiential credits. However, the petitioner submitted no evidence establishing that this department grants college level credit for a degree in Management Information Systems or a computer-related field.



For all of the above reasons, the evidence of record is insufficient to establish that the beneficiary qualifies to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

No evidence has been submitted to establish, and the petitioner does not assert, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), which requires submission of the results of recognized college-level equivalency examinations or special credit programs, such as the [REDACTED]

No evidence has been submitted to establish, and the petitioner does not assert, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), which requires an evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials.

No evidence has been submitted to establish, and the petitioner does not assert, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), which requires that the beneficiary submit evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty.

Finally, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) states the following with regard to achieving a USCIS determination that a beneficiary has the requisite qualifications to serve in a specialty occupation:

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

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;<sup>9</sup>
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

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<sup>9</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. See 8 C.F.R. § 214.2(h)(4)(ii).

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

The record contains none of the types of evidence delineated in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(ii)-(v).

In an attempt to establish eligibility under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i), the petitioner submits the letter from Dr. [REDACTED] expressing recognition of the beneficiary's expertise in the field of Management Information Systems. However, the plain language of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i) requires "recognition of expertise in the specialty occupation *by at least two* recognized authorities in the same specialty occupation (emphasis added)." The petitioner has not submitted evidence of the beneficiary's recognition by at least one other recognized authority in the same specialty occupation.<sup>10</sup>

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

#### IV. CONCLUSION AND ORDER

As set forth above, we determine that the evidence of record does not demonstrate that the proffered position qualifies for classification as a specialty occupation. We also determine, assuming *arguendo* that the proffered position is a specialty occupation, that the evidence of record does not demonstrate that the beneficiary qualifies to perform the duties of a specialty occupation. Accordingly, 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).

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<sup>10</sup> While the petitioner submitted letters from the beneficiary's former co-workers attesting to the beneficiary's prior work experience, these letters do not attest to the beneficiary's expertise in the field. In addition, the petitioner has not established that these were written by "recognized authorities" as defined at 8 C.F.R. § 214.2(h)(4)(ii).



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 the enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*. 345 F.3d 683.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.