MATTER OF K- INC.

DATE: JAN. 30, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a staffing company, seeks to temporarily employ the Beneficiary as a "programmer analyst" under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director, California Service Center, denied the petition. The Director concluded that the record does not establish that (1) the proffered position qualifies as a specialty occupation; and (2) the Beneficiary is qualified to perform the duties of the proffered position.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred in her decision.

Upon *de novo* review, we will dismiss the appeal.

I. SPECIALTY OCCUPATION

We find the evidence of record insufficient to establish that the proffered position qualifies as a specialty occupation.

A. Legal Framework

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), defines the term "specialty occupation" as an occupation 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 regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

> (*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.

8 C.F.R. § 214.2(h)(4)(iii)(A). U.S. Citizenship and Immigration Services (USCIS) has consistently interpreted 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 proposed 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"); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

As recognized by the court in *Defensor*, 201 F.3d at 387-88, where the work is to be performed for entities other than the Petitioner, evidence of the client companies' job requirements is critical. The court held that the former INS had reasonably interpreted the statute and regulations as requiring the Petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the Beneficiary's services. *Id.* Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

B. Proffered Position

In the H-1B petition, the Petitioner stated that the Beneficiary will work off-site as a "programmer analyst" and provided a brief description of his job duties. In response to the Director's request for evidence (RFE), the Petitioner clarified that the Beneficiary will be assigned to work for its client, , at its office in , Iowa. The Petitioner provided an expanded job description for the Beneficiary, as follows:

No.	Duties	Detailed Information	Percentage of Time Involved
a	Analyzing user requirements and defining functional specifications	Identify requirements/User stories at the business meetings and strategize the impact of requirements on different platforms/applications. Understand current Software state of application and determine the impact of new implementation on existing business processes. Read through existing Java codes for existing applications and use that as basis of decisions around the enhancements. Communicate with different teams like Test, Requirement, Production Support for different functions for applications, the proposed changes and estimated release dates.	10%
b	Developing Java design patterns and Java EE design patterns for persistence	Understanding current Production state of batch programs associated with the legacy software applications and designing the solutions to integrate new processes & implementation into new environments. Design new design patterns based on legacy software programs with latest Java EE Technologies and infrastructure in order to provide long-term supportability and sustainability. Design new applications for high transaction processing & scalability in order to seamlessly support future modifications and growing volume of data processed in environment. Implement solutions in order to effectively improve the performance of batch data	10%

		processing and high volume of data being handled by the system to provide better customer support.	
c	Designing SQL to pull segment inputs for the whole application	Based on the new or updated business requirements, implement software layers and SQL to fetch data from databases/data warehouses/document rules by using JDBC and others to obtain data.	10%
d	Building the application using Hudson	Understanding current Production state after each iteration or tasks, integrate new or updated changes into test environments for QA/Test groups.	5%
e	Developing HTML pages using AUIML and Angular JS and integrating them to back-end technology	Implement new front end codes into Commercial Internet Quoting System which using HTML/AUIML to create Graphical User Interface (GUI) and using JavaScript/AngularJS to create response actions for users.	20%
f	Applying SQL Server as the database and applying My SQL workbench as the UI	Updating current data access model into SQL Server or MySQL based on different data. Design the data access model to effectively support future application upgrades and help improve the long-term supportability and sustainability.	5%
g	Developing and implementing test validations of the applications using Junit	Developing back end sides to incorporate the new business requirements. Designing and developing Database Objects in order to support the changes for front end processing and application implementations listed in (b) to (e) above. Writing test cases by using JUnit to make sure new codes are strong and effective.	20%
h	Analyzing test results and recommending modifications to the applications to meet project specification	Preparing a test plan consisting of risks, assumptions, timelines and dependencies of the project divided into various platforms. Identifying high level testing and data requirements and getting approval from the	10%

		QA/Test teams.	
i	Participating in the deployment of the application into existing systems	Coordinating with Production team on progress of the deployment execution and ensuring that the building/deployment activities would be completed within the allocated timelines. Generating Test execution reports/graphs at a project level and component level, and discussing the defects and improvements. Analyzing the Test & Performance Results and implement the changes to meet the project and business expectation.	5%
j	Documenting modifications and enhancements made to the applications and systems as required by the project	Document all the changes implemented across all systems and components. Documentation includes Technical changes, Infrastructure changes, and Business Process changes. Post Release documentation would also include Known Issues from Production Implementation and Deferred defects.	5%

In another letter submitted in response to the RFE, the Petitioner stated that the Beneficiary "will continue to perform the duties of a Programmer Analyst with [its] company" to perform duties including "[j]oining a team working on large project initiatives running in 2 week sprints using Java/J2EE and Groovy/Grails technology."

According to the Petitioner and the end-client, the proffered position requires "a Bachelor's Degree or work experience equivalent in Computer Science, Computer Information Systems, Computer Applications, Electrical Engineering or a related field and Java experience."

C. Analysis

As a preliminary matter, we find the Petitioner and end-client's descriptions of the proffered position insufficient to convey what the Beneficiary will be doing for the requested period of time. Neither the Petitioner, nor the end-client, has explained in detail the nature of the project(s) to which the Beneficiary will be assigned in order to give context and understanding to the stated job duties. For instance, the Petitioner stated that the Beneficiary will spend 20% of his time on developing HTML pages for a "Commercial Internet Quoting System." However, the Petitioner does not further

explain or document what this particular system is, such that we can understand the type of work the Beneficiary will perform on it.[1]

Moreover, the Petitioner stated that the Beneficiary will be "[j]oining a team working on large project initiatives." But the Petitioner has not further identified and explained what these "project initiatives" (in the plural) are. In contrast, the end-client letter references only a single "project." We cannot determine from the vague and inconsistent nature of the Petitioner and end-client's descriptions whether they are referring to the same project(s), and if not, the job duties the Beneficiary will perform for the end-client's other project(s).[2]

Unsupported statements are of very limited weight and normally will be insufficient to carry its burden of proof. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)); *see also Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

In short, the record contains insufficient details regarding the nature and scope of the Beneficiary's employment or substantive evidence regarding the actual work that the Beneficiary will perform. Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The tasks as described do not communicate (1) the actual work that the Beneficiary will perform; (2) the complexity, uniqueness and/or specialization of the tasks; and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty.

The Petitioner thus has not established the substantive nature of the work to be performed by the Beneficiary, which therefore precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). It is the substantive nature of that work that determines (1) the normal minimum educational requirement for entry into 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

[1] We note, for example, that the duty of developing HTML pages could possibly be more appropriate for a position under the "Web Developers" occupational classification, depending on the type of "system" the Beneficiary will work on. For more information about the "Web Developers" occupational classification, see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook,* 2016-17 ed., "Web Developers," https://www.bls.gov/ooh/computer-and-information-technology/print/web-developers.htm (last visited Jan. 30, 2017). This chapter states, in pertinent part, that web developers "[w]rite code for websites, using programming languages such as HTML." *Id.*

[2] We also note that the record contains a master service agreement between the Petitioner and the end-client, but does not contain a work order for the Beneficiary's services. The master service agreement states that the Petitioner "shall perform the services specifically described in the orders agreed to in writing and signed by the parties from time to time (each, an 'Order')."

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.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we will turn to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

1. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. To inform this inquiry, we recognize the *Occupational Outlook Handbook* (*Handbook*) issued by the Department of Labor (DOL) as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.[3]

The *Handbook*'s subchapter entitled "How to Become a Computer Systems Analyst" states, in pertinent part: "A bachelor's degree in a computer or information science field is common, although not always a requirement. Some firms hire analysts with business or liberal arts degrees who have skills in information technology or computer programming."[4] The *Handbook* also states: "Although many computer systems analysts have technical degrees, such a degree is not always a requirement. Many analysts have liberal arts degrees and have gained programming or technical expertise elsewhere."[5]

The *Handbook* indicates that a bachelor's degree in a computer or information science field may be common, but that it is not a *requirement* for entry into these jobs. In fact, this chapter reports that "many" computer systems analysts only have liberal arts degrees and programming or technical experience, but does not further qualify the amount of experience needed. The *Handbook* also notes that many analysts have technical degrees, but does not specify a degree level (e.g., associate's degree) for these technical degrees. The *Handbook* further specifies that such a technical degree is not always a requirement. Thus, this passage of the *Handbook* reports that there are several paths for entry into the occupation.

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[3] All of our references are to the 2016-17 edition of the *Handbook*, which may be accessed at the Internet site http://www.bls.gov/ooh/. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

[4] U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook,* 2016-17 ed., "Computer Systems Analysts," https://www.bls.gov/ooh/computer-and-information-technology/print/computer-systems-analysts.htm (last visited Jan. 30, 2017).

[5] *Id.*

When reviewing the *Handbook*, we must also consider that the Petitioner designated the proffered position as a Level I (entry) position on the labor condition application (LCA).[6] The "Prevailing Wage Determination Policy Guidance" issued by the DOL describes a Level I wage rate as generally appropriate for a position for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. This wage rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that he will be closely supervised and his work closely monitored and reviewed for accuracy; and (3) that he will receive specific instructions on required tasks and expected results.[7] Thus, in designating the proffered position at a Level I wage, the Petitioner has indicated that the proffered position is a comparatively low, entry-level position relative to others within the occupation.[8]

In the instant case, the Petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or another authoritative source, indicates that normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

2. Second Criterion

The second criterion presents two alternative prongs: "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[.]" 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong contemplates common industry practice, while the alternative prong narrows its focus to the Petitioner's specific position.

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[6] The Petitioner is required to submit a certified LCA to USCIS to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the "area of employment" or the actual wage paid by the employer to other employees with similar experience and qualifications who are performing the same services. *See Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542, 545-546 (AAO 2015).

[7] U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

[8] The Petitioner's designation of this position as a Level I, entry-level position indicates that it is a comparatively low-level position compared to other positions *within the same occupation.* Nevertheless, a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I, entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty, or its equivalent. That is, a position's wage level designation may be a relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

a. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the "degree requirement" (i.e., a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava,* 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As discussed above, the Petitioner has not established that its proffered position is one for which the *Handbook*, or another authoritative source, reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. We incorporate by reference our previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals." *See id.* Therefore, based upon a complete review of the record, we conclude that the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

b. Second Prong

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the Petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

Upon review, we find that the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. We reiterate our previous discussion regarding the insufficient and vague nature of the Petitioner and end-client's descriptions of the proffered position, including the lack of information about the particular project(s) to which the Beneficiary will be assigned. These insufficient descriptions of the Beneficiary's duties, without additional details or corroborating evidence of the specific tasks he will perform for the end-client's operations, do not establish the relative complexity or uniqueness of the proffered position. The general descriptions of the proffered duties do not identify tasks that are so complex or unique that only a specifically degreed individual could perform them.

In this matter, the Petitioner highlights "[t]he highly technical nature" of the position. The Petitioner also highlights the need for "scientific analysis and use of mathematical models to predict and measure, the outcome and consequences of design with a broad and intensive theoretical

understanding of computer and software technology." However, the Petitioner has not explained which of the proffered job duties are "highly technical" and/or require "scientific analysis and use of mathematical models," and more importantly, why. For instance, the Petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it may believe are so complex and unique.

Further, and as previously noted, the LCA submitted by the Petitioner indicates that the proffered position is a Level I (entry) wage, which, as noted above, is the lowest of four assignable wage levels. Without additional evidence, the record of proceedings does not indicate that the proffered position is so complex or unique, as such a position would likely be classified at a higher-level, which requires a significantly higher prevailing wage.[9] For all of the above reasons, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

3. Third Criterion

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position.

In support of this criterion, the Petitioner submits information about "a sampling of other Programmer Analysts employed by the Petitioner," including copies of the individual's diplomas, transcripts, and pay statements.

But the Petitioner has not further explained how this "sampling" of employees is representative of the company's employment history for the proffered position. The Petitioner states that it "is one of the largest specialty staffing firms in the United States," and currently has over 13,000 employees in the United States. The Petitioner does not identify the total number of programmer analysts it has employed since its inception in to demonstrate what statistically valid inferences, if any, can be drawn from information about such a limited number of employees. *See generally Earl Babbie, The Practice of Social Research* 186-228 (7th ed. 1995).

Furthermore, the Petitioner does not document these employees' actual job duties. To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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

[9] *See* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

the Act. Therefore, the Petitioner's statement that these employees are also "programmer analysts," without more, is insufficient to demonstrate that these other individuals are actually employed in the proffered position.

Here, the record of proceedings is insufficient to establish that the Petitioner normally requires a bachelor's or higher degree in the specific specialty, or its equivalent, for the proffered position. The Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

4. Fourth Criterion

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

In the instant case, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. The Petitioner does not establish how the proffered duties elevate the proffered position to a specialty occupation. We again refer to our comments regarding the vague descriptions of the proffered position. We also refer to the implications of the Petitioner's designation of the proffered position at a Level I (entry) wage level under the "Computer Systems Analysts" occupational classification. For the reasons discussed above, the evidence of record does not satisfy the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The Petitioner has not satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, we cannot find that the proffered position qualifies as a specialty occupation.

II. BENEFICIARY'S QUALIFICATIONS

A. Legal Framework

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an individual 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 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 is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Therefore, to qualify a beneficiary for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary possesses the requisite degree or its foreign equivalent. Alternatively, if a 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.

In order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree, the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require one or more of the following:

> (*1*) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
>
> (*2*) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

(*3*) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;[10]

(*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 . . . .

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 occupation;[11]
>
> (*ii*) Membership in a recognized foreign or United States association or society in the specialty occupation;
>
> (*iii*) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;

[10] The Petitioner should note that, in accordance with this provision, we will accept a credential evaluation service's evaluation of *education only*, not training and/or work experience.

[11] *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. 8 C.F.R. § 214.2(h)(4)(ii). 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. *Id.*

(*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.

It is always worth noting that, by its very terms, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) is a matter strictly for USCIS application and determination, and that, also by the clear terms of the rule, experience will merit a positive determination only to the extent that the record of proceedings 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 recognition of expertise in the specialty occupation.

B. Analysis

The Beneficiary possesses a foreign bachelor of science degree in biotechnology, and two U.S. master's degrees in biological sciences/biology. He is currently enrolled at to pursue a master's degree in computer technology/computer systems.

Under the provision at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), the Petitioner submitted an evaluation of education and work experience from , a professor of computer science and engineering at , concluding that the Beneficiary has the equivalent of a U.S. bachelor's degree in computer information systems.

Upon close review of the record, we find that the Petitioner has not demonstrated that possesses the authority to grant college-level credit 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. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). evaluation is prefaced by a self-prepared statement that he has the authority to grant transfer credits or course waiver credits. However, his statement is not corroborated by other evidence recognizing his authority. While on appeal the Petitioner submits additional information from website about its ' credit program and professional internship course, this information does not address actual role and authority to grant such credits as a professor and *former* interim director (from 2005 to March 2006) of the office of international programs at

Again, unsupported statements are of very limited weight and normally will be insufficient to carry its burden of proof. *See Matter of Soffici*, 22 I&N Dec. at 165; *see also Matter of Chawathe*, 25 I&N Dec. at 376. The Petitioner must support its assertions with relevant, probative, and credible evidence. *Id.* We may, in our discretion, use an evaluation of a person's foreign education as an advisory opinion. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation. *Id.* As an exercise of our discretion, we decline to accord probative weight.

Under the provision at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), we conclude that the evidence of record is insufficient to demonstrate that the Beneficiary's education and experience is equivalent to a U.S. bachelor's degree in the specific specialty. At issue are questions and discrepancies concerning the Beneficiary's claimed work experience at and .

The Beneficiary purportedly worked for as a computer programmer pursuant to his enrollment in a master's program in biological sciences/biology at the . According to his Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status, he was authorized optional practical training (OPT) to work for from July 9, 2012, to July 8, 2013.[12] As the Director noted, there are inconsistencies in the dates of his employment: the letter from , human resources manager of , states his dates of employment as July 2012 to June 30, 2013, while the letter from software development engineer and the Beneficiary's claimed supervisor at states his dates of employment as July 23, 2012, to July 15, 2013. Also, the Form I-20 lists office as located in New Jersey, while the letter from lists a work address in Washington. Further, evaluation states that the Beneficiary worked for in California. The Petitioner has not provided an explanation, corroborated by objective evidence, reconciling these numerous concerns and inconsistencies.

Subsequently, the Beneficiary purportedly worked for as a software engineer, also pursuant to his enrollment in a master's program in biological sciences/biology at the . However, the Petitioner has not submitted the Form I-20 which authorized his OPT for instead, the Beneficiary's Form I-20 reflects that he was authorized OPT to again work for during the time period in which he claimed to have worked for (July 9, 2013, to December 9, 2014).

All of these discrepancies cast doubt on the credibility of the Petitioner's claims regarding the Beneficiary's work experience. "[I]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence." *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92. "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.* at 591.

In any event, we find that the work verification letters do not clearly demonstrate that the Beneficiary's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that his experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that he has recognition of expertise in the specialty evidenced by at least one type of

[12] It is not clear based on the record how the Beneficiary's work experience as a computer programmer or software engineer is "directly related to his or her major area of study," as required for OPT. 8 C.F.R. § 214.2(f)(10)(ii)(A).

documentation required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Without more, we cannot find the evidence of record sufficiently reliable to conclude, through a Service evaluation, that the Beneficiary is qualified to perform the duties of the proffered position.

The Petitioner has not sufficiently demonstrated that the Beneficiary is qualified to perform the duties of the proffered position.

III. CONCLUSION

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. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of K- Inc.*, ID# 151172 (AAO Jan. 30, 2017)