



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **JUN 26 2013** 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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition, the petitioner describes itself as a commercial banking firm. In order to employ the beneficiary in a position it designates as an "Application Developer 4" position, 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, finding that its approval is barred by the numerical cap on H-1B visa petitions, and also finding, as a separate and distinct basis for denial, that the petitioner failed to establish that the beneficiary is qualified for the proffered position. On appeal, counsel asserted that the director's bases for denial were erroneous and contended that the petitioner satisfied all evidentiary requirements.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and appeal brief submitted on appeal.

Based upon its review of the entire record of proceeding, including the submissions on appeal addressing the grounds for the director's decision, the AAO finds that the petitioner has overcome the basis of the director's decision related to the numerical cap. As the totality of the evidence presented in this particular record of proceeding establishes that the beneficiary is entitled to an exemption from that cap, that basis of the director's decision of denial is withdrawn.

As a preliminary matter, the AAO 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, the AAO will first determine whether the proffered position is a specialty occupation.

The AAO observes that the petitioner has not demonstrated that the proffered position qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. Letters from the petitioner and counsel explicitly state that the educational requirement of the proffered position may be satisfied by a bachelor's degree in computer science, computer information systems, or a quantitative discipline. Quantitative

disciplines include a wide array of subjects that are related to each other by little other than requiring mathematics.¹ A requirement that may be satisfied by a bachelor's degree in any quantitative discipline is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

The petitioner's admission that the proffered position does not require a minimum of a bachelor's degree in a specific specialty or its equivalent is tantamount to an admission that the proffered position is not in fact a specialty occupation. The petition must be denied on this basis alone.

However, the AAO will continue with its analysis of the director's decision. The remaining basis for the director's decision of denial relates to the beneficiary's qualifications. The petitioner must show that the beneficiary is qualified pursuant to the following statutory and regulatory framework.

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, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

¹ The term "quantitative disciplines" includes, for instance, economics, mathematics, computer science, physics, engineering, and statistics, among other disciplines.² The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not training and/or work experience.

- (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 [a] education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and [b] have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Evidence in the record indicates that the beneficiary has a bachelor's degree in pharmacy from [REDACTED] in India, and a master's degree in chemistry from [REDACTED] in Teaneck, New Jersey.

With the visa petition, counsel submitted (1) an evaluation from [REDACTED] dated March 19, 2012; (2) another evaluation, also dated March 19, 2012, from [REDACTED] a professor of computer science at [REDACTED]; (3) a letter, dated November 23, 2010, from [REDACTED] Computer Science Department Chair, and (4) a letter, dated April 1, 2012, from [REDACTED] who identified herself as the petitioner's HR/IT Staffing Representative.

The evaluation from [REDACTED] states that the beneficiary's foreign bachelor's degree in pharmacy is equivalent to a U.S. bachelor's degree in pharmaceutical science.

The evaluation from [REDACTED] of [REDACTED] states that the beneficiary's education, training, and employment experience, considered together, are equivalent to a U.S. bachelor of science degree in computer information systems. The professor also stated: "Because of the positions I hold at the above-mentioned university, I to determine [sic] whether credit would be awarded to a student by the University."

In her April 1, 2012 letter, the petitioner's HR/IT Staffing Representative stated, *inter alia*, the following:

[The petitioner] seeks to employ [the beneficiary], in H-1B status, as an Application Developer 4. He currently works in this position pursuant to Optional Practical Training. As an Application Developer 4, [the beneficiary] serves in [the petitioner's] Enterprise Service Development department, which builds and supports [the petitioner's] enterprise services. [The beneficiary] is responsible for the technical design and development of enterprise services. In addition, he is responsible for the design, development, unit testing and support for enterprise services, utilizing Java, XSLT, and Ant for programming, and SOAP, WSDA, and WS-Security for service oriented architecture background. Additional duties include development of enterprise service standards and best practices; architecture and design of the service

change management and version policies; analysis of service delivery/development time and cost estimates; creation of deployment strips; service monitoring, SLA management, metrics reporting, usage and performance trending; and production support.

This position requires at least a Bachelor's Degree in Computer Science, Computer Information Systems, or a quantitative discipline, plus prior related experience.

* * *

Since October 2011, [the beneficiary] has worked for [the petitioner], pursuant to Optional Practical Training, performing the above-described duties. Prior to joining [the petitioner], from August 2010 to October 2011, he worked for [redacted] in the position of TIBCO Consultant, also pursuant to Optional Practical Training. In this position, he was involved in requirements gathering and design phase meetings; installed and configured TIBCO products; prepared detailed technical design documents for interfaces; developed more than 100 BW processes; configured various TIBCO adaptors such as ADB, File, and MQ for developing the interfaces; created GI forms using Business Studio; designed credit card transaction monitoring using TIBCO Business Events, implemented the AMLS policies and developed rule functions; developed BW process to update live forex rates using File Adapter; and created various XSD/Schemas, XPATH transformations, and XSLT standards.

On May 2, 2012, the service center issued an RFE. The service center requested, *inter alia*, evidence that the beneficiary is qualified for the proffered position pursuant to the salient statutes and regulations.

In response, counsel submitted (1) an undated letter on the letterhead of [redacted] stating that the beneficiary successfully attended a [redacted] course at [redacted] from October 3, 2004, to November 25, 2004; (2) an employment verification letter, dated June 27, 2008, on the letterhead of [redacted]; (3) an undated employment verification letter from the vice president of [redacted]; (4) A Post Graduate Diploma in Computer Applications from the [redacted] that the beneficiary received pursuant to study from March 2007 to March 2008; (5) a certificate, issued June 16, 2010, stating that the beneficiary earned an [redacted] credential; (6) an evaluation, dated July 11, 2012, of the beneficiary's qualifications, prepared by [redacted], a professor in the [redacted]; (7) a letter, dated March 22, 2012, from a dean of [redacted]; (8) a letter on the petitioner's letterhead, dated July 18, 2012, from [redacted], who states his position title as "Human Resources"; and (9) counsel's own letter, dated July 20, 2012.

The signature on the June 27, 2008 employment verification letter on the letterhead of [REDACTED] is illegible, and the person who signed it is not identified by name, but only as "Authorized Signatory Human Resource." The body of that letter states, in its entirety:

This is to certify that [the beneficiary] has worked as a [REDACTED] from 21st February 2005 to 27th June 2008.

He has strong inter-personal relations with the clients and has the ability to learn new skills. He has proved himself to be an asset to the organization.

His job responsibilities include Managing of project activities, research and development on latest technologies, software design and analysis, testing documentation and quality control of software; assist team members on project activities.

We wish him all the success in his future assignments.

The body of the employment verification letter from [REDACTED] states, in its entirety:

This is to certify that [the beneficiary] has worked at our organization as a **TIBCO Consultant** at our client [REDACTED] in MN from Dec 2010 to Oct 2011.

His job responsibilities were to:

- Develop TIBCO BusinessWorks processes to enable batch integration
- Configure Tibco adapters such as ADB, File and MQ for developing the interfaces.
- Develop and work on Web Services using SOAP over JMS and HTTP.
- Create various XSD/Schemas, XPATH Transformations and XSLT Standards

We wish him all the best for his future endeavors.

This Certification is issued to whatever purpose it may serve him best.

The body of the July 11, 2012 evaluation prepared by [REDACTED] states, in its entirety:

The following is an evaluation of the academic credentials and work experience of [the beneficiary]. [The beneficiary] has completed more than four years of professional training and development in the field of Computer Information Systems

in positions that represent progressively advanced responsibility and skill. [The beneficiary] has served under the tutelage of supervisors and mentors who possess skills that are equivalent or superior to those skills that would be imparted in the course of Bachelors-level training in the field.

Having graduated from high school, [the beneficiary] enrolled and completed four years academic coursework at [REDACTED] in India. He was awarded a Bachelor of Pharmacy degree in 2008. [The beneficiary] completed courses in his major, Pharmacy, and other related courses.

[The beneficiary] has completed more than four years of professional training and work experience in Computer Information Systems. During this period of more than four years of progressively responsible work experience, [the beneficiary] served in positions of advanced professional responsibility and sophistication, together with peers, under the supervision of managers, at a level of employment commensurate with university-level training.

Thereafter, [the beneficiary] enrolled in [REDACTED] in the United States. He enrolled and completed *two years of* academic coursework and examinations at the University and was awarded a Master of Science degree in 2010. [The beneficiary] completed courses in his major, Chemistry, and related areas.

Beginning in February 2005 through June 2008, [the beneficiary] worked for [REDACTED] as a Tibco Developer. His duties were to interact with business analysts to translate business requirements into functional specifications, participate in design discussions and code reviews, develop several BW processes, deploy BW processes into various environments. Install, configure, and test TIBCO Administrator, create JMS queues, and configure business events.

From August 2010 to September 2011, [the beneficiary] was a Tibco Consultant from [REDACTED]. He was responsible for gathering requirements, installing and configuring requirements, preparing detailed technical design documents, developing BW processes, creating GI forms, developing several Tibco BusinessWorks processes, and developing unit test cases for interfaces.

Since October 2011, [REDACTED] has employed [the beneficiary] as an Application Developer. He has been charged with participating in the technical design of application systems, developing and implementing application systems, creating designs, coding, testing, implementing, and documenting solutions, creating and executing performance tests, preparing detailed technical design documents, developing BW processes, and creating GI forms.

These more than four years of work experience represent a track of progressively responsible positions and duties in the field of Computer Information Systems, under the tutelage of peers and supervisors. [The beneficiary's] more than four years of work experience constitute the equivalent of not less than the equivalent [sic] of one year of coursework under USCIS's 3 to 1 rule.

On the basis of the [March 19, 2012 evaluation described above], and considering the more than four years of work experience and professional training in Computer Information Systems, it is my opinion that [the beneficiary] has attained the equivalent of *at least a Bachelor of Science in Computer Information Systems* from an accredited institution of higher education in the United States.

This evaluation relies upon copies of the original documents provided by [the beneficiary] and represented by [the beneficiary] to be authentic copies of those documents. I have no grounds to doubt the accuracy of the documents that have been submitted for my review.

The foregoing evaluation of [the beneficiary] has been prepared and certified by me this 10th day of July 2012. On the basis of the position I hold a Professor, [REDACTED]

[REDACTED] I have the authority to evaluate whether the school is to grant college-level credit for experience, training, and/or courses taken at other U.S. or international universities. The above letter is strictly my opinion and is not the opinion of any of the universities with which I am affiliated or any of its departments or affiliates.

The July 18, 2012 letter on the petitioner's letterhead states the following as the duties of the proffered position:

- Performing design, coding, testing, implementations, deployments and documentations of TIBCO business works applications.
- Creating and executing performance tests to ensure that expected application performance levels are achieved.
- Involve [sic] in requirements gathering and in design phase meetings.
- Installing and configuring the TIBCO products on my workstation.
- Preparing detailed Technical Design Documents (TDDs) for the applications I've developed.
- Configured various TIBCO adapters such as ADB, File, and MQ for developing the interfaces.
- Creating various Schemas (XSDs), XPATH Transformations and XSLT standards.
- Creating Parasoft SOA Test projects for all developed applications.
- Performing troubleshooting, debugging and unit testing of various code related configuration issues in QA and production Environments.

- Working with the HP Offshore team to manage the development tasks for the TIBCO applications.
- Updating the Software Turnover Document (STO) with the updates of the TIBCO applications.
- Converting the transport of TIBCO applications from HTTPS to EMS for optimizing control and traffic of critical services.
- Deploying EAR files into Dev environment TIBCO Administrator for unit testing.
- Participate in team wide production support cycle.
- Creating WebFOCUS applications to generate reports of the logs for all ESD Services.

It also states: "[The proffered position] requires at least a Bachelor's Degree in Computer Science, Computer Information Systems, or a quantitative discipline, plus prior related experience." Further still, that letter states that the beneficiary is qualified for the proffered position based on his education and experience.

In his July 20, 2012 letter, counsel reiterated many of the assertions made in the petitioner's July 18, 2012 letter, including that the proffered position "requires at least a Bachelor's Degree in Computer Science, Computer Information Systems, or a quantitative discipline, plus prior work experience," and that the beneficiary "holds the equivalence [sic] of at least a Bachelor's Degree in Computer Information Systems."

The director denied the visa petition on August 6, 2012, stating, *inter alia*, that the petitioner had not demonstrated that the beneficiary is qualified for the proffered position. On appeal, counsel asserted that the evidence submitted demonstrates that the beneficiary is, in fact, qualified for the proffered position.

As noted above, 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. 8 C.F.R. § 214.2(h)(4)(iii)(C).

The AAO will now consider the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(C) in demonstrating that a beneficiary is qualified for a proffered position. The alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(C)(1) may be satisfied if the beneficiary holds a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university.

The duties of the proffered position, as described in the petitioner's July 18, 2012, consist largely of gathering requirements for, and then designing, coding, and debugging, computer applications.

Further, the petitioner stated on the LCA that the proffered position is a computer systems analyst position. Clearly, if the proffered position were to require a minimum of a bachelor's degree in a specific specialty or its equivalent, it would require a degree in a computer-related field, computer programming, computer information systems, computer science, software engineering, or, of course, systems analysis, for instance. The beneficiary does not have a U.S. degree in any computer-related subject. Instead, the beneficiary's U.S. degree is in chemistry. If the proffered position were a specialty occupation position, then the beneficiary would not be qualified for the proffered position pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(1).

Next, the petitioner has not established that the beneficiary is qualified to serve in a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) for an alien holding a foreign degree determined to be equivalent to a U.S. accredited college or university baccalaureate or higher degree required by the pertinent specialty occupation. The beneficiary has a foreign bachelor's degree in pharmacy. Although the record contains evaluations of the beneficiary's qualifications, they do not indicate that the beneficiary's foreign degree is equivalent to a minimum of a bachelor's degree in computer programming, computer information systems, computer science, software engineering, systems analysis, or any closely-related subject. The beneficiary has not been shown to be qualified to work in the proffered position pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

The beneficiary has not been shown to be qualified to work in the proffered position pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(3), as there is no indication in the record of any 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.

Under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the petitioner must establish both (1) that the beneficiary's combined education, specialized training, and/or progressively responsible experience are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and (2) that the beneficiary has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree under 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:

- (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;²
- (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 AAO will now address the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), which is satisfied if the petitioner provides an evaluation of the beneficiary's education, training, and work experience which credibly demonstrates that those three factors, considered together, show that the beneficiary has a minimum of a bachelor's degree in the specific specialty required, or its equivalent.

Referring to the beneficiary's education and his employment experience, considered together, the March 19, 2012 evaluation prepared by [REDACTED] of [REDACTED] states:

. . . [The beneficiary] has satisfied the stated requirements for equivalency to at least a Bachelor of Science degree in Computer Information Systems from an accredited institution of higher learning in the United States.

However, USCIS will not accept a faculty member's opinion as to the college-credit equivalent of a particular person's work experience or training, unless authoritative, independent evidence from the official's college or university, such as a letter from the appropriate dean or provost, establishes that the college or university has a program for granting such credit and that the official is authorized to grant academic credit for that institution, in the pertinent specialty, on the basis of training or work experience.

The November 23, 2010 letter from the [REDACTED] Computer Science department chair submitted with [REDACTED] evaluation states that [REDACTED] "regards faculty members as appropriate evaluators of academic and professional credentials and work experience for the purposes of admissions, advising, placement in the degree programs, substitutions of courses, assessments of internships, and other routine university evaluations." It further states:

² The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not training and/or work experience.

University faculty use their authority to judge college-level credit or equivalent education, training and experience in the course of . . . in assessing the credentials of students from . . . other nations for the purposes of granting credit and determining equivalence

Further still, it states:

[REDACTED] has the authority to make determinations concerning the granting of college-level credit for training and experience in computer science, engineering, information technology, technical communications, computer animation, and related disciplines for the Department of Computer Science.

Finally, that letter states:

I trust that this information is sufficient documentation to support the conclusion that [REDACTED] has the authority to assess, evaluate, and grant credit for training and experience, and that he is familiar with the programs and procedures in place for making these determinations.

The first of the three quoted paragraphs set off above states that faculty members, including [REDACTED]:

use their authority to judge college-level credit or equivalent education, training and experience in the course of . . . in assessing the credentials of students from . . . other nations for the purposes of granting credit.

It does not state that [REDACTED] himself, has *the authority to grant* college-level credit based on training and/or work experience.

The second of the three paragraphs quoted states: [REDACTED] has the authority to make determinations concerning the granting of college-level credit for training and experience" It does not state that [REDACTED] himself, has *the authority to grant* college-level credit based on training and/or work experience.

The third of the three paragraphs quoted states: "I trust that this information is sufficient documentation to support the conclusion that [REDACTED] has the authority to assess, evaluate, and grant credit for training and experience"

The information provided is insufficient to support that conclusion because it does not, at any point, state that [REDACTED] himself, has *the authority to grant* college-level credit based on training and/or work experience.

Because the evaluation of [REDACTED] is not accompanied by authoritative, independent evidence from [REDACTED] that establishes that [REDACTED] is authorized to grant academic credit for [REDACTED] on the basis of training or work experience, that evaluation is of insufficient value in showing that the beneficiary is qualified for the proffered position pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(I).

Moreover, [REDACTED] evaluation is almost without analysis. It does not list the requirements of a bachelor's degree in computer information systems. It does not discuss the classes the beneficiary took in obtaining his degrees in pharmacy and chemistry, and how those classes fulfilled any of the requirements of a bachelor's degree in computer information systems. It does not discuss the beneficiary's training or which of the classes required for a bachelor's degree in computer information systems that training is an acceptable substitute for. Although it discussed the beneficiary's employment experience and concluded, without analysis, that it was "indicative of Bachelor's-level coursework in Computer Information Systems and related subjects," it did not explain what requirements of a bachelor's degree in computer information systems that work experience is an adequate substitute for.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). This evaluator's opinions are conclusory; he does not cite studies, treatises, surveys, or any other factual basis for them. He does not state how he reached his conclusion that the beneficiary's employment experience was equivalent to computer information systems education at the bachelor's degree level. The employment verification letters upon which he appears to have relied provide no apparent indication that his experience equipped him with the equivalent of a minimum of a bachelor's degree in a computer information science. Under these circumstances, the evaluation of [REDACTED] is accorded very little evidentiary weight, and is insufficient to demonstrate that the beneficiary's education, training, and employment experience, considered together, are equivalent to a minimum of a bachelor's degree in a subject closely related to computers, or its equivalent.

The remaining evaluation was produced, as was stated above, by [REDACTED] of [REDACTED]. It states that, considering the beneficiary's education, training, and employment experience together, the beneficiary has attained the equivalent of at least a U.S. bachelor's degree in computer information systems.

However, that evaluation, too, is almost without analysis. It does not list the requirements of a bachelor's degree in computer information systems. It does not discuss the classes the beneficiary took in obtaining his degrees in pharmacy and chemistry, and how those classes fulfilled any of the requirements of a bachelor's degree in computer information systems. It does not discuss the beneficiary's training or which of the classes required for a bachelor's degree in computer information systems that training is an acceptable substitute for. Although it discussed the beneficiary's employment experience and concluded, without analysis, that it was "progressively

responsible," it did not explain what requirements of a bachelor's degree in computer information systems that work experience is an adequate substitute for or why.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Sea, Inc.*, 19 I&N at 820. This evaluator's opinions are conclusory; he does not cite studies, treatises, surveys, or any other factual basis for them. He does not state how he reached his conclusion that the beneficiary's employment experience was equivalent to computer information systems education at the bachelor's degree level. The employment verification letters upon which he appears to have relied provide no apparent indication that his experience equipped him with the equivalent of a minimum of a bachelor's degree in a computer information science. Under these circumstances, the evaluation of [REDACTED] is accorded very little evidentiary weight, and is insufficient to demonstrate that the beneficiary's education, training, and employment experience, considered together, are equivalent to a minimum of a bachelor's degree in a subject closely related to computers, or its equivalent.

The criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(2) and (4) are not factors in this proceeding, and the record contains no evidence related to them.

With regard to 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), the AAO observes that none of the evaluations provided states that the beneficiary's education alone, without consideration of training or work experience, is equivalent to a minimum of a bachelor's degree in a specific specialty closely related to computers, or its equivalent. Therefore, even if the proffered position were a specialty occupation position, the beneficiary would not be qualified for the position pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(3).

As the petitioner has failed to satisfy any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1)-(4), and the AAO will next perform a Service evaluation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

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 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 recognition of expertise in the specialty occupation.

When USCIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), 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;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

Neither the letters from the beneficiary's former employers nor any other evidence of record demonstrates the extent of the theoretical and practical application of specialized knowledge in any specialty that was involved in the beneficiary's work.

The evaluation of [REDACTED] states:

[The beneficiary] has served under the tutelage of supervisors and mentors who possess skills that are equivalent or superior to those skills that would be imparted in the course of Bachelors-level training in the field.

However, [REDACTED] provided no indication of how he reached that conclusion.

The record contains no indication that the beneficiary has recognition of his expertise in any specialty, as evidenced by (i) Recognition of the beneficiary's expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation; (ii) Membership in an association or society in the specialty occupation; (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers; (iv) Licensure or registration to practice the specialty occupation in a foreign country; or (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation. Consequently, the petitioner has not established that the beneficiary satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

As the petition fails to establish that the beneficiary is qualified to serve in any specialty occupation requiring an academic concentration or major in a computer-related specialty, the petition must be denied and the appeal dismissed for failure to qualify the beneficiary under 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

It is noted that the beneficiary's admission and continued stay in the United States is conditioned on the maintenance of the F-1 "nonimmigrant status in which the alien was admitted or to which it was changed under section 248" and compliance "with the conditions" of that status. Section 237(a)(1)(C)(i) of the Act, 8 U.S.C. § 1227(a)(1)(C)(i). The beneficiary received a master's degree in *chemistry* from [REDACTED] and the petitioner claims that the beneficiary has been working for it, performing the duties of a computer systems analyst since October 2011 pursuant to Optional Practical Training (OPT). OPT is temporary employment that is "directly related to the student's major area of study." 8 C.F.R. § 214.2(f)(10)(ii)(A). However, the beneficiary is not employed by the petitioner in a position "directly related" to chemistry; therefore, it appears that the beneficiary has failed to comply with the terms and conditions of his F-1 student visa. While the AAO observes that USCIS has not yet determined that the beneficiary has violated his F-1 status, it is clear from the documentation contained in the current record of proceeding that the beneficiary has violated his F-1 nonimmigrant status by working for the petitioner in a position not "directly related" the beneficiary's major area of study at [REDACTED]

As a final matter, it is noted that in their evaluations, [REDACTED] conclude that the beneficiary has the equivalent of a bachelor's degree in computer information systems based, in part, on his experience with the petitioner. However, the petitioner has employed the beneficiary as an Applications Developer 4 (the proffered position) *prior* to his having gained all of the experience that the evaluators claim (together with his education) is equivalent to a bachelor's degree in computer information systems. Therefore, the petitioner's employment of the beneficiary is an indication that the proffered position is not a specialty occupation by virtue of requiring a bachelor's degree in computer science or computer information systems.

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, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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