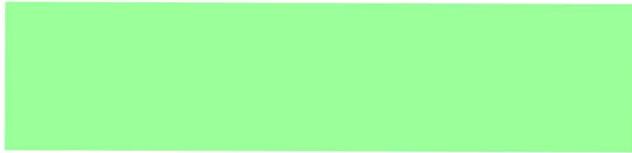




U.S. Citizenship
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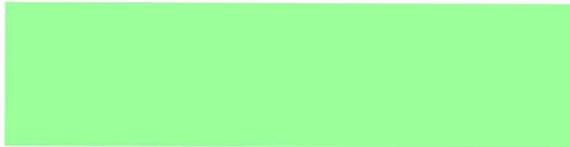


DATE: **JUL 03 2014** Office: CALIFORNIA SERVICE CENTER File:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the California Service Center on April 8, 2013. On the Form I-129 visa petition the petitioner states that it is an online gaming entertainment business with 500 employees, established in 1999. In order to employ the beneficiary in a position to which it assigned the job title "Game Data Analyst," 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 on October 23, 2013, finding that the petitioner failed to establish that the beneficiary is qualified for H-1B classification. On appeal, the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that it satisfied all evidentiary requirements.

The record of proceeding before us contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's Notice of Intent to Deny (NOID) the petition; (5) the petitioner's response to the NOID; (6) the director's denial letter; and (7) the petitioner's Notice of Appeal or Motion (Form I-290B) and supporting documentation. We reviewed the record in its entirety before issuing our decision.

Upon review of the entire record of proceeding, we find that the petitioner has failed to overcome the director's grounds for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

As a preliminary matter, we will address an additional, independent ground, not fully identified by the director's decision, which precludes approval of this petition. Specifically, beyond the decision of the director, the evidence in the record of proceeding does not establish the proffered position as a specialty occupation in accordance with the applicable statutory and regulatory provisions.¹ For this additional reason, the petition may not be approved.

I. FACTUAL AND PROCEDURAL HISTORY

In this matter, the petitioner indicated in the Form I-129 and supporting documentation that it seeks the beneficiary's services in a position that it designates as Game Data Analyst to work on a full-time basis at a salary of \$70,000 per year. The petitioner stated that the dates of intended employment are from October 1, 2013 until August 31, 2016.

¹ We conduct appellate review on a *de novo* basis (*See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)), and it was in the course of this review that we identified this additional ground for denial.

In a support letter dated March 7, 2013, the petitioner indicated that "[t]he position offered to [the beneficiary] is a specialty occupation that requires a minimum of a baccalaureate degree." The petitioner also provided the following description of the job duties to be performed by the beneficiary in the proffered position:

As a Game Data Analyst, [the beneficiary] will use his SQL coding abilities to analyze detailed data to deliver insights about how customers interact with our games. He will also work with the producers, designers, and engineers of our games on a daily basis, providing data-driven analysis to the team that improves the customer experience in our games, as well as informs the team about the business performance of our games. [The beneficiary] will also work with the Business Intelligence (BI) team to leverage existing data sources and tools to supplement the insights generated about our games. He will build dashboards and reports as well as provide performance data about our games using data drawn from multiple sources as well as analyze data to answer ad hoc questions from key stakeholders. [The beneficiary] will also work with game development teams to understand data being generated, verify the quality of that data, and specify new data sets to be generated to answer outstanding questions. He will develop new insights and analyses to inform design/architecture decisions for our games and validate the results of those decisions.

The petitioner added:

[The beneficiary] has the background necessary to fulfill the responsibilities of the Game Data Analyst position at [the petitioner]. He has completed approximately one year of academic studies and accumulated at least twelve years of work experience in the field of Information Systems. [The beneficiary's] academic history and work experience have been evaluated to be equivalent to a Bachelor of Science degree in Information Technology.

The petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The LCA designation selected by the petitioner for the game data analyst position corresponds to the occupational classification "Computer Systems Analysts" - SOC (ONET/OES) Code 15-1121 at a Level I (entry level) wage.

The petitioner submitted an evaluation report prepared for the petitioner by Professor [REDACTED] Department of Statistics and Computer Information Systems, [REDACTED]

[REDACTED] The evaluator stated that the beneficiary has "attained the equivalent of a Bachelor of Science Degree in Information Technology, based on his partial academic studies and his documented (verified) professional experience in information technology, high-level technical support, and related fields."

The petitioner submitted a letter from [REDACTED], Associate Dean, [REDACTED] dated June 16, 2011 (hereinafter [REDACTED]). The letter confirms that Professor [REDACTED] is employed by [REDACTED] and "he has gained experience in

evaluating the foreign study, professional training, and work experience of prospective and existing students of the College, and making determinations regarding the granting of credit for such studies, training, and/or employment."

The petitioner submitted a second letter from [REDACTED] Associate Dean, [REDACTED] [REDACTED] dated May 11, 2007 ("hereinafter [REDACTED]"). The letter stated that "[a]t [REDACTED] our administration and faculty adhere to admissions and credit policies through which university credit may be granted to qualifying students based on their completion of corresponding transfer studies or qualifying, professional life experience." The letter also stated that "Professor [REDACTED] can make recommendations as to the determination of the granting of college-level credit for academic studies and/or professional experience."

The petitioner submitted a letter from [REDACTED] Chair, Statistics and Computer Information Systems, [REDACTED] of New York, dated May 11, 2007. The letter stated that it is confirming that the "faculty of the [REDACTED] of New York, including Professor [REDACTED] have qualifications to assess college-level credit for training and experience." Mr. [REDACTED] also stated, "[a]s per my August 2004 letter, the University does maintain a policy regarding the issuance of credit for experience, notwithstanding the fact that the policy may not [be] specified in a course catalog."

The petitioner also submitted the August 2, 2004 letter referenced by Mr. [REDACTED] in his May 11, 2007 letter. The August 2, 2004 letter is signed by [REDACTED] in his position as Chairperson [REDACTED] of New York. The August 2, 2004 letter was written to confirm that [REDACTED] and the faculty of [REDACTED] of New York can grant college-level credit for training and experience.

The record also contains an employment verification letter for the beneficiary from his previous employer, [REDACTED] which claims that the beneficiary was employed in the position of Technical and Network Support Engineer from December 14, 2000 until October 5, 2012.

On June 19, 2013, the director issued an RFE requesting that the petitioner submit additional evidence pertaining to the beneficiary's work experience and its claim that the work experience is equivalent to the completion of a college degree. The director outlined the evidence that could be submitted.

In response to the RFE, counsel for the petitioner contends that the petitioner is seeking to demonstrate the Beneficiary's academic qualifications by virtue of an evaluation of the Beneficiary's education and work experience pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(1). The petitioner resubmits the evaluation report previously submitted and supporting documentation.

On September 10, 2013, the director issued a NOID requesting that the petitioner submit additional evidence regarding whether the beneficiary is qualified to perform services in a specialty occupation. The director again outlined the type of evidence that could be submitted.

In response, the petitioner submitted, among other things, a resume for the beneficiary and an

expanded experience letter for the beneficiary's prior employment with [REDACTED]. The petitioner also contends that the credential evaluation submitted on behalf of the beneficiary is credible and satisfies the requirements of the regulations.

The director reviewed the documentation and found it insufficient to establish eligibility for the benefit sought. The director denied the petition on October 23, 2013. Counsel for the petitioner submits an appeal of the denial of the H-1B petition and supporting documentation.

II. LAW AND ANALYSIS

A. Failure to Establish that the Proffered Position Qualifies as a Specialty Occupation

We will first address whether the petitioner's proffered position qualifies as a specialty occupation. On appeal, counsel for the petitioner contends that the position proffered here is a specialty occupation which requires a minimum of a U.S. baccalaureate degree in Math, Engineering or other related technical field. Counsel asserts that the petitioner determined that the beneficiary was the best candidate for this position based upon his one-year of completed academic coursework and extensive professional experience and skills in database administration, software development, SQL coding and data analysis and reporting.

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

Preliminary to a discussion of the beneficiary's qualifications, we find that as discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent the determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it cannot be determined whether the beneficiary possesses that degree or its equivalent. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is first found to be a specialty occupation. To determine whether a particular position is a specialty occupation, we turn to the applicable statute and regulations.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), 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) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] requires 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 [(2)] requires 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, a proposed 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 at 387. To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

The petitioner stated on the Form I-129 that the beneficiary would be employed as a Game Data Analyst. The LCA designation selected by the petitioner for the game data analyst position corresponds to the occupational classification "Computer Systems Analysts" - SOC (ONET/OES) Code 15-1121 at a Level I (entry level) wage.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered 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 alien, and determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the evidence in the record of proceeding establishes that performance of the particular proffered 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.

To ascertain the intent of a petitioner, USCIS must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

In this matter, the petitioner provided a broad description of the beneficiary's proposed duties. Thus, it is not possible to discern the substantive nature of the work to be performed by the beneficiary. The failure to detail the beneficiary's actual day-to-day duties, 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.

Assuming for the sake of argument that the proffered duties as generally described by the petitioner in its initial letter would in fact be the duties to be performed by the beneficiary, we will analyze them and the evidence of record to determine whether the proffered position as described would qualify as a specialty occupation. In that regard, we observe the petitioner attested on the required LCA that the proffered position corresponds most closely to that of a computer systems analyst position.

To make its determination whether the proffered position qualifies as a specialty occupation, we turn to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We will first review the record of proceeding in relation 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 that is the subject of the petition.

We recognize the Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² As previously discussed, the petitioner asserts in the LCA that the proffered position falls within the occupational group "Computer Systems Analysts."

Upon review of the information in the *Handbook* regarding the occupational category "Computer Systems Analysts," including the sections regarding the typical duties and requirements for this occupational category, the *Handbook* does not support a conclusion that computer systems analyst positions normally require at least a bachelor's degree in a specific specialty, or its equivalent, for entry.

More specifically, the subchapter of the *Handbook* entitled "How to Become a Computer Systems Analyst" states the following about this occupational category:

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.

Education

Most computer systems analysts have a bachelor's degree in a computer-related field. Because these analysts also are heavily involved in the business side of a

² The *Handbook*, which is available in printed form, may also be accessed on the Internet at <http://www.bls.gov/ooh/>. The references to the *Handbook* are to the 2014-2015 edition available online.

company, it may be helpful to take business courses or major in management information systems.

Some employers prefer applicants who have a master's degree in business administration (MBA) with a concentration in information systems. For more technically complex jobs, a master's degree in computer science may be more appropriate.

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.

Many systems analysts continue to take classes throughout their careers so that they can learn about new and innovative technologies and keep their skills competitive. Technological advances come so rapidly in the computer field that continual study is necessary to remain competitive.

Systems analysts must understand the business field they are working in. For example, a hospital may want an analyst with a background or coursework in health management, and an analyst working for a bank may need to understand finance.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, Computer Systems Analysts, available on the Internet at <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-4> (last visited June 28, 2014).

The *Handbook* does not report that, as an occupational group, "Computer Systems Analysts" require at least a bachelor's degree in a specific specialty. The *Handbook* states that "[m]ost computer systems analysts have a bachelor's degree in a computer-related field," but "[s]ome employers prefer applicants who have a master's degree in business administration (MBA) with a concentration in information systems." In addition, the *Handbook* states that "[a]lthough many computer systems analysts have technical degrees, such a degree is not always a requirement," and "[m]any analysts have liberal arts degrees and have gained programming or technical expertise elsewhere." Accordingly, the *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the computer systems analysts occupational group. Rather, the occupation accommodates a wide spectrum of educational credentials. While the *Handbook* states that most computer systems analysts have a bachelor's degree, the *Handbook* does not report that it is an occupational, entry requirement. Moreover, although a general-purpose bachelor's degree may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 147.

Furthermore, while the *Handbook's* narrative indicates that most computer systems analysts obtain a degree in computer-related field, the *Handbook* does not report that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry

into that occupation. The term "most" is not indicative that a particular position within the wide spectrum of computer programming jobs normally requires at least a bachelor's degree in a specific specialty, or its equivalent. For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of employees in this occupation have a bachelor's degree in a specific specialty, or its equivalent, it could be said that "most" of the individuals have such a degree. It cannot be found, therefore, that a statement that "most" employees possessing such a degree in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "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." Section 214(i)(1) of the Act.

We observe as well that counsel for the petitioner contends on appeal that the position proffered here is a specialty occupation which requires a minimum of a U.S. baccalaureate degree in Math, Engineering or other related technical field.³ In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

³ Inconsistent with counsel's assertion, the petitioner, in its initial letter, referenced the beneficiary's one-year of academic studies and twelve years of work experience in information systems as well as the credential evaluation assigning the beneficiary the equivalent of a Bachelor's degree in Information Technology as qualifying the beneficiary to perform the work of the proffered position. 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).

Neither the petitioner nor counsel explains how the separate fields of "math," "engineering," and "information technology" are directly related to the duties and responsibilities of the position proffered here. Moreover, a general engineering degree covers numerous and various specialties, some of which are only related through the basic principles of science and mathematics, e.g., nuclear engineering and aerospace engineering. Therefore, besides a degree in electrical engineering, it is not readily apparent that a general degree in engineering or one of its other sub-specialties, such as chemical engineering or nuclear engineering, is closely related to the position at hand or that engineering or any and all engineering specialties are directly related to the duties and responsibilities of the particular position proffered in this matter.

Here and as indicated above, the petitioner, who bears the burden of proof in this proceeding, fails to establish either (1) that math, information technology and engineering in general are closely related fields or (2) that engineering or any and all engineering specialties are directly related to the duties and responsibilities of the proffered position. Absent this evidence, it cannot be found that the particular position proffered in this matter has a normal minimum entry requirement of a bachelor's or higher degree in a specific specialty or its equivalent under the petitioner's own standards. Accordingly, as the evidence of record fails to establish a standard, minimum requirement of at least a bachelor's degree *in a specific specialty* or its equivalent for entry into the particular position, it does not support the proffered position as being a specialty occupation and, in fact, supports the opposite conclusion.

Therefore, absent evidence of a direct relationship between the claimed degrees accepted by the petitioner and the duties and responsibilities of the position, it cannot be found that the proffered position requires anything more than a general bachelor's degree. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

When reviewing the *Handbook*, we must also note that the petitioner designated the prevailing wage for the proffered position as a wage for a Level I (entry level) position on the LCA.⁴ This

⁴ Wage levels should be determined only after selecting the most relevant Occupational Information Network (O*NET) code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.

Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. DOL emphasizes that these guidelines should not be

designation is indicative of a comparatively low, entry-level position relative to others within the occupation.⁵ That is, in accordance with the relevant DOL explanatory information on wage levels, this Level I wage rate is only appropriate for a position in which the beneficiary is only required to have a basic understanding of the occupation and would be expected to perform routine tasks that require limited, if any, exercise of judgment. This wage rate also indicates that the beneficiary would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results.

When, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies the criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. The petitioner has not supplied additional probative evidence on this issue.

Upon review of the totality of the evidence in the entire record of proceeding, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is normally required for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the proffered position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf.

⁵ The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is describes as follows:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

Id.

Next, we review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

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 in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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 previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports an industry-wide requirement for at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions. Accordingly, based upon a complete review of the record, the petitioner has not established that at least a bachelor's degree in a specific specialty is the norm for entry into positions that are (1) parallel to the proffered position; and (2) located in organizations similar to the petitioner. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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."

The petitioner in this matter provided a broad description of the duties of the proffered position. As determined above, it is not possible to ascertain what the beneficiary will actually do on a daily basis. Again, absent supporting documentary evidence the petitioner has not met its burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The petitioner fails to credibly demonstrate exactly what the beneficiary will do on a day-to-day basis such that complexity or uniqueness can even be determined. The petitioner fails to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position.

In addition, the LCA submitted by the petitioner in support of the instant petition is materially inconsistent with a claim that the petitioner has established the relative complexity or uniqueness required to satisfy this second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Again, we incorporate by reference and reiterate our earlier discussion regarding the fact that the petitioner submitted a supporting LCA that had been certified for a Level I (entry level) wage. This designation is appropriate for positions for which the petitioner expects the beneficiary to have a basic understanding of the occupation. That is, in accordance with the relevant DOL explanatory

information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; that he will be expected to perform routine tasks that require limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results.

By way of comparison, a position classified at a Level IV (fully competent) position is designated by the DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems." Thus, the wage level designated by the petitioner in the LCA for the proffered position is not consistent with claims that the position would entail any particularly complex or unique duties or that the position itself would be so complex or unique as to require the services of a person with at least a bachelor's degree in a specific specialty. Additionally, given the *Handbook's* indication that computer systems analysts positions do not normally require at least a bachelor's degree in a specific specialty, or the equivalent, for entry, it is not credible that a position involving limited, if any, exercise of independent judgment, close supervision and monitoring, receipt of specific instructions on required tasks and expected results, and close review *would* contain such a requirement. Thus, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. Consequently, as the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other computer systems analysts positions that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner did not submit evidence relating to the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or the equivalent, for the position. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).⁶

⁶ To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. 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 v. Meissner*, 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 a specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. The evidence of record does not convey either the substantive nature or the specialization and complexity of any specific duties that the beneficiary would perform, and it does not distinguish the duties of the proffered position from the generic duties generally performed in the computer systems analysts occupational group, which the *Handbook* indicates no usual association with at least a bachelor's degree in a specific specialty.

In this regard, we incorporate into this analysis our earlier comments and findings with regard to the implication of the Level I wage-rate designation (the lowest of four possible wage-levels) in the LCA. That is, that the proffered position's Level I wage designation is indicative of a low, entry-level position relative to others within the pertinent occupational category. As noted earlier, the DOL indicates that a Level I designation is appropriate for "beginning level employees who have only a basic understanding of the occupation."

For the reasons related in the preceding discussion, the petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. Accordingly, for this additional reason, the petition cannot be approved.

B. Failure to Establish that the Beneficiary Is Qualified to Perform the Duties of a Specialty Occupation

The next issue in this matter is whether the petitioner has established that the beneficiary is qualified to perform the duties of a specialty occupation, even if the position proffered here required a bachelor's or higher degree in a specific discipline.

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

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C)
 - (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform

services in a specialty occupation:

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

Therefore, 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.

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;⁷

⁷ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials

- (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;
- (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.

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

evaluation service's evaluation of *education only*, not training and/or experience.

establishes all of the qualifying elements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) – including, but not limited to, a type of professional recognition.

The petitioner indicated on the Form I-129 that it wished to employ the beneficiary as a game data analyst. In support of the petition, the petitioner submitted an evaluation report prepared for the petitioner by Professor [REDACTED] Department of Statistics and Computer Information Systems, [REDACTED] of New York. The evaluation report stated that the beneficiary has "attained the equivalent of a Bachelor of Science Degree in Information Technology, based on his partial academic studies and his documented (verified) professional experience in information technology, high-level technical support, and related fields."

The petitioner also submitted a letter from [REDACTED], Associate Dean, [REDACTED] dated June 16, 2011, confirming that Professor [REDACTED] is employed by [REDACTED] and "he has gained experience in evaluating the foreign study, professional training, and work experience of prospective and existing students of the College, and making determinations regarding the granting of credit for such studies, training, and/or employment." The petitioner submitted a previously written letter from [REDACTED] Associate Dean, [REDACTED] dated May 11, 2007, stating, "[a]t [REDACTED] our administration and faculty adhere to admissions and credit policies through which university credit may be granted to qualifying students based on their completion of corresponding transfer studies or qualifying, professional life experience." The letter also stated that "Professor [REDACTED] can make recommendations as to the determination of the granting of college-level credit for academic studies and/or professional experience."

The petitioner submitted a letter from [REDACTED], Chair, Statistics and Computer Information Systems, [REDACTED] of New York, dated May 11, 2007. The letter stated that it is confirming that the "faculty of the [REDACTED] of New York, including Professor [REDACTED] have qualifications to assess college-level credit for training and experience." The petitioner submitted a previously written letter from [REDACTED] Chairperson [REDACTED] of New York, dated August 2, 2004. The August 2, 2004 letter was written to confirm that [REDACTED] and the faculty of [REDACTED] of New York can grant college-level credit for training and experience.

As noted above, the director determined that the evidence submitted did not establish that the beneficiary qualified to perform the duties of an H-1B classification.

On appeal, counsel for the petitioner reiterated the petitioner's claim that it had established the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(I).

In order to evaluate a beneficiary's training and/or experience, an evaluation must be issued 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. The documentation submitted with this petition is not sufficient to establish this criterion. The two letters from [REDACTED] and

the two letters from [REDACTED] that were submitted to establish that Mr. [REDACTED] has the authority to issue college-level credit and that [REDACTED] has a program to grant college-level credit for training and experience, were all written several years prior to filing the instant petition. The letters from [REDACTED] were written in 2004 and 2007, which were several years prior to filing the instant petition on April 8, 2013. It is not clear whether the information written in these letters is still relevant almost 10 years later. The most recent letter submitted with the petition is from [REDACTED] dated June 16, 2011 but that is still almost two years prior to the date the instant petition was filed. Thus, the supporting documentation is not sufficient to establish that the evaluator, [REDACTED], currently has the authority to grant college-level credit for training or experience. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Moreover, we visited the [REDACTED] website's information page on issuing college credit for life experience. See [REDACTED]. The website indicates the following: (1) credit for life experience is not evaluated during the admissions process at [REDACTED] but only after the student has enrolled in the program; (2) credit is not awarded for experiences but for the student's ability to demonstrate that these experiences constitute college-level learning; (3) [REDACTED] students can earn up to 15 credits for documented learning experiences, published works, or artistic performances that occurred before they started college, during a hiatus of at least one year in their college careers, or in their current job if they were doing the same job for at least two years before starting college, provided they can show that what they learned or did is equivalent to college level work; (4) enrolled students can pursue the life experience option when they have earned between 45 and 90 credits; and (5) credit for prior learning cannot be applied to area(s) of concentration, liberal arts, residency, or core distribution requirements – this credit is always elective credit.

Neither [REDACTED] nor [REDACTED] discusses the limitations and restrictions placed on the [REDACTED] program for granting college-level credit based on an individual's training and/or work experience. For example, the program allows the issuance of only 15 credits for documented learning experiences, thus is limited to one semester worth of courses. Moreover, the program is limited to enrolled students who have already earned between 45 and 90 credits and the type of credit issued is for elective courses, not courses within the core distribution requirements or in an area of concentration. Thus, it appears that [REDACTED] program for granting college-level credit does not include life experience credit related to core areas of study such as computer science, information technology, or any specific discipline. There is no indication in any of four supporting letters that a student (enrolled or otherwise) would be able to obtain college-level credit for numerous courses all related and leading to a degree in a particular discipline. Notably, the website emphasizes that it is the student that must demonstrate his or her experiences constitute college-level learning. In this matter, although the evaluator reviewed the beneficiary's resume, the evaluator does not indicate how the beneficiary demonstrated that his work experience constituted any college-level learning. It appears, rather, that the evaluator assumed that the work experience constituted college-level learning without interviewing or otherwise requiring the beneficiary to demonstrate this essential element in the [REDACTED] program. The failure to provide an analysis of the beneficiary's work experience within the

context in which [REDACTED] currently issues college-credit for life or work experience significantly diminishes the probative value of these letters and ultimately the evaluation.

Upon review, the record does not establish that Professor [REDACTED] currently has authority to grant college-level credit for training and/or experience, and the record does not establish that [REDACTED] has a program to grant college-level credit resulting in a bachelor's degree in a specific discipline based on an individual's training and/or work experience.

Further, Professor [REDACTED] bases his evaluation on the beneficiary's letter of reference from his employer, [REDACTED] and the beneficiary's supplemental resume. Upon review of both the initial letter and the supplemental letter prepared by the beneficiary's prior employer, we cannot find, and Professor [REDACTED] does not discuss, the foundation upon which he concludes that the beneficiary "completed at least twelve years of bachelor's-level employment experience in information technology, and related areas, characterized by increasingly advanced responsibility and complexity under the supervision of managers and together with peers, at a bachelor's-level of practical experience. For example, the initial February 15, 2013 [REDACTED] letter listed the beneficiary's general job responsibilities with no context or description of advancement, if any. Although the second [REDACTED] letter submitted in response to the director's NOID, elaborated upon the beneficiary's responsibilities, the letter again failed to demonstrate how the beneficiary gained specialized training, and/or obtained progressively responsible positions directly related to the specialty.

Moreover, the author of the second [REDACTED] letter claimed that the beneficiary's "experience was gained while working with colleagues with degrees, certifications and many years of experience," but did not provide any further information or detail regarding the beneficiary's colleagues' level of degrees (e.g., associate's degree, baccalaureate degree, master's degree), certifications or experience. The employer's letters provides insufficient information regarding the beneficiary's work history and duties (i.e., complexity of the job duties, the level of judgment and understanding required to perform the job, the amount, nature, and level of supervision received, and supervisory responsibilities, if any). The evaluator's reliance on the employer's letters does not present an adequate factual foundation for the opinion that he offers. Thus, his opinion is not supported by evidence sufficient to corroborate his conclusion.

The beneficiary's resume lists his position with [REDACTED] as a technical and network support engineer/network operations and does not indicate that he received other titles or that his work experience varied to include advanced responsibility over the twelve-year period he was employed by [REDACTED]. We also observe that the February 15, 2013 [REDACTED] letter indicated the beneficiary was employed full-time, however, the beneficiary's resume indicates that from December 2006 until present, the beneficiary was the chief executive officer/network operations, owner and operator for [REDACTED], an online gaming community. The beneficiary does not state how many hours he worked at each place of employment. Based upon the information provided in the beneficiary's resume, we are unable to ascertain how Professor [REDACTED] was able to determine the exact nature of the duties that the beneficiary performed at his prior places of employment.

Thus, we find the evaluation fails to establish that the beneficiary possesses the equivalent of a bachelor's degree based upon the information provided regarding his work-related duties and responsibilities. In light of the lack of a sufficient factual foundation discussed above, the evaluation is insufficient even if it had been rendered by an official qualified under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

The petitioner has also failed to satisfy any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1)-(4), thus, we will next perform a Service evaluation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). We reiterate 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 regulation, experience will merit a positive determination only to the extent that the record of proceeding establishes all of the qualifying elements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) – including, but not limited to, a type of professional recognition.

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

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

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation⁸;
- (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

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

- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

Upon review of the record, the petitioner has not provided sufficient corroborating evidence as outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). We again reviewed the beneficiary's prior employer's letters, his resume, and Professor [REDACTED]'s opinion. However, these documents do not include sufficient information to conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge in a field directly related to the proffered position and that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a bachelor's degree (or higher), or its equivalent, in the specialty occupation. Moreover, the petitioner failed to submit probative evidence establishing that the beneficiary has recognition of expertise in information technology. Upon review of the record of proceeding, we find that the petitioner has failed to establish that the beneficiary has at least a bachelor's degree in a specific specialty, or its equivalent. Accordingly, the appeal will be dismissed and the petition denied for this reason.

For the reasons related in the preceding discussion, we affirm the director's decision that the beneficiary is not qualified to perform the duties of a specialty occupation requiring a bachelor's or higher degree in information technology. Thus, the appeal must be dismissed and the petition denied for this reason.

III. CONCLUSION

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 the AAO conducts appellate review on a *de novo* basis).

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 our 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.