



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **SEP 04 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

Michael T. Kelly
for Ron Rosenberg
Chief, Administrative Appeals Office

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

On the Form I-129 visa petition, the petitioner describes itself as a software developer and distributor established in [REDACTED]. In order to employ the beneficiary in what it designates as a full-time "Implementation Consultant" position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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

The record of proceeding before us contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's letter denying the petition; and (5) the Form I-290B, brief, and supporting documentation.

Upon review of the entire record of proceeding, including the all of the submissions on appeal, we find that the evidence of record does not overcome the director's ground for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

Beyond the decision of the director, we find an additional aspect which, although not addressed in the director's decision, nevertheless also precludes approval of the petition; namely, the petitioner's failure to establish that the position as described constitutes a specialty occupation.¹ U.S. Citizenship and Immigration Services (USCIS) is required to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether an alien beneficiary was qualified for the position at the time the nonimmigrant visa petition was 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]"). Therefore, for this additional reason, the petition must be denied.

I. SPECIALTY OCCUPATION

We will first address whether the proffered position is a specialty occupation. Based upon a complete review of the record of proceeding, we find that the evidence fails to establish that the

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by our office 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). 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.

position as described constitutes a specialty occupation. For this additional reason, the petition must be denied.

As indicated above, the petitioner seeks to employ the beneficiary in a full-time position which it identifies by the job title "Implementation Consultant." The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for use with a job prospect within the "Computer Systems Analysts" occupational classification, SOC (O*NET/OES) Code 15-1121, and a Level II ("qualified") prevailing-wage rate. The petitioner stated on both the Form I-129 and the LCA that it would pay her a salary of \$73,070 per year. The petitioner maintains that its gross annual income at the time of filing was \$21,000,000 and its net annual income was \$15,000,000.

In its March 25, 2013 letter, the petitioner described the proffered position as follows:

[The beneficiary] will be responsible for educating and training customers in the use of [REDACTED]. The position entails leading Joint Application design sessions using our [REDACTED] modeling tools to achieve a desired solution and build a proof of concept model from which the Implementation and training will follow. She will train our employees on new Product at our location. [The beneficiary] will also train customers on new processes as well as the application and help customize the application as required. She will train customers who come to our location for workshops and will perform online implementations with customers via the web. She will occasionally visit a customer's site to perform discovery and obtain an understanding of the customer's business to be able to model our Software. [The beneficiary] will spend no more than 3-5 days at a customer site. The position of Implementation Consultant requires at least a Bachelor's degree in Computer Science, Business Informatics or related field.

In response to the director's RFE, issued on June 5, 2013, the petitioner provided additional details regarding the proffered position, in a letter dated July 29, 2013. Specifically, the petitioner stated that the beneficiary would be responsible for the following duties:

- Facilitate Joint Application Design (JAD) sessions to identify and analyze the business requirements, documenting the results in a formalized document. Based upon this analysis and their understanding of the business requirement, the Implementation Consultant will document the guidelines for building an efficient ERP solution for the customer.
- Facilitate Site Audit sessions for existing sites that have been using the ERP software for several years. The purpose of the audit is to analyze the ERP system, understand how the system is being used, uncover the deficiencies within the current system and provide recommendations for reengineering the system. The Site Audit results are recorded in a formal document with

recommendations for streamlining processes to improve performance and use of the software.

- Facilitate business process re-engineering sessions for customers, as required. The implementation consultant analyzes process requirements, design and present a model of the software solution that fulfills or exceeds the requirements of the customer. They create and maintain a project plan to manage the Process Re-engineering lifecycle.

Before proceeding further, upon consideration of the totality of all of the petitioner's duty descriptions, position descriptions, explanations, and assertions, as well as the complete complement of documents submitted in support of the petitioner's specialty occupation claim, we find that the evidence in the record of proceeding does not establish relative complexity, specialization and/or uniqueness as distinguishing aspects of either the proposed duties or the position that they are said to comprise.

While the petitioner and counsel may claim that the nature of the proposed duties and the position that they are said to comprise elevate them above the range of usual Computer Systems Analyst positions and duties by virtue of their level of specialization, complexity, and/or uniqueness, the evidence of record does not support these claims. 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. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As evident in the statement of duties quoted above, the record of proceeding presents the duties comprising the proffered position in terms of relatively abstract and generalized functions that lack sufficient detail and concrete explanation to establish the substantive nature of the work and associated applications of specialized knowledge that its actual performance would involve. Take for example the following duty description:

She will train our employees on new Product at our location. [The beneficiary] will also train customers on new processes as well as the application and help customize the application as required.

The evidence of record contains neither substantive explanation, work-product copies, nor other documentation establishing the substantive nature of the user requirements for "the Product" for which the beneficiary would provide training, the nature and complexity of that training, and the minimum training and/or education required to provide such training. Likewise, the record does not illuminate either the substantive work the proffered position would involve or the extent, if any, that the training would require attainment of a specific level of post-secondary education, or education-equivalency, in any specific specialty.

As another example, we note that, in its RFE response, the petitioner asserts the beneficiary will perform "facilitation" services. Specifically, the petitioner attests that the beneficiary will facilitate "Joint Application Design (JAD) sessions to identify and analyze the business requirements," "facilitate Site Audit sessions for existing sites that have been using the [REDACTED] software for several years," and "facilitate business process re-engineering sessions for customers, as required." However, the evidence of record does not convey either (1) the substantive nature of "JAD sessions," "Site Audit sessions," and "business process re-engineering sessions"; (2) what "facilitation" of such sessions would involve; and (3) what substantive applications of highly specialized knowledge actual performance of such "facilitation" would require.

As a final representative example of the generality of the petitioner's information about the proffered position and its duties, we note the statement that the beneficiary would "visit a customer's site to perform discovery and obtain an understanding of the customer's business to be able to model our Software," which suggests that the true nature of the beneficiary's duties may fluctuate based on particular customer needs. Here, as throughout the record's descriptions of the position's constituent duties, we find insufficient details for a factual foundation that would substantively support a finding that the particular duty or aspect of the position – or the totality of all such elements of the proffered position - is more complex, specialized, and/or unique than those of Computer Systems Analysts positions that can be performed by persons without at least a bachelor's degree, or the equivalent, in a specific specialty.

The duties of the proffered position, and the position itself, are described in relatively generalized and abstract terms that do not relate substantial details about either the position or its constituent duties. Further, we find that the petitioner has not supplemented the job and duty descriptions with documentary evidence establishing the substantive nature of the work that the beneficiary would perform, whatever practical and theoretical applications of highly specialized knowledge in a specific specialty would be required to perform such substantive work, and whatever correlation may exist between such work and associated performance-required knowledge and attainment of a particular level of education, or educational equivalency, in a specific specialty.

Thus, we conclude that, as generally described as all of the elements of the constituent duties are, they do not - even in the aggregate - establish the nature of the position or the nature of the position's duties as more complex, specialized, and/or unique than those of computer systems analysts positions that do not require the services of a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

To meet its burden of proof in establishing the proffered position as a specialty occupation, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the 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 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), USCIS consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not 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 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.

We will now discuss application of each supplemental, alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

We will first consider the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied by the petitioner establishing that a baccalaureate or higher degree, or its equivalent, in a specific specialty is the normal minimum requirement for entry into the particular position that is the subject of the petition.

We recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.² As noted above, the LCA that the petitioner submitted in support of this

² The *Handbook*, which is available in printed form, may also be accessed online at <http://www.bls.gov/ooh>. Our references to the *Handbook* are from the 2014-15 edition available online.

petition was certified for a job offer falling within the "Computer Systems Analysts" occupational category.

The *Handbook* states the following with regard to the duties of purchasing managers:

Computer systems analysts study an organization's current computer systems and procedures and design information systems solutions to help the organization operate more efficiently and effectively. They bring business and information technology (IT) together by understanding the needs and limitations of both.

Duties

Computer systems analysts typically do the following:

- Consult with managers to determine the role of the IT system in an organization
- Research emerging technologies to decide if installing them can increase the organization's efficiency and effectiveness
- Prepare an analysis of costs and benefits so that management can decide if information systems and computing infrastructure upgrades are financially worthwhile
- Devise ways to add new functionality to existing computer systems
- Design and develop new systems by choosing and configuring hardware and software
- Oversee the installation and configuration of new systems to customize them for the organization
- Conduct testing to ensure that the systems work as expected
- Train the system's end users and write instruction manuals
- Computer systems analysts use a variety of techniques to design computer systems such as data-modeling, which create rules for the computer to follow when presenting data, thereby allowing analysts to make faster decisions. Analysts conduct in-depth tests and analyze information and trends in the data to increase a system's performance and efficiency.

Analysts calculate requirements for how much memory and speed the computer system needs. They prepare flowcharts or other kinds of diagrams for programmers or engineers to use when building the system. Analysts also work with these people to solve problems that arise after the initial system is set up. Most analysts do some programming in the course of their work.

Most computer systems analysts specialize in certain types of computer systems that are specific to the organization they work with. For example, an analyst might work predominantly with financial computer systems or engineering systems.

Because systems analysts work closely with an organization's business leaders, they help the IT team understand how its computer systems can best serve the organization.

In some cases, analysts who supervise the initial installation or upgrade of IT systems from start to finish may be called IT project managers. They monitor a project's progress to ensure that deadlines, standards, and cost targets are met. IT project managers who plan and direct an organization's IT department or IT policies are included in the profile on computer and information systems managers.

Many computer systems analysts are general-purpose analysts who develop new systems or fine-tune existing ones; however, there are some specialized systems analysts.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Computer Systems Analysts," <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-2> (last visited August 19, 2014).

The *Handbook* states the following with regard to the educational requirements necessary for entrance into the field:

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.

Id. at <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-2> (last visited August 19, 2014).

The statements made by DOL in the *Handbook* regarding entrance into this occupational category do not support a finding that a bachelor's degree, or the equivalent, in a specific specialty is normally required. The *Handbook's* recognition that a bachelor's or higher degree in a computer or information science field is common, but not exclusively "required" by employers, strongly suggests that a bachelor's degree in a specific specialty, or the equivalent, is not a normal, minimum entry requirement for this occupation. Furthermore, the *Handbook's* statement that some firms hire individuals with degrees in business or liberal arts that have skills in information technology or computer programming demonstrates that there is no universal requirement for a degree in a specific specialty for entry into this occupational category. Thus, the *Handbook* does not indicate that a minimum of a bachelor's degree in a specific specialty, or its equivalent, is normally required for this occupational category.

Accordingly, as the *Handbook* indicates that entry into the Computer Systems Analysts occupational group does not normally require at least a bachelor's degree in a specific specialty or its equivalent, it does not support the proffered position as satisfying this first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). That is, in light of the *Handbook's* information on the range of acceptable

educational credentials for entry into the Computer Systems Analysts occupational group, a position's inclusion within this group is not in itself sufficient to establish that position as one for which a baccalaureate or higher degree in a specific specialty or its equivalent is normally a minimum requirement for entry.

Nor does the record of proceeding contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion within the Computer Systems Analysts occupational group is sufficient in and of itself to establish the proffered position as, in the words of this criterion, a "particular position" for which "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry."

Finally, the petitioner has designated the proffered position as a Level II position on the submitted LCA, indicating that it is a "qualified" position for an employee who has obtained a good understanding of the field – "either through education or experience" - but who will only perform "moderately complex tasks that require limited judgment." See Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009). Therefore, even aside from the evidentiary deficiencies that we are identifying, this aspect of the record undermines the credibility of any claim that the proffered position is so specialized or complex as to distinguish itself from positions in the Computer Systems Analysts occupational group that do not require at least a bachelor's degree, or the equivalent, in a specific specialty. Further, it would be reasonable to expect that for such a higher-level position as claimed, a petitioner would submit an LCA certified for a Level IV prevailing-wage rate position, requiring a significantly higher prevailing-wage. 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).³

³ The *Prevailing Wage Determination Policy Guidance* (available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf (last visited August 19, 2014)) issued by DOL states the following with regard to Level II wage rates:

Level II (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O*NET Job Zones.

The proposed duties' level of complexity, uniqueness, and specialization, as well as the level of independent judgment and occupational understanding required to perform them, are questionable, as the petitioner submitted an LCA certified for a Level II, "qualified" position. In accordance with the relevant DOL explanatory information on wage levels, by submitting an LCA with a Level II wage rate, the petitioner effectively attests that the beneficiary is only required to perform moderately-complex tasks that require limited judgment.

As the evidence in the record of proceeding does not establish that at least a baccalaureate degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position that is the subject of this petition, the petitioner has not satisfied the criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we find that the petitioner has not satisfied 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 (1) to the petitioner's industry; and (2) for positions within that industry that are both: (a) parallel to the proffered position, and (b) 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; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Nor are there any submissions from a professional association in the petitioner's industry stating 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. Nor has the petitioner submitted any letters or affidavits from firms or individual in the industry attesting that such firms "routinely employ and recruit only degreed individuals." Therefore, the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common (1) to the petitioner's industry; and (2) for positions within that industry that are both: (a) parallel to the proffered position, and (b) located in organizations that are similar to the petitioner.

Next, we find that the evidence of record does not 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."

In this particular case, the evidence of record does not credibly demonstrate that the duties the beneficiary will perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty or its equivalent.

We refer the petitioner to our earlier comments and findings with regard to the substantive deficiencies of the record's information about the proffered position and its duties.

As reflected in those comments and findings – which we incorporate into our analysis of the present criterion - the record of proceeding does not contain evidence establishing relative complexity or uniqueness as aspects of the proffered position, let alone that the position is so complex or unique as to require the theoretical and practical application of a body of highly specialized knowledge such that a person with a bachelor's or higher degree in a specific specialty or its equivalent is required to perform the duties of that position. Rather, we find that, as reflected in this decision's earlier quotation of duty descriptions from the record of proceeding and in our comments and findings about them, the evidence of record does not distinguish the proffered position from other positions falling within the "Computer Systems Analysts " occupational category, which, the *Handbook* indicates, encompasses positions that are performed by persons without at least a bachelor's degree in a specific specialty or its equivalent to enter those positions.

Further, we here also incorporate by reference and reiterate our earlier discussion regarding the LCA and its indication that the petitioner would be paying a wage-rate that is appropriate for a lower-level position in which only moderately-complex tasks will be performed relative to others within the Computer Systems Occupational group, as this factor is inconsistent with the level of relative complexity and uniqueness required to satisfy this criterion. Moreover, that wage rate is appropriate for positions where the beneficiary would exercise only limited judgment in the performance of his or her tasks.

Accordingly, given the *Handbook's* indication that positions located within the "Computer Systems Analysts " occupational category are performed by persons without at least a bachelor's degree in a specific specialty, or the equivalent, it is not credible that a position involving limited exercise of independent judgment, on only moderately complex tasks, *would* be so complex or unique that it could only be performed by a person with at least a bachelor's degree in a specific specialty or the equivalent.

As the evidence of record therefore fails to establish that the beneficiary's responsibilities and day-to-day duties comprise a position so complex or unique that the position can be performed only by an individual with at least a bachelor's degree in a specific specialty or its equivalent, the petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) either.

We turn next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty or its equivalent for the position.

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. Additionally, the record must establish that a petitioner's

imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position.⁴

Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

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 at 387. 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 proposed 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.

As the record of proceeding contains no evidence regarding the petitioner's recruiting and hiring of any other computer systems analysts, there is no evidence for consideration under this criterion. As the record of proceeding does not demonstrate that the petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the proffered position, it does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, we find that the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform them

⁴ Any such assertion would be undermined in this particular case by the fact that the petitioner indicated in the LCA that its proffered position is a comparatively lower position relative to others within the same occupation.

is usually associated with the attainment of a baccalaureate or higher degree in the specific specialty or its equivalent.

In reviewing the record of proceeding under this criterion, we reiterate our earlier discussion regarding the *Handbook's* entries for positions falling within the "Computer Systems Analysts" occupational category. Again, the *Handbook* does not indicate that a bachelor's degree in a specific specialty, or the equivalent, is a standard, minimum requirement to perform the duties of such positions (to the contrary, it indicates precisely the opposite); and the record of proceeding indicates no distinguishing factors that would elevate the duties proposed for the beneficiary above those that the *Handbook* attributes to the Computer Systems Analysts occupational group in general. As reflected in this decision's earlier discussion of the petition's duty descriptions, the proposed duties as described in the record of proceeding contain no indication of specialization and complexity such that the knowledge they would require is usually associated with any particular level of education in a specific specialty. As generically and generally as they were described, the duties of the proposed position are not presented with sufficient detail and explanation to establish the substantive nature of the duties as they would be performed in the specific context of the petitioner's particular business operations. Also as a result of the generalized and relatively abstract level at which the duties are described, the record of proceeding does not establish their nature as so specialized and complex as to require knowledge usually associated with at least a bachelor's degree in a specific specialty, or the equivalent.

Simply put, as reflected in this decision's earlier comments and findings with regard to the generalized level at which the duties are described in the record, the evidence of record does not develop the duties in sufficient detail to establish their nature as so specialized and complex that their performance would require knowledge usually associated with the attainment of at least a bachelor's degree in a specific specialty.

While the evidentiary deficiencies discussed above themselves preclude a finding that the petitioner has satisfied this criterion, we also find that both on its own terms and also in comparison with the two higher wage-levels that can be designated in an LCA, by the submission of an LCA certified for a wage-level II, the petitioner effectively attests that the proposed duties are of relatively low complexity as compared to others within the same occupational category. This fact is materially inconsistent with the level of complexity required to satisfy this criterion.

As earlier noted, the *Prevailing Wage Determination Policy Guidance* issued by the U.S. Department of Labor (DOL) states the following with regard to Level II wage rates:

Level II (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O*NET Job Zones.

The above descriptive summary indicates that this wage level is appropriate for only "moderately complex tasks that require limited judgment." We note the relatively low level of complexity that this Level II wage-level reflects when compared with the two still-higher LCA wage levels, neither of which was designated on the LCA submitted to support this petition.

The aforementioned *Prevailing Wage Determination Policy Guidance* describes the Level III wage designation as follows:

Level III (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O*NET Job Zones would be indicators that a Level III wage should be considered.

Frequently, key words in the job title can be used as indicators that an employer's job offer is for an experienced worker. . . .

The *Prevailing Wage Determination Policy Guidance* describes the Level IV wage designation as follows:

Level IV (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibilities.

Here we again incorporate our earlier discussion and analysis regarding the implications of the petitioner's submission of an LCA certified for the Level II wage-level. By virtue of this submission the petitioner effectively attested that the proffered position involves only "moderately complex tasks that require limited judgment."

For all of these reasons, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the petitioner has not satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. This aspect of the petition precludes its approval and makes the beneficiary's qualifications irrelevant. However, we will

nonetheless also address the lack of sufficient evidence of record to establish the beneficiary is qualified to serve in a specialty occupation.

II. BENEFICIARY QUALIFICATIONS

We now turn directly to the ground upon which the director denied the petition – that is, the determination that the evidence in the record has not established that the beneficiary is qualified to perform the duties of a specialty occupation. Based on our complete review of the record of proceeding, we conclude that the evidence fails to establish that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the appeal will be dismissed, and the petition will be denied.

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

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

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

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

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

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

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

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

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.

As the beneficiary did not earn a baccalaureate or higher degree from an accredited college or university in the United States, she does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1). As the beneficiary does not possess a foreign degree that has been determined to be equivalent to a baccalaureate or higher degree from an accredited college or university in the United States, she does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), either. As the petitioner has not demonstrated that the beneficiary holds an unrestricted state license, registration or certification to perform the duties of a specialty occupation, she does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3), either. Accordingly, 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) remains as the only avenue for the petitioner to demonstrate the beneficiary's qualifications to perform the duties of the proffered position.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) requires a demonstration that (1) the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that (2) the beneficiary also has recognition of that expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) is determined by at least one of the following:

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

In support of the petition, the petitioner submitted an evaluation of the beneficiary's work experience prepared by [REDACTED], an evaluator employed by [REDACTED] who also serves as Dean of the School of Information Technology at [REDACTED] Florida. In his March 25, 2013 report, Mr. [REDACTED] maintains that he has reviewed the beneficiary's work experience and that, based upon on his findings, the beneficiary's work experience is equivalent to a U.S. bachelor's degree in information technology. Mr. [REDACTED] also provided the following statement in his report:

[REDACTED] is a regionally accredited university that grants credits based on an individual's education, training and/or work experience. Furthermore, as part of my current responsibilities at the university, I have the authority to grant college level credit for training and/or work experience.

(Emphasis in original).

Mr. [REDACTED] also claimed that he is "widely considered a 'recognized authority' in the field of higher education" and claims that his evaluations are "continuously accepted by [USCIS]." He provided a copy of his resume in support of this contention.

⁵ The petitioner should note that, in accordance with this provision, we will accept a credentials evaluation service's evaluation of *education only*, not training and/or work experience.

In response to the director's RFE issued on June 5, 2013, the petitioner submitted a second evaluation of the beneficiary's work experience prepared by Dr. [REDACTED] another evaluator employed by [REDACTED] who serves as Adjunct Professor at [REDACTED] Florida. In his July 22, 2013 report, Dr. [REDACTED] also maintains that he has reviewed the beneficiary's work experience and based on his findings, the beneficiary's work experience is equivalent to a U.S. bachelor's degree in computer science. Dr. [REDACTED] also provided the following statement in his report:

[REDACTED] is a regionally accredited university that grants credits based on an individual's education and/or work experience. Furthermore, I have the authority to grant college level credit for training and/or work experience.

(Emphasis in original).

Like Mr. [REDACTED] Dr. [REDACTED] also claimed that he is "widely considered a 'recognized authority' in the field of higher education" and claims that his evaluations are "continuously accepted by [USCIS]." He provided a copy of his resume in support of this contention.

Dr. [REDACTED] also provided a letter dated April 22, 2013 which repeated these contentions, and provides further details regarding his role as professor at [REDACTED]. Specifically, Dr. [REDACTED] claims that he holds a Doctorate degree in Civil Engineering and currently serves as a registered professional engineer in the state of Florida as well as professor of the following courses at [REDACTED] (1) fundamentals of pavement design; (2) advanced pavement design; (3) pavement maintenance; and (4) rehabilitation and pavement management systems.

Dr. [REDACTED] evaluation was also accompanied by an undated letter from Dr. [REDACTED] Associate Dean for Academic Programs at [REDACTED] which confirms that Dr. [REDACTED] is a professor at the Department of Civil and Environmental Engineering at [REDACTED]. He further states that Dr. [REDACTED] "is the undergraduate student advisor for the Department of Civil and Environmental [Engineering] with authority to review, evaluate and recognize foreign transfers and work experience for credit granting purposes."

The director denied the petition on September 24, 2013, noting that the petitioner failed to establish that the beneficiary was qualified to perform the duties of a specialty occupation. On appeal, counsel for the petitioner asserts that the director misinterpreted the submitted evidence, and submits an updated evaluation from Mr. [REDACTED] in support of the beneficiary's claimed qualifications.

In denying the petition, the director found that the evaluations by Mr. [REDACTED] Dr. [REDACTED] did not demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). Specifically, the director declined to accept these evaluations, noting that the evaluators failed to provide documentation that they have the authority to grant college-level credit in the specialty at an accredited university. We agree.

At the outset, the petitioner and its counsel should note that the two professors' self-endorsements as "widely considered a 'recognized authority' in the field of higher education" and persons' whose evaluations are "continuously accepted by [USCIS]" add nothing to the weight of their evaluations.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii)(*Definitions*) identifies the requirements for establishing a person as a "recognized authority" within the H-1B specialty occupation context as follows,

Recognized authority means a person or an organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. Such an 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;

* * *

Neither of the professors provided the documentation substantiating his "experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom." Further, even if each professor had substantiated his claim to be a recognized authority in "the field of higher education," an issue in the field of higher education is not before us on appeal. Further, neither the professors' resumes, their letters' content, nor any other evidence of record substantiates that either of them has expertise, or specialized knowledge worthy of some deference, in the area in which they are opining, namely, crediting work experience under the USCIS beneficiary qualification regulations. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

As another preliminary matter, we accord no weight to either professor's claim that his "evaluations are continuously accepted by USCIS." First, we note no documentary evidence corroborates the claim. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.* Second, as so generally stated, the claim of continual acceptance by USCIS does not even amount to a claim that USCIS has ever done anything with the professors' opinions beyond accepting and considering them as part of records of proceeding into which they have been submitted. Third, neither counsel, the petitioner, nor the professors whose opinions they obtained, cite any statutory, regulatory, or policy mechanism or requirement for according any particular weight to an opinion on the ground that the author's opinion in a separate proceeding with different facts was explicitly recognized by USCIS as having a material impact in a determination to approve a petition – which is not the situation in this case.

Having established why we accord no probative weight to the professors' claims of relevant expertise and authority with regard to the matter on which they have opined in this proceeding, we will next address other aspects of the professors' opinions that undermine their usefulness to the AAO in its consideration of the beneficiary's qualifications.

The experiential evaluations of Mr. [REDACTED] and Dr. [REDACTED] are written in their capacity as evaluators for [REDACTED] an educational credentials evaluation service. Both evaluations conclude that the beneficiary possessed the equivalent of a U.S. bachelor's degree in either information technology or computer science based on her professional work experience and training.

It must be noted, however, that as evident in the earlier quoted regulations, non-USCIS evaluations about the U.S. education-equivalency of training and work experience are expressly reserved for "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." 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). The [REDACTED] evaluations do not meet this requirement and are, therefore, of little evidentiary value.

However, since Mr. [REDACTED] and Dr. [REDACTED] claim to be professors at accredited universities with such authority, the petitioner and counsel assert that these experiential evaluations satisfy the regulatory requirements under 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). For the reasons set forth below, we find that they do not.

Regarding the March 25, 2013 report by Mr. [REDACTED] the director correctly noted that at the time that he rendered his assessment, Mr. [REDACTED] had not established that he possessed the authority to grant college-level credit for training and/or experience at an accredited college or university which had a program for granting such credit based on an individual's training and/or work experience.

Although Dr. [REDACTED] claimed in his March 25, 2013 report to have the "*authority to grant college level credit for training and/or work experience*," the record lacked independent evidence to corroborate this claim. The evaluation was not accompanied by evidence demonstrating that [REDACTED] had a program to grant college-level credit for training and/or experience, or that Dr. [REDACTED] had the authority at the time he rendered his assessment to grant college-level credit for training and/or experience at [REDACTED] or another accredited college or university which had such a program. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

On appeal, counsel for the petitioner submits an updated evaluation report from Mr. [REDACTED] dated October 8, 2013, which again equates the beneficiary's work experience to a U.S. bachelor's degree in information technology. The evaluation on appeal is accompanied by a letter from Mr. [REDACTED] written on [REDACTED] letterhead, in which he again claims that he has the authority to grant college level credit for training and/or work experience, as well as copies of various web pages from [REDACTED] website describing its internship programs and credit-granting procedures.

Preliminarily, we note that the regulations indicate that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary in the adjudication of the petition. See 8 C.F.R. §§ 103.2(b)(8); 214.2(h)(9)(i). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. § 103.2(b)(1), (8), and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, we will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). In this matter, the director advised the petitioner of the deficiencies in Mr. [REDACTED] evaluation and afforded the petitioner the opportunity to supplement the record with additional evidence. If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's RFE. *Id.* Under the circumstances, we need not and do not consider the sufficiency of the evidence submitted for the first time on appeal.

Nevertheless, the record still remains devoid of sufficient evidence to establish that Mr. [REDACTED] possessed the authority to grant college-level credit for training and/or experience at an accredited college or university which had a program for granting such credit, in the particular specialty here at issue, based on an individual's training and/or work experience. The March 25, 2013 evaluation was not supported by corroborating evidence that established Mr. [REDACTED] authority to grant such credit. The October 8, 2013 evaluation submitted on appeal will be discounted for the reasons set forth above; however, had we afforded evidentiary weight to this new submission, it would still fail to satisfy this criterion. Dr. [REDACTED] self-serving letter accompanying the report, without independent, objective evidence confirming his authority to grant college-level credit in the specialty, fails to satisfy the requirement at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

For similar reasons, the evaluation of Dr. [REDACTED] is also insufficient to establish that he had the authority at the time he rendered his assessment to grant college-level credit for training and/or experience at an accredited college or university which had a program for granting such credit based on an individual's training or work experience. Specifically, while Dr. [REDACTED] evaluation is accompanied by a letter from Dr. [REDACTED] Associate Dean for Academic Programs at [REDACTED], this letter is not dated and thus is of little probative value. Although Dr. [REDACTED] states that Dr. [REDACTED] is "currently" a professor at [REDACTED] there is no evidence to confirm the accuracy of this statement as of the date Dr. [REDACTED] rendered his experiential evaluation. Moreover, even if the letter was afforded evidentiary weight, it is unclear how Dr. [REDACTED] teaching responsibilities in the field of civil and environmental engineering qualify him to render an expert opinion regarding the equivalency of the beneficiary's work experience to a U.S. bachelor's degree in computer science. Therefore, even if it were determined that Dr. [REDACTED] was in fact "the undergraduate student advisor for the Department of Civil and Environmental [Engineering] with authority to review, evaluate and recognize foreign

transfers and work experience for credit granting purposes," there is insufficient evidence that Dr. [REDACTED] is qualified to equate the beneficiary's work experience to a degree in a computer science when his claimed expertise and academic position with [REDACTED] is in the field of civil and environmental engineering.

In any event, there is no evidence of record that establishes that this professor satisfied all of the qualifying elements specified at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), to wit, that, at the time he authored the evaluation (1) he was an official at an accredited college or university, (2) he had authority to grant college-level credit for training and/or experience at that educational institution, (3) that such authority applied to the *particular specialty* upon which the professor was opining, and (4) that his accredited college or university had a *program* for granting such credit in that specialty based on an individual's training and/or work experience.

As such, the record of evidence does not establish that the beneficiary is qualified to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

No evidence has been submitted to establish, and the petitioner does not assert, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), which requires submission of the results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI).

Nor does the beneficiary qualify under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) by virtue of an "evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials." The evaluations discussed above evaluate only the beneficiary's work experience, and there is no evidence in the record to suggest that the beneficiary has obtained a foreign degree.

Nor has any evidence been submitted to establish, and the petitioner does not assert, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), which requires that the beneficiary submit evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty.

Consequently, 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 we will next perform a Service evaluation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

The petitioner should note that, as specifically stated in the regulation, the evaluative function at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) is reserved for USCIS alone. Also, the petitioner should note the multi-tiered requirements of this criterion.

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." The regulation further states that:

It must be clearly demonstrated (1) that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; (2) 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 (3) 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;⁶
- (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 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.

In addition to the above-referenced evaluations from [REDACTED] the record also contains the following:

- A Founding Statement for [REDACTED] demonstrating that the beneficiary is the sole member with a 100% interest;⁷

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

⁷ We note that the director erroneously found this document to indicate that the beneficiary was a "certified accountant." The director's error is harmless since we conduct review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The director's erroneous statement is hereby withdrawn.

- Letter from the beneficiary's accountant, [REDACTED] dated June 11, 2012;
- Letter from the Marketing Director of [REDACTED], dated June 12, 2012, confirming that the beneficiary, while employed by [REDACTED] has been a registered [REDACTED] reseller and a certified business partner;
- Letter from the Head of Customer Relations of [REDACTED], dated May 22, 2012, confirming that the beneficiary, while employed by [REDACTED] has been a registered [REDACTED] reseller and a certified business partner;
- Letter from the [REDACTED] dated May 22, 2012, stating that the beneficiary has been a part-time employee with the company in the position of [REDACTED] software support consultant since 1992; and
- Letter from the Director of [REDACTED] dated June 15, 2012, stating that the beneficiary has been a subcontractor on various projects for the past five years.

Although the record contains some information regarding the beneficiary's work history, it does not establish that this work experience included the theoretical and practical application of specialized knowledge required by the proffered position; that it was gained while working with peers, supervisors, or subordinates who held a bachelor's degree or its equivalent in the field; and that the beneficiary achieved recognition of her expertise in the field as evidenced by at least one of the five types of documentation delineated in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i)-(v). The fact that the beneficiary is the 100% owner/member of [REDACTED] suggests that she is an independent contractor working on her own. Moreover, the letters from [REDACTED] do not provide details about the beneficiary's peers, supervisors, or subordinates, such that we could determine that she worked alongside individuals with a bachelor's degree or the equivalent in the requisite field.

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

III. CONCLUSION AND ORDER

We agree with the director's findings that the petitioner failed to demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation. Beyond the decision of the director, we

find additionally that 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.

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. The appeal will be dismissed and the petition denied for this reason.

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