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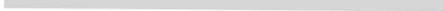
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



DATE: **APR 03 2015** 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:

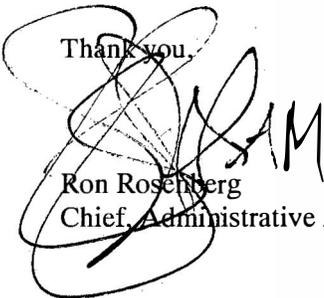


INSTRUCTIONS:

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 (hereinafter "director") denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. The petition will be denied.

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a 15-employee "IT DEVELOPMENT/SERVICES" business established in [REDACTED]. In order to employ the beneficiary in what it designates as a full-time "Computer Programmer Analyst" position at a salary of \$61,589 per year, 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 services of a specialty occupation. On appeal, the petitioner submits additional evidence relating to the beneficiary's claimed qualifications for the proffered position.

The record of proceeding 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 Notice of Appeal or Motion (Form I-290B), and supporting documentation. We have reviewed the record in its entirety before issuing our decision.

Upon review of the entire record of proceeding, we find that the director did not err in denying this petition. Beyond the director's decision, we find that the evidence does not establish that the proffered position qualifies as a specialty occupation. For these reasons, the appeal will be dismissed, and the petition will be denied.

#### I. FACTUAL AND PROCEDURAL HISTORY

As noted above, the petitioner seeks to employ the beneficiary on a full-time basis as a computer programmer analyst. The petitioner checked the box on the Form I-129 at Part 5, Question 5 attesting that the beneficiary will work off-site, and listed the address from where the beneficiary will work as [REDACTED]. No other addresses of employment were listed on the Form I-129. The petitioner requested a validity period of October 1, 2014 to September 20, 2017.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a "Computer Programmer Analyst," and that it corresponds to Standard Occupational Classification (SOC) code and title "15-1131, Computer Programmers" from the Occupational Information Network (O\*NET). The LCA further states that the proffered position is a Level I, entry-level, position. The sole place of employment the petitioner listed on the LCA is [REDACTED].

In support of the petition, the petitioner submitted, *inter alia*, an undated letter describing itself as "a consulting company which places workers at end-client locations through contractual agreements."<sup>1</sup> The petitioner asserted that it seeks to employ the beneficiary as a full-time computer programmer analyst, and listed several job duties for the proffered position including "[c]reated Use cases, and developed detailed **Use Case Diagrams** and Sequence diagrams describing how actions are to be carried out using **MS Visio**," "[i]ntegral part of sales and marketing strategy team, generating various reports for V.P[.] and CEO," and "[o]verseas [*sic*] account relationship management." The petitioner stated that "the minimum requirement for this position is a comprehensive understanding of computer systems and programming, which comes with at least a Bachelor's degree in Computer Science or a related fields [*sic*]." The petitioner then asserted that the beneficiary "is qualified for this position by virtue of her academic background in bussiness [*sic*] administration besides her relevant years of experience [*sic*]." The letter was signed on the petitioner's behalf by [REDACTED] Vice President of Operations, [REDACTED].<sup>2</sup>

The petitioner submitted its Employment Agreement with the beneficiary, which was entered into on October 1, 2014.<sup>3</sup>

The petitioner submitted an itinerary, in which it reiterated that the beneficiary would work at the address of [REDACTED] for the entire validity period requested. The itinerary contained the same duties as found in the petitioner's letter.

The petitioner submitted a Statement of Work (SOW) entered into between the petitioner and [REDACTED] on March 24, 2014. The SOW identifies the petitioner as the "Subcontractor" and the beneficiary as "Subcontractor Personnel."<sup>4</sup> The SOW identifies the "Project Work Location" as "[REDACTED] office" located at [REDACTED]. Under "Scope/Objective," the SOW states that the petitioner shall provide services for "[redesigning] existing in-house staffing CRM to incorporate advanced features." The SOW describes the key features and benefits of the enhancements as to improve hiring, recruiting, and staffing. The SOW also lists several tasks and responsibilities for the beneficiary. Under "Consultant Qualifications," the SOW states: "Degree: Bachelor Degree or related discipline. Minimum 3 plus years of IT experience . . . Acts in the highest level technical role as an individual contributor and/or team lead for the most complex computer applications and/or application initiatives. Works on the most complex problems . . . ." The SOW was signed by the petitioner's president, [REDACTED]. The petitioner also submitted a Master Services Agreement (MSA) dated November 1, 2011 between its company and [REDACTED] again signed by [REDACTED].

<sup>1</sup> This letter states that the beneficiary's annual salary will be \$60,000.

<sup>2</sup> [REDACTED] misstates the petitioner's name in his letter.

<sup>3</sup> This Employment Agreement refers to the beneficiary as a male.

<sup>4</sup> The SOW references the beneficiary as [REDACTED].

The petitioner submitted a document entitled "Staffing CRM Enhancements: Project Specification" which purports to describe "the project specification and requirements for IT Staffing CRM Enhancement project."

The petitioner submitted a copy of the beneficiary's resume. Under "Work Experience," the beneficiary listed her work experience as a "Programmer Analyst" for "INDIA" from "June 2010 – Nov[.] 2012." The beneficiary did not list any other employers on her resume.

The petitioner submitted an "Employment Offer Letter," dated June 5, 2005, in which ) offered the beneficiary a "Programmer Analyst" position starting on June 12, 2010.<sup>5</sup>

The petitioner submitted an evaluation of the beneficiary's foreign degree from concluding that the beneficiary has the academic equivalent of a U.S. Bachelor of Business Administration degree.

The petitioner submitted evidence that the beneficiary last entered the United States on November 16, 2012 in H-4 status.<sup>6</sup> The petitioner confirmed on the Form I-129 that the beneficiary is currently in H-4 status, having last entered the United States on November 16, 2012 in such status.

The director issued an RFE instructing the petitioner to submit additional documentation. In response to the RFE, the petitioner submitted, *inter alia*, a letter dated July 16, 2014 providing additional descriptions of the duties of the proffered position. In particular, the petitioner stated that the beneficiary will spend 70% of her time on: "[d]esign of Assurity Solution Implementation"; "involve[ment] in building platform that provides administrative tools to monitor service fulfilment turnaround times and availability"; "building framework which makes it easy to build multiple services quickly"; and "[a]nalyze information, plan, design, computer systems, base code problems, decide the best techniques, manage company data, evaluate business process, prepare business requirement documents and flow charts." The petitioner stated that the beneficiary would spend the remaining 30% of her time on "ancillary" job duties that "involve interaction with the client to understand their requirements . . . such as preparing docs, conducting gap analysis, develop user cases and understand and develop the needs of business and design reports of Business and functional documentation." The petitioner then provided a revised list of the proffered job duties, and asserted that the beneficiary "will be assigned to Staffing CRM Implementation

<sup>5</sup> While this letter purports to have been signed by Senior Manager, Operations," it bears a signature that is strikingly similar to signature.

<sup>6</sup> The petitioner's passport reflects that the beneficiary entered as the H-4 spouse of who was also petitioned for by the petitioner.

Project." Further, the petitioner stated that the minimum educational requirement for the proffered position is "a Bachelor's degree or equivalent."

The petitioner submitted a letter from [REDACTED] Associate Professor and Department Chairperson of [REDACTED], concluding that the beneficiary has the equivalent of a Bachelor of Business Administration with a concentration in Management Information Systems based on a combination of her academics and professional experience. Specifically, [REDACTED] considered the beneficiary's "two years of professional training and work experience . . . as a Programmer Analyst with [REDACTED] from "January, 2010 through November, 2012." Additionally, the petitioner submitted another letter from [REDACTED] concluding that the beneficiary "must be considered an expert in Management Information Systems."

The petitioner submitted a letter from [REDACTED] Professor of Management Information Systems, [REDACTED] concluding that the beneficiary "should be considered an expert in the area of Management Information Systems based on his [sic] educational background and professional experience and accomplishments."

The petitioner submitted a letter dated July 10, 2014 from [REDACTED] declaring that the beneficiary worked for the company "from 06/12/2010 to 12/31/13 in the capacity of a 'Senior Programmer.'"<sup>7</sup>

The director denied the petition, concluding that the evidence of record does not demonstrate that the beneficiary is qualified to perform the services of a specialty occupation. The director based her decision in part on discrepancies regarding the beneficiary's claimed work experience. Specifically, the beneficiary was allegedly employed by [REDACTED] in India from June 12, 2010 to December 31, 2013, but the evidence of record reflects that she has been in the United States in H-4 classification since November 16, 2012.

On appeal, the petitioner acknowledged that the beneficiary has been in the United States in H-4 status since November 16, 2012. Nevertheless, the petitioner claimed that "[f]rom November 16, 2012 until December 13, 2013, she continued to work full-time remotely for [REDACTED] from the United States." The petitioner further claimed that the beneficiary "was not being paid during [the last] 8 months." The petitioner reiterated that the beneficiary "was employed as a Senior Programmer Analyst during the entire period from June 12, 2010 until December 13, 2013," and added that the beneficiary was working "full-time under the supervision of [REDACTED]"

In support of the appeal, the petitioner submitted a letter from the beneficiary in which she attested to the following:

<sup>7</sup> Again, while this letter purports to have been signed by [REDACTED] HR-Head," it bears a signature that is strikingly similar to [REDACTED] signature.

I was employed by [REDACTED] India, from Nov[.] 16, 2012 till December 31, 2013 as Senior Programmer Analyst. During this period, my primary duty is to assess the business and data processing problems which will be implemented in improving computer systems including Client Relationship Management (CRM) and Microsoft Dynamics CRM.

The beneficiary further attested that when she came to the United States on November 16, 2012 in H-4 status, she "continued to work full-time remotely with the same duties as listed above, but [she] was not paid while working remotely."

The petitioner submitted a letter dated October 8, 2014 from [REDACTED] attesting to the beneficiary's employment "as Senior Programmer Analyst from June 12, 2010 till December 31, 2013." The letter further states: "Even after she left to the United States on November 16, 2012, [the beneficiary] continued to work full-time remotely with the same duties listed above, but was not paid while working remotely." The letter was signed by "[REDACTED] Manager, Human Resources."

## II. SPECIALTY OCCUPATION

As a preliminary matter, we will discuss, beyond the director's decision, whether the proffered position qualifies as a specialty occupation. U.S. Citizenship and Immigration Services (USCIS) is required to follow long-standing legal standards and determine first, whether the proffered position is a specialty occupation, and second, whether an alien beneficiary is qualified for the position at the time the nonimmigrant visa petition is filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation]"). In this matter, however, it appears the director did not analyze the proffered position to determine whether it met the definition of a specialty occupation. Therefore, we will first determine whether the proffered position is a specialty occupation.

### A. The Law

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

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires [(1)] theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires [(2)] the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. See *K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); see also *COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. See *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), USCIS consistently interprets the term "degree" in the criteria at 8 C.F.R.

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

To determine whether a particular job qualifies as a specialty occupation, USCIS does not rely simply upon a proffered position's title. The specific duties of the position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the beneficiary, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d at 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

We note that, as recognized by the court in *Defensor, supra*, where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. *See Defensor v. Meissner*, 201 F.3d at 387-388. The court held that the former Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. *Id.* at 384. Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

## B. Discussion

As a preliminary matter, we find that there are numerous inconsistencies and discrepancies in the petition and supporting documents which undermine the petitioner's credibility with regard to the services the beneficiary will perform, as well as the actual nature and requirements of the proffered position. When a petition includes numerous errors and discrepancies, those inconsistencies raise serious concerns about the veracity of the petitioner's assertions. In turn, these inconsistencies undermine the legitimacy of the petitioner's offer of employment to the beneficiary.

When determining whether a position is a specialty occupation, we must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, USCIS looks 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."

For H-1B approval, the petitioner must demonstrate a legitimate need for an employee exists and to substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition. It is incumbent upon the petitioner to demonstrate it has sufficient work to require the services of a person with at least a bachelor's degree in a specific specialty, or the equivalent, to perform duties at a level that requires the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty for the period specified in the petition.

In the instant matter, the petitioner has not credibly explained and documented for whom the beneficiary will be working, what project the beneficiary will be working on, and what duties the beneficiary will be performing. The petitioner indicates that the beneficiary will be working off-site at the address of [REDACTED] which is the claimed office address of [REDACTED].<sup>3</sup> The evidence of record suggests that [REDACTED] is the end-client in this matter.

The evidence of record, however, does not sufficiently support the claim that [REDACTED] is the actual end-client for whom the beneficiary will provide her services. For instance, both the MSA and the SOW between the petitioner and [REDACTED] refer to the petitioner as the "Subcontractor." This denotes that [REDACTED] is the "Contractor" or mid-vendor which has subcontracted with the petitioner to provide services to a separate, unidentified end-client. This is also supported by the language in the MSA which specifically states that "[REDACTED] will handle all the billing to the client and will reimburse Subcontractor only when [REDACTED] has received the revenue from the client." The language in the MSA that "[a]ny Subcontractor employee engaged by [REDACTED] under this contract will be considered a[n] [REDACTED] Representative and shall not under any circumstances reveal themselves(s) to

<sup>8</sup> We question whether [REDACTED] is a viable company located at [REDACTED]. According to [REDACTED] website, its address in the United States is [REDACTED]. See [http://www.\[REDACTED\].Default.aspx](http://www.[REDACTED].Default.aspx) (last visited Mar. 25, 2015). While the MSA states that [REDACTED] is a California corporation, a search of business entities with that name in the California Secretary of State's database of California corporations returned no results. See <http://kepler.sos.ca.gov/> (last visited Mar. 25, 2015). According to the California Secretary of State's website, an LLC with the name [REDACTED] LLC, has had its LLC status cancelled. See [id.](http://kepler.sos.ca.gov/) <http://kepler.sos.ca.gov/> (last visited Mar. 25, 2015).

be Sub-contractor's employee" further suggests that there is a separate end-client involved. There is insufficient explanation or documentation identifying who the ultimate end-client will be.

Notably, the petitioner indicates that the beneficiary will be working for [REDACTED] in-house "IT Staffing CRM Enhancement project." However, the record of proceeding lacks sufficient, credible documentation establishing that this is a *bona fide*, in-house project of [REDACTED]. As previously mentioned, that [REDACTED] subcontracted – as opposed to contracted – with the petitioner undermines any claim that the beneficiary will work on an "in-house" project of [REDACTED]. Moreover, the record of proceeding lacks sufficient explanation and evidence of the specifics of this purported in-house project. While the petitioner submitted the document entitled "Staffing CRM Enhancements: Project Specification," the petitioner provided no explanation regarding this document, such as its origin, author, date, and intended audience. In addition, this document provides only a brief, broad overview of the project, and contains no specific references to the petitioner, the beneficiary, or any other individuals who may be involved with the project. In fact, the majority of this document does not even appear pertinent to the "IT Staffing CRM Enhancement project." Instead, it primarily describes [REDACTED] CRM," which appears to be a different project or product altogether.<sup>9</sup>

Furthermore, there is not a consistent, sufficient explanation of the duties the beneficiary will perform on the "IT Staffing CRM Enhancement project." For instance, the SOW states that the beneficiary will work on duties such as "[d]esigned the ETL processes using Informatics tool to load data from Oracle 9i; DB2 into the target Oracle 9i **Data Warehouse**," "[c]reated Use cases, and developed detailed **Use Case Diagrams** and Sequence diagrams describing how actions are to be carried out using **MS Visio**," and "[w]orked closely with Developer & testing team to perform System Integrity Testing (SIT) & User Acceptance System (UAT)." Not only are these proffered duties described in the past tense, but they are verbatim reiterations of the beneficiary's claimed work experience as found in her resume. The use of identical language as the beneficiary's resume suggests that the listed duties in the SOW are not accurate.<sup>10</sup> Furthermore, the SOW states that the beneficiary "will work on designing the architecture of the application," but then does not expressly list any duties involving architecture or application design in the subsequent list of tasks and responsibilities.

<sup>9</sup> [REDACTED] CRM" is described as a "new CRM Product . . . [that] helps companies optimize customer relationships by integrating marketing, sales, and service." In contrast, the "IT Staffing CRM Enhancement project" is described as an "[i]n house CRM used for Tracking Candidate information" for staffing, recruiting, and hiring purposes.

<sup>10</sup> Cf. *Surinder Singh v. BIA*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an adverse credibility determination in asylum proceedings based in part on the similarity of the affidavits); *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source).

The job duties listed in the SOW also differ from the job duties listed by the petitioner. For example, the petitioner initially stated that the beneficiary will be an "[i]ntegral part of sales and marketing strategy team, generating various reports for V.P[.] and CEO" and will "[oversee] account relationship management." However, the SOW does not list any sales, marketing, or account relationship management duties, nor is it readily apparent why the beneficiary would perform sales, marketing, or account relationship management duties if her assigned project were to design an in-house staffing project, as claimed. Moreover, the SOW states that the beneficiary will "[act] in the highest level technical role as an individual contributor and/or team lead for the most complex computer applications and/or application initiatives" and will "[work] on the most complex problems." In contrast, the petitioner submitted a certified LCA for a Level I, entry-level position, thus indicating that the beneficiary is only required to have a basic understanding of the occupation and will perform routine tasks that require limited, if any, exercise of judgment.<sup>11</sup> This is inherently contradictory to the statements in the SOW that the beneficiary will perform "the most complex" duties. The petitioner has not submitted an explanation, corroborated by objective evidence, reconciling the various descriptions of the proffered position, and these discrepancies undermine the legitimacy of the petitioner's assertions and submitted evidence.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

<sup>11</sup> A Level I wage rate is described 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.

See U.S. Dept't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

We observe that the submitted documents contain numerous other inconsistencies, such as referring to the beneficiary as ' [REDACTED] ' repeatedly referring to her as a male, referring to the assigned project as "Assurity Solution Implementation," stating the beneficiary's salary as \$60,000 rather than \$61,589, and the petitioner's misstating of its own name as [REDACTED].<sup>12</sup> Overall, these numerous inconsistencies and deficiencies further undermine the probative value of the submitted evidence.<sup>13</sup> Again, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

Notwithstanding the above, the descriptions of the duties of the proffered position are too generalized and vague to sufficiently convey the specific tasks to be performed. For example, the SOW states that the beneficiary "will work on designing the architecture of the application." The SOW, however, does not further specify what is meant by "designing," and does not specifically list any duties involving architecture or application design. As another example, the petitioner stated the beneficiary will spend 70% of her time on duties including "[a]nalyze information, plan, design, computer systems, base code problems, decide the best techniques, manage company data, evaluate business process, prepare business requirement documents and flow charts." The petitioner does not further detail what specific tasks constitute these overarching duties.

Thus, in light of the inconsistencies and deficiencies regarding the proposed job duties, the end-client, and the assigned project in this matter, we find insufficient probative documentation to substantiate the petitioner's claims regarding the actual work that the beneficiary will perform to establish eligibility for this benefit. That is, the evidence of record fails to sufficiently establish the substantive nature of the work to be performed by the beneficiary. The record of proceeding lacks evidence that the petitioner is able to and will provide H-1B caliber work for the beneficiary in the manner and period of employment requested in the petition, and that the petitioner has made a *bona fide* offer of employment to the beneficiary.

As discussed above, the evidence of record fails to establish the substantive nature of the work to be performed by the beneficiary. Consequently, it cannot be found 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.

<sup>12</sup> A salary of \$60,000 would not meet the prevailing wage of \$61,589.

<sup>13</sup> We also observe that the petitioner entered into the SOW for the beneficiary's services several months *prior* to executing its Employment Agreement with the beneficiary on October 1, 2014.

Accordingly, as the evidence does not satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation.

Even if the petitioner were able to establish the substantive nature of the work to be performed by the beneficiary and that a *bona fide* job offer exists, the evidence still does not demonstrate that the proffered position could qualify as a specialty occupation based upon the minimum educational requirement of the position.

Specifically, the SOW states that the minimum educational requirement for the proffered position is a "Bachelor Degree or related discipline." The SOW does not state that the required bachelor's degree must be in a specific specialty. Similarly, the petitioner has stated that the minimum educational requirement for the proffered position is "a Bachelor's degree or equivalent," without further specification.<sup>14</sup>

The requirement of a general bachelor's degree, without further specification, is tantamount to an admission that the proffered position is not in fact a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. There must be a close correlation between the required specialized studies and the position; thus, the mere requirement of a degree, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988) ("The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility."). While 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 at 147 (1st Cir. 2007).

For all of the reasons discussed above, we cannot find that the petitioner has made a *bona fide*, credible offer of employment to the beneficiary for a position that qualifies as a specialty occupation. Accordingly, the petition must be denied.

### III. BENEFICIARY QUALIFICATIONS

We will now address the director's grounds for denying the petition, i.e., that the evidence of record does not demonstrate that the beneficiary is qualified to perform the services of a specialty

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<sup>14</sup> While the petitioner has also stated that the proffered position requires "a Bachelor's degree in Computer Science or a related fields [*sic*]," the petitioner has not submitted an explanation, corroborated by objective evidence, reconciling its inconsistent statements. Regardless, to the extent that the petitioner's descriptions differ from those provided by the end-client, we would generally defer to the end-client's descriptions. *See Defensor v. Meissner*, 201 F.3d at 387-388 (the petitioner-provided job duties and alleged requirements to perform those duties are irrelevant to a specialty occupation determination).

occupation. On appeal, the petitioner contends that the beneficiary is qualified to perform services in a specialty occupation by virtue of her combined experience and education.

A. The Law

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.

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;<sup>15</sup>
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . . .

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

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<sup>15</sup> 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.

peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;<sup>16</sup>
- (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.

#### B. Discussion

Upon review, we agree with the director that the evidence of record does not demonstrate that the beneficiary is qualified to perform the services of a specialty occupation.

In denying the petition, the director observed discrepancies regarding the beneficiary's claimed employment with Infovista from June 12, 2010 to December 31, 2013, as she has been in the United States in H-4 classification since November 16, 2012. On appeal, the petitioner asserts that the beneficiary was working "remotely" while in the United States.

<sup>16</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

The petitioner asserts that the beneficiary was "not being paid" for all or the most part of her "remote" employment.<sup>17</sup> The petitioner, however, has not explained why the beneficiary worked full-time without pay for [REDACTED] particularly for such a prolonged period of time. Moreover, the petitioner has not submitted sufficient evidence to corroborate the beneficiary's claimed employment during this time period, such as communications between the beneficiary and her supervisors and examples of the beneficiary's work products. We also note that the beneficiary's own resume lists her dates of employment at [REDACTED] as from June 2010 to November 2012 which is in contrast to the claim that she worked there until December 31, 2013. [REDACTED] evaluation states that the beneficiary "completed two years of professional training and work experience." There are also discrepancies regarding the actual position(s) the beneficiary held at [REDACTED] that cast doubt on any claims of employment there. For instance, the beneficiary's resume lists her sole position at [REDACTED] as "Programmer Analyst," while the letters from the petitioner and [REDACTED] state that the beneficiary worked as a "Senior Programmer" or "Senior Programmer Analyst."

We also find that the letters from [REDACTED] provide insufficient information regarding the beneficiary's work history and duties (e.g., 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). While the letters provide brief lists of the beneficiary's tasks in the position and the letters state that the beneficiary's "job responsibilities became progressively more advanced," they do not provide any explanation of how her work entailed progressively responsible duties. Further, there is insufficient information regarding the requirements for the position. We note that the letters merely state that the beneficiary "worked with other professionals who possessed at least a bachelor's degree or equivalent in the occupation." We also observe that the employment offer letter from [REDACTED] is dated five years before the beneficiary's start date.

Because of the inconsistencies and discrepancies with respect to the beneficiary's employment at [REDACTED] we cannot find that the letters from [REDACTED] and [REDACTED] which rely on this claimed employment with [REDACTED] to conclude that the beneficiary has the equivalent of a bachelor of business administration with a concentration in management information systems and has recognition of expertise in the field of management information systems, are probative in this matter.

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)).

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<sup>17</sup> While the petitioner asserts that the beneficiary was not being paid during the last eight months of her employment, the beneficiary indicates that she was not paid at all while she was working remotely from November 16, 2012 to December 31, 2013 (a period of approximately 13 months).

Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

We also share the director's concerns that these letters do not provide specifics in their evaluation (such as regarding how much credit was granted for the beneficiary's college studies), which the petitioner did not address on appeal. As such, we decline to afford these letters any probative weight and will not discuss them further.

We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

We also find that there is insufficient evidence in the record that the beneficiary has recognition of expertise in the industry. There is insufficient evidence that (1) the beneficiary holds membership in a recognized association in the specialty occupation, (2) there is published material by or about the beneficiary, (3) the beneficiary has licensure or registration to practice the specialty occupation in a foreign country, or (4) achievements with a recognized authority has determined to be significant contributions to the field of the specialty occupation. See 8 C.F.R. § 214.2(h)(4)(3)(D)(5)(ii) – (v). Thus, absent corroborating evidence as outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), we cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge in a field related to the proffered position or that the beneficiary has recognition of expertise in the industry. Moreover, absent this evidence of recognition of expertise in the specialty, the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) would not have been established in any event and, therefore, it could not be found that the beneficiary was qualified to perform the duties of a specialty occupation, notwithstanding the satisfaction of any one of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D).

The petitioner has failed to establish that the beneficiary is qualified to perform the duties of any specialty occupation. For this additional reason, the petition will be denied.

#### • IV. CONCLUSION AND ORDER

As set forth above, the evidence of record does not establish that the proffered position qualifies for classification as a specialty occupation, and that the beneficiary is qualified to perform the services of a specialty occupation. Accordingly, the petition will be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by us even if the service center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d at 145 (noting that we conduct 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 the enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*. 345 F.3d 683.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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