



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **APR 14 2015** OFFICE: VERMONT 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:
[Redacted]

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

I. INTRODUCTION

On the Form I-129 visa petition, the petitioner describes itself as a two-employee software development/consulting company¹ established in [REDACTED]. In order to employ the beneficiary in what it designates as a "Programmer/Analyst" position at a salary of \$62,000 per year,² the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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

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

Upon review of the entire record of proceeding, we find that the evidence of record does not overcome the director's basis for denying this petition. We will also address an additional, independent ground, not identified by the director's decision, that we find also precludes approval of this petition.³ Specifically, beyond the decision of the director, the evidence in record of proceeding does not establish that the proffered position qualifies as a specialty occupation. Accordingly, the appeal will be dismissed, and the petition will be denied.

II. STANDARD OF REVIEW

In the exercise of our administrative review in this matter, as in all matters that come within our purview, we follow the preponderance of the evidence standard as specified in the controlling

¹ The petitioner provided a North American Industry Classification System (NAICS) Code of 541511, "Custom Computer Programming Services." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "541511 Custom Computer Programming Services," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited April 13, 2015).

² 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 I (entry-level) prevailing wage rate.

³ We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010), unless the law specifically provides that a different standard applies. In pertinent part, that decision states the following:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

* * *

The "preponderance of the evidence" of "truth" is made based on the factual circumstances of each individual case.

* * *

Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Id. at 375-76.

We conduct our review of service center decisions on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d at 145. In doing so, as noted above, we apply the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon our review of the present matter pursuant to that standard, however, we find that the evidence in the record of proceeding does not support counsel's contentions that the evidence of record requires that the petition at issue be approved. Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, we find that the director's ground for denial was correct. Upon our review of the entire record of proceeding, and with close attention and due regard to all of the evidence, separately and in the aggregate, submitted in support of this petition, we find that the petitioner has not established that its claims are "more likely than not" or "probably" true. As the evidentiary analysis of this decision will reflect, the petitioner has not submitted relevant, probative, and credible evidence that leads us to believe that its claims are "more likely than not" or "probably" true.

III. THE PROFFERED POSITION

In its support letter dated December 13, 2013, the petitioner stated that the beneficiary's duties would include the following:

- Requirements elicitation and documentation, working with business and other IT stakeholders;
- Use case and functional specification development, including but not limited to GUI wireframe design;
- User Acceptance Test planning and execution;
- Creates conceptual and functional designs for new and enhanced systems in coordination with technology analysts, external vendors and consultants;
- Coordinates user review and approval at all stages of system development and delivery;
- Assists in managing system implementation, tracking the timing of deliverables, and developing conversion and migration plans for moving from existing systems to enhanced or more effective new systems;
- Identifies opportunities to utilize existing, enhanced or new technologies or business methods to streamline work processes and improve business margins within individual business units;
- Maintains awareness of systems, products and expertise available both within client and elsewhere to use in addressing business unit needs;
- Develops and maintains a functional expertise in the technology industry and anticipates business and system needs based upon changing industry conditions.

The petitioner stated that the proffered position requires "a minimum of a Bachelor's degree in Computer Science, an Engineering discipline, or a related field along with the applicable software development or programming experience."

IV. SPECIALTY OCCUPATION

As a preliminary matter and beyond the director's decision, we find that the proffered position does not qualify as a specialty occupation. The director denied the petition, finding that the evidence of record of proceeding did not establish that the beneficiary is qualified to perform services in a specialty occupation. However, a beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify 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 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]."). In the instant case, the record of proceeding does not establish that the proffered position qualifies as a specialty occupation.

To meet the petitioner's burden of proof in establishing the proffered position as a specialty occupation, the evidence of record must establish that the employment the petitioner 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.

The petitioner stated on the Form I-129 that the beneficiary would be employed in a programmer/analyst position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the evidence in the record of proceeding establishes that performance of the particular proffered position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

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 INS had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. *Id.* 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.

As recognized in *Defensor v. Meissner*, it is necessary for the end-client to provide sufficient information regarding the proposed job duties to be performed in order to properly ascertain the minimum educational requirements necessary to perform those duties. *See Defensor v. Meissner*, 201 F.3d at 387-388. In other words, as the nurses in that case would provide services to the end-client hospitals and not to the petitioning staffing company, the petitioner-provided job duties and alleged requirements to perform those duties were irrelevant to a specialty occupation determination. *See id.*

Here, the record of proceeding is similarly devoid of sufficient information from the end-client, Avaya, regarding not only the specific job duties to be performed by the beneficiary for that company, but also information regarding whatever the end-client may or may not have specified with regard to the educational credentials of persons to be assigned to its projects. In response to the director's RFE, the petitioner submitted, among others, the following documentation:

- Employee Agreement and employment offer letter, signed by the beneficiary and the petitioner, dated November 10, 2013;
- Contracting Agreement, dated November 1, 2013, between [REDACTED] and the petitioner;
- Exhibit A to the Contracting Agreement, signed on November 1, 2013 by [REDACTED] and the petitioner, which states that the beneficiary will provide support to [REDACTED] for its end-client, [REDACTED];
- Master Services Agreement, signed by the petitioner and [REDACTED] on October 1, 2013;
- Master Services Agreement, signed by [REDACTED] on July 9, 2013, which states that [REDACTED] will "provide the Services describe in any Statement of Work associated with this Agreement and incorporated herein by this reference (the "Services"); and,
- Statement of Work (SOW), signed by the petitioner and [REDACTED] on November 11, 2013, which states that [REDACTED] will assist [REDACTED] in the implementation of "SAP FSCM (Financial Supply Chain Management), Biller Direct, credit management, [and] disputes and collections."

The record does not contain any contracts, work orders, or statements of work from the end-client, [REDACTED] establishing the nature of the work that the beneficiary would perform and the qualifications it requires to perform such duties. The master agreement signed by [REDACTED] states that [REDACTED] "shall employ for the Services only persons known to it to be experienced and fully qualified to perform the tasks assigned to them." It further states that at [REDACTED] request, "the credentials of any of [REDACTED] employees assigned to perform the Services shall be submitted to [REDACTED] in advance of such assignment." However, the record is devoid of information detailing the specifics of the tasks that will be assigned to the beneficiary on a particular project. As indicated above, according to the SOW, the project for [REDACTED] includes wide range of areas including the implementation of "SAP

FSCM (Financial Supply Chain Management), Biller Direct, credit management, [and] disputes and collections." The record does not make it clear which part of the project the beneficiary will work upon, and its associated duties.

The petitioner's failure to submit evidence establishing the substantive nature of the work to be performed by the beneficiary, and the educational credentials necessary to perform them, precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.⁴

Accordingly, as the evidence of record of proceeding has not established that it has 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. The appeal will be dismissed and the petition denied on this basis.

V. BENEFICIARY QUALIFICATIONS

We will now discuss the basis of the director's decision denying the petition. The director determined that the evidence submitted was insufficient to demonstrate that beneficiary is qualified to perform the duties of the proffered position. Again, we note that the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. Here, the evidence of record does not demonstrate that the proffered position is a specialty occupation. However, in order to fully address the director's decision, we will nonetheless discuss whether the evidence submitted was sufficient to demonstrate that the beneficiary is qualified to perform the duties of the proffered position.

On appeal, counsel asserts that the director had not communicated her concerns about the beneficiary's qualification until the issuance of the denial notice. Counsel states that the denial letter was "the first time" the director raised the issue of the beneficiary's qualification. We disagree

⁴ It is noted that, even if the proffered position were established as being that of a computer systems analyst, a review of the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (the *Handbook*) does not indicate that, simply by virtue of its occupational classification, such a position qualifies as a specialty occupation in that the *Handbook* does not state a normal minimum requirement of a U.S. bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation of systems analyst. See 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-4> (last visited April 13, 2015). As such, absent evidence that the position of systems analyst satisfies one of the alternative criteria available under 8 C.F.R. § 214.2(h)(4)(iii)(A), the instant petition could not be approved for this additional reason.

with counsel. In her RFE dated January 8, 2014, the director specifically stated that additional evidence was needed to demonstrate that the beneficiary has at least a baccalaureate degree in computer science, or in a closely related field. In response to the RFE, counsel stated, in a letter dated January 15, 2014, that the petitioner had "enclosed as Exhibit – 8, a copy of beneficiary's college transcripts for his Master & Bachelor program" and "[a]lso enclosed is a copy of his experiential evaluation and copies of his experience letters to document his professional work experience." Therefore, counsel's assertion that the director raised the issue of the beneficiary's qualification the first time in the denial notice is without merit.

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

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

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

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

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary possesses the requisite license or, if none is required, that he or she has completed a degree in the specialty that the occupation requires. Alternatively, if a license is not required and if the beneficiary does not possess the required U.S. degree or its foreign degree equivalent, the petitioner must show that the beneficiary possesses both (1) education, specialized training, and/or progressively responsible experience in the specialty equivalent to the completion of such degree, and (2) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

On appeal, the petitioner and counsel claim that the beneficiary qualifies to perform the duties of the proffered position based on his education and experience. In other words, they contend he satisfies 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). In order to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the evidence of record must demonstrate that 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 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

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

specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The petitioner is seeking the beneficiary's services as a programmer/analyst and classified in the LCA under the computer systems analysts occupational category. With respect to the beneficiary's education and experience, the record of proceeding before the director contained: (1) the beneficiary's academic transcripts, (2) an expert evaluation from [REDACTED] dated December 19, 2013, (3) a work experience letter from [REDACTED] of [REDACTED] dated November 30, 2013, (4) a letter from [REDACTED] signed by an unidentified "Authorized Signatory" dated September 25, 2002, and (5) a letter from [REDACTED] dated December 9, 2003.

In order to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), the petitioner had submitted the evaluation of the beneficiary's education and work experience prepared by [REDACTED]. According to Mr. [REDACTED], based on the beneficiary's "academic coursework, as well as approximately seven years and eight months of work experience and training in management information systems, and related areas," the beneficiary has "the equivalent of a Bachelor of Science degree with a dual major in Management Information Systems and Business Administration from an accredited institution of higher education in the United States." However, Mr. [REDACTED] evaluation did not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) because the evidence of record does not demonstrate both: (1) that Mr. [REDACTED] has the authority to grant college-level credit for training and/or experience at any university; and (2) that [REDACTED] has a program for granting such credit, in the pertinent specialty, based on an individual's training and/or work experience.

We will now address Dr. [REDACTED] evaluation letter dated February 14, 2013, which the petitioner submits on appeal.⁷ We note first that the record of proceeding contains the following letters regarding the beneficiary's work experience:

1. A letter of unknown authorship from [REDACTED] dated September 25, 2002;
2. A letter from [REDACTED] dated December 9, 2003;
3. A letter from [REDACTED] dated November 30, 2013

⁶ The record of proceeding indicates that Mr. [REDACTED] is a member of "[REDACTED]" and a corporate member of the [REDACTED]

⁷ We note that Dr. [REDACTED] evaluation letter predates the petition's filing date. The petitioner provides no explanation why this letter was not submitted with the initial filing of the petition or in response to the director's RFE, but was submitted on appeal.

4. A letter from [REDACTED] dated February 7, 2014; and
5. A letter from [REDACTED] dated February 10, 2014.

In arriving at his conclusion, Dr. [REDACTED] stated that he had considered the beneficiary's education and experience. With respect to the beneficiary's experience, Dr. [REDACTED] referenced the beneficiary's experience with [REDACTED]. While Dr. [REDACTED] did not identify the specific experience letters he reviewed in the process of making a determination regarding the beneficiary's experience, we note that his letter predates the letters from [REDACTED] and [REDACTED]. The record contains no explanation of how Dr. [REDACTED] could have evaluated these letters that were written after his evaluation; or in the alternative, why any alternative letters (or any other evidence regarding the beneficiary's work experience) that Dr. [REDACTED] may have reviewed were not submitted with his evaluation letter. The record contains only two experience letters [REDACTED] and [REDACTED] letters) which predate Dr. [REDACTED] letter, and they collectively cover the beneficiary's work experience from April 1998 to April 2003, which does not support Dr. [REDACTED] conclusion that the beneficiary possesses eleven years and nine months of qualified work experience. The record is devoid of any explanation regarding how Dr. [REDACTED] could have evaluated the beneficiary's experience if the experience letters were written after his expert opinion letter. 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.* As a matter of discretion, USCIS may accept expert opinion testimony. However, USCIS will reject an expert opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence or to determine a fact in issue.'").

For the above-stated reasons, Dr. [REDACTED] letter has little probative value, and therefore, it is insufficient to demonstrate that the beneficiary qualifies 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). The beneficiary is unqualified under this criterion because he 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 in the specific specialty required by the proffered position.⁸

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)(4), which requires that the record of proceeding contain 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) states the following with regard to USCIS analysis of an alien's qualifications:

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

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;⁹
- (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

⁸ We again reiterate that the proffered position does not qualify as a specialty occupation.

⁹ *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. See 8 C.F.R. § 214.2(h)(4)(ii).

contributions to the field of the specialty occupation.

Although the record contains the above-referenced information regarding the beneficiary's work history, that evidence 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 his 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).

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 evidence of the record does not establish that the beneficiary qualifies to perform the duties of a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied on this basis as well.

VI. CONCLUSION AND ORDER

An application or petition that does not comply with the technical requirements of the law may be denied by us even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001); *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of the enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1037, *aff'd*, 345 F.3d 683; *see also BDPCS, Inc. v. Fed. Communications Comm'n*, 351 F.3d 1177, 1183 (D.C. Cir. 2003) ("When an agency offers multiple grounds for a decision, we will affirm the agency so long as any one of the grounds is valid, unless it is demonstrated that the agency would not have acted on that basis if the alternative grounds were unavailable.").

The petition will be denied and the appeal dismissed for the above stated reasons.¹⁰ 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.

¹⁰ As the grounds discussed above are dispositive of the petitioner's eligibility for the benefit sought in this matter, we will not address and will instead reserve our determination on the additional issues and deficiencies that we observe in the record of proceeding with regard to the approval of the H-1B petition.