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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: AUG 0 7 2015

PETITION RECEIPT #:

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:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

I. PROCEDURAL BACKGROUND

On the Form I-129 visa petition, the petitioner describes itself as a 26-employee "Call Center Operations" company established in In order to employ the beneficiary in what it designates as a full-time "Development Manager" position at a salary of $85,000 per year,[1] the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The Director denied the petition, finding that the evidence of the record of proceeding did not establish that the beneficiary is qualified to perform services in a specialty occupation. On appeal, the petitioner asserts that the Director's basis for denial of the petition was erroneous.

The record of proceeding before us contains the following: (1) the Form I-129 and supporting documentation; (2) the Director's RFE; (3) the petitioner's response to the RFE; (4) the Director's letter denying the petition; and (5) the Form I-290B and supporting documentation. We reviewed the record in its entirety before issuing our decision.[2]

For the reasons that will be discussed below, we find that the petitioner has not established eligibility for the benefit sought. Accordingly, the Director's decision will not be disturbed. The appeal will be dismissed.

II. SPECIALTY OCCUPATION

The Director denied the petition finding that the evidence of the record 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

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[1] The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for use with a job prospect within the "Software Developers, Systems Software" occupational classification, SOC (O*NET/OES) Code 15-1133, and a Level I (entry-level) prevailing wage rate, the lowest of the four assignable wage-levels.

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

occupation]."). Therefore, the preliminary issue is whether the evidence of the record of proceeding has demonstrated by a preponderance of the evidence that the petitioner will employ the beneficiary in a specialty occupation position.[3] In the instant case, the record of proceeding does not establish that the proffered position qualifies as a specialty occupation.

A. Legal Framework

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)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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 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;

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[3] The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)).

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

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

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually

requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

B. Analysis

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

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 proffered, 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 its 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 this matter, the petitioner stated that the beneficiary will be employed in-house as a "Development Manager." However, upon review of the record of proceeding, we find that the petitioner did not provide sufficient, credible evidence to establish in-house employment for the beneficiary for the validity of the requested H-1B employment period. Specifically, the petitioner did not submit a job description to adequately convey the substantive work to be performed by the beneficiary. The evidence of record does not present the proffered position and its constituent duties in sufficient detail to establish either the substantive nature of the work that the beneficiary would perform in the proffered position or any particular educational or education-equivalent level of any body of highly specialized knowledge in any specific specialty that the beneficiary would have to apply to perform the position.

In its support letter, the petitioner stated that the beneficiary would be responsible for the

following duties:[4]

- Mentor, manage and support a development team on shore and off shore engineers[.] Document and communicate project technical requirements and designs.
- Own and collaborate with stakeholders on platform architecture. Communicate cross-functionally and drive engineering efforts[.]

In its RFE response letter, prior counsel stated that the beneficiary will "customize the websites of [redacted] and he will fulfill the Agents['] requirements for their website regularly," and provided the following duties:

- Document and communicate project technical requirements and designs.
  - The beneficiary will attend technical meetings on a continuously [sic]
  - He will then come up with Improvements/Blogs and software code testing
  - Design and architect the blueprint of the code and system integration
  - This is then presented to the client and once approved by the client it is applied to the website
- Mentor, manage and support a development team of 6 onshore and offshore engineers
  - Will ensure that the team follows standards and criteria
  - Ensure that the user interface is in line with the design front end monitor
  - Ensure that the application design is met
  - The beneficiary will manage this by having status meeting, thru different means such as email, phone calls, Skype to follow up on status of tasks in a daily basis
- Coordinate the engineering team effort and be in close contact with product management and QA and customer support
- Own and collaborate with stakeholders on platform architecture
  - He will communicate with the management team twice a week to provide updates on ongoing projects
- Communicate cross-functionally and drive engineering efforts

We first note that evidence of the record does not support prior counsel's assertion that the beneficiary will provide website support for the petitioner's clients. Although the petitioner submitted an agreement into which it entered with [redacted] on March 18, 2010, this agreement does not provide any details regarding the specific duties of the beneficiary or the specific project upon which the beneficiary would work. Without documentary evidence to support the claim, the assertions of prior counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534

[4] The petitioner stated that it had attached work orders containing further information regarding the beneficiary's job duties. However, the record of proceeding does not contain the referenced work orders.

(BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Nevertheless, considering the totality of all of the petitioner's duty descriptions, we find that the evidence of record does not establish the depth, complexity, or level of specialization, or substantive aspects of the matters upon which the petitioner claims that the beneficiary will engage. Rather, the duties of the proffered position, and the position itself, are described in relatively generalized and abstract terms that do not relate substantial details about either the position or its constituent duties. For example, the petitioner states that the beneficiary will "come up with Improvement/Blogs" and "mentor, manage and support" engineers without providing details regarding the beneficiary's specific duties in blogging, mentoring, managing, and supporting. The abstract nature of the proposed duties is further illustrated by the petitioner's statement that the beneficiary would "[o]wn and collaborate with stakeholders." The petitioner does not explain the beneficiary's actual tasks in owning and collaborating with shareholders as applied within the scope of the petitioner's business operations and the proffered position, nor does it identify its shareholders. The petitioner also provides no details as to how the beneficiary would "[c]ommunicate cross-functionally and drive engineering efforts." Similarly, in describing the beneficiary's duties in its RFE response letter, prior counsel uses words and phrases such as "ensure," "coordinate," "be in close contact," and "come up with," which do not explain the beneficiary's actual tasks on a given project. Thus, as so generally described, we find that the descriptions do not illuminate the substantive application of knowledge involved or any particular educational attainment associated with such application. The duties as described give very little insight to actual tasks that the beneficiary would perform on a day-to-day basis. Furthermore, we find that the petitioner has not supplemented the job and duty descriptions with documentary evidence establishing the substantive nature of the work that the beneficiary would perform, whatever practical and theoretical applications of highly specialized knowledge in a specific specialty would be required to perform such substantive work, and whatever correlation may exist between such work and associated performance-required knowledge and attainment of a particular level of education, or educational equivalency, in a specific specialty.

Also, the petitioner did not provide any information with regard to the order of importance and/or frequency of occurrence with which the beneficiary will perform these functions and tasks. Thus, the petitioner did not specify which tasks were major functions of the proffered position, and it did not establish the frequency with which each of the duties would be performed (e.g., regularly, periodically or at irregular intervals). As a result, the petitioner did not establish the primary and essential functions of the proffered position.

This type of generalized description may be appropriate when defining the range of duties that may be performed within an occupational category, but it does not adequately convey the substantive work that the beneficiary will perform within the petitioner's business operations and, thus, cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in the context of the petitioner's business operations, demonstrate that a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the beneficiary for the period of employment

requested in the petition. For these reasons alone, the evidence of record does not demonstrate that the proffered position is a specialty occupation. In addition, the petitioner does not explain how the duties of a software developer[5] fit within its business operations as the evidence does not sufficiently demonstrate that the petitioner is in the software developing business.[6]

Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The tasks as described do not communicate (1) the actual work that the beneficiary would perform, (2) the complexity, uniqueness and/or specialization of the tasks, and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty.

In the instant case, the petitioner has not described the proffered position with sufficient detail to determine that the minimum requirements are a bachelor's degree in a specialized field of study. It is incumbent on the petitioner to provide sufficient evidence to establish that the particular position that it proffers would necessitate services at a level requiring both the theoretical and practical application of a body of highly specialized knowledge and the attainment of at least a bachelor's degree in a specific specialty, or its equivalent. When "any person makes an application for a visa or any other document required for entry, or makes an application for admission, [. . .] the burden of proof shall be upon such person to establish that he is eligible" for such benefit. Section 291 of the Act; *see also Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972).

Moreover, although the petitioner included managerial duties for the beneficiary, it specified a Level I, entry-level wage level on the LCA. Pursuant to the *Prevailing Wage Determination Policy Guidance*, a Level I wage is appropriate for a position requiring only "a basic understanding of the occupation" expected of a "worker in training" or an individual performing an "internship." That designation indicates further that the beneficiary will only be expected to "perform routine tasks that require limited, if any, exercise of judgment." However, we find that the managerial duties and job requirements described by counsel and the petitioner exceed this threshold.

This aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the petitioner's assertions regarding the demands, level of responsibilities and requirements of the proffered position.[7] Doubt cast on any aspect of the petitioner's proof may, of course, lead to a

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[5] Again, the LCA submitted by the petitioner in support of the petition was certified for use with a job prospect within the "Software Developers, Systems Software" occupational classification, SOC (O*NET/OES) Code 15-1133.

[6] Again, the petitioner describes itself as a business providing "call center operations."

[7] The issue here is that the petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, it is important to note that a Level I wage-designation

reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. 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. at 591-92.

The record does not establish the substantive nature of the work to be performed by the beneficiary, which therefore precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Accordingly, as the record of proceeding does not establish 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. For this additional reason, the appeal will be dismissed.

III. THE BENEFICIARY'S QUALIFICATIONS

The Director found that the beneficiary was not qualified to perform the duties of the proffered position. However, a beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the evidence of record does not establish that the proffered position requires a baccalaureate or higher degree in a specific specialty, or its equivalent. However, in order to address the Director's decision, we will discuss whether the evidence submitted was sufficient to demonstrate that the beneficiary was qualified to perform the duties of the proffered position as described.

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,

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does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), an entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty or its equivalent. That is, a position's wage level designation may be a consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

(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.

Here, the petitioner asserts that the beneficiary qualifies for the proffered position based on a combination of his education and progressively responsible experience.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*) requires a demonstration 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;[8]

(*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 its support letter, the petitioner states that it requires "a Bachelor's Degree in Engineering, Computer Science, or related" degree for the proffered position. The petitioner submitted an evaluation dated March 24, 2014 by Dr. an evaluator at concluding that the beneficiary possesses a foreign equivalent of a U.S. degree of Bachelor of Science in Management Information Systems. We note that Dr. evaluation is not sufficient to demonstrate that the beneficiary possesses the required education and experience. Dr. provides no explanation regarding how he reached his conclusion and what specific documents other than "diplomas, transcripts and resume provided by [the beneficiary]" he reviewed. Furthermore, although Dr. concludes that the beneficiary's experience is equivalent to 21 years of experience in management information systems, he does not state which

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

experience letters, if any, he reviewed. It appears that Dr. did not base his opinion on objective evidence; rather, he simply relied on the resume that the beneficiary provided.[9] Accordingly, the evaluation submitted by Dr. is not probative evidence toward demonstrating that the beneficiary possesses the foreign equivalent of a U.S. degree.

In response to the Director's RFE, the petitioner submitted an evaluation dated July 2, 2014 from Dr. a professor of computer science at concluding that based upon his combined education and experience, the beneficiary has attained the equivalent of a U.S. "Bachelor's degree in Management Information [S]ystems from an accredited institution of higher learning in the United States." With regard to the beneficiary's progressive work experience, Dr. does not discuss the experience letters in detail and provides no insight into to how he determined that the beneficiary's experiences described in the letters from former employers were progressive.[10] In the RFE, the Director requested specific evidence, such as copies of personnel records, performance evaluations, pay records, or other documents that reflect promotion or achievement of progressively responsible positions directly related to the specialty.[11] The petitioner submitted none of these documents, and Dr. does not explain how he ascertained that one duty was more progressive than the other. The evidence of record does not support Dr. conclusion regarding whatever degree-equivalency the beneficiary may have attained through his experience. Therefore, the evaluation submitted by Dr. is not probative evidence toward demonstrating that the beneficiary possesses a foreign equivalent of a U.S. degree.

On appeal, the petitioner submitted three additional evaluations. The evaluation dated February 3, 2015 from an evaluator at the , would not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*), as the evidence of record does not establish that she possesses the authority to grant college-level credit for training and/or experience in the specialty

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[9] The evidentiary weight of a resume is insignificant. It represents a claim made by the beneficiary rather than evidence to support that claim, and the record of proceeding lacks documentary evidence to establish or corroborate the claims regarding the beneficiary's professional experience made in his resume. 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)).

[10] For example, Dr. references the letters from and However, these letters state only that the beneficiary was a "Team Leader" without providing any information regarding his duties and responsibilities.

[11] Depending on the specificity, detail, and credibility of a letter, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g.*, *Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience.

The petitioner also submitted an evaluation, dated February 2, 2015, prepared by Dr. a faculty member at . Dr. stated that he reviewed the five employment verification letters. However, Dr. provides no insight into how he determined that the duties described in the experience letters from former employers were progressive. Dr. opinion letter does not provide any information regarding the evaluation process he followed while analyzing the beneficiary's experience; rather, he simply concludes that the beneficiary's experience was progressive in the field of management information systems. Similar to Dr. evaluation, the evaluation prepared by Dr. , dated February 4, 2015, concludes that the beneficiary's experience was progressive and that he earned the educational equivalent of a "Bachelor's degree in Management Information Systems," but provides no insight into how he determined that the duties described in the experience letters from former employers were progressive. For example, the letter dated January 27, 2015 from notes that the beneficiary "may have been performing some or all" the listed duties. It is unclear from the statement in letter how Dr. and Dr. could determine exactly which duties the beneficiary performed and which ones were more progressive than the others. Furthermore, the letter submitted by , dated January 21, 2015, and the letter submitted by , dated January 14, 2015, are virtually identical in content to one another and list the same duties using the exact same language.[12] Therefore, we find that these letters carry little probative weight. Accordingly, the evaluations submitted by Dr. and Dr. are not persuasive.

Based on the deficiencies noted, we do not find the evaluations submitted by the petitioner persuasive. We may, in our discretion, use advisory opinion statements submitted by the petitioner as expert testimony. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). 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. *Id.* Therefore, the petitioner did not satisfy 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*). As was the case under 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(*1*) and (*2*), the beneficiary is unqualified under this criterion

[12] The use of identical language and phrasing across the various letters suggest that the language in the letters is not the authors' own. *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).

because he did not earn a baccalaureate or higher degree from an accredited college or university in the United States and 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.

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 beneficiary submit evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty.

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.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*) states the following with regard to USCIS analyzing 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;[13]
>
> (*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

[13] *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).

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.

Although the record contains some information regarding the beneficiary's work history, it does not establish that his 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 petitioner did not establish that the beneficiary qualifies to perform the duties of a specialty occupation.[14]

IV. 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.").

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[14] As stated above, we have determined that the proffered position does not qualify as a specialty occupation. However, we have discussed the beneficiary's qualifications in order to address the Director's decision.

The petition will be denied and the appeal dismissed for the above stated reasons.[15] 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.

[15] 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.