



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUL 27 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 please find the decision of the Administrative Appeals Office (AAO) in 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 petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

I. BACKGROUND

On the Form I-129 visa petition, the petitioner describes itself as a software development and consulting firm established in [REDACTED]. In order to employ the beneficiary in what it designates as a "Programmer Analyst" position, at an annual salary of \$58,000, 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 does not demonstrate that the beneficiary is qualified to perform the duties of the particular type of specialty occupation claimed in the petition.

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

We find that upon review of the entire record of proceeding, the evidence of record does not overcome the Director's ground for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

As a preliminary matter, we note that 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 this case, the Director did not address whether the proffered position is a specialty occupation. Beyond the decision of the Director, we find that the record of proceeding does not establish that the proffered position qualifies as a specialty occupation.¹

¹ In the Labor Condition Application (LCA) filed in support of the petition, the petitioner indicated that the proffered position corresponds to "Computer Systems Analysts" occupational classification, SOC (O*NET/OES) Code 15-1121 at a Level I (entry level) wage. We recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. In discussing the occupational category "Computer Systems Analysts," the *Handbook* states "although many computer systems analysts have technical degrees, such a degree is not always a requirement. Many analysts have liberal arts degrees and have gained programming or technical expertise elsewhere." Therefore, we find that the *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the

However, for the limited purpose of adjudicating the beneficiary qualification issue upon which the Director denied the petition, we will assume that the proffered position is one that requires a U.S. bachelor's degree in computer information systems or its equivalent.² As we will discuss at length, the evidence of record does not establish that the beneficiary has attained a bachelor's degree in computer information systems or its equivalent. Accordingly, the appeal will be dismissed, and the petition will be denied.

II. LEGAL FRAMEWORK

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

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.

minimum requirement for entry into this occupation. It is noted that the petitioner referred to the Occupational Information Network (O*NET) to assert that this occupational category requires a four-year bachelor's degree; however, O*NET does not indicate that a bachelor's degree in a specific specialty or its equivalent is required. The petitioner did not provide other authoritative sources to establish that the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent.

We further note that the petitioner indicated in its support letter dated March 15, 2014 that the position requires "a BS degree or its equivalent in the management information systems, computer science, computer applications, engineering or related field." USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. However, in this case, the petitioner has not established how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties.

² The petitioner submitted credential evaluations that indicate that the beneficiary's academic and work experience is equivalent to a bachelor's degree in computer information systems. We further note that the *Handbook* indicates "a bachelor's degree in a computer or information science is common, although not always a requirement." Therefore, we will assume, for the limited purpose of adjudicating this case, that a bachelor's degree in computer information systems is required for the proffered position.



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

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

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

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

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary possesses the requisite license or, if none is required, that he or she has completed a degree in the specialty that the occupation requires. 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;³
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . . .

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

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

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;⁴

³ 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.

⁴ *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. 8 C.F.R. § 214.2(h)(4)(ii). 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

- (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.

Further, in accordance with the "preponderance of the evidence" standard as articulated in *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010), we 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."

III. DISCUSSION

On appeal, the petitioner asserts that the "[b]eneficiary holds a Bachelor of Technology in Civil Engineering from ██████████ University (awarded 1998) and a Diploma in Civil Engineering (awarded 1994)." The petitioner further indicates that "[the beneficiary] has at least seven years of qualifying experience and training in the field of Computer Information Systems."

We note that, absent (1) an actual U.S. bachelor's or higher degree from an accredited college or university, (2) a foreign degree determined to be equivalent to such a degree, or (3) a pertinent license, the only remaining avenue for the beneficiary to qualify for the proffered position is pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), in which the petitioner must establish both (1) that the beneficiary's combined education, specialized training, and/or progressively responsible experience are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and (2) that the beneficiary has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. Therefore, the issue on this appeal is whether the beneficiary's combined education and experience is equivalent to completion of a U.S. bachelor or higher degree in the specialty occupation.

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. *Id.*

A. Evidence

Evaluations

- An August 4, 2014 "Expert Opinion Evaluation of Academics and Work Experience" by Dr. [REDACTED], Ph.D., an Associate Professor of Computer Applications and Information Systems at the [REDACTED]
- A January 15, 2015 "Credential Evaluation Report" by Dr. [REDACTED], a Professor of Computer Science and Engineering at [REDACTED] University.

Both evaluators opine that the combination of (1) the beneficiary's degrees from India and (2) the beneficiary's work experience is equivalent to a U.S bachelor's degree in computer information systems.

Academics

- A diploma in "Civil Engineering" for completing 3 year study awarded from State Board of Technical Education and Training (SBTET).
 - "Provisional Certificate Cum Consolidated Marks." This document only includes marks for the second and third year of study. Also, the petitioner did not submit an academic transcript showing the coursework that the beneficiary completed.
- A certificate issued by the engineering faculty at [REDACTED] University attesting that the beneficiary "has been duly admitted to the Degree of Bachelor of Technology (Civil)."
 - A two-page academic transcript which reflects that the period of study was from 1995 to 1998, and the beneficiary was awarded a bachelor of technology "(Civil Engineering)" in April, 1998.
 - The transcript reports completion of the following courses (quoted verbatim from the transcript):
 - Year I: Mathematics - I; Mathematics - II; Engineering Mechanics; Engineering Geology; Solid Mechanics; Fluid Mechanics; Structural Analysis I; Elements of Ele. & Mech. Engg.; Engineering Geology Lab.; Str. of Materials & Concrete Lab.; Computer Programming Lab.
 - Year II: Structural Analysis - II; Geo-Technical Engineering; Water Res. Engg. Drawing; Environmental Engg. - I; Hydraulics & Hydraulic Mach.; Str. Des. & Drawing - I (Con.); Str. Des. & Drawing- II (Steel); Est. Costing & Const.

Management; Transportation Engg. - I; H & H M Lab.; Geo-tech Engg. & Trans. Engg. Lab; Environmental Engg. Lab.

Year III: Str. Des. & Drawing - III (Con); Str. Des. & Drawing - IV (Steel); Water Res. Engg. & Drawing - II; Transportation Engg. - II; Structural Analysis - III; Elective I: Prestressed Concrete; Elective II: Adv. Topics in Environmental Engg.; Computer Appl. In Civil Eng. Lab; Project Work.

Notably, the transcript records only *two* computer courses (namely, "Computer Programming Lab." and "Computer Appl. In Civil Eng. [(sic)] Lab").

*Work Experience*⁵

- A letter from [REDACTED] Software Services Ltd. states that "[the beneficiary] was in our employment from November 22, 2006 to May 31, 2007 as 'Software Engineer'" and that "he has left us on his own accord."
- A letter from [REDACTED] states "this is to certify that [the beneficiary] was working with [REDACTED] since July 03, 2007. He has resigned of his own accord and is being relieved from the services of the Company from the close of working hours of January 23, 2009." It further states "[a]t the time of his resignation, he was designated as Sr. Software Engineer."
- A service certificate from [REDACTED] Technology Ltd. names the beneficiary, and states that he joined the firm designated as a senior software engineer on May 11, 2009 and left the firm by resigning on March 5, 2010.
- The sworn statements from persons identifying themselves as the beneficiary's former coworkers and attesting that they have personal knowledge of the beneficiary's employment; however, the accuracy of the statements' contents is not affirmed by the employers.⁶

⁵ The record also contains a variety of other documents related to the beneficiary's periods of work for former employers. The petitioner submitted an "*Employment Agreement*" between the beneficiary and the [REDACTED]. From this document and the accompanying [REDACTED] documents we only glean that the beneficiary had been employed by [REDACTED] as a "Consultant." The record also contains *certificates* reflecting that the beneficiary had successfully completed several training courses in Information Technology areas. We will not discuss these documents as neither evaluation specifically addresses these documents.

⁶ While the affiants state that the beneficiary "worked with" them, the amount of contact that they had with the beneficiary is not clear. Further, close similarity of the statements' format and phrasing suggest that their content was provided by a common source, which raises questions about their credibility.

B. Analysis

Again, under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the petitioner must establish both (1) that the beneficiary's combined education, specialized training, and/or progressively responsible experience are equivalent to completion of a U.S. baccalaureate or higher degree in the specialty occupation, and (2) that the beneficiary has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In order to equate the beneficiary's credentials to a U.S. baccalaureate or higher degree, the petitioner must meet one or more of the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D). Here, we will not discuss 8 C.F.R. § 214.2(h)(4)(iii)(D)(2) or (4), since they are not relevant to the issues on appeal.

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.

The provision at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) requires 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.

The evidence in the record contains an evaluation from Dr. █ from the University of █. However, the petitioner has not established that Dr. █ is an official that meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1); therefore we withdraw the Director's contrary finding. Specifically, Dr. █ submitted a letter from the Dean of the University of █ School of Business. It states in pertinent part that Dr. █ is "authorized and qualified to grant 'life experience' credits through the IDEAL degree-completion program offered through the School of █." However, there is no evidence anywhere in the record of proceeding of the extent of the Business School Dean's participation in or personal knowledge of the IDEAL program, which the Dean's own letter acknowledges as one administered by an entity other than the Business School, namely, the School of █. We find that this is in itself sufficient reason for us to accord no significant weight to the letter from the Dean of the Business School, particularly as this Dean presents no substantive information or documentation to support his conclusory declaration that Dr. █ is "authorized and qualified to grant 'life experience credits' through the IDEAL degree-completion program" at the University of █.

Further, we find that, even taken at face value, the letter from the Business School Dean does not establish that Dr. [REDACTED]'s involvement in the University of [REDACTED] IDEAL program qualifies him as "an official who has authority to grant college-level credit for training and/or experience in the specialty" in a University of [REDACTED] "program for granting such credit based on an individual's training and/or work experience." Specifically, the Dean of the Business School states that Dr. [REDACTED] is authorized to grant "life experience" credits, *not* "college-level credit" and *not* "college-level credit in the [pertinent] specialty" as specified at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). We will not speculate as to the nature, qualifying grounds, or academic weight of what is meant by "life-experience" credits, and the record of proceeding throws little light on this aspect of the IDEAL program. It is the petitioner's burden to establish both what constitutes "life experience" as defined for credit-assessment in the IDEAL program, and also that "life experience" evaluated for credit in the IDEAL program is substantially the same as "training and/or work experience" which must be the basis of college-credit awarded by a person whom a petitioner holds out as qualifying as an 8 C.F.R. § 214.2(h)(4)(iii)(D)(I) official. The petitioner has not met that burden. For this reason, we withdraw the Director's contrary finding, and find that the petitioner has not established that Dr. [REDACTED] is an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college of university which has a program in granting such credit based on an individual's training and/or work experience.

The record of proceeding also contains a Credential Report by Dr. [REDACTED] dated January 15, 2015; however, we find that the evidence in the record does qualify him as an official described at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). The evaluation is accompanied by a letter from [REDACTED] who represents himself as the Dean of Natural Sciences.⁷ While Dr. [REDACTED] states that the university "grants credits based on an individual's education, training and/or work experience," and Dr. [REDACTED] "has authority to confer college level credits to his students," it does not indicate that Dr. [REDACTED] has the authority to grant college-level credit for training and/or experience in the specialty at the university. Moreover, the record does not have additional information regarding the program or Professor's [REDACTED]'s knowledge and authority as the dean of another academic department, namely natural sciences, to affirm Dr. [REDACTED]'s authority to grant such credits.

We also note that both evaluators' conclusions are not sufficiently substantiated. For example, Dr. [REDACTED] identifies the beneficiary's former employers and the periods of employment; however, he does not discuss any details of the beneficiary's work, other than to note the names of former employers, the periods of former employment, and that the beneficiary "has held such titles as Software Engineer and Senior Software Engineer." This evaluator then states, without citation to any study, research, or authoritative source that "[t]hese are standard titles in the Industry and are given only to persons able to conduct the software development process at a level commensurate with one of the computer-related bachelor degrees." We accord no significant weight to this

⁷ We note that the letter from Dr. [REDACTED] is dated June 10, 2014, six months prior to the issuance of evaluation; therefore, it is not clear if the information contained in his letter is current. We further note that [REDACTED] University's website describes Dr. [REDACTED]'s status as "phased retirement." See www.plu.edu (last visited July 22, 2015).

finding. While it appears that all of the previous employment referenced by Dr. [REDACTED] was performed in India, Dr. [REDACTED] does not establish that he has a sufficient knowledge of position-title usage in India – or with the former employers – to reach his conclusion. Further, the focus of our concern is U.S degree-equivalency, and Dr. [REDACTED] does not substantiate that Indian computer-related degrees are by and large equivalent to U.S. degrees, although that assumption is implicit in his statement.

Similarly, we note that Dr. [REDACTED] relied upon the aforementioned sworn statements from the beneficiary's former co-workers for the beneficiary's work experience, as evident in his summary of the beneficiary's work experience. Specifically, he compressed the sworn-statements' bullet-point duty descriptions into a paragraph, without any supplemental comments about the substantive nature of such duties or how the specific performance requirement of those duties those relate to specific U.S college-level coursework needed for a U.S. bachelor's degree in computer information systems. For the reasons reflected in our earlier comments and findings about the evidentiary weight of the sworn statements, we find that Dr. [REDACTED] has not provided an adequate factual foundation for evaluating the beneficiary's work history. Additionally, Dr. [REDACTED]'s assessment of the beneficiary's work experience is undermined by the fact that he misstates the information in the two sworn statements about the beneficiary's work for the period from June 2008 to December 2009 at [REDACTED]. Dr. [REDACTED]'s language presents the beneficiary as having fully performed the six duties for which the sworn statements only state that the beneficiary was "involved in," without any specific description of the substantive extent such involvement.

An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials

The regulations at 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) requires an evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials. As discussed, the record contains an evaluation by Dr. [REDACTED]. We note that while Dr. [REDACTED] indicates that he is a professor in computer science at [REDACTED], the evaluation is submitted on a Universal Evaluations and Consulting's letterhead and Dr. [REDACTED] signed his name as an "evaluator." Further, Dr. [REDACTED]'s evaluation is based on the beneficiary's academic credentials and work experience. Therefore, Dr. [REDACTED]'s evaluation does not meet the criterion under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3).

However, even if we were to consider Dr. [REDACTED]'s evaluation on the beneficiary's academic credentials only, we find that his conclusions are not sufficiently substantiated. For example, Dr. [REDACTED] concluded that based on the beneficiary's SBTET diploma, the beneficiary "has satisfied requirements substantially similar to those required *towards the completion of* academic studies leading to [a] US equivalent high school plus one-year university level credit from a regionally accredited college in the United States [emphasis added]." However, Dr. [REDACTED] did not specifically address the beneficiary's SBTET coursework, and his narrative does not correlate any specific SBTET coursework to specific coursework requirements for a U.S. bachelor's degree in computer information systems or any other specific specialty. As noted the record of proceeding

does not contain an academic transcript from [REDACTED] to establish the course work that the beneficiary has completed.

With regard to the certificate issued by [REDACTED] University, Dr. [REDACTED] opined that the beneficiary "has satisfied academic requirements substantially similar to those required towards the completion of academic studies leading to [a] Bachelor of Science in Civil Engineering from an accredited college or university in the United States." We note that his narrative does not equate the beneficiary's post-secondary education to any specific amount of U.S. coursework in computer information systems, which is the specialty Dr. [REDACTED] ultimately finds a U.S. degree-equivalency. Parenthetically, we note again that the [REDACTED] documentation shows no computer coursework and that the [REDACTED] University documents only reflect *two* computer courses (namely, Computer Programming Lab and Computer Applications in Civil Engineering). Thus, neither set of documents provides a credible basis for finding in the beneficiary's foreign education a significant amount of U.S. college-level equivalency in computer information systems.

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. . . .

Aside from the material deficiencies discussed above, both evaluations misinterpret the so-called "three-for-one" rule. Dr. [REDACTED] stated that "3 years of experience/training is equal to 1 year of University-level credit in [the] USA"; Dr. [REDACTED] also stated that USCIS has "established that three years of work experience and/training is equivalent to one year of university-level training."

The only section of the H-1B beneficiary-qualification regulations that provides for application of a three-for-one ratio is the provision at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). However, that provision reserves its application exclusively for USCIS agency-determinations.⁸ Further, that provision

⁸ That the application is exclusively a measure for USCIS is clear in the language of the regulation. Additionally, the supplementary comments to the Final Rule that first introduced the ratio into agency regulations include the following statements:

For the benefit of petitioners and applicants who may have difficulty in seeking and obtaining a determination of equivalency through authoritative sources, the Service adopted its own standard for substituting specialized training and/or experience for college-level training, and for assuring that the alien is recognized as a member of the profession. The three-for-one formula which will be used is based on a survey of relevant precedent decisions which reflect the number of years of experience held by aliens who did not have degrees, but were regarded by the Service as members of their profession. . . .

requires substantially more than simply equating any three years of work experience in a specific field to attainment of a year's worth of U.S. college credit in that field or specialty. In fact, it inserts a number of elements of proof into the experience and/or training equation that both evaluators have overlooked. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) – which, as we have seen, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) introduces as one of the avenues towards establishing a beneficiary's qualifications - reads as follows:

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. 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* [(1)] that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; [(2)] that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; *and* [(3)] that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

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

[Emphasis added.]

The record contains letters from the beneficiary's former employers as evidence of the beneficiary's work experience. However, the letters are limited to skeletal information, such as the beneficiary's periods of employment and the beneficiary's job title. They contain no substantive information about the specific work that the beneficiary performed, such as, for instance, the level of

responsibility that he exercised, the extent to which he was supervised, the latitude of independent judgment that the beneficiary may have been allowed to exercise, or the types and levels of any substantive knowledge that the beneficiary may have applied in the area of computer information systems. Moreover, the letters provide no statements as to the quality of the beneficiary's work, the level of his skills, or any aspects of the beneficiary's performance meriting recognition for showing a particular level of expertise in computer information systems. Further, the letters do not identify the minimum educational requirements that the firms set for the type of position that the beneficiary held. Also, while the letters indicate that the beneficiary resigned from each position they do not address whether the resignations may have been tendered in lieu of termination by the employer. For all of these reasons, the former employers' letters have little evidentiary value beyond indicating the employers for whom the beneficiary worked at various times and the titles under which he worked.

Neither the two evaluations, the documents accompanying them, nor any other part of the record of proceeding provides sufficient evidence for us to reasonably conclude that the work-experience evidence satisfies the 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) requirements for application of the "three-to-one ratio." Accordingly, we cannot conclude that the evidence of the beneficiary's work experience qualifies for recognition of any years of college-level credit by correct application of the H-1B beneficiary-qualification regulations' "three-for-one" standard.

We also find that the evaluations' misapplication of a truncated and materially incomplete version of the true "three-for-one" rule is in itself sufficient grounds for dismissing the appeal and denying the petition, for the ultimate opinion of each of the evaluations depends in material part upon that misapplication.

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.* 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.'").

Therefore, we conclude that the totality of the evidence regarding the beneficiary's foreign education and work experience does not satisfy any criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (h)(4)(iii)(D). As the petitioner has not established that the beneficiary is qualified to serve in the alleged specialty occupation in accordance with the requirements at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D), the appeal will be dismissed and the petition will be denied.

IV. BEYOND THE DECISION OF THE DIRECTOR

Since the identified basis for denial is dispositive of the petitioner's appeal, we need not address other grounds of ineligibilities we observe in the record of proceeding. Nevertheless, we will briefly note and summarize it here with the hope and intention that, if the petitioner seeks again to employ the beneficiary or another individual as an H-1B employee in the proffered position, it will submit sufficient independent objective evidence to address and overcome other additional grounds in any future filing.

As we noted in our discussion of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), to establish that a beneficiary is qualified to serve in a specialty occupation position by virtue of a combination of education, training, and/or work experience, the evidence of record must establish not only (1) that the beneficiary has sufficient "education, specialized training, and/or progressively responsible experience" to satisfy the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), but also (2) that the beneficiary has "recognition of expertise in the specialty through progressively responsible positions directly related to the specialty." We find that neither the evaluations by Drs. [REDACTED] and [REDACTED] nor any other evidence of record satisfies that second requirement.

Further, as noted, the petitioner has not established that the proffered position qualifies as a specialty occupation. Moreover, we further note that the petitioner did not submit sufficient credible documentary evidence that it had specialty work available for the beneficiary for the duration of the requested time period.

V. 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 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, 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.