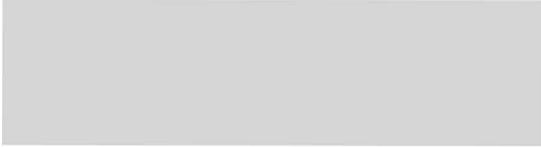




U.S. Citizenship  
and Immigration  
Services

(b)(6)



**JUN 17 2015**

DATE:

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:

NO REPRESENTATIVE OF RECORD

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](http://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, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

## I. PROCEDURAL HISTORY

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a 55-employee "Software Consulting & Development" business established in [REDACTED]. In order to employ the beneficiary in a position it designates as a "Computer Programmer/Analyst" position, 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 demonstrate that (1) the proffered position qualifies for classification as a specialty occupation, and (2) the beneficiary is qualified to perform the duties of the proffered position.

The record of proceeding before us contains: (1) the Form I-129 and supporting documentation; (2) the Director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Notice of Appeal or Motion (Form I-290B) and supporting documentation. We reviewed the record in its entirety before issuing our decision.<sup>1</sup>

For the reasons that will be discussed below, we find that the evidence of record does not overcome the Director's grounds for denying this petition. Accordingly, the Director's decision will not be disturbed. The appeal will be dismissed.

## II. THE PROFFERED POSITION

The petitioner identified the proffered position as a "Computer Programmer/Analyst" on the Form I-129, and attested on the required Labor Condition Application (LCA) that the occupational classification for the position is "Computer Programmers," SOC (ONET/OES) Code 15-1131, at a Level I (entry) wage.<sup>2</sup>

In the petitioner's letter in support of the petition, dated March 30, 2014, the petitioner stated that it offers "a variety of services including product development, mobile app developer and IT outsourcing to help the company meet its unique business objectives utilizing the latest technical innovations." The petitioner noted that it is affiliated with [REDACTED] for research and development of mobile applications and that it is a [REDACTED].

<sup>1</sup> We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

<sup>2</sup> See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance, Nonagric. Immigration Programs* (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

██████████ for design and development of mobile applications. The petitioner indicated that it "has been focusing on Applications targeted for wearable devices along the ██████████" and that its "primary services focus on content management, application development, application management, website development, software testing and e-commerce."

The petitioner described the proffered position as follows:

As a Computer Programmer/Analyst, the beneficiary will work with our engineering team to perform: Requirements analysis, Building Software Architecture, design, QA and debug the software program / algorithms written for retail, education, entertainment and [m]obile healthcare applications. Beneficiary shall also correct errors, [o]ptimize & improvise performance of the software by making appropriate changes and rechecking the program to ensure that the desired results are produced, [w]rite, update, and maintain computer programs or software packages to handle specific jobs such as tracking inventory, storing or retrieving data or controlling other equipment, write, analyze, review, and rewrite programs, using workflow chart and diagram, and applying knowledge of computer capabilities, subject matter, and symbolic logic; analyze and evaluate existing and proposed systems & devices, computer programs and systems as well as related procedures to process data and program.

The petitioner also provided the "Project Details" indicating that the beneficiary "will be working on various Mobile Applications development projects based on ██████████ platforms." The petitioner indicated further that the beneficiary will be involved in the following:

**Certification Process**

Per ██████████ process, the beneficiary shall sign the Mobile Applications/projects with appropriate [petitioner's] credentials. It ensures [the petitioner's] application cannot be distributed by someone else even though the application package is leaked.

Upon completion of app development, the beneficiary shall be submitting the app through ██████████ Office. Beneficiary shall help company in monetizing through application by incorporating In app purchase, In app advertisements and promoting paid app downloads.

**Product Management**

The beneficiary shall play role of mobile product specialist for [the petitioner]. The beneficiary will be responsible for the following:

**Define product strategy and roadmaps:** Shall be responsible for defining the long term strategy of the Software Solutions / products & define product roadmap.

**Deliver MRD's and PRD's:** Market Requirement Documents (MRD) include the voice of the customer and is a component of the business case. The MRD shall be written with assistance from research, marketing communications, sales, engineering and finance teams. The Product Requirements Document (PRD) consists of the prioritized feature set for the product.

**Voice of the customer:** Responsible for tracking user feedback, customer satisfaction and metrics to measure success and engagement of new and existing functionalities to the software solutions/products.

**Conduct competitive analysis:** Shall research the competition's technology and gathers data around market share, direction of the industry and threat to the current product and business.

The petitioner also stated that the "industry standard . . . among all IT professionals including but not limited to Technical Consultant/Software Developer/Programmer Analyst/Systems Analysts/Software Engineers is . . . at least a Bachelor of Science or its equivalent in Computer Science or Engineering or Information Technology or related area."

In the petitioner's letter of employment to the beneficiary, the petitioner stated that "[a] Computer Programmer/Analyst requires a minimum Bachelor of Computer Science or an equivalent degree." As for the duties he is expected to perform, the petitioner stated the following:

Your responsibilities include Lead and participate in architectural technology designs considering usability, scalability, security and ongoing supportability of software components. Code Java Enterprise software. Work with business and systems analysts to help ensure projects are correctly defined and technical designs fulfill the desired functional requirements. Develop business and user requirements, technical architecture, functional specifications, design documents, and testing requirements for projects. Deliver formal presentation of findings, recommendations, and specifications. Collaborate with required departments regarding infrastructure, program management and quality assurance. Develop distributed systems, including client/server and web based distributed systems environments and GUI design. Lead development teams providing guidance and support. Develop, create, and modify existing applications software or specialized utility programs.

### III. SPECIALTY OCCUPATION

The first issue in this matter is whether the proffered position qualifies for classification as a specialty occupation.

### A. Legal Framework

To meet its burden of proof, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

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

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

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

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must 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), 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 ascertain the intent of a petitioner, USCIS must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the Director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B

petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

Thus, a crucial aspect of this matter is whether the petitioner has adequately described the duties of the proffered position, such that USCIS may discern the nature of the position and whether the position indeed 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. The petitioner has not done so here.

The petitioner submitted a general overview of the proffered position in its letter in support of the petition, reciting portions of the duties of a computer programmer as set out in the Occupational Information Network's (O\*NET) Online Summary Report for computer programmers. The petitioner's further description of the duties, including the beneficiary's work on the certification process, the product management (including defining the long term strategy, delivery of market and product requirement documents, tracking user feedback), and researching the competition's technology and gathering data on market share, may include duties of a technical writer and business marketer. The petitioner also indicates that the beneficiary will need familiarity with a group of technologies and software programs and platforms, but does not specify how the beneficiary will use these technologies in his day-to-day tasks.

In the petitioner's description of the proposed duties to the beneficiary in its offer of employment, the petitioner indicates that the beneficiary will assume a lead position, will code Java Enterprise software, will work with business and systems analysts, will deliver formal presentations, and collaborate with other departments on program management and quality assurance and develop distributed systems. The petitioner's placement of the beneficiary at a lead level in its employment offer is not indicated within the petitioner's various descriptions of the beneficiary's proposed duties and conflicts with the petitioner's designation of the proffered position as a Level I, entry-level, position on the LCA.<sup>3</sup> See U.S. Dep't of Labor, Emp't &

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<sup>3</sup> The petitioner's designation that the proffered position requires only a Level I, entry wage demonstrates the petitioner's belief that the proffered position is a comparatively low, entry-level position relative to others within the computer programmer occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that he would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results. Based upon the petitioner's designation of the proffered position as a Level I (entry) position, it does not appear that the beneficiary will be expected to serve in a senior or leadership role. This conflicts with the terms of the signed and accepted employment offer wherein the beneficiary will operate in a "lead" role. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such

Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

Also, on appeal, the petitioner repeats the initial generic description of the proffered position and adds that the beneficiary will spend the majority of his time on development which is more consistent with a software developer position. See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Software Developers," <http://www.bls.gov/ooh/computer-and-information-technology/software-developers.htm#tab-2> (last visited June 11, 2015). Thus, the beneficiary's primary role and level of responsibility is not consistent upon review of the petitioner's descriptions, its offer of employment, and its attestations in the LCA. 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).

Although we recognize that a particular position may include overlapping duties, the petitioner must sufficiently identify the occupation with a consistent description of the duties so that we may analyze the actual position proffered and the level of responsibility expected of the beneficiary. In this matter, the duties are not consistently described and do not include the level of detail necessary for our analysis. Thus, upon review, it is not evident that the proposed duties as described, and the position that they comprise, merit recognition of the proffered position as qualifying as a specialty occupation. The overall responsibilities for the proffered position contain generalized functions without providing sufficient information regarding the particular work, and associated educational requirements, into which the duties would manifest themselves in their day-to-day performance within the petitioner's operations. The petitioner has not demonstrated how the performance of the duties of the proffered position, as described by the petitioner, would require the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent.

The abstract level of and inconsistent information provided regarding the duties of the proffered position preclude a determination that the position proffered here is a specialty occupation position. The petitioner has not provided sufficient details regarding the nature and scope of the beneficiary's employment or substantive evidence regarding the actual work that the beneficiary would perform. 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 fail to communicate (1) the substantive nature and scope of the beneficiary's employment; (2) the actual work that the beneficiary would perform; (3) the complexity, uniqueness and/or specialization of the tasks; and/or (4) the correlation between that work and a need for a particular educational

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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).

level of highly specialized knowledge in a specific specialty (or its equivalent). Consequently, this lack of evidence prohibits a determination that the petitioner's proffered position qualifies as a specialty occupation under the pertinent statutory and regulatory provisions.

That is, the failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under 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 entry into 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. Thus, the petitioner has not established that the proffered position is a specialty occupation under the applicable provisions.

The material deficiencies in the record regarding the actual duties of the proffered position require the dismissal of this appeal.<sup>4</sup> As the petitioner 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. For this reason, the appeal will be dismissed.

It is noted that, even if the proffered position were established as being that of a computer programmer, a review of the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (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 programmer 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 June 11, 2015). As such, absent evidence that the position of computer programmer 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.

We will also briefly address the advisory opinion letter prepared by Dr. [REDACTED] a professor in the computer science department at [REDACTED] who offers his perspective on computer programmer/analyst positions. Dr. [REDACTED] noted that he had reviewed the letter submitted in support of the petition, containing a description of the proffered position, as well as the *Handbook* and the O\*NET Summary Reports. Dr. [REDACTED] observed that the title

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<sup>4</sup> We note that the petitioner submitted copies of agreements it has with companies such as [REDACTED] however, the agreements are not accompanied by evidence that the beneficiary will be working pursuant to such agreements. We also note that the record contains a "Staffing Agency Agreement" in which the petitioner agrees to supply "temporary staffing and/or consulting services." While the relevance of such an agreement has not been established, we observe that the nature of that agreement is in accord with the petitioner's assertion that it provides "IT outsourcing."

of the proffered position is common to the computer industry and refers to a person able to undertake the software development process. Dr. [REDACTED] opined that the "ability to fill this role requires knowledge of programming languages, operating systems, development environments and testing methodologies, knowledge that is normally acquired while earning one of the computer-related baccalaureate degrees, such as computer science." Dr. [REDACTED] relied on the description of some of the duties outlined in the O\*NET Online's excerpt on the occupation of computer programmer to confirm that the position proffered here, which includes some of these same duties, is a specialty occupation. Dr. [REDACTED] concluded that a "computer programmer" title is generally only given to persons who have earned one of the computer-related baccalaureate degrees, such as Computer Information Systems or Management Information Systems, because it requires one to operate at a professional level with programming languages, operating systems and development environments.

First, Dr. [REDACTED] opinion, while noting that he reviewed the petitioner's description of duties, the *Handbook*, and O\*NET Online, does not indicate whether he visited the petitioner's business premises or spoke with anyone affiliated with the petitioner, so as to ascertain and base his opinion upon the substantive nature and educational requirements of the proposed duties as they would be actually performed. Additionally, Dr. [REDACTED] does not specify or discuss any relevant research, studies, surveys, or other authoritative publications as part of his review and or as a foundation for his opinion.

In addition, we note that the O\*NET Online Summary Report, referenced by Dr. [REDACTED] is insufficient to establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor's degree or its equivalent in a specific specialty. Specifically O\*NET OnLine does not state a requirement for a bachelor's degree in a specific specialty. Further, Dr. [REDACTED] does not discuss the fact that the petitioner submitted an LCA certified for a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation, which signifies that the beneficiary is only expected to possess a basic understanding of the occupation.<sup>5</sup> The omission of such an important factor diminishes the evidentiary value of his opinion.

Finally, Dr. [REDACTED] does not provide any meaningful analysis on how a computer-related baccalaureate degree, such as computer science or such as computer information systems, or management information systems are directly related to the duties and responsibilities of the proffered position. That is, other than his conclusory statements, he does not discuss specific bachelor's level coursework and provide an analysis of how and why such coursework is directly related to particular duties. The extent of meaningful analysis involved in the formulation of the position-evaluation opinion, therefore, is questionable. Dr. [REDACTED] does not sufficiently explain

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<sup>5</sup> See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

the empirical basis for his conclusory opinion.

We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). For the reasons discussed above, the letter from Dr. [REDACTED] does not support the petitioner's assertion that the proffered position qualifies as a specialty occupation.

#### IV. THE BENEFICIARY'S QUALIFICATIONS

In the instant matter, the Director found that the beneficiary would not be qualified to perform the duties of the proffered position. In this matter, we note that we do not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, the 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 petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree in a specific specialty, or its equivalent, also cannot be determined.

Nevertheless, we agree with the Director's determination regarding the beneficiary's qualifications. We find that the beneficiary's foreign bachelor's degree in mechanical engineering is insufficient to qualify him to perform the services of a specialty occupation unless the academic courses pursued and knowledge gained is a realistic prerequisite to a particular occupation in the field. The petitioner must demonstrate that the beneficiary obtained knowledge of the particular occupation in which he or she will be employed. See e.g., *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm'r 1968). The petitioner, however, did not submit sufficient evidence regarding the nature of the proffered position to make an assessment of whether the beneficiary obtained knowledge equivalent to at least a bachelor's degree in a specific specialty required by the particular occupation in which he will be employed.

The petitioner here is seeking the beneficiary's services as a Computer Programmer/Analyst. As previously discussed, the petitioner asserts in the LCA that the proffered position falls under the occupational category for computer programmers. However, the evidence of record does not demonstrate how the beneficiary, by virtue of holding a foreign degree in mechanical engineering, is qualified to perform the duties of a specialty occupation field in computer technology.

The position evaluation prepared by Dr. [REDACTED] described above also included a section on the beneficiary's qualifications. Dr. [REDACTED] noted that the beneficiary's formal education "included five courses relating to aspects of computers and mathematics that would apply directly to an education equivalency in CIS, including Computer Programming, Microprocessors, Operations Research Production Management and Statistical Quality Control." Dr. [REDACTED] opines that "[g]iven the shortage of programmers at that time, [the beneficiary] would have been qualified

for an entry-level position as a computer programmer.<sup>6</sup> However, Dr. [REDACTED] does not identify or otherwise substantiate that these five courses resulted in a bachelor's degree in a computer-specific discipline and it is clear that the foreign university did not grant the beneficiary a bachelor's degree in a computer-specific discipline. Moreover, Dr. [REDACTED] has not provided evidence of his expertise to comment on either the shortage of programmers in India or the requirements of particular employers in India.

We further observe that Dr. [REDACTED] evaluation of the beneficiary's foreign degree does not offer an opinion as to the U.S. equivalency of the foreign degree. Accordingly, the record does not establish that the beneficiary possesses (1) a U.S. bachelor's or higher degree from an accredited college or university, that is required by the specialty occupation from an accredited college or university, (2) a foreign degree determined to be equivalent to a U.S. baccalaureate or higher degree required by the specialty occupation from an accredited college or university, or (3) a pertinent license. Thus, the only remaining avenue for the beneficiary to qualify for a specialty occupation position in a computer technology field is pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). 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 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.

The provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require one or more of the following to determine whether a beneficiary has achieved a level of knowledge, competence, and practice in the specialty occupation that is equal to that of an individual who has a baccalaureate or higher degree in the specialty:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;<sup>7</sup>

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<sup>6</sup> The beneficiary's foreign degree was awarded in 2001.

<sup>7</sup> The petitioner should note that, in accordance with this provision, we will accept a credentials evaluation service's evaluation of *education only*, not experience.

- (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 . . . .

The petitioner in this matter relies upon the evaluation of the beneficiary's academic and work experience authored by Dr. [REDACTED] to demonstrate the beneficiary's qualifications. In the letter, dated July 26, 2014, Dr. [REDACTED] listed the documents he relied upon for his opinion regarding the beneficiary's qualifications. Dr. [REDACTED] in his evaluation of the beneficiary's qualifications, notes the beneficiary's claimed employment and the titles that he held, his certificates issued by [REDACTED] as well as the beneficiary's formal education, and then offers his conclusion that the beneficiary has documented "well over twelve years in positions in which he deployed the knowledge and skills normally acquired while earning one of the computer-related baccalaureate." Dr. [REDACTED] further concludes: "[the beneficiary] has earned an equivalency to a bachelor's degree in Computer Information Systems owing to over [f]ifteen years of experience deploying the knowledge and skills normally acquired while earning such a degree."

Based upon Dr. [REDACTED] evaluation, we are unable to ascertain how he determined the exact nature of the beneficiary's duties in his employment.<sup>8</sup> Overall, it is not possible to ascertain how Dr. [REDACTED] obtained knowledge of the beneficiary's work responsibilities sufficient to support his conclusion that "[the beneficiary] has earned an equivalency to a bachelor's degree in Computer Information Systems owing to over [f]ifteen years of experience deploying the knowledge and skills normally acquired while earning such a degree." Dr. [REDACTED] does not discuss the beneficiary's professional experience in detail and does not otherwise present an adequate factual foundation for the opinion that he offers. That is, we do not find Dr. [REDACTED] opinion to be supported by evidence sufficient to corroborate his conclusion.

Again, 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.* As noted above, the evaluation is not supported by probative evidence to support the evaluator's claims regarding the beneficiary's professional experience.

As the petitioner has not satisfied any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1)-(4), we will evaluate the beneficiary's credentials pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). By its very terms, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) is a matter strictly

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<sup>8</sup> The letters from the beneficiary's employers do not describe the duties he performed.

for USCIS application and determination. 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.

Upon our review of the totality of the record, the petitioner has not provided corroborating evidence as outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Thus, we cannot conclude that the beneficiary's training and/or work experience included the theoretical and practical application of a body of highly specialized knowledge in a field related to a specific specialty occupation position; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree in the specific occupation, or its equivalent; or that the beneficiary has recognition of expertise in the industry. We note specifically, that the letters submitted and the beneficiary's resume do not include sufficient probative information regarding the beneficiary's various positions to identify his specific duties and to substantiate that his experience was gained while working with peers, supervisors, or subordinates who have degrees in the specific occupation or its equivalent.

As such, since evidence was not presented that the beneficiary has at least a bachelor's degree in a specific specialty, or its equivalent, directly related to the duties and responsibilities of the proffered position, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

For the reasons related in the preceding discussion, we affirm the Director's decision that the beneficiary is not qualified to perform the duties of a specialty occupation in a computer field. Thus, the appeal must be dismissed for this additional reason.

## V. CONCLUSION

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 we conduct appellate review on a *de novo* basis).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of the enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 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; *see e.g., Matter of Otiende*, 26 I&N Dec. at 128. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.