



U.S. Citizenship  
and Immigration  
Services

(b)(6)



**JUN 17 2015**

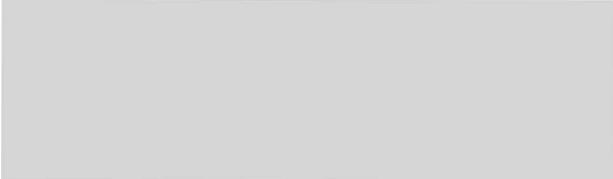
DATE:

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.

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a four-employee "Computer Software Consulting Services or Consultants" business established in [REDACTED]. In order to employ the beneficiary in a position it designates as a "JAVA Software Engineer" 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 determining that the petitioner had not established that the proffered position qualifies for classification as a specialty occupation.<sup>1</sup>

The record of proceeding before this office includes the following: (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), the petitioner's brief and additional documentation. We reviewed the record in its entirety before issuing our decision.<sup>2</sup>

Upon review of the totality of the evidence, we find that the evidence of record does not overcome the Director's grounds for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

#### I. THE PROFFERED POSITION

The petitioner identified the proffered position as a "JAVA Software Engineer" on the Form I-129, and indicated the beneficiary would not work off-site. The petitioner attested on the required Labor Condition Application (LCA) that the occupational classification for the position is "Software Developers, Applications," SOC (ONET/OES) Code 15-1152, at a Level II (qualified) wage.<sup>3</sup> The LCA was certified on March 18, 2014, for a validity period from July 1, 2014 to June 30, 2017. The LCA identified the beneficiary's employment location as [REDACTED] New Jersey. The petitioner described the beneficiary's duties on the Form I-129 Supplement H as "software development for financial systems[,] primarily server side, JAVA."

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<sup>1</sup> The Director noted that it did not appear that the beneficiary is qualified to perform the duties of a software engineer; however, the petition was not denied on that basis.

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

<sup>3</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).

In response to the RFE, the petitioner provided an overview of the beneficiary's proposed work, indicating that the beneficiary "will participate in the development of the framework for the financial instrument operations" and that the "major function of this framework is to provide a scripts language for the financial instruments analysis." The petitioner added that the beneficiary's responsibilities and the requirements for the position included the following:

- Software requirements analysis, primarily from the server standpoint, partially from the system stand point (10% of his time)
- Software design, primarily from the server stand point, partially from the system stand point (20% of his time)
- Developing algorithm for a syntax interpreter (40% of his time)
- Coding system, server side (30% of his time)

The first two tasks require a strong knowledge in the product development. From the common practice in the Software Development area, it is well established that Baccalaureate or preferably Master degree in engineering filed [*sic*] is required for such tasks.

The third task requires and [*sic*] an advanced degree, preferably Master degree, since, this position is required specialized knowledge in program language sematic to create an interpreter. [The beneficiary] covered several specialized disciplines that are available in Master programs and that would benefit the project.

- Linguistic and software tools. CAD
- Advanced mathematics
- Scientific study basics
- Diagnostics, forecasting, non-destructive testing and quality management.

The last task does not always require Baccalaureate or Master degree, but taking in account that [the beneficiary] will have to implement an advanced algorithm related to the language interpreters, it is strongly suggested to use a person who went through Master degree programs and showed his capabilities for advanced tasks.

The petitioner stated that, based on the above, "the position requires an advanced degree in engineering with advanced skills in Linguistic and software tools."

The petitioner also referenced an attachment to its response to the Director's RFE, indicating it is a full position description. The referenced attachment is the petitioner's Internet Job Posting for a position titled "Sr. Software Engineer, Java, Capital Markets" which indicates that the "position is to participate in development of financial applications aimed at serving one of the world [*sic*] major banks." The petitioner identified the skills required for its advertised position as strong Java knowledge, OOP design, and Database and SQL experience. The job posting noted that "[f]inancial experience is not required, but of course will be a plus." The job posting did not

reference a required degree. The petitioner also included copies of a printout of individuals it claimed had responded to this job announcement, and email transmissions confirming interviews for the position.

## II. SPECIALTY OCCUPATION

The 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

As observed above, the issue here is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. 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."

One consideration that is necessarily preliminary to, and logically even more foundational and fundamental than the issue of whether a proffered position qualifies as a specialty occupation, is whether the petitioner has provided substantive information and supportive documentation sufficient to establish that, in fact, the beneficiary would be performing services for the type of position for which the petition was filed. Another such fundamental preliminary consideration is whether the petitioner has established that, at the time of the petition's filing, it had secured non-speculative work for the beneficiary that corresponds with the petitioner's claims about the nature of the work that the beneficiary would perform in the proffered position.

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 initially provided a perfunctory one-sentence description of the proposed duties of the proffered position on the Form I-129 Supplement H. In response to the Director's RFE, the petitioner provided a broad overview of the duties of the position. Its job posting for the position indicated generally that the duties of the successful candidate "would be to develop a server Java framework for trading systems." On appeal, the petitioner submits a description of duties taken verbatim from the Department of Labor's *Occupational Outlook Handbook's (Handbook)* chapter on Software Developers and asserts that this is a more detailed description for its proffered position.<sup>4</sup> The petitioner references the *Handbook's* statement that "[s]oftware developers usually have a bachelor's degree, typically in computer science, software engineering, or a

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<sup>4</sup> For additional information regarding the occupational category "Software Developers," see U.S. Dept'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 9, 2015).

related field" to demonstrate that the proffered position is a specialty occupation.<sup>5</sup> These descriptions are insufficient to demonstrate that the individual performing the general duties must have a bachelor's degree in a specific discipline, in order to perform them. The petitioner does not provide sufficient insight into the actual day-to-day work the beneficiary will be expected to perform as it relates to work for the petitioner on any of the petitioner's proposed projects.

We also observe that the petitioner here has not identified the particular project to which it will assign the beneficiary except in the most general of terms. The petitioner noted that the beneficiary will work on a project, that its partner in the project is "[redacted]" and that the beneficiary "will work in our offices." The petitioner noted further that it is possible "we will have to visit our end-user customers for few days, but it will happen very rarely and only on particular stages of the project (requirements analysis, deployments, etc)." When referring to the project to which the beneficiary would be assigned, the petitioner referenced a "[redacted]" attached to the response. The "[redacted]" is titled "[redacted]" and provides a timeline for design input beginning in 2014 to "compilation language" in 2018. The petitioner also submitted a copy of its "Vendor Agreement" with "[redacted]", dated May, 21, 2010, which identified "[redacted]" as the client and the petitioner as the contractor. The statement of work attached to the Vendor Agreement is dated July 13, 2010, with a start date of July 26, 2010 and an end date of on or about October 28, 2010 or satisfactory completion of services. The Statement of Work does not identify the "[redacted]" project but refers generally to a project related to a credit trading system.

Additionally, the petitioner provides incomplete information regarding the purported project. For example, the petitioner claims that its partner in the claimed project is "[redacted]" but it does not submit a current contract or statement of work, purchase order, or other evidence describing the partnership, the role of each company, and the details of the project including the number and type of resources needed to complete the project. 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)).

Although the petitioner references "end-user customers," it does not identify the type of end-user or discuss whether it currently has contracts or purchase orders with any end-users. The only information in the record before the Director regarding the petitioner's claimed project was a

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<sup>5</sup> We note here that when discussing an occupational title such as software developer, the petitioner cannot repeat portions of the generalized descriptions found in the *Handbook* to establish the position is a specialty occupation. Such a generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. When establishing a position as a specialty occupation, the petitioner must describe the specific duties and responsibilities to be performed by the beneficiary in relation to its particular business interests. In the instant matter, the petitioner has offered no description of the duties of its proffered position beyond the generalized outline it provided at the time of filing and in response to the Director's RFE.

██████████ titled "██████████" which provided a generic timeline for design input beginning in 2014 to "compilation language" in 2018. On appeal, the petitioner acknowledges that its "executive team is still working on the project documents" and submits general information regarding what appears to be the initial module for the design input of a '██████████' project. Although the petitioner also indicates that it has entered into an agreement with a marketing subcontractor as part of its project plans, the agreement is dated subsequent to the filing of the petition.<sup>6</sup>

The petitioner also references its "development team" and claims that the location of the "development team" has moved from the location designated on the LCA to a new location. We have reviewed the lease agreement submitted on appeal but find that upon review of the totality of the record, the record does not include sufficient information to confirm that the petitioner actually has obtained sufficient work space for its "development team." In that regard we note that the lease agreement is for one year for a project that the petitioner claims will last until 2018. The petitioner has not identified the number of individuals included in its "development team." Thus, it is not possible to ascertain from the broad and generic information provided regarding the petitioner's claimed project the actual number of resource hours dedicated to each phase of the project and the resources' specific duties related to the project. Regarding the petitioner's lease agreement, the petitioner has not submitted evidence that it has paid rent and the record includes insufficient probative information identifying the petitioner's presence within the rented office complex.

Upon review of the totality of the record, including the late-submitted lease agreement which does not correspond to the beneficiary's employment location attested to on the petitioner's LCA, the lack of information regarding the petitioner's "development team," and the lack of probative evidence regarding the project's details, we cannot conclude that a viable project existed when the petition was filed. Moreover, the record lacks substantive information regarding the viability of work to be performed on the project and evidence that any work to be completed requires the knowledge of a specialty occupation worker as the term is interpreted according to the applicable statutes and regulations.

Notably, other than indicating generally that the beneficiary will utilize third party software in working on the petitioner's project, the record does not have specific and detailed evidence regarding the beneficiary's actual day-to-day tasks. That is, to the extent that they are described, the proposed duties do not provide a sufficient factual basis for conveying the substantive matters that would engage the beneficiary in the performance of the proffered position for the entire period requested.

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<sup>6</sup> The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

The job descriptions do not persuasively support the claim that the position's day-to-day job responsibilities and duties would require the theoretical and practical application of a particular educational level of highly specialized knowledge in a specific specialty directly related to those duties and responsibilities. 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. Thus, 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.

Accordingly, the record lacks substantive evidence establishing that, at the time the petition was filed, the petitioner had secured non-speculative work for the beneficiary that corresponds with its claims regarding even the general nature of the work it described in its submitted position description. That is, the petitioner has not provided sufficient evidence establishing that it had work for the beneficiary to perform. Again, without supporting documentary evidence, the petitioner has not met its burden of proof. *Id.* As the record in this matter is insufficient to substantiate the beneficiary's actual work for the duration of the requested period, we cannot conclude that the petitioner has established that it will employ the beneficiary in a specialty occupation for that period.

Based upon a complete review of the record of proceeding, we find that the evidence of record does not establish (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. Consequently, these material omissions preclude a determination that the petitioner's proffered position qualifies as a specialty occupation under the pertinent statutory and regulatory provisions. There is a lack of probative evidence substantiating the petitioner's claims with regard to the duties, responsibilities and requirements of the proffered position.

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. That is, the evidence of record's 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.

Accordingly, 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. We affirm the Director's determination that the petitioner has not provided a description of the actual work the beneficiary will perform and has not established that it has sufficient H-1B work for the requested period of intended employment. For this reason, the appeal will be dismissed and the petition denied.

We further note that in this matter, the petitioner initially did not list its educational requirement for the proffered position. In response to the Director's RFE, the petitioner claimed that "the position requires an advanced degree in engineering with advanced skills in Linguistic and software tools." However, the petitioner's job posting for the position only listed skills in Java and OOP design and database and SQL experience. The petitioner did not identify any particular educational requirements for the position. On appeal, the petitioner references the *Handbook's* statement that "[s]oftware developers usually have a bachelor's degree, typically in computer science, software engineering, or a related field" and asserts that a degree requirement in computer science or a related field is common in the IT industry.<sup>7</sup>

Thus, in addition to the material deficiencies regarding the duties of the position as discussed above, the petitioner has not submitted a consistent record regarding its educational requirements for the proffered position. 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). Notably, even if the petitioner indicated that the proffered position required either an engineering degree, as stated in its response to the Director's RFE, or a computer science degree as indicated in the *Handbook*, the petitioner has not established that its requirements or industry requirements demonstrate the proffered position is a specialty occupation. The petitioner, who bears the burden of proof in this proceeding, has not established that computer science and engineering in general are closely related fields. Absent this evidence, it cannot be found that the particular position proffered in this matter has a normal minimum entry requirement of a bachelor's or

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<sup>7</sup> We have reviewed the four Internet job postings from other companies submitted by the petitioner on appeal. We note this documentation does not establish that the proffered position qualifies as a specialty occupation. First, the petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers' recruiting history for the type of jobs advertised. Second, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices. Further, to establish that an organization is similar, the petitioner must demonstrate that it shares the same general characteristics with the advertising organization. It is insufficient for the petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion. Here, the record does not include documentary evidence substantiating that the companies advertising are in the petitioner's industry, that the positions advertised are parallel to the proffered position, and that the advertising organizations are similar to the petitioner. Again, going on the record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

higher degree in a specific specialty or its equivalent under the petitioner's own standards. Accordingly, as the evidence of record does not establish a standard, minimum requirement of at least a bachelor's degree *in a specific specialty* or its equivalent for entry into the particular position, it does not support the proffered position as being a specialty occupation and, in fact, supports the opposite conclusion.

The petitioner, in response to the Director's RFE, also appears to rely on the beneficiary's education and background to establish that the proffered position is a specialty occupation. However, USCIS cannot determine if a particular job is a specialty occupation based on the qualifications of the beneficiary. A beneficiary's credentials to perform a particular job are relevant only when the job is first found to qualify as a specialty occupation. USCIS is required instead 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].").

The material deficiencies in the record preclude approval of the petition. The petitioner has not established that the position proffered here is a specialty occupation.

### III. BENEFICIARY'S QUALIFICATIONS

In the instant matter, the Director noted that it did not appear the beneficiary would be qualified to perform the duties of the proffered position. However 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, and find that the credential evaluation submitted establishes only that the beneficiary has been awarded foreign degrees that are equivalent to degrees in radio electronics engineering. The beneficiary's subsequent work experience that may be related to the duties of the proffered position has not been evaluated. Moreover, the record does not include evidence of the beneficiary's training and/or work experience, as well as the recognition of expertise in the specialty through progressively responsible positions directly related to a specialty. See 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and (D)(1). 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). Here, the petitioner 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 would

be employed. As such, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

#### IV. CONCLUSION

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.<sup>8</sup>

**ORDER:** The appeal is dismissed.

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<sup>8</sup> As the identified grounds of ineligibility are dispositive of the petitioner's appeal, we need not address any additional issues in the record of proceeding.