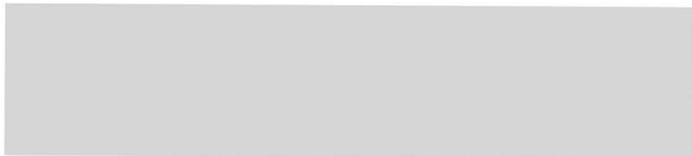




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 26 2015

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

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) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

I. PROCEDURAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as 105-employee "IT Services" company established in [REDACTED]. In order to employ the beneficiary in what it designates as a full-time "Programmer Analyst" position at a salary of \$68,000 per year,¹ the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The petitioner is requesting to employ the beneficiary from October 1, 2013 to September 1, 2016.

The Director denied the petition, finding that the evidence of record did not establish that the beneficiary is qualified to perform services in a specialty occupation. The petitioner now files this appeal, asserting that the beneficiary is qualified for the proffered position.

We base our decision upon our review of the entire record of proceeding, which includes: (1) the Form I-129 and the supporting documentation filed with it; (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, Notice of Appeal or Motion, and the petitioner's submissions on appeal.

As will be discussed below, we have determined that the Director did not err in his decision to deny the petition. However, a beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. U.S. Citizenship and Immigration Services (USCIS) is required to determine first, whether the proffered position qualifies as a specialty occupation, and second, whether an alien beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation]."). In the instant case, the record of proceeding does not establish that the proffered position qualifies as a specialty occupation.² For this additional reason, the appeal will be dismissed, and the petition will be denied.

II. SPECIALTY OCCUPATION

Beyond the decision of the Director, we find insufficient evidence to establish that the proffered position qualifies for classification as a specialty occupation.

¹ The petitioner states on the Labor Condition Application that the beneficiary will be paid \$67,371 per year.

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

A. Legal Framework

To meet its burden of proof in establishing the proffered position as a specialty occupation, 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires [(1)] 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 requires [(2)] 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, the 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), 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.

We note that, as recognized by the court in *Defensor, supra*, where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. See *Defensor v. Meissner*, 201 F.3d at 387-388. The court held that the former Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. *Id.* at 384. Such

evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

B. Proffered Position

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a "Programmer Analyst," and that it corresponds to Standard Occupational Classification (SOC) code and title 15-1121, "Computer Systems Analysts," from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I position.

In support of the petition, the petitioner submitted a letter dated March 29, 2013, in which it stated under the heading "Itinerary of Definitive Employment" that "[t]he beneficiary will be working at [REDACTED] with a work location of: [REDACTED] [REDACTED] for the entire duration of the requested employment." The petitioner then listed the job duties of the proffered position as follows:

- Understands system design, application data models and entity relationships and contributes to finalizing the business requirements[;]
- Map functional requirements, transforming them into technical requirements, and advise on best technical solutions for business requirements[;]
- Participate in code and technical requirements reviews[;]
- Develop and implement documented technical design to meet the business requirement[;]
- Unit test system changes with ability to identify and resolve issues[;]
- Coordinates implementation of changes to existing applications[;]
- Documents configuration and participates in walkthroughs[;]
- Assists in preparation of system test plans, test cases and scripts[;]
- Supports system and regression testing and helps with ability to identify and quickly resolve issues and uncovered in user acceptance testing for the application development team[; and]
- Provide post-implementation support[.]

In the same letter, the petitioner asserted that it considers itself as "a temporary services employer," which it defined as "one that contracts with clients or customers to supply workers to perform services for the client or customer" and performs several functions related to hiring, assigning, reassigning, paying, and terminating the worker.

The petitioner provided additional information regarding the proffered position in response to the Director's RFE. More specifically, the petitioner attested that it will assign the beneficiary to a project at [REDACTED] pursuant to a Statement of Work dated October 27, 2012. The petitioner stated that "[t]his statement of work [is] until December 15, 2013 and we fully expect it to be renewed for the entire duration of the requested employment." The petitioner further

explained that "[t]he statement of work does not have any employee names as it is [up to the petitioner] to staff the project. The beneficiary will be working on this project for the entire duration of the requested employment." The petitioner attached a copy of the Statement of Work referenced in its letter.

C. Analysis

We will first address, whether there was specialty occupation work available for the beneficiary at the time the Form I-129 was filed.

For H-1B approval, the petitioner must demonstrate that a legitimate need for an employee exists and that it has secured H-1B caliber work for the beneficiary for the entire period of employment requested in the petition.³ In addition, USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or 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).

³ The agency made clear long ago that speculative employment is not permitted in the H-1B program. For example, a 1998 proposed rule documented this position as follows:

Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. See section 214(i) of the Immigration and Nationality Act (the "Act"). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

63 Fed. Reg. 30419, 30419 - 30420 (June 4, 1998). While a petitioner is certainly permitted to change its intent with regard to non-speculative employment, e.g., a change in duties or job location, it must nonetheless document such a material change in intent through an amended or new petition in accordance with 8 C.F.R. § 214.2(h)(2)(i)(E).

The regulation at 8 C.F.R. § 214.2(h)(9)(i)(B) also contemplates that speculative employment is not permitted stating that a "petition may not be filed . . . earlier than 6 months before the date of **actual need** for the beneficiary's services or training . . ."

In this matter, the petitioner asserts that the beneficiary would be assigned to work for the end-client, [REDACTED] for the entire validity period requested, October 1, 2013 to September 1, 2016. However, the evidence of record does not contain sufficient evidence corroborating the petitioner's assertions regarding the beneficiary's claimed assignment. That is, the petitioner has not established that the submitted Statement of Work (SOW), dated October 27, 2012, actually relates to the beneficiary and authorizes his assignment to [REDACTED] for the entire validity period, as claimed. The record of proceeding does not contain any evidence from [REDACTED] other than the SOW.

For instance, the SOW does not contain any specific references to the beneficiary by name.⁴ It also does not specifically reference the proffered position. While the SOW lists the project resources as consisting of one or more Onsite Liaison(s) – Technical Lead(s), Development On-shore – Senior, Intermediate, and Junior Level positions, and QA On-shore - Senior, Intermediate, and Junior Level positions, the petitioner has not established that any of these positions include the proffered position, the title of which is "Programmer Analyst." The petitioner also has not explained how the proffered position and its constituent duties correlate to the work described under "Project Description and Requirements," and the timelines described under "Schedule (milestone dates and deliverables)." Notably, the SOW indicates that the petitioner "will provide a detailed project plan of all activities," but no such detailed plan has been submitted for the record, despite the project's scheduled start date in November of 2012. The SOW further indicates that the milestones of "[o]nboard the on-site team" and "[o]rientation to [REDACTED] standards, processes & Analysis of fit gap" began on November 26, 2012. The petitioner has not explained how the beneficiary could be included on the on-site team without having participated in the onboarding and orientation process.

Moreover, the submitted SOW ends on December 15, 2013. Thus, even assuming *arguendo* that the SOW relates to the beneficiary and authorizes his assignment to [REDACTED] the petitioner still has not sufficiently established how the SOW constitutes reliable evidence of the beneficiary's claimed assignment there for the entire requested validity period (until September 1, 2016).⁵ Although the petitioner asserts that it "fully expect[s] [the SOW] to be renewed for the

⁴ Despite the petitioner's assertion that "[t]he statement of work does not have any employee names as it is [up to the petitioner] to staff the project," the SOW does name two of the petitioner's employees, [REDACTED] and [REDACTED] as senior level representatives. 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).

⁵ The SOW is identified as "Attachment B." The evidence of record does not include the "Consulting Services Agreement ; [REDACTED] ' between [REDACTED] and the petitioner which the SOW states "constitute[s] the full agreement and govern[s] over any conflicting terms found within the Purchase Order or Invoice." We also note that the record does not include an "Attachment A."

entire duration of the requested employment," the petitioner has neither pointed to any language in the SOW nor submitted other evidence corroborating this assertion.⁶ 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)).

As the record of proceeding does not contain sufficient evidence establishing that the beneficiary would be assigned to work for [REDACTED] for the entire validity period requested - and considering that the petitioner is in the business of supplying workers to third-party clients or customers - we cannot find that the petitioner has demonstrated a legitimate need for the beneficiary's services. In other words, the petitioner has not demonstrated that it has secured definitive, non-speculative H-1B caliber work for the beneficiary for the entire period of employment requested in the petition.

Moreover, while the petitioner provided a list of job duties, petitioner-provided duties are often outside the scope of consideration for establishing whether the position qualifies as a specialty occupation. *See Defensor v. Meissner*, 201 F.3d 384, 387-388 (5th Cir. 2000) (stating that the petitioner-provided job duties and alleged requirements to perform those duties were irrelevant to a specialty occupation determination where the nurses in that case would provide services to the end-client hospitals and not to the petitioning staffing company).⁷ Nevertheless, even if we were to consider the petitioner's descriptions, we still would not find them sufficient to explain the circumstances of the beneficiary's assignment at [REDACTED]. The petitioner's descriptions of the duties of the proffered position are overly broad and not explained in the context of [REDACTED] or the particular project described in the SOW. For instance, the petitioner listed one of the job duties as "[u]nderstanding system design, application data models and entity relationships and contributes to finalizing the business requirements." The petitioner did not further elaborate upon what is meant by the term "contributes to finalizing the business

⁶ Contrary to the petitioner's statement that it expects the SOW to be renewed, the SOW lists the effective date of the SOW as ending on December 15, 2013, and does not contain any provisions regarding renewal. In addition, the SOW states that "[t]he Go-Live date is an estimated date and can change within a four (4) week window without a change to the fixed price bid." This statement implies that any work conducted on this particular project beyond four weeks of the go-live date in October 28, 2013 would require a change to the fixed price bid, and thus, would require a new contractual agreement.

⁷ The petitioner contends that "USCIS is fond of quoting *Defensor vs meissner* 201 f 3d 384. However, the facts of that case are completely different then this case. If USCIS wants to quote that case in an adverse decision then USCIS needs to show how the facts are exactly same/similar to this instant petition." [Verbatim].

The petitioner's contention is not persuasive. We find that *Defensor* is applicable here, as the beneficiary will providing his services to the end-client, [REDACTED] and not to the petitioner, which is in the business of supplying workers to third-party clients or customers. *See Defensor*, 201 F.3d at 387-388.

requirements," whose business requirements these are, and what systems and applications are involved. As previously mentioned, the petitioner has not specifically explained how the proffered duties correlate to the work and timelines described in the SOW.

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

Accordingly, as the 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 for classification as a specialty occupation. The appeal will be dismissed for this additional reason.

III. BENEFICIARY'S QUALIFICATIONS

A. Legal Framework

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

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

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

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that 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;⁸
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . . .

B. Analysis

The petitioner did not indicate educational requirements for the proffered position. In support of the Form I-129, the petitioner submitted copies of the beneficiary's degrees from [REDACTED]. Notably, the degree in Master of Computer Applications was issued in December 2004, but has a stamped date of March 16, 2009, and the Degree of Bachelor of Commerce does not have a date of issuance but has a stamp date of March 14, 2003. An academic transcript indicates that the beneficiary received a degree of Bachelor of Commerce/English in April 2001. The Director found that the beneficiary is not qualified to perform services in a specialty occupation, noting that the beneficiary's Degree of Master of Computer Applications from [REDACTED] was not credible, as it was stamped roughly five years after the degree was earned.⁹ The Director also noted some formatting issues with the degree itself.

On appeal, the petitioner submitted a new Course Completion Certificate, dated July 5, 2004, certifying that the beneficiary completed his Master of Computer Application course during the period 2001-2004. The petitioner also submitted an affidavit from the beneficiary explaining why his degree was issued several years after the course completion year of 2004. The beneficiary affirmed in his affidavit that he "completed Master of Computer Applications in 2004 under [REDACTED], INDIA."

Upon review of the newly submitted Course Completion Certificate, however, we still find insufficient evidence to establish that the beneficiary received a Degree of Master of Computer Applications from [REDACTED] as claimed. In particular, the Course Completion

⁸ The petitioner should note that, in accordance with this provision, we will accept a credential evaluation service's evaluation of *education only*, not training and/or work experience.

⁹ As discussed in this decision, the evidence of record is insufficient to establish that the proffered position qualifies for classification as a specialty occupation. Nonetheless, we are discussing the issue of the beneficiary's qualifications here since it was the Director's sole basis for denying the petition.

Certificate was issued by [REDACTED], and bears the stamp of [REDACTED] India, at the top. The stamp on the bottom of the certificate bears the name "[REDACTED]". Neither the beneficiary's affidavit nor the petitioner's appeal brief explained why the beneficiary's degree certificates were issued by apparently different institutions in different cities.¹⁰ The evidence of record also does not explain why the [REDACTED] certificate states that the beneficiary received the "Master of Computer Applications" degree in December 2004, but the [REDACTED] certificate states that the beneficiary completed a "Master of Computer Application" course and is dated five months before the other certificate. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

While the petitioner submitted a credential evaluation report from Dr. [REDACTED] concluding that the beneficiary has the academic equivalent to a United States master's degree in Computer Information Systems, we decline to afford this report probative value. More specifically, Dr. [REDACTED] does not indicate whether he considered, or was even aware of, the delayed issuance of the beneficiary's Degree of Master of Computer Applications from [REDACTED] or the beneficiary's subsequently submitted Course Completion Certificate from an apparently different institution in a different city with an inconsistent date of completion. We consider these to be significant omissions, in that it suggests an incomplete or inaccurate review of the beneficiary's qualifications and a faulty factual basis for his ultimate conclusion. We may, in our discretion, use an evaluation of a person's foreign education as an advisory opinion. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation. *Id.*

For all of the above reasons, the record of proceeding contains insufficient evidence to establish that the beneficiary is qualified to perform the duties of a specialty occupation position. The appeal will be dismissed for this final reason.

IV. CONCLUSION AND ORDER

As set forth above, we find, beyond the decision of the Director, that the evidence of record does not sufficiently establish that the petitioner has definitive, non-speculative work for the beneficiary, and that the proffered position qualifies for classification as a specialty occupation. We also find

¹⁰ The [REDACTED] Course Completion Certificate also states that the beneficiary completed the course in "Master of Computer Application" instead of "Master of Computer *Applications* (plural emphasized)" as stated in the certificate from [REDACTED] and the beneficiary's affidavit.

that the evidence of record is insufficient to establish the beneficiary's qualifications for the proffered position. Accordingly, the appeal will be dismissed and the petition denied.

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, 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.