



U.S. Citizenship
and Immigration
Services

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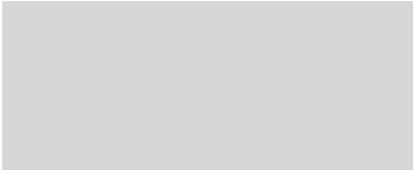
DATE: **MAY 26 2015**

PETITION RECEIPT #: 

IN RE: Petitioner: 
Beneficiary:

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

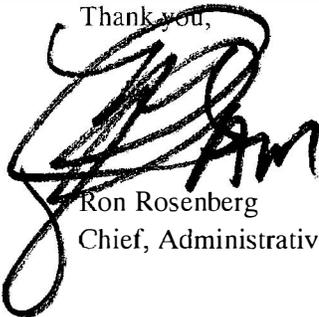
ON BEHALF OF PETITIONER:



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

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

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

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

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a 180-employee "Information systems" company, established in [REDACTED]. In order to employ the beneficiary in a position it designates an "Associate Consultant-JAVA Developer" 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 provided evidence sufficient to establish that the proffered position is a specialty occupation.

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 Form I-290B, Notice of Appeal or Motion, and the petitioner's brief in support of the appeal.

Upon review of the entire record of proceeding, we find that the petitioner has not overcome the Director's grounds for denying this petition. Accordingly, the appeal will be dismissed and the petition will remain denied.

I. STATUTORY AND REGULATORY FRAMEWORK

The issue in this matter is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, 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 also 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.

II. FACTS AND PROCEDURAL HISTORY

The petitioner identified the proffered position as an "Associate Consultant-JAVA Developer" on the Form I-129, and attested on the required Labor Condition Application (LCA) that the occupational classification for the position is "Computer Support Specialists," SOC (ONET/OES) Code 15-1150, at a Level II (qualified) wage.¹ The LCA was certified on March 4, 2014, for a validity period from August 28, 2014 to August 27, 2017.

In the petitioner's letter in support of the petition, dated March 6, 2014, the petitioner stated that it "was founded in [redacted] in response to a growing demand for information technology consulting and project management services." The petitioner provided an overview of several programming languages and a programming platform, and indicated that the beneficiary would be employed as an "associate consultant-JAVA Developer." Regarding the beneficiary's duties, the petitioner stated:

His duties will include test driven development performing Object Oriented programming and design with a managed programming language (C# or Java), as

¹ We observe here that the petitioner attests on the LCA that it used the OFLC Online Data Center, published in 2014, as its source to obtain the appropriate prevailing wage. However, SOC (ONET/OES) Code 15-1150, "Computer Support Specialists," does not appear in the OFLC Online Data Center, All Industries Database, for the time period in which the LCA was submitted, July 2013 to June 2014. The SOC code that appears to most closely correspond to the occupation "Computer Support Specialists" for the time period July 2013 to June 2014 is SOC (ONET/OES) Code 15-1151, "Computer User Support Specialists." <http://www.flcdatacenter.com/OesQuickResults.aspx?code=15-1151&area=18140&year=14&source=1> (last visited May 8, 2015). The Level I and Level II prevailing wages for SOC (ONET/OES) Code 15-1151, "Computer User Support Specialists," are \$32,074 and \$40,622, respectively. As will be discussed in detail below, the petitioner has not submitted a certified LCA that corresponds to the instant petition.

well as any structured Query Language (Oracle, MSSQL, mysql, postgres, etc.). He will also perform web programming (HTTP request/response lifecycle) using Hypertext Markup Language (HTML) and JavaScript, along with Cascading Stylesheets (CSS).

The petitioner stated that the minimum academic requirement for the proffered position is a "bachelor's degree in computer science, information technology or related field." The petitioner enclosed the beneficiary's diploma and transcripts from [REDACTED] in [REDACTED], Ohio showing the beneficiary was awarded a "Bachelor of Science" degree in December 2012.² The petitioner asserted that a "bachelor's degree is normally the minimum requirement for entry into the particular position and we would normally require such a degree for this position."

Upon review of the initial record, the Director requested additional evidence to establish that the proffered position qualifies for classification as a specialty occupation. The Director outlined the specific evidence that could be submitted. In response to the Director's RFE, the petitioner repeated the initial description and supplemented the description as follows:

- Determine operational objectives by studying business functions, gathering information, evaluating output requirements and formats;
- Design computer programs by analyzing requirements, constructing workflow charts and diagrams, studying system capabilities, writing specifications;
- Improve systems by studying current practices and designing modifications;
- Primarily work with Object Oriented programming and design with a managed programming language (C# or Java), as well as any structured Query Language (Oracle, MSSQL, mysql, postgres, etc.).
- Perform web programming (HTTP request/response lifecycle) using Hypertext Markup Language (HTML) and JavaScript, along with Cascading Stylesheets (CSS).

The petitioner identified the particular project to which the beneficiary would be assigned, noted the difficulty of assigning time percentages to different elements, and provided an estimate of the beneficiary's time spent on various functions. The petitioner indicated that its "mission is heavily dependent upon highly educated and expert information systems associates" and reiterated that they "all have at a minimum a bachelor's degree in computer science or a related field." The petitioner noted that at the beneficiary's "level of responsibility" he "will use independent judgment and problem solving in his work."

The record in response to the Director's RFE also included: the petitioner's corporate documents, brochures, and press releases; photographs of the petitioner's location; the petitioner's corporate

² The petitioner asserted that the beneficiary's bachelor's degree is in the fields of information technology and web development; however, the diploma submitted does not identify a particular area of concentration.

structure, career path, and partial organizational chart; a contract and related documents between the petitioner and the State of Ohio; and the employment agreement between the beneficiary and the petitioner.³

Upon review of the record, the Director denied the petition. The Director determined that the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner asserts that the prevailing wage occupational classification on the LCA has no bearing on whether the job set forth on the Form I-129 is a specialty occupation. The petitioner also contends that the proffered position of Associate Consultant-Java Developer is a "Software Developer, Applications." The petitioner references the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* chapters on "Software Developers," "Computer Programmers," "Computer Systems Analysts," and "Database Administrators" to demonstrate that the entry-level education for these workers is a bachelor's degree. The petitioner also references the Occupational Information Network's (O*NET) report on "'**software developers, applications**' at 15-1132, 'computer programmers' at 15-1021, 'computer systems analysts' at 15-1051.00 and 'software engineers' at 15-1031," and notes that under "Education," O*NET indicates that most of these occupations require a four-year bachelor's degree.

The petitioner further asserts that a "'degree in a specific specialty' has been ruled unlawful by the U.S. Federal District Court that has jurisdiction over this employer." The petitioner cites *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), in support of this assertion. The petitioner notes that the beneficiary's curriculum and degree clearly shows a specialized course of study for the position. The petitioner avers additionally, that it normally requires a degree for the position and that the nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree in a related field. The petitioner concludes that it has established by a preponderance of the evidence that the proffered position is a specialty occupation and that eligibility for the H-1B classification has been established.

III. STANDARD OF PROOF

In light of the petitioner's references to the requirement that USCIS apply the "preponderance of the evidence" standard, we affirm that, in the exercise of our appellate review in this matter, as in all

³ The employment agreement between the petitioner and the beneficiary is dated February 27, 2013 and offers the beneficiary a salary of \$37,000 per year. We observe that the petitioner indicated on the Form I-129, that the beneficiary's annual salary will be \$47,000. However, the petitioner has not addressed this salary discrepancy. 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).

matters that come within our purview, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010). In pertinent part, that decision states the following:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

* * *

The "preponderance of the evidence" of "truth" is made based on the factual circumstances of each individual case.

* * *

Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Id.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In doing so, we apply the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon our review of the present matter pursuant to that standard, however, we find that the evidence in the record of proceeding does not support the petitioner's contentions that the evidence of record requires that the petition at issue be approved. Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, we find that the Director's determinations in this matter were correct. Upon our review of the entire record of proceeding, and with close attention and due regard to all of the evidence, separately and in the aggregate, submitted in support of this petition, we find that the petitioner has not established that its claims are "more likely than not" or "probably" true. As the evidentiary analysis of this decision will reflect, the petitioner has not submitted relevant, probative, and credible evidence that leads us to believe that the petitioner's claims are "more likely than not" or "probably" true.

IV. MATERIAL FINDINGS

A. The LCA Does Not Correspond to the Petition

As a matter critically important in its determination of the merits of this appeal, we find that there are significant discrepancies in the record of proceeding with regard to the petitioner's occupational classification of the proffered position and the duties and responsibilities of the proffered position. Based upon a complete review of the record of proceeding, we find that the petitioner has not provided sufficient consistent and credible information to establish that the proffered position is a specialty occupation.

First, the LCA serves as the critical mechanism for enforcing section 212(n)(1) of the Act, 8 U.S.C. § 1182(n)(1). *See* 65 Fed. Reg. 80110, 80110-80111 (indicating that the wage protections in the Act seek "to protect U.S. workers' wages and eliminate any economic incentive or advantage in hiring temporary foreign workers" and that this "process of protecting U.S. workers begins with [the filing of an LCA] with [DOL]."). According to section 212(n)(1)(A) of the Act, an employer must attest that it will pay a holder of an H-1B visa the higher of the prevailing wage in the "area of employment" or the amount paid to other employees with similar experience and qualifications who are performing the same services. *See* 20 C.F.R. § 655.731(a); *Venkatraman v. REI Sys., Inc.*, 417 F.3d 418, 422 & n.3 (4th Cir. 2005); *Patel v. Boghra*, 369 Fed.Appx. 722, 723 (7th Cir. 2010); *Michal Vojtisek-Lom & Adm'r Wage & Hour Div. v. Clean Air Tech. Int'l, Inc.*, No. 07-97, 2009 WL 2371236, at *8 (Dep't of Labor Admin. Rev. Bd. July 30, 2009).

Accordingly, under the H-1B program, a petitioner must offer a beneficiary wages that are at least the actual wage level paid by the petitioner to all other individuals with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application. *See* section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A).

Thus, contrary to the petitioner's assertion, USCIS is required to analyze the certified LCA to determine whether the certified LCA corresponds to and supports the H-1B petition filed on behalf of the beneficiary. That is, the regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS), is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation*

named in the [LCA] is a specialty occupation . . . and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

With respect to the LCA, DOL provides clear guidance for selecting the most relevant O*NET occupational code classification.⁴ The "Prevailing Wage Determination Policy Guidance" states the following:

In determining the *nature of the job offer*, the first order is to review the requirements of the employer's job offer and determine the appropriate occupational classification. The O*NET description that corresponds to the employer's job offer shall be used to identify the appropriate occupational classification If the employer's job opportunity has worker requirements described in a combination of O*NET occupations, the SWA should default directly to the relevant O*NET-SOC occupational code for the highest paying occupation. For example, if the employer's job offer is for an engineer-pilot, the SWA shall use the education, skill and experience levels for the higher paying occupation when making the wage level determination.

The instructions that accompany the LCA indicate that, when completing Section D, "Period of Employment and Occupation Information," the employer should enter the occupational code that most clearly describes the occupation "to be performed." Based on the petitioner's characterization of the proffered position, the LCA should, therefore, list the occupational code for Software Developers, Applications, the employment field that the petitioner claims is reflected in the duties of the proffered position.

The LCA was submitted to the DOL on February 26, 2014 and certified on March 4, 2014 for the occupational classification of "Computer Support Specialists," SOC (ONET/OES) Code 15-1150, at a Level II (qualified) wage.⁵ The OFLC Online Data Center, All Industries Database, for July 2013 to June 2014, the pertinent time period, no longer uses SOC Code 15-1150. As noted above, OFLC Online Data Center uses SOC Code 15-1151, to identify "Computer User Support Specialists."⁶ More importantly, the OFLC Online Data Center indicates the prevailing wage for this occupational classification, in the [redacted] OH metropolitan statistical area (MSA) at a Level II wage as

⁴ 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.

⁵ The Labor Certification Registry website is accessible on the Internet at <https://icert.doleta.gov> (last visited May 8, 2015).

⁶ The Foreign Labor Certification Data Center is the location of the Office of Foreign Labor Certification (OFLC) Online Wage Library for prevailing wage determinations. See <http://www.flcdatacenter.com/> (last visited May 8, 2015).

\$40,622.⁷ If the position proffered here is actually a computer support specialist or a computer user support specialist, the wage offered on the Form I-129 would comply with DOL regulations.

However, the petitioner's proffered wage of \$47,000 does not comply with the prevailing wage in the [REDACTED] OH MSA for a position that encompasses the duties of a "Software Developer, Applications" position. On appeal, the petitioner claims that the position proffered here is actually a software developer, applications (SOC Code 15-1132); however, the prevailing wage for such an occupation at a Level II (qualified) wage, in the [REDACTED], OH MSA is \$71,302, a wage significantly higher than that proffered by the petitioner.⁸ The attested salary of \$47,000 per year on the Form I-129 falls well below that required by law for the position of software developer, applications.

We again note that the employment agreement between the petitioner and the beneficiary offers the beneficiary a salary of \$37,000 per year whereas the petitioner indicated on the Form I-129, that the beneficiary's annual salary will be \$47,000. The petitioner has not addressed this salary discrepancy. 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).

As observed above, even if the petitioner believed its position was described as a combination of O*NET occupations, it should have chosen the relevant occupational code for the highest paying occupation, again in this case "Software Developer, Applications."⁹ However, the petitioner chose the occupational category "Computer Support Specialists" for the proffered position which involves technical assistance, support, and advice, not designing, developing, and deploying software applications and systems.¹⁰ The fact that the LCA so clearly lists the wrong occupational code and

⁷ For more information regarding the wages for "Computer User Support Specialists" – SOC (ONET/OES Code) 15-1151, in [REDACTED], OH MSA, for the period 7/2013 – 6/2014, see [http://www.flcdatacenter.com/OesQuickResults.aspx?code=\[REDACTED\]&area=\[REDACTED\]&year=14&source=1](http://www.flcdatacenter.com/OesQuickResults.aspx?code=[REDACTED]&area=[REDACTED]&year=14&source=1) (last visited May 8, 2015).

⁸ Even if the petitioner had certified the LCA for a Level I (entry) wage, for a "Software Developer, Applications" position in [REDACTED] OH MSA, for the period 7/2013 – 6/2014, the prevailing wage would be \$60,008. See [http://www.flcdatacenter.com/OesQuickResults.aspx?code=\[REDACTED\]&area=\[REDACTED\]&year=14&source=1](http://www.flcdatacenter.com/OesQuickResults.aspx?code=[REDACTED]&area=[REDACTED]&year=14&source=1) (last visited May 8, 2015).

⁹ Here the petitioner references a number of occupations that require a bachelor's degree according to its interpretation of the chapters in the *Handbook* and O*NET's report on software developers, computer programmers, computer systems analysts, database administrators, and software engineers. The petitioner does not appear to claim that the proffered position encompasses the duties of these occupations, other than the occupation of a software developer or a software developer, applications.

¹⁰ For a complete discussion of the duties of a "Computer Support Specialist," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-2015 ed., "Computer Support

the wrong prevailing wage undermines the credibility of the petition. Had the petitioner provided the occupational code and prevailing wage for software developers, applications, to the DOL, it would have been required to pay a much higher wage to the beneficiary. However, the petitioner provided the wrong occupational code and prevailing wage on the LCA and was able to obtain an LCA certified for a different occupation at a much lower rate of pay, then turn to USCIS and claim that the position is for a software developer, applications, in an attempt to qualify the proffered position as a specialty occupation.

To permit the petitioner to engage in this pretense would result in a petitioner paying a wage lower than that required by section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A), by allowing that petitioner to simply submit an LCA for a different occupation and at a lower prevailing wage than the one being petitioned for. Here, the petitioner has not submitted a valid LCA that has been certified for the proper occupational classification, and the petition must be denied for this reason.

B. Requirement of a Bachelor's Degree in a Specific Specialty

The petitioner interprets the *Handbook's* report on the "Software Developer" position to require a bachelor's degree for the occupation demonstrating that this is the typical level of education that most workers need to enter this occupation.¹¹ We have consistently determined that in accordance with the statutory requirements, a petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. There must be a close correlation between the required specialized studies and the position; thus, the mere requirement of a degree, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988) ("The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility."). Thus, while a general-purpose bachelor's degree may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147 (1st Cir. 2007).

We have also reviewed the petitioner's citation to *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, for the proposition that "[t]he knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation-specific majors. What is required is

Specialists," <http://www.bls.gov/ooh/computer-and-information-technology/computer-support-specialists.htm#tab-1>. For a complete discussion of the duties of a "Software Developer," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-2015 ed., "Software Developers," <http://www.bls.gov/ooh/computer-and-information-technology/software-developers.htm#tab-2> (last visited May 8, 2015).

¹¹ We reiterate that the petitioner has not submitted a certified LCA for an occupational classification that corresponds to the petition, if the proffered position is in fact a software developer position.

an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge."

We agree with the aforementioned proposition that "[t]he knowledge and not the title of the degree is what is important." In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, for example, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added). However, upon review of the totality of the record, the petitioner here has not met its burden and establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those duties. The documentation provided is inconsistent and undermines the credibility of the petition.

In any event, the petitioner has furnished insufficient evidence to establish that the facts of the instant petition are analogous to those in *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*.¹² We also note that, in contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before this office, the analysis does not have to be followed as a matter of law. *Id.* at 719.

The petitioner also asserts that the beneficiary's academic curricula cannot be ignored in this matter. In that regard we acknowledge the beneficiary's Bachelor of Science degree and note that his transcript includes a number of completed information technology courses. 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

¹² It is noted that the district judge's decision in that case appears to have been based largely on the many factual errors made by the service center in its decision denying the petition. We further note that the service center director's decision was not appealed to this office. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by our *de novo* review of the matter.

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].").

Finally, in promulgating the H-1B regulations, the former INS made clear that the definition of the term "specialty occupation" could not be expanded "to include those occupations which did not require a bachelor's degree in the specific specialty." 56 Fed. Reg. 61111, 61112 (Dec. 2, 1991). More specifically, in responding to comments that "the definition of specialty occupation was too severe and would exclude certain occupations from classification as specialty occupations," the former INS stated that "[t]he definition of specialty occupation contained in the statute contains this requirement [for a bachelor's degree in the specific specialty or its equivalent]" and, therefore, "may not be amended in the final rule." *Id.*

C. The Proffered 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."

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.

In the instant case, the duties of the proffered position, as described by the petitioner in support of the Form I-129 petition and in response to the Director's RFE, do not include duties that demonstrate the individual performing the duties must have a bachelor's degree in a specific discipline, in order to perform them. For example, the petitioner indicates that the beneficiary will "[i]mprove systems by studying current practices and designing modifications," but does not describe the beneficiary's day-to-day tasks in performing this function. Similarly, the petitioner notes that the beneficiary will "[d]etermine operational objectives by studying business functions, gathering information, evaluating output requirements and formats," as well as "[d]esign computer programs." However, the petitioner does not provide sufficient insight into the actual work the beneficiary will be expected to perform, especially in relation to the petitioner's other information technology employees, to substantiate the petitioner's assertions regarding the education required to perform the duties. Based on the inconsistencies in the record with respect to the work that the

beneficiary will perform, it is not possible to ascertain whether the beneficiary will provide basic technical assistance or will be expected to perform duties at a much higher level. For example, the petitioner claims on the LCA that the beneficiary will be performing the duties of "Computer Support Specialists," yet claims elsewhere that the beneficiary will be performing such duties as "Object oriented programming and design" and "web programming," duties that are manifestly not the work performed by computer support specialists. See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-2015 ed., "Computer Support Specialists," <http://www.bls.gov/ooh/computer-and-information-technology/computer-support-specialists.htm#tab-1> (last visited May 8, 2015).

Upon review of the duties by the petitioner, and the totality of the record, it is not evident that the proposed duties, and the position that they comprise, merit recognition of the proffered position as qualifying as a specialty occupation. 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. 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 which contain generalized functions lack 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.

Based upon a complete review of the record of proceeding, we find that the petitioner has not established (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.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary 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.

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.

V. CONCLUSION

An application or petition that fails to 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 145 (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of the enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1037, *aff'd*, 345 F.3d 683; *see also BDPCS, Inc. v. Fed. Communications Comm'n*, 351 F.3d 1177, 1183 (D.C. Cir. 2003) ("When an agency offers multiple grounds for a decision, we will affirm the agency so long as any one of the grounds is valid, unless it is demonstrated that the agency would not have acted on that basis if the alternative grounds were unavailable.").

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition is denied.