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**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF O-IT, INC.

DATE: OCT. 7, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a 59-employee software development and consulting company established in [REDACTED], seeks to employ the Beneficiary in what it designates as a full-time “Programmer Analyst” position from July 25, 2014 to July 21, 2017. The Petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation. *See* 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, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the petition, finding the evidence of record insufficient to establish that: (1) the proffered position qualifies as a specialty occupation position; and (2) the Beneficiary is qualified to perform the duties of the proffered position. On appeal, the Petitioner asserts that the Director’s bases for denial were erroneous, and contends that the Petitioner satisfied all evidentiary requirements.

The record of proceeding before us contains: (1) the Petitioner’s Form I-129 and the supporting documentation filed with it; (2) the service center’s request for additional evidence (RFE); (3) the Petitioner’s response to the RFE; (4) the Director’s denial letter; and (5) the Notice of Appeal or Motion (Form I-290B) and the Petitioner’s submissions on appeal. We reviewed the record in its entirety before issuing our decision.

For the reasons that will be discussed below, we agree with the Director that the Petitioner has not established eligibility for the benefit sought.¹ Accordingly, the Director’s decision will not be disturbed. The appeal will be dismissed.

I. THE PROFFERED POSITION

The Petitioner claims in the Labor Condition Application (LCA) submitted to support the visa petition that the proffered position corresponds to Standard Occupational Classification (SOC) code and title 15-1131, “Computer Programmers,” from the Occupational Information Network (O*NET).

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

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In a letter dated July 23, 2014, the Petitioner listed the specific job duties of the proffered position, as follows:

- Be involved in complete software Development Life cycle (SDLQ process by analyzing business requirements and understanding the functional work flow information from source systems to destination systems.
- Design and develop SSIs package to import and export data from MS Excel, SQL server 2005 and flat files.
- Be involved in daily batch loads (Full & Incremental) into staging and DOS areas, troubleshooting process, issue and errors using SQL Server Integration Services (SSIS) 2008.
- Be involved in complete SSIS life cycle in creating SSIS packages, building, deploying and executing the packages in both environments (Development and Production).
- Use various Transformations in SSIS Dataflow, Control Flow using for loop containers and Fuzzy lookups etc.
- Be involved in ETL architecture enhancements to increase the performance using query optimizer.
- Implement event handlers and Error Handling in SSIS packages.
- Configure the loading of data into slowly changing dimensions using slowly changing Dimensions wizard.

(Verbatim.)

In the same letter, the Petitioner stated that “the position requires the individual to have a degree in Computer Science, or equivalent with related experience in the information technology field.” The Petitioner stated that the Beneficiary is “very qualified” for the position by virtue of her Bachelor’s degree in Science from [REDACTED] (India), Post-Graduate Diploma in Information Process from [REDACTED] (India), and employment experience.

In other documentation, the Petitioner explained that the Beneficiary would be assigned to its in-house project, ‘[REDACTED]’ which it described as the development of a new touch-based software application geared towards hotel and restaurant management. As evidence of its “[REDACTED]” project and product, the Petitioner submitted a “Project Plan,” “Market Analysis,” and other documentation outlining the developmental phases, timelines, resources, and other information pertinent to the project.

In another letter dated September 19, 2014, the Petitioner confirmed that the Beneficiary “has been assigned as a Programmer Analyst on our In-House ‘[REDACTED]’ application development team at our head quarters [*sic*] in [REDACTED] TX.” The Petitioner further confirmed that the Beneficiary “will work 40 hours a week for the duration of the period requested and she will be directed in Installing, Configure, Developing, Integrating, Testing, Configuration, Deploying, Support, Maintain, and Administer applications during the term.” The Petitioner then listed the same job duties for the proffered position as previously listed in its July 23, 2014 letter. In addition, the Petitioner attested that the proffered position requires the “attainment of a bachelor’s degree in Science or Engineering

stream.” The Petitioner stated that the Beneficiary is qualified for the position based on her education and “five years of professional work experience in Computer Science as a Computer Programmer.”

II. SPECIALTY OCCUPATION

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.

A. Legal Framework

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

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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

We agree with the Director that the evidence of record does not demonstrate that the Petitioner has specialty occupation work available for the Beneficiary. That is, the Petitioner has not submitted sufficient, credible evidence to establish that ‘[REDACTED]’ is a *bona fide* in-house project of the Petitioner, and that the Beneficiary would be exclusively assigned to it. Thus, the evidence of record does not demonstrate that the duties of the proffered position are, in fact, associated with a specialty occupation.

First, the Petitioner has presented the duties comprising the proffered position in relatively broad and vague terms. These job descriptions lack sufficient detail and concrete explanation to establish the substantive nature of the work within the context of the [REDACTED] project, and the associated applications of specialized knowledge that their actual performance would require. For example, the Petitioner stated in its July 23, 2014 and September 19, 2014 letters that the Beneficiary would “[b]e involved” in various activities. However, the Petitioner did not clarify what specific tasks the Beneficiary would “[b]e involved” in, such that we could discern the nature and complexity of each specific task. Furthermore, the Petitioner did not explain how the listed job duties specifically relate to the [REDACTED] project. We note that several of the listed job duties involve the design and development of “SSIs” or “SSIS” packages, but the Petitioner has not further explained what these “SSIs” or “SSIS” packages are, and how they relate to [REDACTED]. There are no specific references to “SSIs” or “SSIS” packages in the “Project Plan” and “Market Analysis” documents.

Throughout the “Project Plan” document, the Petitioner refers to an unidentified “system owner,” “[REDACTED] System Owner,” “CIO/HCG/system owner,” and “user point of contact,” among other similar terms.² It is unclear why the Petitioner would make separate references to a system owner/user, if [REDACTED] is being developed internally by the Petitioner. There are also numerous undefined acronyms and references to other companies whose relationships to the Petitioner are unexplained. For example, section 4.2(a) lists “HCG” as a group within the “core project development team.” Part 5.1(a) states that the [REDACTED] project will deliver IT services to “DOE Headquarters customers.” Part 5.4(a) states that “two organizations, GC and NN, will not provide funding for the projects as anticipated.” Part 11 states that “technical personnel will be trained by [REDACTED].” The Petitioner has not explained what “HCG,” “DOE,” “GC,” and “NN” stand for, what these entities and “[REDACTED]” are, and how they relate to the Petitioner and the [REDACTED] project.

² For instance, the “Project Plan” states under part 5.4(a) that “[t]he system owner, user point of contact and Pilot Group POCs should be involved in the testing of early versions of screens, reports and process flow.” It also states that “[t]he project team is dependent upon the availability of the system owner and Pilot Group members to review the deliverable documents.”

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Not only are the Petitioner's descriptions of the proffered job duties vague, but they are internally inconsistent as well. For instance, the "Project Plan" document lists additional duties for the programmer analyst position that are not listed in the Petitioner's July 23, 2014 and September 19, 2014 letters. More specifically, the "Project Plan" states that the programmer analyst position is responsible for duties including "[a]nalyze existing program and prepare cost analysis report for alternate solutions," "[p]erforms audit on client system," and "[a]ssist in client Training and deployment strategy." The Petitioner has not explained why these and other job duties found in the "Project Plan" are not listed in the July 23, 2014 and September 19, 2014 letters. The Petitioner also has not explained why there would be job duties involving an "existing program," "client system" and "client Training," considering the Petitioner's claim that [REDACTED] is a *new* software application being developed *in-house* by the Petitioner.

The Petitioner's "Project Plan" indicates that the Petitioner has already completed the initial research, planning, systems integration, pilot installation, testing, and pilot deployment phases as of August 15, 2014, the date the instant petition was filed.³ The completed phases specifically include the activities of requirements specifications, market research, project planning, customization and integration, and data migration planning. In contrast, the Petitioner asserted in its July 23, 2014 and September 19, 2014 letters that the Beneficiary would "[b]e involved in complete software Development Life cycle," including performing the duties of "analyzing business requirements and understanding the functional work flow information." It is unclear how the Beneficiary could be involved in the "complete" software development life cycle and perform preliminary planning duties such as analyzing business requirements, when according to the "Project Plan," these and many other developmental activities and phases have already been completed by the Petitioner.

In fact, it is not clear what work remains to be done by the Petitioner on the [REDACTED] project, and how much of this work would be allocated to the Beneficiary. Notably, the "Project Plan" states that "a total project expenditure of 7,120 person hours [is] required to test, evaluate, plan, configure screen, query and report features, and install and deploy [REDACTED]" The "Project Plan" then contains a "Resource Loading Chart" listing "the estimated hours required by month for each person on the project." However, this chart indicates that the Petitioner has already completed a total of 7,112 hours of work as of March 2014; there is no explanation as to what additional resources will be allocated to the project after March 2014. Moreover, this chart represents that each programmer

³ The Petitioner's documents contain varying descriptions of the project's phases and completion dates. For instance, a table entitled "Project Life Cycle and Estimated Completion Dates" in the "Project Plan" lists the following eight stages/milestones with their targeted completion dates: (1) Exit the Planning Stage, 01/25/2012; (2) Exit the System Integration Stage, 08/10/2012; (3) Exit the Pilot Installation and Testing Stage, 06/02/2013; (4) Exit the Pilot Deployment and Acceptance Stage, 02/10/2014; (5) Exit the Pilot Post-Implementation, 10/18/2014; (6) Exit the Headquarters-wide Implementation Stage, 09/05/2016; (7) Re-engineering and Customization, 11/30/2016; and (8) Maintenance and Support, Ongoing. The Petitioner duplicated this table in its September 19, 2014 letter.

Another table entitled "Master Schedule/Project Deliverables" lists the following stages and completion dates: (1) Research and Testing, 12/30/2011; (2) Planning, 01/25/2012; (3) System Integration, 08/10/2012; (4) Pilot Installation and Testing, 06/02/2013; (5) Pilot Deployment, 02/10/2014; (6) Pilot Post Implementation Assessment, 06/22/2016; (7) Headquarters Wide Implementation, 09/05/2016; and (8) Customization and Enhancements, 11/30/2016.

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analyst position would work, for example, a total of 92 hours per month during the January – March 2014 period, which is less than full-time employment.⁴ Overall, the information found in the “Project Plan” raises additional questions as to whether the Beneficiary would be assigned to work on the [REDACTED] project on a full-time basis until July 21, 2017, as claimed.

Finally, the record of proceeding lacks objective, credible documentation corroborating the developmental progress reported in the “Project Plan.” For instance, the “Project Plan” indicates that frequent status reports, including project schedules and technical status reports, will be completed as part of the project’s tracking and control mechanisms. However, no examples of these status reports were submitted for the record, despite the Petitioner’s commencement of activities on the project since late 2011 or early 2012.⁵ While the Petitioner submitted a “Market Analysis,” this document is several years old (apparently having been prepared in 2011) and is not probative evidence that the Petitioner has begun substantial work on the [REDACTED] project.⁶

Based upon a complete review of the record of proceeding, we find that the Petitioner has not sufficiently established that [REDACTED] is a *bona fide* in-house project of the Petitioner, and that the Beneficiary would be exclusively assigned to this project, as claimed. Thus, the record of proceeding is insufficient to 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. 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 evidence substantiating the Petitioner’s claims with regard to the duties, responsibilities and requirements of the proffered position.

For these reasons, the evidence of record does not demonstrate the substantive nature of the duties the Beneficiary would perform on that project. That the Petitioner did not 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 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

⁴ In its September 19, 2014 document, the Petitioner specifically stated that the Beneficiary would work 40 hours per week.

⁵ According to the “Resource Loading Chart” and “Master Schedule/Project Deliverables” chart, the Petitioner started expending resources on the project in October 2011, and completed the “Research and Testing” phase on December 30, 2011.

⁶ The “Market Analysis” lists the “current year” as 2011. In addition, contrary to the “Project Plan” indicating that the initial research, planning, systems integration, pilot installation, testing, and pilot deployment phases have already been completed, the “Market Analysis” states that the [REDACTED] product is currently “undergoing market research and initial phases of human resource planning and technical design engineering.”

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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 Petitioner has not satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies for classification as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

III. BENEFICIARY QUALIFICATIONS

The Director also found that the Beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. However, a 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 evidence of record does not establish that the proffered position qualifies for classification as a specialty occupation. Therefore, we need not and will not address the Beneficiary's qualifications further, except to briefly note additional deficiencies with respect to the submitted evaluations.

The evaluation from [REDACTED] concludes that the Beneficiary has the equivalent of a "Bachelor of Science in General Sciences with a second major in Computer Sciences" based on a combination of her education and work experience. However, in accordance with the provision at 8 C.F.R. § 214.2(h)(4)(iii)(D) (allowing for "[a]n evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials"), we accept a credential evaluation service's evaluation of *education only*, not training and/or work experience.

In addition, the evaluation from Professor [REDACTED], [REDACTED], does not sufficiently explain the factual basis for his ultimate conclusion that the Beneficiary has the equivalent of "at least a Bachelor of Science degree in Computer Information Systems." For instance, Professor [REDACTED] asserts that the Beneficiary "served in progressively sophisticated and responsible positions, together with peers, in both non-managerial and managerial capacities, at a level of work experience equal to a Bachelor's-level training" for a period of five years. However, Professor [REDACTED] does not sufficiently explain and document the source of his information. We note that none of the experience letters from [REDACTED] or [REDACTED] contain any information about the educational requirements of the positions in question, or about the educational qualifications of the Beneficiary's peers, supervisors, or subordinates.⁷ See 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Moreover, Professor [REDACTED] does not sufficiently explain how the Beneficiary's work experience, particularly her position as a Process Specialist with duties such as "[p]urchasing Launch Coordinator (Change Management) for [REDACTED] and

⁷ The evidence of record does not support the Petitioner's conclusion that the Beneficiary has "five years of professional work experience in Computer Science as a Computer Programmer." We note that none of the work experience letters mention any programming duties.

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“[c]ommunicates Cost and Timing Information,” amounts to a bachelor’s-level training in Computer Information Systems. As such, Professor [REDACTED] letter contains conclusory statements that are of limited evidentiary value.

We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

IV. CONCLUSION

Based upon a complete review of the record of proceeding, we find that the evidence does not establish that the proffered position, as described, more likely than not constitutes a specialty occupation.⁸ We also observe deficiencies with respect to the Beneficiary’s qualifications to perform the duties of the proffered position. Accordingly, the appeal will be dismissed and the petition will be denied.

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.

Cite as *Matter of O-IT, Inc.*, ID# 13682 (AAO Oct. 7, 2015)

⁸ As this ground of ineligibility is dispositive of the Petitioner’s appeal, we need not address any additional issues or deficiencies we have noted in the record of proceeding.