



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

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

MATTER OF S-S- INC

DATE: OCT. 8, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a software consulting, training, and development company, seeks to employ the Beneficiary in what it designates as a full-time “Computer Programmer” position. The Petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation. *See* 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, California Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

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 files this appeal, asserting that the Director’s decision was erroneous and overlooked previously submitted evidence.

We base our decision upon our review of the entire record of proceeding, which includes: (1) the Petitioner’s 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 decision denying the petition; and (5) the Petitioner’s appeal and submissions on appeal.

As will be discussed below, we find that the evidence of record is insufficient to establish that the Beneficiary is qualified to perform services in a specialty occupation. Beyond the Director’s decision, we also find that the evidence of record is insufficient to establish that the proffered position constitutes a specialty occupation.¹ Accordingly, the appeal will be dismissed, and the petition will be denied.

I. THE PROFFERED POSITION

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position corresponds to Standard Occupational Classification (SOC) code and occupation title “15-1131, Computer Programmers,” from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I position.

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 March 31, 2014, the Petitioner explained that it is developing a new software product, [REDACTED] and that the Beneficiary “will work solely” on this in-house project. The Petitioner stated that it “aims to bring this product suite to the market in late 2015 and is currently in the process of engaging with potential clients to solidify the systems requirements and conduct prototype building.” The Petitioner further explained that it “forecasts a consistent need for IT resources including but not limited to Systems Analysts, [and] Programmer/Analysts . . . for the duration of this development effort and during the support and maintenance beyond 2015.”

In the same letter, the Petitioner submitted a lengthy list of duties for the proffered position, which include business process analysis and design responsibilities, development responsibilities, test planning and execution responsibilities, and product support responsibilities.

The Petitioner submitted a separate “Itinerary of Services” for the Beneficiary which listed the following job duties for the position titled “Computer Programmer Analyst”:

1. Analyzing business requirements, participating in business and technical discussions with business analysts and team members.
2. Create a project plan and Implement selected business processes by mapping and adapting it in SAP as per the requirement gathered from the client.
3. Configure SD Master Data, Order types, item & schedule line categories[.]
4. Configure SD Delivery types, transfer orders, handling units, shipment types and transportation.
5. Configure Price determination, Tax determination Revenue account determination.
6. Knowledge of key integration points with other modules related to MM/PP e.g. FI, SD[.]
7. Define the business process in detail to cover all requirements as per blue print agreed with client.
8. Develop solutions for Hospitality using SAP SD and CRM modules[.]
9. Configure SAP SD for sales and distribution and SAP CRM for Customer Relationship Management.
10. Define Campaign Management, Lead Management, High Volume Segmentation, and Opportunity management, and Customer Interaction center.
11. Configure ATP checks for Room availability[.]
12. Integrate Sales and Distribution with Finance and Material management modules[.]
13. Configure Sales Volume and Promotions and Rebates as part of SD and CRM integration.
14. Work with the other members of development team ensuring that consistent design standards reflecting sound practices such as reusability, supportability, scalability, etc. are applied.
15. Work with project teams and customer service teams as a technical resource and contribute to successful implementation.

16. Program and modify stored procedures and functions, create alternate views, database administration, in providing product functionality.

In a letter dated August 4, 2014, the Petitioner provided another list of job duties with percentages of time spent on each duty, as follows:

- Part of requirement gathering Business Process Re-engineering, Blueprinting, configuration, Unity & Integration testing, Training, Documentation, Production support, Involve in Feasibility Analysis, Risk Analysis and Gap Analysis Configuration and Customization (9-11%)
- Involve in complex validation rules, cross module integration, workflows and approval processes to implement business logic. Design, develop and test our ERP products according to the company's specifications, technical requirements and process (9-11%)
- Work on configuration of all aspects of SD including enterprise structure defining & assignment, Master data, Presales, Sales order processing, Logistic Execution (Shipping, delivery) and Billing-Invoice (Order to Cash Process). Work on Master Date Management Creation and maintenance of Customer Master, Material Master, Vendor master & Customer Material Information record (9-11%).
- Set up Sales Documents functionality like Sales Documents Header, Sales Document Item, Sales document, schedule line, item category, contracts, and scheduling agreements. Work on complex pricing process of material via Pricing procedure, Condition type, Access sequence, Condition table, and Condition record, pricing routines, calculation Rule (9-11%).
- Designed Order Management Process by Creation of Sales documents – Inquiry, Quotation, Sales order achieved special business process like rush order, cash sales, service order, return orders, Deliveries (outbound & inbound), Billing, Invoicing, credit memo, debit memo. Configure, Designed and to deliver Special Functionalities in SAP like Variant configuration, Configuration Profile, Configuration Class, Dependencies, selection, action, procedure, precondition (9-11%).
- Work different functionality in SAP like Account determination, Revenue Account determination, Material determination, Output determination, Text determination, Partner determination, Free goods determination, Rebates, product selection, Account Receivables, Make to order, Stock transport order (STO), Available to promise (ATP), Copy Control, Log of Incompletion, availability check (9-11%).
- Achieve and map different business process like Consignment sales, Credit management, Rush Order, Cash Sales, Third party material, Inter Company Sales process (9-11%).
- Achieve Shipping and Transportation business process like Shipping Cost, Shipping Document, Handling Unit Management, Batch Management Determination, Route Determination, Packing, Picking, Returnable Packing, and Cross Docking in SAP (9-11%).

- Work on integration of different modules like Finance, Controlling, Warehouse Management, Material Management, Production Planning, and Customer Service with SAP Sales and Distribution. Integrate SAP ECC 6.0 with third party system like Oracle Transportation Management, 3rd Party Logistic Systems (3PL) using functionality like EDI, IDOC (9-11%).
- Provide technical support and consultations to the functional and technical developers in the US and India to develop, design and test our own software product as per company's business blue print (9-11%).

II. SPECIALTY OCCUPATION

We will first discuss whether the proffered position qualifies as a specialty occupation. We are required to follow long-standing legal standards and determine first, whether the proffered position is a specialty occupation, and second, whether the Beneficiary is qualified for the position at the time the nonimmigrant visa petition is filed. *Cf. Matter of Michael Hertz Assocs.*, 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 this matter, it appears the Director did not properly analyze the proffered position to determine whether it meets the definition of a specialty occupation.

A. Legal Framework

To meet the Petitioner's burden of proof with regard to the proffered position's classification as an H-1B 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 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

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who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which Petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

B. Analysis

We find that the evidence of record is insufficient to demonstrate that the duties of the proffered position are in fact associated with a specialty occupation. That is, the Petitioner has not submitted sufficient, credible evidence to establish that the [REDACTED] project is a *bona fide* in-house project of the Petitioner, and that the Beneficiary will be exclusively assigned to it.

First, the Petitioner presented the duties comprising the proffered position in terms of relatively abstract and generalized functions. The 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. Take for example the job duty of "[w]ork with project teams and customer service teams as a technical resource and contribute to successful implementation." The Petitioner did not explain what specific tasks the Beneficiary would be responsible for (i.e., what is meant by the broad terms "work with" and "contribute"), the complexity of such tasks and the knowledge needed to perform them, and who these "project teams" and "customer service teams" are. As another example, the Petitioner stated that the Beneficiary will "[d]efine Campaign Management, Lead Management, High Volume Segmentation, and Opportunity management, and Customer Interaction center." The Petitioner did not explain what particular tasks are involved, what the terms "Campaign Management," "Lead Management," "High Volume Segmentation," "Opportunity Management," and "Customer Interaction center" refer to, and how this duty is related to the [REDACTED] project.

Several of the duties do not appear relevant to the [REDACTED] project at all, such as:

- To gather requirements on vendor management and evolution technique with respect to quality management policy practiced in the current business process, analyze the pricing

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procedure followed with vendors, type of procurement process followed in purchasing stock and non stock materials, services and various ways in which inventory of material is managed in the plant.

- To gather cross functional requirements covering quality management process integrated with other elements of supply chain management ranging from Quality management for incoming goods to outgoing goods, Master inspection characteristics, Sampling procedure and inspection planning, Inspection lot creation, inspection lot processing and notification processing.
- Achieve Shipping and Transportation business process like Shipping Cost, Shipping Document, Handling Unit Management, Batch Management Determination, Route Determination, Packing, Picking, Returnable Packing, and Cross Docking in SAP.
- Designed Order Management Process by Creation of Sales documents – Inquiry, Quotation, Sales order achieved special business process like rush order, cash sales, service order, return orders, Deliveries (outbound & inbound), Billing, Invoicing, credit memo, debit memo. Configure, Designed and to deliver Special Functionalities in SAP like Variant configuration, Configuration Profile, Configuration Class, Dependencies, selection, action, procedure, precondition.
- Work different functionality in SAP like Account determination, Revenue Account determination, Material determination, Output determination, Text determination, Partner determination, Free goods determination, Rebates, product selection, Account Receivables, Make to order, Stock transport order (STO), Available to promise (ATP), Copy Control, Log of Incompletion, availability check

The evidence of record does not indicate how duties such as analyzing procurement, purchasing, and inventory of material in a “plant” setting, or sampling and inspection of “incoming goods to outgoing goods,” are related to the development of an in-house software product geared towards the hospitality industry. Likewise, it is not clear why the [REDACTED] project would involve business processes and functions for shipping, transportation, rush order, cash sales, return orders, rebates, and “make to order” goods. In fact, many of the above duties closely resemble the Beneficiary’s past job duties as found in his resume and employment verification letters.

We also observe some job duties indicating that the Beneficiary will have managerial-level responsibilities. More specifically, the proffered duties include “[m]anage the product development lifecycle process,” and “[p]erform project coordination.” They also include “[i]nvolve in complex validation rules . . . and approval processes to implement business logic.” These duties appear inconsistent with the Level I (entry) wage level selected here. In designating the proffered position at a Level I wage, the Petitioner has indicated that the proffered position is a comparatively low, entry-level position relative to others within the occupation.² The Petitioner's designation of the

² A Level I wage rate is described in DOL’s ‘Prevailing Wage Determination Policy Guidance’ as follows:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if

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proffered position as a Level I, entry-level position is inconsistent with these and other stated duties, and raises additional questions regarding the substantive nature of the proffered position.³

Furthermore, the Petitioner did not submit credible, objective documentation corroborating its claims regarding the Beneficiary's assignment to the [REDACTED] project. In particular, the document

[REDACTED] (Draft v1.0)" contains no references to the Beneficiary or to the proffered position. In fact, this document contains a table entitled "Phase I Budget" listing the resources needed for "Phase I" of the project, which culminates with system [REDACTED] and [REDACTED] to Customers" on June 23, 2015. However, this table does not include a computer programmer position as one of the required resources. The absence of the proffered position from this table is significant, in that the Petitioner requested a validity date beginning on October 1, 2014 and listed several job duties that would likely be performed during "Phase I" of the project.⁴

The Petitioner submitted a "Software Lease Agreement" dated January 15, 2014, through which the Petitioner is leasing the "SAP ECC 6.0 Software Package" from another company. However, the Petitioner has not further explained how it and its outsourced professionals in India are accessing and utilizing this "leased" software package to develop its [REDACTED] product. Moreover, we note that

any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

Thus, in accordance with the above DOL explanatory information on wage levels, the Level I wage rate indicates that the Beneficiary is only required to have a basic understanding of the occupation and carries expectations that the Beneficiary perform routine tasks that require limited, if any, exercise of judgment; that he would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results.

³ The issue here is that the Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is relatively higher than other positions *within the same occupation*. Nevertheless, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), an entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty or its equivalent. That is, a position's wage level designation may be a consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

⁴ For example, it appears that job duties such as "[a]nalyzing business requirements," "[c]reate a project plan," and configuring and developing various modules would have to be performed before the system could go live and be presented to customers.

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the Petitioner requested a validity period of three years (beginning on October 1, 2014 and ending on September 9, 2017), whereas the lease is only for a term of one year.

There are other discrepancies that lead us to question whether the Beneficiary will be placed exclusively in-house, as claimed. The Petitioner stated that the Beneficiary will work “under the direct supervision of [REDACTED] Accounts Manager.” However, according to the Petitioner’s organizational chart, the Beneficiary (identified as “New Employee”) is directly supervised by an unidentified person in the position of “Recruitment” in the Sales and Marketing Department. Meanwhile, [REDACTED] is depicted as overseeing a Consulting/Operations department which includes the outsourced Indian contractors but not the Beneficiary.⁵ The organizational chart’s depiction of the Beneficiary in a completely different department and chain of command than the outsourced Indian contractors undermines the Petitioner’s explanation that it “intends to employ [the Beneficiary] as an in-house computer programmer to work on [REDACTED] in the United States, coordinating the software development with the counterparts in India.”

Finally, while the Petitioner repeatedly stated that the Beneficiary “will work solely for [the Petitioner at its] office located at [REDACTED] MN,” the Petitioner stated in a document entitled “Qualifying Employer-Employee Relationship” that the Beneficiary will “perform his/her duties on the client project at the client’s location.” Similarly, the Employment Offer Letter states that the Beneficiary’s annual salary will be paid “upon timely submission of all time sheets approved by the client,” thus indicating that the Beneficiary will be assigned to a client site.

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). 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.*

For all of the above reasons, we find that the evidence of record does not sufficiently demonstrate that the Beneficiary will be assigned to the in-house [REDACTED] project, if such a project exists. Moreover, even if it were established that the Beneficiary will be assigned to the [REDACTED] project, the evidence still does not sufficiently describe the duties to be performed by the Beneficiary. Consequently, we find that the evidence of record does not demonstrate the substantive nature of the proffered position and its constituent duties. The 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

⁵ The Petitioner’s CEO explained in an affidavit that the company ‘retained professional services of 4 Indian employees . . . in initiating and continuing the development of [REDACTED]’ The Petitioner explained that because [REDACTED] targets U.S. clientele, it needs qualified computer professionals, such as the Beneficiary, in the United States to coordinate the developmental activities.

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 evidence does not satisfy any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation.

III. BENEFICIARY QUALIFICATIONS

Even if the Petitioner had established that the proffered position qualifies as a specialty occupation, the Director correctly determined that the Beneficiary is not qualified to perform the duties of such a specialty occupation.

A. Legal Framework

The statutory and regulatory framework that we must apply in our consideration of the evidence of the Beneficiary's qualification to serve in a specialty occupation follows below.

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;⁶
- (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. . . .

In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5):

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;⁷
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;

⁶ 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.

⁷ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. 8 C.F.R. § 214.2(h)(4)(ii). A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. *Id.*

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- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

It is always worth noting that, by its very terms, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) is a matter strictly for USCIS application and determination, and that, also by the clear terms of the rule, experience will merit a positive determination only to the extent that the record of proceeding establishes all of the qualifying elements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) – including, but not limited to, a type of recognition of expertise in the specialty occupation.

B. Analysis

Upon review, we find the evidence of record insufficient to demonstrate that the Beneficiary's education and experience are equivalent to a United States baccalaureate or higher degree in the specialty occupation.

The Petitioner submitted two evaluations from the [REDACTED] concluding that the Beneficiary has the equivalent of a U.S. bachelor's degree in management information systems based upon a combination of his education and work experience. However, we cannot accept these evaluations. Under 8 C.F.R. § 214.2(h)(4)(iii)(D), we may accept an evaluation of *education* by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials. In accordance with this provision, we will accept a credential evaluation service's evaluation of *education only*, not training and/or work experience.

Moreover, we cannot determine that the Beneficiary has acquired the requisite degree through a combination of education, specialized training, and/or work experience in areas related to the specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). For instance, the letter from [REDACTED] briefly discusses the Beneficiary's job duties, but does not discuss what theoretical and practical application of specialized knowledge were required to perform these duties, nor the educational qualifications of the Beneficiary's peers, supervisors, or subordinates. The letter from [REDACTED] does not demonstrate that the Beneficiary's training and/or work experience included the theoretical and practical application of specialized knowledge required by these duties. The letter also does not include the educational qualifications of the Beneficiary's peers, supervisors, or subordinates at [REDACTED]. We note that the record does not include a letter from the Beneficiary's other employer, [REDACTED] describing the Beneficiary's employment.⁸ We cannot conclude, based upon the limited evidence of record, that the Petitioner has clearly demonstrated that the Beneficiary's training and/or work experience

⁸ The Petitioner submitted several letters including the Beneficiary's "Appointment Letter" from [REDACTED]; however, none of these letters contain any pertinent details regarding the Beneficiary's actual job duties performed for [REDACTED].

included the theoretical and practical application of specialized knowledge required by the specialty occupation; and that the Beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

For the above reasons, the evidence of record is insufficient to demonstrate that the Beneficiary is qualified to perform the duties of a specialty occupation. For this additional reason, the appeal will be dismissed.

IV. CONCLUSION

As set forth above, we find the evidence of record insufficient to establish that the proffered position qualifies for classification as a specialty occupation. We also find the evidence of record insufficient to establish that the Beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the appeal will be dismissed and the petition denied.⁹

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.

Cite as *Matter of S-S- Inc*, ID# 13820 (AAO Oct. 8, 2015)

⁹ As these issues preclude the approval of the petition, we will not address any of the additional deficiencies we have identified on appeal.