



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

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

MATTER OF I- LLC

DATE: JULY 25, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an information technology [IT] development and consulting firm, seeks to temporarily employ the Beneficiary as a “programmer analyst” under the H-1B nonimmigrant classification for specialty occupations. See Immigration and Nationality Act (the Act), section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director, Vermont Service Center denied the petition, concluding that the Petitioner had not established that the Beneficiary was qualified to perform the services of the specialty occupation position claimed in the petition.

The matter is now before us on appeal. In the appeal, which includes a brief and additional evidence, the Petitioner asserts that the Director based her decision upon an incorrect application of law, regulations, and precedent decisions; failed to properly consider the evidence presented; and applied a higher standard of proof than preponderance of the evidence.

Upon *de novo* review, we will dismiss the appeal.¹

I. BACKGROUND

As indicated by the labor condition application (LCA) that it submitted into the record, the Petitioner filed the petition for a position within the Software Developers, Applications occupational group, and assigned “programmer analyst” as the position’s title. The Department of Labor’s *Occupational Outlook Handbook (Handbook)* chapter on software developers indicates that specialty occupation

¹ We follow the preponderance of the evidence standard as specified in *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

positions within that occupational group would usually require at least a bachelor's degree in computer science and strong computer programming skills.¹ In pertinent part, the *Handbook* states:

How to Become a Software Developer

Software developers usually have a bachelor's degree in computer science and strong computer programming skills.

Education

Software developers usually have a bachelor's degree, typically in computer science, software engineering, or a related field. A degree in mathematics is also acceptable. Computer science degree programs are the most common, because they tend to cover a broad range of topics. Students should focus on classes related to building software in order to better prepare themselves for work in the occupation. For some positions, employers may prefer a's degree.

Although writing code is not their first priority, developers must have a strong background in computer programming. They usually gain this experience in school. Throughout their career, developers must keep up to date on new tools and computer languages.

Software developers also need skills related to the industry in which they work. Developers working in a bank, for example, should have knowledge of finance so that they can understand a bank's computing needs.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Software Developers," <http://www.bls.gov/ooh/computer-and-information-technology/software-developers.htm#tab-4> (last visited July 22, 2016).

Therefore, the question before us is whether the evidence of record establishes that, at the time of the petition's filing, the Beneficiary held at least a bachelor's degree in computer science or a closely related specialty, or its equivalent. The record includes documentary evidence regarding (1) the Beneficiary's post-secondary education, both in India and in the United States; (2) her work-experience, both in India and the United States; (3) the courses, in India, for which she received completion certificates; and (4) two evaluations of the Beneficiary's academic history, certificates, and employment history.

Because the Beneficiary did not hold at least a U.S. bachelor's degree in computer science or a related IT discipline at the time of the petition's filing, the Petitioner attempts to establish that the Beneficiary had achieved the equivalent of such a degree by a combination of her academic history, IT-related certificates, and employment history. In this pursuit, the Petitioner refers us to two

(b)(6)

Matter of I- LLC

evaluations of those factors that it obtained from professors – one from a university professor [REDACTED] and the other from a community-college professor ([REDACTED]).

II. LEGAL FRAMEWORK

We apply the following statutory and regulatory framework when adjudicating whether an H-1B specialty-occupation petitioner has established that its beneficiary is qualified to serve in a particular specialty occupation.

A. Statute

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that a foreign national applying for classification as an H-1B nonimmigrant worker in a specialty occupation 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 [Section 214(i)(1)(B) of the Act, 8 U.S.C. § 1184(i)(1)] 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.

As licensure is not an issue, section 214(i)(2)(A) of the Act is not a factor in this appeal.

B. Beneficiary Qualifying Criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C)

Implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) specifies that, to qualify to perform services in a specialty occupation, the foreign national must:

- (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 [(1)] 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 [(2)] have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record reflects that the Beneficiary holds a U.S. baccalaureate or higher degree from an accredited college or university; but it is undisputed that the degree is not in a specialty directly related to the performance requirements of the proffered position. Therefore, the evidence of record cannot satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(1) for a U.S. bachelor's or higher degree in a specific specialty that is required to perform the proffered position. Likewise, because the record of proceedings does not include a foreign degree determined to be equivalent to a U.S. baccalaureate or higher degree required by the asserted specialty occupation, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) does not figure in this appeal. Because there is no assertion of qualifying licensure, the provision at 8 C.F.R. § 214.2(h)(4)(iii)(C)(3) also is not relevant to this appeal.

We will apply the fourth criterion 8 C.F.R. § 214.2(h)(4)(iii)(C), however, as the Petitioner contends that a combination of experience and foreign education qualifies the Beneficiary for service in the type of specialty occupation that the Petitioner asserts. That criterion specifies two requirements for qualifying under it. The evidence of record must establish that the Beneficiary has attained (1) education, specialized training, and/or progressively responsible experience that is equivalent to completion of at least a U.S. baccalaureate in the specialty occupation, and also (2) recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

For the analytical framework for applying them, the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) direct us to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D).

C. The Criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D).

The provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) clarify the evidentiary requirements for establishing educational equivalency in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). Those provisions do this by both defining "equivalence to completion of at least a U.S. baccalaureate or higher degree" and also specifying the means for establishing such degree-equivalency.

The definitional segment at 8 C.F.R. § 214.2(h)(4)(iii)(D) states:

[F]or purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty. . . .

The regulation then specifies that the requisite specialty-degree-equivalency shall be determined by one or more of the following means:

- (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;²
- (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 [(a)] 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 [(b)] the [foreign national] has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . . .

As there is no evidence of college-level equivalency examinations, special credit programs, or certification or registration from a nationally-recognized professional association or society, the avenues for degree-equivalency determinations under 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(2) and (h)(4)(iii)(D)(4) will not detain us. Also, as the record's evaluation documents were not presented as products of a credentials evaluation service's evaluation of the Beneficiary's education, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) is not relevant. However, we will discuss the first and fifth criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D).

As we shall see, the record lacks the factual foundation necessary to vest either of the professors with the authoritative status that USCIS specifies to qualify an evaluation of the educational equivalency of a beneficiary's work experience and/or training for consideration under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

² In accordance with this provision, we will accept a credentials evaluation service's evaluation of *education only*, not training and/or work experience.

Next, as clear from its language, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) is only satisfied if the Service, upon its own evaluation of the evidence, determines that the Beneficiary has both (1) acquired the requisite degree-equivalency through a combination of education, specialized training, and/or work experience, and (2) achieved recognition of expertise in the specialty occupation. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) describes what “must be clearly demonstrated” by the record’s documentary evidence in order to attain beneficiary-qualification under this criterion:

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* [(1)] that the [beneficiary’s] training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; [(2)] 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; and [(3)] that the [beneficiary] 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;³
- (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;
- (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.

(Emphasis added.)

³ *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.*

Matter of I- LLC

By its very terms, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) is a matter strictly for USCIS application and determination.⁴ Also by the clear terms of the rule, experience will merit a positive determination only to the extent that the record of proceeding satisfies all of the qualifying elements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) - including, but not limited to, recognition of expertise in the pertinent specialty occupation - by clearly demonstrative evidence.

III. ANALYSIS

A. Academic History

As discussed below, the educational documentation indicates that (1) two of the 24 subjects/papers for which the Beneficiary received marks at the [REDACTED] India, were for computer-related courses; (2) that the curriculum for the Beneficiary's master's degree in business administration (MBA) from an accredited U.S. university did not include computer or IT courses; and (3) that the Beneficiary had not yet taken the IT courses required for the U.S. university program in which he was enrolled for an MBA with an IT concentration.

1. [REDACTED] India

The record includes statements of marks, but no diploma, for the Beneficiary's coursework at the [REDACTED] India. The statements record marks for 24 subjects/papers. Of the 24 entries, the only two indicating computer or IT-related subject matter are recorded as "Computer Fundamentals" and "Computer Application" – and both of those entries are annotated as "Subsidiary Subjects (not added to the total)." We also note that the statements of marks do not indicate whatever credit hours, if any, were awarded for the two "subsidiary level courses" for which the marks are entered - or for any other coursework, for that matter.

⁴ That the application is exclusively a measure for USCIS is clear in the language of the regulation. Additionally, the supplementary comments to the Final Rule that first introduced the ratio into agency regulations include the following statements:

For the benefit of petitioners and applicants who may have difficulty in seeking and obtaining a determination of equivalency through authoritative sources, the Service adopted its own standard for substituting specialized training and/or experience for college-level training, and for assuring that the alien is recognized as a member of the profession. The three-for-one formula which will be used is based on a survey of relevant precedent decisions which reflect the number of years of experience held by aliens who did not have degrees, but were regarded by the Service as members of their profession. . . .

55 Fed. Reg. 2606, 2616 (Jan. 26, 1990)(Final Rule).

Matter of I- LLC

2. [REDACTED]

The diploma and associated transcript from [REDACTED] a U.S. institution of higher education, reflect that the Beneficiary was awarded an MBA in Global Business Leadership, with a concentration in Organizational Leadership. However, the academic transcript reveals that the academic credits for which the MBA was awarded did not include IT or computer courses.

3. [REDACTED]

The academic record from [REDACTED] another U.S. educational institution, reports grades for courses designated as [REDACTED] INTER COMM BUS; [REDACTED] CNTEMPRY MGMT; [REDACTED] MKTG STRATEGIES; [REDACTED] FIN STMT ANLYS; and [REDACTED] CORPORATE FIN; and an "I" ("Incomplete," per the glossary on the back of the record) for [REDACTED] MBA CPT INTRN. While this document indicates that the Beneficiary had yet to complete the requisite core coursework in Information Technology, the academic record includes a notation indicating that upon completion of all of the degree requirements the Beneficiary will be awarded an MBA with a concentration in Information Technology.

In sum, the totality of the academic documentation falls short of showing that the Beneficiary had achieved either Indian or U.S. baccalaureate or higher degrees in computer science or IT specialties.⁵ Further, the only academic records of computer or IT coursework at an institution identified as a university or college - i.e., the [REDACTED] statement of marks - do not state the credit hours, if any, awarded for the two subjects/papers for which the Beneficiary received marks in computer subjects, identified without explanation as "Subsidiary Subjects (not added to the total)."

B. Certificates of Proficiency

The record includes copies of three "Certificates of Proficiency" from an institution, in India, named [REDACTED]. The certificates were issued to the Beneficiary for (1) "Programming Pro C, C++"; (2) "Certification in MS - Office"; and (3) an unidentified course of study from February 2008 to July 2008. The evidence of record establishes neither the nature of the conferring institution nor whatever recognition, if any, official credentialing bodies may have extended to it and its certificates of proficiency. Further, the record does not contain such helpful information as the hours required for the certification, the course presenters' credentials, or academic-credit recognition of the certificates by accrediting bodies or institutions of higher learning in India.

⁵ The [REDACTED] submissions indicate that the Beneficiary received marks for 24 papers/subjects, that only two of those marks related to computer subjects, and that those computer courses were annotated "Subsidiary Subjects (not added to the total)." The transcript from [REDACTED] reveal that the academic credits for which the MBA was awarded did not include IT or computer courses. The academic record from [REDACTED] indicates that the Beneficiary had not yet completed the IT coursework required by the MBA program in which the Beneficiary was enrolled.

Matter of I- LLC

C. Work Experience

1. [REDACTED]

The “to whom it may concern” letter, dated November 29, 2010, was written by [REDACTED] Senior Manager – Human Resources, “to certify that [the Beneficiary] has been an employee of our organization from November 3, 2009 till October 30, 2010.” The body of the letter states that the Beneficiary “was designated as Software Engineer”; “was primarily responsible for design, development, testing, and implementation of commercial applications using client/server architecture”; and “was also involved in conducting software training.” The author also states that the Beneficiary’s “skills in C, C++, SQLdatabase, [and] MS Office were used for all projects.”

2. [REDACTED]

The Student and Exchange Visitor Information System (SEVIS) records submitted with the Form I-129, Petition For A Nonimmigrant Worker, indicate that [REDACTED] employed the Beneficiary as a “Business Analyst” from May 2013 to June 2014, in [REDACTED] California. However, the record contains no submissions from [REDACTED] itself.

3. [REDACTED]

An [REDACTED] letter of March 10, 2015 specifies duties that the Beneficiary was providing services to [REDACTED] as a “Business Analyst consultant,” “under contract with [REDACTED] under contract with [REDACTED] under contract with [the Petitioner].” The letter lists generic duties without explanation of any particular educational level of highly specialized knowledge in a specific specialty that would be required to perform them, and without details as to the educational attainments of either the peers, supervisors, or subordinates with whom the Beneficiary was working.

4. The Petitioner

We note that SEVIS documents indicate that the Beneficiary had CPT employment with the Petitioner commencing March 13, 2015. We note that only one month of that employment would be relevant to the Beneficiary’s qualifications as of the time the petition was filed. In any event, the Petitioner does not substantively describe the work the Beneficiary performed and the educational attainment of employees with whom the Beneficiary worked.

5. The Beneficiary’s Resume

The evidentiary weight of the Beneficiary’s resume is insignificant. The resume represents a claim by the Beneficiary, rather than evidence to support that claim. As such, the resume’s evidentiary weight does not exceed the cumulative corroborative information other documents of record provide about the Beneficiary’s work experience. In the instant matter, the other documents of record about

(b)(6)

Matter of I- LLC

the Beneficiary's work experience contain only generalized descriptions of the Beneficiary's work or job title. Therefore, they do not establish or corroborate the substantive nature of the Beneficiary's work experience. Furthermore, the record of proceeding does not contain any evidence of professional recognition as is required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) for a USCIS determination that a beneficiary's work experience has equipped a beneficiary with the equivalent of a U.S. baccalaureate or higher degree in a specific specialty.

D. Evaluations of the Beneficiary's Qualifications

As we noted earlier, the record contains the opinions of two professors as to the Beneficiary's qualifications. For the reasons that we shall discuss below, neither opinion merits significant weight towards establishing that the Beneficiary is qualified to serve in the pertinent specialty occupation.

1. [REDACTED]

[REDACTED] provided an evaluation of the Beneficiary's education credentials and work experience in a document which he entitled "Academic Credential, Work Experience & Expert Opinion." He introduces his evaluation as "an expert opinion and evaluation written by a college professor in the capacity of a consultant," and he emphasizes this point by stating, in bold-face type: "It should be emphasized that this expert opinion is written by a college professor in the capacity of a consultant & [IT] expert and not written on behalf of any credential evaluation firm or in the capacity of a college professor authorized to grant college-credit for work." He also asserts that, because he is acting in the capacity of a consultant, "there is no need to submit a letter from his college Dean."

The professor states that he is a tenured professor at [REDACTED] New Jersey, and has been teaching computer science and computer information systems courses there for 32 years.

For his "expert qualifications" [REDACTED] references his attached resume and states that:

- "As a Professor of Computer Science for over thirty years," he has "advanced knowledge of how Information Technology (IT) works, and a long expertise in distinguishing the levels of degree and course-work knowledge required to perform computer-related tasks."
- "[A]s a principal officer of [REDACTED] since 2000," he has "acquired advanced technical and business knowledge of the Information Technology Industry, and the incidence of degree and coursework requirements in the industry."

[REDACTED] submission does not qualify for consideration under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), that is, as "[a]n 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

(b)(6)

Matter of I- LLC

university which has a program for granting such credit based on an individual's training and/or work experience." The professor expressly disclaimed the requisite official status and he provided no evidence to qualify him under that criterion. Further, the professor's claimed status as a professor at a community college is not sufficient to meet the criterion's requirement that the evaluator be an authorized official at "at an accredited college or university."

Next, we see that [REDACTED] expressly states that he is not submitting his evaluation document as the product of a credential-evaluation agency, although he submits his opinion on such an agency's letterhead. Accordingly, the document does not qualify for consideration as "an evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials" under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(2).

Finally, the H-1B specialty-occupation regulations confine the avenues for establishing a beneficiary's qualifications to those specified at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (h)(4)(iii)(D). Despite the Petitioner's view to the contrary, those regulations do not incorporate evaluation by "a consultant" as a means by which to establish the beneficiary as qualified to perform the pertinent specialty occupation.

Upon providing certain types of foundational evidence, a person's opinion may be considered as that of a "recognized authority." The regulation at 8 C.F.R. § 214.2(h)(4)(ii) defines a "recognized authority" as follows:

Recognized authority means a person or an organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. Such an 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.

In this regard, we conclude that the evidence of record does not qualify [REDACTED] as a recognized authority as defined at 8 C.F.R. § 214.2(h)(4)(ii). We find, for instance, that, while the professor claims that his opinions have been accepted in thousands of USCIS cases, he does not cite specific instances where his opinions on the educational equivalency of experience and/or training in the IT field have been expressly accepted as authoritative, as opposed to merely included in a record of proceedings. In any event, read as a whole, the regulatory framework of the beneficiary-qualification regulations for H-1B specialty-occupation petitions limit the role of a recognized

Matter of I- LLC

authority, in the beneficiary-qualification context, to providing documentation that the beneficiary has achieved recognition of expertise in the pertinent specialty (as required for a USCIS beneficiary-qualification determination under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)) by either (1) “recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation,” or (2) “achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.” Therefore, even if [REDACTED] had established himself as a recognized authority in the area in which he is opining, his opinion would be assessed for what it would establish about the Beneficiary’s having gained expertise in the specific specialty – and, in that regard, the professor’s evaluation would merit little weight, based upon the cursory knowledge that the evaluation reflects about the work that the Beneficiary actually performed.

For all of the reasons discussed above, [REDACTED] evaluation and ultimate opinion of the educational equivalency of the Beneficiary’s experience merits little weight.

2. [REDACTED]

[REDACTED] provides a two-part evaluation document. In the first part, he opines that the proffered position is a specialty occupation. Here we will focus on the evaluation’s second part, which the professor introduces as his “Evaluation of Academics and Work Experience of the Beneficiary,” and, in particular, its conclusion that, by her “two-plus years of employment” at [REDACTED] and the Petitioner, the Beneficiary “completed the time equivalent to at least one half year of university-level academic training in Information Systems.” That conclusion is a critical piece of the calculation behind the professor’s ultimate opinion that the Beneficiary “has attained the holds the equivalent of a Bachelor’s Degree with a concentration in Information Systems from an accredited institution of higher education in the United States.” As we shall now discuss, however, [REDACTED] opinion as to the U.S. college-course equivalency of the Beneficiary’s training and experience has no significant weight under the pertinent regulation.

[REDACTED] self-endorsement notwithstanding, the evidence of record does not establish that he satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), which sets the regulatory threshold for qualifying a person’s opinion for USCIS consideration on the issue of U.S. college-level credit equivalency for a beneficiary’s training and/or work experience.

To substantiate his claim that he qualifies as an authorized official within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), [REDACTED] submitted a letter from the Dean of the [REDACTED] School of Business. The letter states in pertinent part that [REDACTED] is “authorized and qualified to grant ‘life experience’ credits through the [REDACTED] degree-completion program offered through the School of Continuing and Professional Studies.” However, there is no evidence anywhere in the record of proceedings of the extent of the Business School Dean’s participation in or personal knowledge of the [REDACTED] program, which the Dean’s own letter acknowledges as one administered by an entity other than the Business School, namely, the School of Continuing and Professional Studies. We find that this is in itself sufficient reason for us to accord no significant weight to the

(b)(6)

Matter of I- LLC

letter from the Dean of the Business School, particularly as this Dean presents no substantive information or documentation to support his conclusory declaration that [REDACTED] is “authorized and qualified to grant ‘life experience credits’ through the [REDACTED] degree-completion program” at the [REDACTED]. Further, the record contains no explanation of why [REDACTED] has not taken the opportunity to submit substantive, confirmatory information from the Dean of the School of Continuing and Professional Studies, who would likely be the better source of evidence with regard to a program administered by his own school.

Further, we find that, even taken at face value, the letter from the Business School Dean does not establish that [REDACTED] involvement in the [REDACTED] program qualifies him as “an official who has authority to grant college-level credit for training and/or experience in the specialty” in a [REDACTED] “program for granting such credit based on an individual’s training and/or work experience.” Specifically, the Dean of the Business School states that [REDACTED] is authorized to grant “life experience” credits, *not* “college-level credit” and *not* “college-level credit in the [pertinent] specialty” as specified at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). We will not speculate as to the nature, qualifying grounds, or academic weight of what is meant by “life-experience” credits, and the record of proceeding throws little light on this aspect of the [REDACTED] program. It is the Petitioner’s burden to establish both what constitutes “life experience” as defined for credit-assessment in the [REDACTED] program, that “life experience” evaluated for credit in the [REDACTED] program is substantially the same as “training and/or work experience” which must be the basis of college-credit awarded by a person whom a petitioner holds out as qualifying as an 8 C.F.R. § 214.2(h)(4)(iii)(D)(I) official. The Petitioner has not met that burden.

In sum, because the evidence of record has not established that [REDACTED] is an official who has authority to grant college-level credit for training and/or experience in the pertinent specialty at an accredited college of university which has a program for granting such credit based on an individual’s training and/or work experience, his opinion as to the U.S. college-level course equivalency of the Beneficiary’s training and work experience merits no significant weight, and, in fact, does not even merit consideration under the standard at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I).

Further, even if [REDACTED] opinion had qualified for consideration under the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I) - which is not the case - his ultimate opinion would do little for establishing the Beneficiary as qualified to serve in a position requiring the practical and theoretical application of at least a bachelor’s degree level of highly specialized knowledge in a computer or IT-related specialty. After all, in the record’s context, which includes evidence of only two college-level “Subsidiary Subjects (not added to the total)” - “Computer Fundamentals” and “Computer Application” - without any evidence of the academic credits or instructional hours associated with them - [REDACTED] has not explained how the half a year of college-credit that he would recognize in the Beneficiary’s experience would suffice to render the Beneficiary’s education, experience, and training equivalent to at least a U.S. bachelor’s degree in an IT or computer-related specialty. We may, in our discretion, use advisory opinion statements submitted by the petitioner as expert testimony. *Matter of Caron International*, 19 I&N Dec. 791 (Comm’r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we are not

Matter of I- LLC

required to accept or may give less weight to that evidence. *Id.* USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (“[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to ‘fact’ but rather is admissible only if ‘it will assist the trier of fact to understand the evidence or to determine a fact in issue.’”).

We also note that [REDACTED] stated that USCIS has “established that three years of work experience and/training is equivalent to one year of university-level training,” and that he applied this simple work-experience/college-credit ratio to reach his conclusion with regard to the education-equivalency of the Beneficiary's work experience.

However, the only section of the H-1B beneficiary-qualification regulations that provides for application of a three-for-one ratio is the provision at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). However, as we have noted, that provision reserves its application exclusively for USCIS agency-determinations. Further, that provision requires substantially more than simply equating any three years of work experience in a specific field to attainment of a year's worth of U.S. college credit in that field or specialty. In fact, it inserts a number of elements of proof into the experience and/or training equation that both evaluators have overlooked. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) – which, as we have seen, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) introduces as one of the avenues towards establishing a beneficiary's qualifications - reads as follows:

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. 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* [(1)] that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; [(2)] 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* [(3)] 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;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

Matter of I- LLC

- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (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.

(Emphasis added.)

Neither the two evaluations, the documents accompanying them, nor any other part of the record of proceeding provides sufficient evidence for us to reasonably conclude that the work-experience evidence satisfy the 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) requirements for application of the “three-to-ratio.” Accordingly, we cannot conclude that the evidence of the Beneficiary’s work experience qualifies for recognition of any years of college-level credit by correct application of the H-1B beneficiary-qualification regulations’ “three-for-one” standard.

We also find that the evaluations’ misapplication of a truncated and materially incomplete version of the true “three-for-one” rule is in itself sufficient grounds for dismissing the appeal and denying the petition, for the ultimate opinion of each of the evaluations depends in material part upon that misapplication.

Therefore, we conclude that the totality of the evidence regarding the Beneficiary’s foreign education and work experience does not satisfy any criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (h)(4)(iii)(D). As the Petitioner has not established that the Beneficiary is qualified to serve in the alleged specialty occupation in accordance with the requirements at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D), the appeal will be dismissed and the petition will be denied.

IV. CONCLUSION

In visa petition proceedings, it is the Petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 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 I- LLC*, ID# 17272 (AAO July 25, 2016)