



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

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

MATTER OF T- INC.

DATE: MAY 4, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a computer company, seeks to temporarily employ the Beneficiary as a “software quality assurance engineer” 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, California Service Center, denied the petition. The Director concluded that the Petitioner had not established that the Beneficiary is qualified to perform services in the proffered position.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director erred by not according appropriate weight to previously submitted evidence. The Petitioner submits a brief and new evidence to support the appeal.

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

## I. ISSUES

Although the Director denied the petition on the basis of the Beneficiary’s qualifications, we find, as a threshold matter, that there is insufficient evidence to establish that the proffered position qualifies as a specialty occupation. U.S. Citizenship and Immigration Services (USCIS) is required to follow long-standing legal standards and determine first, whether the proffered position qualifies for classification as a specialty occupation, and second, whether the Beneficiary was qualified for the position at the time the nonimmigrant visa petition was 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].”). We therefore will first discuss the issue of whether the proffered position qualifies as a specialty occupation, and then, the issue of the Beneficiary’s qualifications.

## II. SPECIALTY OCCUPATION

### 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) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

- (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.

8 C.F.R. § 214.2(h)(4)(iii)(A). U.S. Citizenship and Immigration Services (USCIS) has consistently interpreted 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 proposed 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”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

As recognized by the court in *Defensor*, 201 F.3d at 387-88, where the work is to be performed for entities other than the petitioner, evidence of the client companies’ job requirements is critical. *See Defensor v. Meissner*, 201 F.3d at 387-88. The court held that the former Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary’s services. *Id.* Such evidence

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

#### B. Proffered Position

On the Form I-129, the Petitioner indicated that it seeks to employ the Beneficiary as a “software quality assurance engineer” for an off-site project. In its cover letter and itinerary, the Petitioner provided the following description of the proffered position (verbatim):<sup>1</sup>

- Responsible for identifying and translating business requirements into Functional Specifications Document
- Design, develop, configure, deploy, program and implement software applications, packages and components customized to meet specific needs and requirements
- Analyze functional and business requirements and implementation requirements
- Plan, coordinate, and implement network security measures in order to protect data, software, and hardware solutions of the site
- Operate master consoles in order to monitor the performance of computer systems and networks, and to coordinate computer network access and use
- Creates appropriate documentation in work assignments such as program code, and technical documentation
- Perform routine network startup and shutdown procedures, and maintain control records
- Design, configure, and test computer hardware, networking software and operating system software
- Recommend changes to improve systems and network configurations, and determine hardware or software requirements related to such changes
- Confer with network users about how to solve existing system problems
- Gather data pertaining to customer needs, and use the information to identify, predict, interpret, and evaluate system and network requirements
- Perform test plan preparation and unit and network testing

The Petitioner’s employment agreement with the Beneficiary provided the following description of the proffered position (verbatim):

- Review requirements, with the goal of identify gaps that would lead to testability problems.
- Create and execute test plans, test cases, and scripts for development projects supporting our billing, rating, CRM, and web systems.

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<sup>1</sup> The cover letter stated that the Beneficiary would perform the duties below “[i]n the capacity of a Computer Programmer.”

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- Drive resolution of reported defects with software developers (both internal and external), ensuring that the business needs are satisfied
- Understand and communicate defect priority and assess when a “work-around” is appropriate, includes documentation of the accepted defect to the production support team.
- Support production team in validating production defects, helping to drive root cause and validating resolution.
- Provide prospective and guidance on launch readiness of new development, including assessment of potential risks and customer experience issues.
- Evaluate testing methodologies constantly, looking for efficiency and coverage improvements that will ensure quality and timely software delivery.
- Provide quality documentation, status updates and support
- You will also be responsible for providing weekly status reports and time sheets on the work done to your Project Manager as applicable.

The Petitioner submitted a letter from the end-client, which provided the following description of the Beneficiary’s day-to-day duties and responsibilities (verbatim):<sup>2</sup>

- Serve as a key member of software development team as the lead QA tester on development projects
- Test Web based and Desktop applications developed on various technologies.
- Conduct formal and informal product design reviews throughout the software development lifecycle to provide input on functional requirements, product designs, schedules and potential issues.
- Leverage programmer’s background to communicate effectively with software design team, quickly gaining their respect and becoming a valued, “go-to” team member on challenging tests cases.
- Supported the software development team with the pre and post deployment testing on production environment
- Manage and performed Smoke, Functional, Regression, Performance and Data Migration testing.
- Manage task allocation and ensured timely and accurate completion of tasks as well as ensuring project standards are maintained by team members.
- Work with the project teams in understanding client requirements by analyzing the functional/requirement documents and attending design sessions during requirement analysis phase.

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<sup>2</sup> The end-client also stated that the Beneficiary would be performing the work of a Software QA Engineer at its premises. The letter stated that the Beneficiary will be assigned to work “on a project to launch the flagship product . . . on mobile and web while enhancing the website with new features,” and that he and other temporary onsite consultants will be involved in “the customization phase for each customer.” The letter further stated that the duration of the assignment is “24+months with extension(s), 40 hrs per week.”

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- Actively participate in meetings with business analysts, system analysts and developers on queries or concerns faced by them.
- Prepare Software quality Test Plan, Test Strategy and Testing Effort Estimates.
- Plan, monitor and report the status of the test activities (Smoke, Functional, and Regression) on a daily basis.
- Escalate the necessary risks to management and ensured necessary controls and countermeasures are in place, when the risk occurs.
- Support the project team in metrics analysis by collecting the metrics data of the project and verifying the collected data for integrity.
- Create a Traceability Matrix to ensure 100% test coverage

C. Analysis

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not has not credibly and sufficiently demonstrated the substantive nature of the proffered position. We therefore cannot find that the proffered position qualifies as a specialty occupation.

The evidence of record contains inconsistent descriptions of the work to be performed by the Beneficiary. For instance, the Petitioner designated the position on the U.S. Department of Labor (DOL)'s labor condition application (LCA) under the occupational category, "Computer Occupations, All Other." However, many of the job duties provided by the Petitioner in its cover letter and itinerary were copied verbatim from DOL's description for the occupational category "Network and Computer Systems Administrators."<sup>3</sup>

DOL provides clear guidance for selecting the most relevant occupational classification for the LCA. The "Prevailing Wage Determination Policy Guidance" states the following:

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

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<sup>3</sup> See DOL's O\*NET Online Summary Report for "Network and Computer Systems Administrators," <http://www.onetonline.org/link/details/15-1142.00> (last visited Apr. 29, 2016).

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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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

On the LCA, the Petitioner provided the prevailing wage that corresponds to a Level I (entry) position under the occupation "Computer Occupations, All Other" of \$59,259 per year.<sup>4</sup> However, the prevailing wage for a "Network and Computer Systems Administrators" position at a Level I wage rate is significantly higher at \$65,000 per year than the prevailing wage for "Computer Occupations, All Other."<sup>5</sup>

Thus, according to DOL guidance, if the Petitioner believed its position was appropriately described in "Network and Computer Systems Administrators" or in a combination of "Network and Computer Systems Administrators" and "Computer Occupations, All Other," it should have chosen the relevant occupational code for the highest paying occupation – in this case, "Network and Computer Systems Administrators." However, the Petitioner chose the occupational category for the lower paying occupation "Computer Occupations, All Other" for the proffered position.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition.<sup>6</sup> The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the Beneficiary. Here, the Petitioner has not submitted a certified LCA that corresponds to the claimed duties of the proffered position.

In any event, copying job duties directly from DOL is insufficient to demonstrate the actual duties that the Beneficiary will perform. This type of description may be appropriate when defining the

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<sup>4</sup> A Level I wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I, 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 relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

<sup>5</sup> For more information regarding the wages for "Network and Computer Systems Administrators" – SOC (ONET/OES Code) 15-1142, in the [REDACTED] CA MSA for the period 7/2014 – 6/2015, see [http://flicdatacenter.com/OesQuickResults.aspx?code=15-1142&area=\[REDACTED\]&year=15&source=1](http://flicdatacenter.com/OesQuickResults.aspx?code=15-1142&area=[REDACTED]&year=15&source=1) (last visited Apr. 29, 2016).

<sup>6</sup> See 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL-certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements for H-1B visa classification.*

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range of duties that may be performed within an occupational category, but it does not adequately convey the substantive work that the Beneficiary will perform within the Petitioner's (or the end-client's) business operations and, thus, generally cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in the context of that petitioner's business operations, as well as demonstrate a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition. Simply submitting a generic job description that is not specific to the Beneficiary and the Petitioner's operations is insufficient to establish the substantive nature of the proffered position.

Furthermore, the evidence of record contains additional discrepancies and deficiencies regarding the proffered position and its constituent duties. In particular, the job duties described in the cover letter and itinerary differ significantly from the job duties found in the Petitioner's employment agreement with the Beneficiary, as well as from the job duties found in the end-client letter. As indicated above, the job duties described in the cover letter and itinerary are primarily duties falling under the "Network and Computer Systems Administrators" occupation. However, no express networking duties appear in the employment agreement or in the end-client letter. Conversely, the employment agreement and end-client letter contain QA testing duties, such as creating test scripts and performing Smoke, Functional, and Regression testing, which do not appear in the cover letter or itinerary.

The proposed job duties are not sufficiently explained within the context of the [REDACTED] project. For instance, the end-client letter stated that the Beneficiary and other temporary onsite consultants will be involved in the "launch" and "customization phase for each customer." However, there is no additional explanation as to what specific tasks the Beneficiary will be responsible for in the "customization phase," and how the stated job duties, such as "[p]lan, monitor and report the status of the test activities (Smoke, Functional, and Regression) on a daily basis," actually relate to the "customization phase."

Notably, the end-client's Business and Marketing Plan for the [REDACTED] project contained a Projected Profit and Loss chart, which indicates that the product development cost for the entire project is \$1500 for each three-month quarter beginning in October 2015 and ending in December 2017. Thus, this chart indicates that the end-client will spend only \$500 per month in development cost for each month of the project. In contrast, the Purchase Order between the Petitioner and the end-client for the Beneficiary's services indicated that he will be paid a rate of \$50 per hour, 40 hours per week, for a total pay of \$2,000 per week. It is not readily evident how the Beneficiary's services will be utilized on the [REDACTED] project, if at all, in addition to the other temporary "onsite consultants" the end-client referenced in its letter.<sup>7</sup>

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<sup>7</sup> The Projected Profit and Loss chart also indicated that the end-client will have an average of 6 to 147 consultants in any given quarter. It is not clear how the Petitioner expects to spread out the development costs of \$500 per month among these other consultants, in addition to the Beneficiary's salary, which already exceeds the total monthly costs.

For all of the above reasons, we find the evidence of record insufficient to demonstrate the substantive nature of the proffered position and its constituent duties. Consequently, we are precluded from finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Accordingly, as the 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'S QUALIFICATIONS

#### A. Legal Framework

We will now discuss the Director's ground for denial, i.e., that the Beneficiary is not qualified for the proffered position.

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 individual 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 a beneficiary 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.

Therefore, to qualify a beneficiary 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 the Beneficiary 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;<sup>8</sup>

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<sup>8</sup> The Petitioner should note that, in accordance with this provision, we will accept a credential evaluation service's

- (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 Beneficiary's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the Beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree in the specialty occupation, or its equivalent; and 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;<sup>9</sup>
- (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

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evaluation of *education only*, not training and/or work experience.

<sup>9</sup> *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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- (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

The Petitioner asserted that “[t]he Beneficiary has a combination of education and progressive experience that is equivalent to a degree in Computer Information Systems and expertise in the specialty occupation.” The Petitioner specifically requested a determination by the Service pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), and stated that it “is not attempting to prove equivalence in any other way.”<sup>10</sup>

The Petitioner submitted letters from the Beneficiary’s current employer confirming his initial appointment as a “Software Engineer in Grade ‘G3’” in April 2006, his promotion to a “Sr. Software Engineer in grade G4” in June 2007, and his promotion to a “Technical Architect in grade G6” in May 2012. However, these letters are insufficient to demonstrate that the Beneficiary has the equivalent of the requisite degree based upon a combination of his education, specialized training, and/or work experience in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). While these letters may indicate that the Beneficiary has had progressively responsible work experience, they do not detail the specific job duties the Beneficiary performed, and moreover, what theoretical and practical application of specialized knowledge was required for his positions. These letters also do not provide information relevant to the credentials of the Beneficiary’s peers, supervisors, or subordinates, as further required by this criterion.

In addition, the Petitioner submitted a letter from [REDACTED], who claims to have been the Beneficiary’s supervisor “on several projects between March 2007 and December 2010.” This letter, too, is insufficient for purposes of demonstrating eligibility under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). This letter does not describe in sufficient detail the Beneficiary’s specific job duties, and the body or bodies of specialized knowledge required to perform them. Nor does this letter provide information relevant to the credentials of the Beneficiary’s peers, supervisors, or subordinates, or of the writer himself. Furthermore, there is insufficient evidence to corroborate [REDACTED] claims.

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<sup>10</sup> The Petitioner previously submitted an evaluation from [REDACTED], Associate Professor at the [REDACTED], under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Since the Petitioner is no longer pursuing eligibility under this criterion, we will not further discuss the deficiencies with [REDACTED] evaluation.

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On appeal, the Petitioner submits some of [REDACTED] payroll records from August 2005 to February 2006. These pay records all predate the start of the Beneficiary's employment in April 2006, and thus, do not corroborate [REDACTED] claims that he worked with and supervised the Beneficiary. We also observe that the latest pay record for the month of February 2006 lists [REDACTED] position as a Grade 3 Software Engineer, which is the same position and grade that the Beneficiary entered into in April 2006. The Petitioner did not submit other documentation to corroborate [REDACTED] claims regarding his supervision of the Beneficiary's work. Accordingly, we accord little probative value to [REDACTED] letter.

Given the above deficiencies, we also find the letters from [REDACTED] and [REDACTED] expressing "recognition of [the Beneficiary's] expertise in the field of Computer Information Systems" to have little probative value. Both of these letters were written based not on personal knowledge of the Beneficiary, but upon the same "work verification letters," which we find insufficient for the reasons discussed above. We may, in our discretion, use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). *See also Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988) (addressing evaluations of foreign education). 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 Int'l, Inc.*, 19 I&N Dec. at 795.

Based upon the evidence of record, we cannot find that the Beneficiary has the equivalent of the required degree based upon a combination of his education, specialized training, and/or work experience, and that he has achieved recognition of expertise in the field as a result of such training and experience. We therefore cannot find that the Beneficiary is qualified to perform services of the proffered position. The appeal will be dismissed and the petition denied.

#### IV. CONCLUSION

The petition will be denied and the appeal dismissed. The burden is on the Petitioner to show 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 T- Inc.*, ID# 16877 (AAO May 4, 2016)