



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

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

MATTER OF M-T- LLC

DATE: MAY 10, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a software development and consulting business, seeks to temporarily employ the Beneficiary as a “software 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: (1) the proffered position qualifies as a specialty occupation; and (2) the Beneficiary is qualified to serve in a specialty occupation position.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional documentation and asserts that it has established that the proffered position is a specialty occupation and that the Beneficiary is qualified to perform the duties of the specialty occupation.

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

I. 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).

B. Proffered Position

On the H-1B petition, the Petitioner identified the proffered position as a “software engineer.” On the labor condition application (LCA) submitted in support of the petition, the Petitioner designated the proffered position under the occupational category “Software Developers, Applications” corresponding to Standard Occupational Classification code 15-1132.¹

¹ The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). We will consider this selection in our analysis of the position. The “Prevailing Wage Determination Policy Guidance” issued by the Department of Labor (DOL) provides a description of the wage levels. A Level I wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. This wage rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that he will be closely supervised and his work closely monitored and reviewed for accuracy; and (3) that he will receive specific instructions on required tasks and expected results. U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf. A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner’s job opportunity. *Id.*

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In response to the Director's request for evidence (RFE), the Petitioner explained that the Beneficiary "has been assigned to perform services in-house at [the Petitioner's] location on an application development project [the Petitioner] is implementing for [an end-client]." The Petitioner submitted a letter from the claimed end-client confirming that the Beneficiary will be working from the Petitioner's premises in the capacity of "software engineer (automation engineering)" and will perform the following job duties (verbatim):

- Have excellent understanding of the Software Development Life Cycle and well versed in agile methodologies, open source test automation, and software development life cycle.
- Comprehensive knowledge of automation testing, automated testing tools and frameworks for Regression Testing, System Testing, and User Acceptance Testing (UAT), using tools like Quick test pro (QTP).
- Experience in building and maintaining Regression test suite created using QTP.
- Extensive knowledge of testing large applications, descriptive programming, DOM, CSS, XPATH and Iterative development environment.
- Extensively created common function libraries for Web, Windows, Mainframe and Data compare that was used across many projects in the organization.
- Extensively worked on QTP Data driven Automation framework, QTP Keyword driven Automation framework models.
- Extensively implemented Business process testing (BPT) with all Interfacing system.
- Sound knowledge of scripting languages, Internet technologies, quality assurance processes and writing SQL queries.
- Experience in Analysis of Software Requirement Specifications, Creation of Test Plans and development of Test Scripts, Test Cases and executing them.
- Experience with QA Methodology and QA Strategies to ensure the Quality Assurance Control.
- Formulating Test Plans and Test Cases based on the User Requirements Specification (URS) and Functional Requirements document for the functionality and usability testing.
- Expert in Problem solving and Bug tracking using tools like Quality Center and ALM.

On appeal, the Petitioner reaffirms that the Beneficiary will perform the above-stated job duties.

C. Analysis

As a preliminary matter, neither the claimed end-client nor the Petitioner has identified the pertinent field(s) of study or the level of degree required to perform the duties of the proffered position. Section 214(i)(1) of the Act defines the term "specialty occupation" as an occupation that requires the theoretical and practical application of a body of highly specialized knowledge, and "attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry

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into the occupation in the United States.” Without specifying what type of degree, if any, is required for the proffered position, the Petitioner cannot establish that the proffered position meets the statutory definition of a “specialty occupation.” Section 214(i)(1) of the Act.

Moreover, it also cannot be found that the proffered position qualifies as a specialty occupation, as the record does not describe the position’s duties with sufficient detail to convey the substantive nature of the proffered position.²

Here, the claimed end-client and the Petitioner have provided identical, generalized job descriptions for the Beneficiary that do not sufficiently describe the specific tasks he will perform. For example, the stated job duties of “[h]ave excellent understanding of the Software Development Life Cycle,” “[c]omprehensive knowledge of automation testing, automated testing tools and frameworks,” and “[e]xperience in building and maintaining Regression test suite,” do not convey specific tasks to be performed. Instead, they portray the type of knowledge and experience required or expected of persons in the proffered position. Other job duties, such as “[f]ormulating Test Plans and Test Cases based on the User Requirements Specification (URS) and Functional Requirements document for the functionality and usability testing,” are also too broadly stated to adequately convey the specific tasks that the Beneficiary will perform.

In addition, the record does not adequately describe and document the Beneficiary’s job duties and role in the context of the claimed end-client’s [REDACTED] project. None of the listed job duties specifically refer to the claimed end-client or its particular project. Conversely, the claimed end-client’s statement of work (SOW) does not specifically reference the Beneficiary or the role of a software engineer.

The Petitioner also has not adequately explained how the Beneficiary’s job duties relate to the different roles and responsibilities divided between the Petitioner and the claimed end-client, as reflected in the SOW. For instance, the SOW indicates that the claimed end-client will be primarily responsible for several functions relating to quality control, reporting, and testing. However, the Beneficiary’s stated job duties also include “Formulating Test Plans and Test Cases based on the User Requirements Specification (URS) and Functional Requirements document for the functionality and usability testing,” which appear to overlap with quality control, reporting, and testing functions. The record does not sufficiently clarify which functions have been delegated to the Petitioner and the Beneficiary, and which functions remain with the claimed end-client. Furthermore, the Petitioner has not explained the manner in which the Beneficiary will perform duties for the claimed end-client, whose office is located in New Jersey, from the Petitioner’s office located in Illinois.

² The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

Although the record contains a task order (TO) specifically assigning the Beneficiary to the claimed end-client, this document was executed on August 21, 2015, after the date the H-1B petition was filed. The Petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the Petitioner or Beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). As such, we do not find this document to constitute probative evidence of the Beneficiary's work assignment as it existed at the time of filing.³

Overall, we find the submitted job descriptions and evidence insufficient to establish what actual tasks and duties the Beneficiary will be performing for the end-client. In establishing the position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by the beneficiary in the context of the petitioner and/or the end-client's business operations as applicable, as well as demonstrate a legitimate need for H-1B caliber work for the beneficiary for the period of employment requested in the petition. Simply submitting generic job descriptions and documents is insufficient to establish the substantive nature of the particular position being proffered here.

We are further precluded from understanding the substantive nature of the proffered position and its associated requirements based on inconsistencies in the record. For instance, the stated job descriptions indicate that the Beneficiary will perform work that requires "[e]xtensive," "[c]omprehensive," "[s]ound, and "[e]xcellent" knowledge and understanding of software development and testing methodologies, as well as expertise in problem solving and bug tracking. These descriptions appear inconsistent with the Petitioner's designation of the position on the LCA as a position warranting only a Level I (entry) wage. More specifically, a Level I wage indicates that the position is an entry-level position for an employee who has only basic understanding of the occupation.⁴ U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. Again

³ Even if we were to consider the TO, we observe that it is inconsistent with the MSA it is supposed to accompany. More specifically, the TO states that, in the event of a conflict between it and the MSA, the terms of the MSA shall apply. In contrast, the MSA states that "[i]f there is any conflict or discrepancy between the terms of this Agreement and the terms of SOW, the term of SOW shall govern the rights and obligations of the parties." The Petitioner has not explained this inconsistency. The Petitioner also has not explained whether the TO or the SOW represents the actual agreement for the Beneficiary's services.

⁴ The Petitioner's designation of this position as a Level I, entry-level position undermines any claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, 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.

referencing the DOL's *Prevailing Wage Determination Policy Guidance*, for example, a position requiring profound work experience and supervisory duties would appear to indicate at least a Level III wage level ("experienced") or a Level IV position ("fully competent"), for which significantly higher prevailing wages are required. *Id.*

Moreover, contrary to the Petitioner's assertions, the evidence of record strongly suggests that the Beneficiary will be assigned to another end-client(s) than the one claimed here. The SOW refers to three different parties involved in the project: the claimed end-client, the Petitioner, and an unidentified "Customer." Several of the project deliverables, as well as the project timeline, specifically refer to a "Customer" of the claimed end-client. Furthermore, we highlight the following language in the master service agreement (MSA) between the claimed end-client ("Buyer") and the Petitioner ("Consulting Company") (verbatim):

WHEREAS [Buyer] is in the business of providing the software design and development of computer business systems ("services") to parties ("CLIENTS"), which are under contract with [Buyer] to provide such consultants and specifically described in the statement of work or Task Order ("SOW" or "T.O.") which is made part of this agreement.

WHEREAS [Buyer] from time to time may engage and subcontract [the Petitioner] hereinafter referred to as "Consulting Company", to provide Consultants to [Buyer] or [Buyer's] Clients.

WHEREAS, CONSULTING COMPANY is desirous of an arrangement where [Buyer] will offer Software Solution or Consulting services to [Buyer's] Client.

WHEREFORE, IN CONSIDERATION OF the promises and mutual covenants and agreements herein contained, the parties agree as follows:

...

CONSULTING COMPANY shall assign consultants as required to successfully complete the services for CLIENT.

The MSA also contains provisions indicating that the Beneficiary's assignment to the claimed end-client may be immediately terminated "if the CLIENT cancels the project," and that his remuneration may be withheld if "Client does not pay [Buyer]." Based on the language indicating that the Beneficiary will be assigned to an unknown end-client under unspecified terms and conditions, we are further precluded from finding that the Petitioner has adequately established the

substantive nature of the proffered position, and consequently, whether the proffered position requires the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent.⁵

As the Petitioner has not established the substantive nature of the work to be performed by the Beneficiary, we are therefore 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 entry into 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 Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies for classification as a specialty occupation. The appeal will be dismissed for this reason.

II. BENEFICIARY'S QUALIFICATIONS

A. Legal Framework

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:

⁵ We also question whether the Petitioner has a *bona fide*, non-speculative work assignment for the Beneficiary. The agency made clear long ago that speculative employment is not permitted in the H-1B program. For example, a 1998 proposed rule documented this position as follows:

Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. See section 214(i) of the Immigration and Nationality Act (the "Act"). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

Petitioning Requirements for the H Nonimmigrant Classification, 63 Fed. Reg. 30,419, 30,419-20 (proposed June 4, 1998) (to be codified at 8 C.F.R. pt. 214).

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- (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;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

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

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- (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.

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 of the record, we find that the Beneficiary is not qualified to perform the duties of a specialty occupation.⁸

The record includes documentation showing that the Beneficiary holds a three-year bachelor of science diploma in visual communication from the [REDACTED] India. In addition, the Petitioner submitted three letters to show that the Beneficiary worked as: (1) an automation tester from September 4, 2008, to October 28, 2010 (approximately two years and one month); (2) a senior automation tester from November 4, 2010, to May 31, 2012 (approximately one year and seven months); and (3) an associate tester from June 11, 2012, to August 31, 2013, and then as a test engineer for the same company from September 1, 2013, to March 18, 2015 (totaling approximately two years and nine months).

[REDACTED] a “credentials evaluation service and academic advisory firm specializing in the evaluation of foreign educational credentials,” found the Beneficiary’s foreign degree to be “the equivalent of three years of academic studies leading to a Bachelor of Science Degree.” Accordingly, this evaluation does not establish that the Beneficiary possesses “a foreign

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.*

⁸ Although a beneficiary’s credentials to perform a particular job are relevant only when the job is found to be a specialty occupation (which has not been established here), we will nevertheless address the documentary evidence submitted to establish the Beneficiary’s qualifications for the Petitioner’s information.

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degree determined to be equivalent to a United States baccalaureate or higher degree,” as required in part by 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). A U.S. baccalaureate degree is generally found to require four years of education. *See Matter of Shah*, 17 I&N Dec. 244 (Reg’l Comm’r 1977).

The [REDACTED] also evaluated the Beneficiary’s “approximate six years and seven months” of employment experience and asserted that the Beneficiary’s academic and work experience is the equivalent of a Bachelor of Science Degree in Computer Information Systems from an accredited institution of higher education in the United States. As observed above, however, in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) we accept a credentials evaluation service’s evaluation of *education only*, not training and/or work experience.

The record also includes an evaluation of the Beneficiary’s education and experience prepared by [REDACTED] a company that “evaluates academic and experiential credentials and specializes in the evaluation of foreign educational credentials.” The evaluation, which is on the letterhead of [REDACTED], states that the Beneficiary’s combined academic background and experience are the equivalent of a bachelor of science degree in computer information systems from an accredited institution of higher education in the United States. The evaluation includes [REDACTED] statement as follows:

Because of the position I hold at [REDACTED] I have the authority to grant college-level credit for training, and/or courses taken at other U.S. or international universities. As part of my position at [REDACTED] I am responsible for the evaluation of foreign credentials for transfer credit and/or undergraduate and graduate admission. *This evaluation is my personal advisory opinion based upon standards and practices that are common in the evaluation of foreign credentials; [REDACTED] has their own internal admission policies and standards that may differ from the methodologies utilized in this evaluation.*

(Emphasis added.) Considering the highlighted language, we find that [REDACTED] evaluation was performed on behalf of [REDACTED] and not in his capacity as an official of [REDACTED], or another institution of higher education.⁹ We thus cannot accept this evaluation as evidence under either 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), which pertains to a credentials evaluation service’s evaluation of *education only* (not training and/or work experience), or 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), which pertains to “[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

⁹ The record also includes a letter signed by the Department Chair of the Department of Management at [REDACTED] who confirms [REDACTED] is an adjunct assistant professor in various departments. However, the letter does not state that [REDACTED] has the authority to *grant* college-level credit, as opposed to evaluating work experience. In addition, [REDACTED] does not appear to rely on his position at [REDACTED] when offering his opinion on the Beneficiary’s qualifications in this matter. Accordingly, this letter and the information regarding [REDACTED] will not be further reviewed.

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university which has a program for granting such credit based on an individual's training and/or work experience (emphasis added)."

We also find this evaluation insufficient under the regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) for an additional reason, i.e., that the Petitioner has not demonstrated that [REDACTED] has authority to grant credit in the particular specialty of computer information systems. The record contains a letter from [REDACTED] the Dean of the [REDACTED] the [REDACTED] confirming that [REDACTED] "is the Director of the graduate program [REDACTED] and "that he has authority to award credit based upon students' professional experience." However, the Petitioner has not submitted evidence that [REDACTED] authority extends to the field of computer information systems, and that a [REDACTED] program would include a computer information systems program. As such, [REDACTED] evaluation carries little weight.¹⁰

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). 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. *Id.* Consequently, the Petitioner has not satisfied any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1)-(4), and we will next perform a Service evaluation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

The record contains the Beneficiary's academic transcripts, diploma, and three employment verification letters for the Beneficiary. The employment letters list the titles of the positions the Beneficiary held and include summaries of his duties and responsibilities, but do not sufficiently set out which of the duties represent specialized training or progressively responsible experience received by the Beneficiary. The record does not contain additional information about and evidence of the educational qualifications of his peers. Absent such evidence, the record does not clearly demonstrate that the Beneficiary's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that his experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that he has recognition of expertise in the specialty. 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

Thus, even if the proffered position qualified as a specialty occupation (which it does not), the Petitioner has not established that the Beneficiary is qualified to perform the duties of a specialty occupation as set out by the pertinent statute and regulations. For this additional reason, the appeal will be dismissed.

¹⁰ The Petitioner also submits a printout from [REDACTED] website regarding credit given for "prior learning" at [REDACTED]. The printout notes that a maximum of six credits can be awarded for prior learning in any specific learning area. It does not appear that [REDACTED] college-level credit program would extend to awarding credits that would be the equivalent of one or more years of bachelor's-level education in a specific learning area, which further undermines the probative weight of [REDACTED] evaluation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

III. CONCLUSION

The “preponderance of the evidence” standard requires that the evidence demonstrate that the Petitioner’s claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r 1989)). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* Here upon review of the totality of the evidence presented and for the reasons stated above, the Petitioner has not established that, more likely than not, the proffered position qualifies as a specialty occupation or that the Beneficiary is qualified to perform the duties of a specialty occupation.

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 M-T- LLC*, ID# 16336 (AAO May 10, 2016)