



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

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

MATTER OF D-G-S- INC.

DATE: MAY 31, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a software services company, seeks to temporarily employ the Beneficiary as a "technical architect" 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 evidence of record did not establish 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 evidence and asserts that the Director erred in finding that the proffered position is not a specialty occupation and that the Beneficiary does not qualify for the position.

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

I. SPECIALTY OCCUPATION

A. Law

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

The Petitioner describes the duties of the proffered position and the percentage of time the Beneficiary would spend on each task as follows (verbatim; emphasis omitted):¹

Phase	Job Duties	% Time	
Functional Requirement	Understanding and documenting functional requirements This Phase involves the following activities 1. understand the high level requirements of the prospect from Sales team and the project Manager		15%

¹ The duties listed here are provided by the Petitioner in its request for evidence (RFE) response letter and on appeal. Some of the duties stated in the Petitioner’s support letter differ from the ones stated here. The Petitioner does not provide any explanation for the varying duties. “[I]t is incumbent upon the Petitioner to resolve the inconsistencies by independent objective evidence.” *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the Petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92.

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	<p>2. Understand the functionality required to be delivered</p> <p>3. Provide an estimate for the work to be done using Function point technique</p> <p>4. Create functional specification document based on which design and development will be carried out.</p>		
	<ul style="list-style-type: none">• Understand the functionality required to be delivered	5%	
	<ul style="list-style-type: none">• Provide an estimates	5%	
	<ul style="list-style-type: none">• Create functional specification document	5%	
Technical designing	<p>Creating and documenting technical design of the components</p> <p>This activity involves designing the components considering functional and non-functional requirements. Followings are the main activities involved during the technical design phase</p> <ol style="list-style-type: none">1. Work with designing the technical solution after conducting feasibility2. Design the solution fitting the needs of the customer as well as long term vision of related to ePM solution3. Design the interfaces to various satellite systems such as ERP's, Reporting tools, Customer's in-house systems for seamless data integration and flow4. Design the database structure in the SQL Server. Also understand integration with other Database's such as Oracle, DB2 or flat file system5. Design the reusable components using ASP.NET MVC, Entity Framework. <p>Continuously poll the technology on the direction it is taking to make sure that the solutions delivers the requirements of the industry in most optimal and technologically advanced framework.</p>		45%
	<ul style="list-style-type: none">• Understanding the design	5%	
	<ul style="list-style-type: none">• Creating high-level technical design new components and documenting them.	15%	
	<ul style="list-style-type: none">• Creating detailed technical design documents of new components	25%	
Development	<p>Participating in development, delegating the development activities and supporting team to perform quality development</p> <p>This phase required development of core component of</p>		35%

	the application which will be used by the team to further complete development of required features and functionalities. As a technical architect he will also oversee the quality by means of unit testing and code reviews		
	<ul style="list-style-type: none"> • Creating components framework using design patterns best suitable for the component as per the design and coding guidelines defined. 	5%	
	<ul style="list-style-type: none"> • Develop the database structure in the SQL Server 	5%	
	<ul style="list-style-type: none"> • Creating complex stored procedures, functions in SQL server. Development of ePM processes as per design 	5%	
	<ul style="list-style-type: none"> • Develop Clickable HTML screens or a wireframe with CSS3 framework prototype and POC's to demonstrate the feasibility of proposed requirements 	2%	
	<ul style="list-style-type: none"> • Development & documentations of reusable components for future use. 	5%	
	<ul style="list-style-type: none"> • Develop job schedulers for time bound instantiation of tasks that are required for the solution to work as per requirements. 	5%	
	<ul style="list-style-type: none"> • Guide development team in delivering the functionality needed 	3%	
	<ul style="list-style-type: none"> • Peer review the components developed from technical perspective 	5%	
Testing	Supporting the testing team during system & integration testing in case any clarifications are required. Also involve in performance testing to done using load runner.	5%	5%
Total		100%	

The Petitioner requires a minimum of a “Bachelor’s degree or its equivalent in Engineering, Science, Computer Science or a closely related field” for the proffered position.

The labor condition application (LCA) submitted by the Petitioner in support of the petition was certified for use with a job prospect within the “Software Developers, Applications” occupational classification, SOC (O*NET/OES) Code 15-1132, and a Level I (entry-level) prevailing wage rate, the lowest of the four assignable wage-levels.

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C. Analysis

For H-1B approval, the Petitioner must 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. It is incumbent upon the Petitioner to demonstrate it has sufficient work to require the services of a person with at least a bachelor's degree in a specific specialty, or its equivalent, to perform duties at a level that requires the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty for the period specified in the petition.

In this matter, the Petitioner indicated that the Beneficiary will be employed in-house as a "Technical Architect." However, upon review of the record of proceedings, we find that the Petitioner did not submit a job description that adequately conveys the substantive work to be performed by the Beneficiary. USCIS in this matter must review the actual duties the Beneficiary will be expected to perform to ascertain whether those duties require at least a baccalaureate degree in a specific specialty, or its equivalent, as required for classification as a specialty occupation. To accomplish that task in this matter, USCIS must analyze the actual duties in conjunction with the specific project(s) to which the Beneficiary will be assigned. To allow otherwise, results in generic descriptions of duties that, while they may appear (in some instances) to comprise the duties of a specialty occupation, are not related to any actual services the Beneficiary is expected to provide.

Considering the totality of the Petitioner's duty descriptions, we find that the evidence of record does not establish the depth, complexity, or level of specialization, or substantive aspects of the matters upon which the Petitioner claims that the Beneficiary will engage. We acknowledge that the Petitioner has provided a rather lengthy version of the duties; however, the duties of the proffered position, and the position itself, are nonetheless described in relatively generalized and abstract terms that do not relate substantial details about either the position or its constituent duties.

For example, the Petitioner stated that the Beneficiary will "work with [REDACTED]" "design the solution," "design the interfaces" "design the database structure," "develop clickable HTML," and "develop job schedulers" without providing specific duties associated with these tasks. Similarly, the Petitioner did not provide details regarding the Beneficiary's specific role in "guid[ing] development team" and "supporting the testing team." Likewise, stating that the Beneficiary will "peer review the components developed" reveals no details regarding the project itself or the tasks involved with the project. Furthermore, in the "Functional Requirement" section of the duties, the Petitioner states that the Beneficiary will "understand the high level requirements" and "understand the functionality required to be delivered," which refer to the skills required in performing tasks but do not provide any insight into the actual tasks the Beneficiary will perform.²

² The Petitioner listed similar skills required for the proffered position under the subheading "Technical Designing" of the duties.

Such generalized information does not in itself establish a correlation between any dimension of the proffered position and a need for a particular level of education, or educational equivalency, in a body of highly specialized knowledge in a specific specialty. Therefore, it is not evident that the proposed duties as described in this record of proceeding, and the position that they comprise, merit recognition of the proffered position as a specialty occupation. The duties as described give very little insight to actual tasks that the Beneficiary would perform on a day-to-day basis. Furthermore, we find that the Petitioner has not supplemented the job and duty descriptions with documentary evidence establishing the substantive nature of the work that the Beneficiary would perform, whatever practical and theoretical applications of highly specialized knowledge in a specific specialty would be required to perform such substantive work, and whatever correlation may exist between such work and associated performance-required knowledge and attainment of a particular level of education, or educational equivalency, in a specific specialty.

In this case, the Petitioner has not described the proffered position with sufficient detail to determine that the minimum requirement is a bachelor's degree in a specialized field of study. It is incumbent on the Petitioner to provide sufficient evidence to establish that the particular position that it proffers would necessitate services at a level requiring both the theoretical and practical application of a body of highly specialized knowledge and the attainment of at least a bachelor's degree in a specific specialty, or its equivalent. When "any person makes application for a visa or any other document required for entry, or makes application for admission, . . . the burden of proof shall be upon such person to establish that he is eligible" for such benefit. Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)

We also observe that several job duties indicate that the Beneficiary will perform some managerial-level duties. For example, the Petitioner stated the Beneficiary would "guide" the "development team" and "oversee the quality." Also, in support of its assertion that the proffered position is a specialty occupation, the Petitioner submitted its job advertisement for a technical architect position which it claims to be the same as the proffered position. According to this advertisement, the Petitioner requires five years of progressive experience in the position offered along with its educational requirement, which also indicates a higher-level position.³ However, the Petitioner's statements on the LCA are inconsistent with the work experience requirement stated on the Petitioner's job advertisement.⁴ The LCA indicates a wage level at a Level I (entry) wage, which is

³ Furthermore, the Petitioner's claim that the Beneficiary has been working for the Petitioner in a "senior" level position since 2004 detracts further from the Petitioner's assertion that this is an entry-level position.

⁴ The Petitioner's designation of this position as a Level I, entry-level position undermines its 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

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the lowest of four assignable wage-levels. “[I]t is incumbent upon the Petitioner to resolve the inconsistencies by independent objective evidence.” *Matter of Ho*, 19 I&N Dec. at 591. Any attempt to explain or reconcile such inconsistencies will not suffice unless the Petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92.

The Petitioner also submitted two opinion letters⁵ from [REDACTED] a professor at [REDACTED]. In his letters, [REDACTED] states that the “provided position description clearly illustrates the advanced, complex, and professional nature of this position.” He further asserts that the proffered position requires “a bachelor’s-level degree (or the equivalent) in an applicable field, such as Computer Information Systems, Computer Science, Computer Engineering, or a related area.” [REDACTED] states that he “reviewed an outline of the job duties . . . as presented in the employer’s petition letter.”

As we noted above, the duties provided in the Petitioner’s support letter are different than the ones provided in its RFE letter and on appeal. [REDACTED] did not state whether he reviewed all versions of the duties. Thus, there is no indication that he possesses sufficient knowledge of the Petitioner’s proffered position beyond the information provided by the Petitioner. Further, he indicated that the “position description clearly illustrates the advanced, complex, and professional nature of this position.” There is no indication that [REDACTED] was aware of the fact that the Petitioner designated the proffered position as an entry-level position relative to others within the occupational category. We consider this a significant omission, in that it indicates an incomplete review of the position. [REDACTED] has not provided sufficient facts that would support the contention that the proffered position requires at least a bachelor’s degree in a specific specialty.

As a matter of discretion, we may 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, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* USCIS is ultimately responsible for making the final determination regarding an individual’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, 502 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.’”). Therefore, we find that [REDACTED] letter has limited probative value to establish that the proffered position qualifies as a specialty occupation.

Without a meaningful, credible job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation’s level of knowledge in a specific specialty. The tasks as described do not communicate (1) the actual work

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.

⁵ The letters dated September 30, 2015, and November 17, 2015, are virtually identical in content.

that the Beneficiary would perform, (2) the complexity, uniqueness and/or specialization of the tasks, and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty. The Petitioner's assertion with regard to the educational requirement for the position is conclusory and unpersuasive, as it is not supported by the job description or probative evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Moreover, the inconsistencies highlighted above undermine the credibility of the entire petition.

The inability to establish the substantive nature of the work to be performed by the Beneficiary consequently precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that 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 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 as a specialty occupation.

We note that the Petitioner cites to *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), for the proposition that “[t]he knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge.”

We agree with the aforementioned proposition that “[t]he knowledge and not the title of the degree is what is important.” In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the “degree in the specific specialty (or its equivalent)” requirement of section 214(i)(1)(B) of the Act. In such a case, the required “body of highly specialized knowledge” would essentially be the same. Since there must be a close correlation between the required “body of highly specialized knowledge” and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be “in *the* specific specialty (or its equivalent),” unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added). For the aforementioned reasons, however, the Petitioner has not met its burden to establish that the particular

position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those tasks.

In any event, the Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Finance*.⁶ We also note that, in contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. See *Matter of K-S-*, 20 I&N Dec. 715, 719-20 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.*

Finally, the Petitioner further refers to unpublished decisions in which we determined that the proffered positions qualified as specialty occupations. The Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. While 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

For the reasons related in the preceding discussion, the Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation.

II. BENEFICIARY'S QUALIFICATION

The Director also found that the Beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. However, a beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. Here, the Petitioner has not demonstrated that the proffered position is a specialty occupation. However, in order to address the Director's decision, we will discuss whether the evidence submitted was sufficient to demonstrate that the Beneficiary was qualified to perform the duties of the proffered position as described.

A. Law

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

⁶ It is noted that the district judge's decision in that case appears to have been based largely on the many factual errors made by the Director in the decision denying the petition. We further note that the Director's decision was not appealed to us. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by us in our *de novo* review of the matter.

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that are 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 an individual for classification as an H-1B nonimmigrant worker under the Act, the Petitioner must establish that the Beneficiary possesses the requisite license or, if none is required, that he or she has completed a degree in the specialty that the occupation requires. Alternatively, if a license is not required and if the Beneficiary does not possess the required U.S. degree or its foreign degree equivalent, the Petitioner must show that the Beneficiary possesses both (1) education, specialized training, and/or progressively responsible experience in the specialty equivalent to the completion of such degree, and (2) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree, the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;⁷
- (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:

⁷ The Petitioner should note that, in accordance with this provision, we will accept a credentials evaluation service's evaluation of *education only*, not experience.

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- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;⁸
- (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

In its support letter, the Petitioner states that it requires “a Bachelor’s degree or its equivalent in Computer Science, Engineering, Computer Information Systems or a closely related IT field” for the proffered position.

We note that, absent (1) an actual U.S. bachelor's or higher degree from an accredited college or university, (2) a foreign degree determined to be equivalent to such a degree,⁹ or (3) a pertinent license, the only remaining avenue for the Beneficiary to qualify for the proffered position is pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), in which the petitioner must establish both (1) that the Beneficiary's combined education, specialized training, and/or progressively responsible experience

⁸ *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.*

⁹ The Petitioner submitted an evaluation by [redacted] an evaluator at the [redacted] concluding that the Beneficiary possesses a foreign equivalent of a U.S. degree of “Bachelor of Science Degree in Mechanical Engineering.” However, the record of evidence does not establish that mechanical engineering degree is related to the duties of the proffered position.

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are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and (2) that the Beneficiary has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

states in his evaluations that the Beneficiary's education and work experience are equivalent to a bachelor's degree with a dual major in computer information systems and mechanical engineering. However, we find that evaluation does not establish that the Beneficiary is qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). Specifically, the record of proceedings does not contain academic transcripts for the Beneficiary's foreign degree and there is no evidence suggesting that such transcripts were provided for his review. Further, with regards to the Beneficiary's progressive work experience, states that he relied on "detailed letter from his current employer." The record contains a letter from the Petitioner's parent company in India that discusses the projects the Beneficiary participated in and the duties associated with the projects. However, the letter does not contain substantive information about the specific work that the Beneficiary performed, such as, for instance, the level of responsibility that he exercised, the extent to which he was supervised, the latitude of independent judgment that the Beneficiary may have been allowed to exercise, or the types and levels of any substantive knowledge that the Beneficiary may have applied in the area of computer information systems. Moreover, the letter provides insufficient information as to the quality of the Beneficiary's work, the level of his skills, or any aspects of the Beneficiary's performance meriting recognition for showing a particular level of expertise in computer information systems. Therefore, we find that opinion letter is not probative under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).¹⁰

Further, we find that the letter from the Petitioner's parent company in India is also insufficient for the Service to make a determination that the Beneficiary possesses a U.S. bachelor's or higher degree through a combination of his education, specialized training, and/or work experience pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). While we note that the record also contains letters from the parent company that discuss monetary rewards and offers of promotion, the letters do not contain sufficient information regarding whether the Beneficiary's training and/or work experience included theoretical and practical application of specialized knowledge or that his experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation or that the Beneficiary has recognition of expertise in the specialty evidenced by documentary evidence. The Petitioner, therefore, has not established that the Beneficiary is qualified to perform the duties of the proffered position.

¹⁰ We further note that misinterprets the so-called "three-for-one" rule. stated that three years of work experience is equal to one year of college training. 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, that provision reserves its application exclusively for USCIS agency-determinations.

III. CONCLUSION

For the reasons discussed above, we find that the evidence of record does not establish that (1) the proffered position qualifies as a specialty occupation and (2) the Beneficiary is qualified to serve in a specialty occupation position. In visa petition proceedings, 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 D-G-S-, Inc.*, ID# 16881 (AAO May 31, 2016)