



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

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

In Re: 8768592

Date: JUNE 2, 2020

Appeal of Vermont Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (H-1B)

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

The Vermont Service Center Director denied the petition, concluding that the record did not establish that the proffered position qualifies as a specialty occupation.

The petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.¹ The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*.² Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

Section 101(a)(15)(H)(i)(b) of the Act defines an H-1B nonimmigrant as a foreign national “who is coming temporarily to the United States to perform services . . . in a specialty occupation described in section 214(i)(1) . . .” (emphasis added). Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires “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 into the occupation in the United States.” The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates section 214(i)(1) of the Act but adds a non-exhaustive list of fields of endeavor. In addition, 8 C.F.R. § 214.2(h)(4)(iii)(A) provides that the

¹ Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

² *See Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

proffered position must also meet one of the following criteria to qualify as a specialty occupation position:

- (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). As this regulation must be read with the statutory and regulatory definitions of a specialty occupation under section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii), we construe the term “degree” 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).

II. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.³

A. First Prong of the Second Criterion

The second criterion presents two, alternative prongs: “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[.]” 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong contemplates common industry practice, while the alternative prong narrows its focus to the Petitioner’s specific position.

³ On appeal, the Petitioner does not challenge the Director’s decision concluding that it had not established that the position qualifies as a specialty occupation under the first criterion, the second prong of the second criterion or the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, we will not address those criteria in our decision.

We generally consider the following sources of evidence to determine if there is such a common degree requirement: whether the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry establish that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989) (considering these "factors" to inform the commonality of a degree requirement)).

On the labor condition application (LCA)⁴ submitted in support of the petition, the Petitioner designated the proffered position as corresponding to a Standard Occupation Classification (SOC) code 15-1199 "Computer Occupations, All Others" occupation at a Level I wage. This occupational category includes several sub-categories, including SOC code 15-1199.08, "Business Intelligence Analysts," which the Petitioner identifies as the occupation that most closely corresponds to the proffered position.

The *Handbook* is a career resource offering information on the duties and educational requirements of a wide variety of occupations.⁵ However, there are occupational categories which the *Handbook* does not cover in detail, and instead provides only summary data. The subchapter of the *Handbook* titled "Data for Occupations Not Covered in Detail" states, in relevant part, that the "[t]ypical entry-level education" for occupations within this general occupational group which includes "Business Intelligence Analysts" is a "Bachelor's degree," without indicating a specific specialty.⁶ The *Handbook* also indicates that no work experience in a related occupation or typical on-the-job training is expected for occupations within this general occupational group.⁷ Thus, the *Handbook* does not indicate that these positions comprise an occupational group for which there is a common industry requirement of at least a bachelor's degree in a specific specialty, or its equivalent.

On appeal, the Petitioner resubmits nine job postings to establish this criterion. The Petitioner argues that its description of the duties for its proposed position is sufficiently detailed to compare to the advertisements submitted and to conclude that its position and the advertised positions are similar. We agree that most of the advertised positions include general duties that correspond to the Petitioner's position descriptions. However, the advertisements submitted demonstrate that there are a number of paths available to perform the job duties described. For example, 2 of the advertisements do not list

⁴ A petitioner is required to submit an LCA to the Department of Labor to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the area of employment or the actual wage paid by the employer to other employees with similar duties, experience, and qualifications. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

⁵ We do not maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and we regularly review the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. Nevertheless, to satisfy the first criterion, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

⁶ Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Data for Occupations Not Covered in Detail, <https://www.bls.gov/ooh/about/data-for-occupations-not-covered-in-detail.htm> (last visited May 22, 2020).

⁷ *Id.*

academic requirements for the position advertised; one notes that the position requires an undefined number of years of experience, the second indicates that a minimum of 10 years of experience is required. Additionally, a third advertisement finds a general bachelor's degree acceptable for the advertised position. These advertisements undermine the Petitioner's claim that a bachelor's degree in a specific specialty is a common industry requirement for parallel positions in similar companies.

Further, an additional 4 job postings include a bachelor's degree preference or requirement and indicate that a general business degree is one of the several degrees that would be acceptable for the advertised position. However, a general business degree, without more, is inadequate to establish that a position qualifies as a specialty occupation.⁸ A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question.⁹ Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988). Here, the job postings do not include sufficient information to conclude that they require more than a general bachelor's degree in business to qualify for the advertised positions.

Of the 2 remaining job postings, one requires a bachelor's degree in business intelligence, information systems, or finance and the last of the job postings includes a requirement for a master's degree in engineering, information technology, mathematics, or management, and 2 years of experience. We have considered these 2 advertisements in conjunction with the 7 other advertisements submitted and conclude that there are a range of degrees and experience acceptable to perform the advertised positions the Petitioner claims are similar to its proposed position. The advertisements considered together confirm that there is not a common industry requirement for a parallel position in an organization similar to the Petitioner.

The Petitioner also cites to *RELX, Inc. v. Baran*, 397 F.Supp.3d 41 (D.D.C. Aug. 5, 2019), wherein the court stated that “[t]here is no requirement in the statute that only one type of degree be accepted for a position to be specialized” and that “if the position requires the beneficiary to apply practical and theoretical specialized knowledge and a higher education degree it meets the requirements.” We agree that 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

⁸ A general degree requirement does not necessarily preclude a proffered position from qualifying as a specialty occupation. For example, an entry requirement of a bachelor's or higher degree in business administration with a concentration in a specific field, or a bachelor's or higher degree in business administration combined with relevant education, training, and/or experience may, in certain instances, qualify the proffered position as a specialty occupation. In either case, it must be demonstrated that the entry requirement is equivalent to a bachelor's or higher degree in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp.*, 484 F.3d at 147.

⁹ On appeal, the Petitioner asserts “that a business degree is relevant to a position involving data analysis, and that institutions of higher education are now offering programs and coursework as part of their Business degree in data science and data analytics, or newly title degrees including Data Analytics” The Petitioner submits excerpts from several university degree programs that have established business degree concentrations in data analytics or similar fields. As noted above, when a petitioner establishes that the duties of a position require a business degree with a concentration in a specific field, it may very well satisfy this criterion. However, the advertisements submitted do not specify that the general business degree must include a concentration in any particular field.

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. Section 214(i)(1)(B) of the Act (emphasis added).

As the foregoing discussion demonstrates, while we agree that the bachelor’s degree does not have to be a degree in a *single* specific specialty, we do not agree with the analytical framework set forth by the *RELX* court. That is, the *RELX* court does not undertake the proper inquiry regarding the position’s specific educational requirements and instead concludes that a requirement for a general bachelor’s degree is sufficient to discharge the petitioner’s burden. The court overlooks the statutory and regulatory provisions as they pertain to the requirement that the bachelor’s degree, or its equivalent, be in a *specific specialty*.¹⁰ Although we agree with the *RELX* court that the bachelor’s degree does not have to be a degree in a single specific specialty, this agreement is predicated upon the fields of study including a “body of specialized knowledge” and the attainment of a bachelor’s or higher degree in a specific specialty that is directly related to the position.¹¹ When as here, support from the *Handbook* or other sources is absent, we must analyze whether a petitioner has sufficiently demonstrated that its particular position is one for which a bachelor’s degree in a specific discipline, or its equivalent, is commonly required in the industry for parallel positions among similar organizations and whether the stated field(s) of study directly relate to the performance of the duties.¹²

We also reviewed the industry letter from a competitor and two letters authored by recruiters that the Petitioner submits on appeal.¹³ The author of the letter of one of the Petitioner’s competitors avers that the Petitioner’s duties and requirements are reflective of what her company requires for similar positions and that its minimum requirement is at least a bachelor’s degree in data science or a related field, such as business analytics or information science or related fields. The recruiters, in letters with verbatim

¹⁰ 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, even in matters arising 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 properly before us, the analysis does not have to be followed as a matter of law. *Id.* Consistent with the Board’s holding in *K-S-*, we decline to follow the *RELX* court’s reasoning.

¹¹ The *RELX* court does not address how a general bachelor’s or higher degree is the equivalent of a bachelor’s or higher degree in a specific specialty.

¹² Although the *RELX* court briefly discusses the duties of the position, it did not engage in analysis of whether the duties actually required the theoretical and practical application of a body of highly specialized knowledge, *and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation*. Rather, the court accepted the petitioner’s stated standards concerning its position. However, the record must establish that a petitioner’s stated degree requirement is not a matter of preference for high-caliber candidates but is necessitated instead by performance requirements of the position. See generally *Defensor*, 201 F.3d at 387-88. Were we limited solely to reviewing a petitioner’s claimed self-imposed requirements, an organization could bring any individual with a bachelor’s degree to the United States to perform any occupation as long as the petitioning entity created a token degree requirement. *Id.*

¹³ The Petitioner also submits a position evaluation on appeal. Although the opinion will be discussed in full in the next section, we observe that [redacted] concludes that the degree requirement is common to the industry in parallel positions, but does not address the job postings that undermine his conclusion.

language claim that “[t]he normal requirement for the position of Data Analyst is a bachelor’s degree Business, Business Intelligence, Information Systems or similar data analytics discipline.”¹⁴ These letters also are insufficient to establish that there is a common industry degree requirement for a position parallel to the Petitioner’s position within similar organizations. While these individuals may have anecdotal information regarding recruiting and hiring requirements for a data analyst position, the information is not supported with relevant research, studies, surveys, or other publications or sources as part of the foundation for their conclusions. We also note the verbatim language in the recruiters’ letters and question whether these individuals authored the letters or were asked to sign a prepared letter rather than offer an objective, statistical assessment of the requirements they look for as necessary for a data analyst position. We further observe that the requirements listed in the job postings submitted by the Petitioner conflict with the information in these individuals’ letters which suggest that entry into the Petitioner’s proffered position is restricted to candidates with a bachelor’s degree in a specific specialty, or its equivalent.

The record does not include consistent probative evidence supporting the Petitioner’s claim that a bachelor’s degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations. The Petitioner has not satisfied this criterion.

B. Fourth Criterion

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

We have reviewed the duties of the proffered position and the additional narrative added to the duties in response to the Director’s RFE. The Petitioner describes the routine duties of a data analyst position who extracts data from various sources, mines the data, transforms data to generate various reports, queries data repositories, and implements advanced data models. The Petitioner explains that these duties will be performed using third-party technologies, software, and tools such as MS Excel, QlikView, SAP, master data management, MS Dynamics, and other business-related tools. The Petitioner also describes the purpose and goal of the Beneficiary’s duties as to produce reports, develop and enhance business processes, perform regression and root cause analysis, and develop scalable and customizable dashboards, among other things. The Petitioner also lists the Beneficiary’s coursework that it believes is relevant to the performance of the duties.

The Petitioner’s description does not identify which duties are so complex or specialized that a bachelor’s degree in a specific specialty, or the equivalent, is required to perform the duties. Knowledge readily available through certifications and basic courses in software technology is not the same as a “body of highly specialized knowledge” attained through bachelor’s-level study resulting in a bachelor’s degree in a specific specialty, or its equivalent. There is insufficient information in the

¹⁴ Both recruiters also attest that they “have not recruited an individual for the position of Data Analyst without a bachelor’s degree for placement at [the Petitioner] or any similar company.” Again, a general bachelor’s degree, without more, is inadequate to establish a position is a specialty occupation.

record establishing why the duties require a bachelor's degree in a particular discipline, or its equivalent.

The Petitioner also lists the Beneficiary's coursework that it believes relevant to the elaboration of duties. While we understand that a few of the Beneficiary's courses may prepare her to perform the duties of this position; the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself qualifies as a specialty occupation. Thus, whether or not the Beneficiary in this case has completed a specialized course of study directly related to the proffered position is irrelevant to the issue of whether the proffered position qualifies as a specialty occupation, i.e., whether the duties of the proffered position require the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent. Section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii).

Although we understand the parameters of what the Beneficiary will be expected to do, the description on its own does not illuminate the substantive application of knowledge involved or any particular educational requirement associated with such duties. We do not disagree that the position will require knowledge of third party technology and the ability to manipulate data using such third-party technology, however, the record does not include sufficient evidence establishing why these duties are specialized and complex, rather than the routine duties of a "Business Intelligence Analysts" or other data specialists occupation, that does not require a bachelor's-level degree, or higher, in a specific specialty, or its equivalent.

On appeal, the Petitioner submits two letters to support its claim that the proposed position satisfies this criterion. The first letter is authored by [redacted] Associate Dean of Academic Affairs and Professor of Practice [redacted] University School of Information Science. [redacted] sets forth his experience and academic history and lists the foundational competencies pertinent to the Beneficiary's master's in information management degree. [redacted] then adds that organizations such as the Petitioner seeking to employ data analysts will require prospective candidates to have a strong foundation in computer engineering, computer science, information science, information management, data and data science technologies, as well as high volume data engineering. [redacted] [redacted] however, does not include relevant research, studies, surveys, or other authoritative publications or sources as part of his review and as a foundation for this opinion. That is, [redacted] opinion is not supported with objective, statistical evidence, but rather with what appears to be anecdotal evidence.

[redacted] also refers to several courses that he states "may be offered in a Bachelor's degree, but more than likely, a Master's degree would be necessary to learn the more sophisticated depth of knowledge in these domains" and this type and level of degree is normally necessary for a candidate to enter this position. If [redacted] is stating that a master's degree would be required to perform the proffered position adequately, we note that the Petitioner does not appear to agree as it requires only a bachelor's degree in business management, information or information systems management to perform the described duties.¹⁵ [redacted] also lists several of the Beneficiary's master's-level

¹⁵ We also observe that the Petitioner does not provide a consistent version of its minimum requirements to perform the

courses as preparing her to perform the duties of the positions. However, while [] may draw inferences that the Beneficiary's coursework may be beneficial in performing certain duties of the position, we disagree with any inference that the Beneficiary's degree is required in order to perform the duties of the proffered position. Put simply, stating that a person with the Beneficiary's degree could perform the duties of the position is not the same as stating that such a degree is required to perform the duties.

[] indicates he reviewed the Petitioner's job duties for the proffered position and that the technical skills, business systems knowledge, and analytical thinking skills required to perform the duties conform to the requirement for a strong foundation in those areas. [] concludes that the proposed position is sufficiently specialized and complex that only an individual with a bachelor's or higher degree in such a field would be able to perform the job duties as specified. Such a conclusion appears to rule out other methods one could utilize to attain the requisite foundation or knowledge.

[] does not acknowledge or discuss other methods, that appear to be readily available such as a general bachelor's degree, certifications, or experience with software technology, that lead to a sufficiently similar knowledge-set. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. 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.¹⁶

We also reviewed the position evaluation prepared by [] Professor of Computer Science and Information Systems, [] University. [] repeats the Petitioner's description of the proposed duties and lists 7 major "knowledge areas" used to model bachelor degree programs in information science as set out in the *IS 2010 Curriculum Guidelines for Undergraduate Programs in Information Systems*, published by the Association for Computing Machinery (ACM).¹⁷ For example, [] states: "[p]rogrammers need to work with testing teams to 'smoke out' these problems, using a variety of test methods, and need to understand their code well enough to correct the problem without introducing additional bugs." [] concludes that skills for this duty are taught in courses in the programming fundamentals knowledge area, including application development. It is not clear, however, from the Petitioner's description of proposed duties that its position is a "Programmer" position. Even if the position requires such duties [] does not explain why a bachelor's degree in information science or systems is required when different programming languages are taught in high school, vocational school, and in online certification courses.

[] also identifies a few other courses that might impart the knowledge required to perform some of the duties and adds that any of the duties listed for the position could be traced back to a

described duties. Initially the Petitioner states that the proffered position requires "at least a bachelor's degree in Business Management or a closely-allied, relevant technical field such as Information or Information Systems Management" and that "[t]he professional engineers [it] currently hires for roles of this kind have a professional degree in Business Management or a closely relevant field." In response to the Director's RFE, the Petitioner claims that the role requires a minimum of a bachelor's degree in information management systems or information science or a closely related technical field, omitting a business management degree as acceptable. The Petitioner must resolve this ambiguity in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

¹⁶ *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988).

¹⁷ The curriculum guideline identifies broad concepts of knowledge areas which are not sufficiently concise to correlate to particular courses in an established curriculum of such courses which leads to a baccalaureate or higher degree in a specific specialty, or its equivalent. The relevance of these guidelines in establishing this position is a specialty occupation is not evident.

corresponding knowledge area. He opines that “if any of the job duties require competence in a major knowledge area, it stands to reason that the whole of the job’s responsibility could not be performed without Bachelor-level competence in Information Management Systems, Information Science, or a related technical field.” However, the majority of the Petitioner’s description of duties indicates that the Beneficiary, in the performance of the duties, will use third-party technologies, tools, and software, which do not readily feature specialized or complex work. [redacted] does not address why using MS Excel, QlikView, SAP and associated tools and platforms are skills so complex or specialized that they can only be learned in a bachelor’s degree program in information systems or science, or a related field (or its equivalent), rather than, for instance, through certifications in these third-party technologies.

[redacted]’s evaluation is not based on sufficient cogent analysis to establish his conclusion that “any individual lacking a Bachelor’s degree (or its equivalent) in these fields would not be able to perform these duties to the degree [the Petitioner] requires for the continuous execution of its business operations.” He does not provide the information and explanations necessary to support a conclusion that a bachelor’s degree in a specific discipline, while helpful, would be required. The professor does not account for obvious alternative explanations.¹⁸ A lack of sufficient consideration of alternatives is a basis that can adversely affect the evidentiary weight of such an opinion.¹⁹ [redacted] does not support his conclusion with sufficiently detailed analysis and he does not offer sufficient comprehensible explanations that require a conclusion that the duties the Petitioner describes require a “body of highly specialized knowledge” attained through a course of bachelor’s-level study in a specific discipline, or its equivalent.²⁰

The record does not establish that the proffered position is so specialized and complex that the knowledge required to perform the position is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

Upon review of the totality of the evidence submitted, the Petitioner has not established that more likely than not, the proffered position is a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Moreover, the record does not establish that the Petitioner satisfied the statutory and regulatory definitions of specialty occupation.

ORDER: The appeal is dismissed.

¹⁸ See *Claar v. Burlington N.R.R.*, 29 F.3d 499, 502 (9th Cir. 1994).

¹⁹ See *Ambrosini v. Labarraque*, 101 F.3d 129, 140 (D.C. Cir. 1996).

²⁰ Again, 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.*