U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N-, INC.

DATE: MAY 31, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a computer company, seeks to temporarily employ the Beneficiary as a "business analyst" under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) § 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 is insufficient to establish that: (1) the proffered position qualifies as a specialty occupation; (2) there is a valid labor condition application for the occupation; and (3) the Beneficiary is qualified to serve in a specialty occupation position in accordance with the applicable statutory and regulatory provisions.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director's conclusions are erroneous.

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

I. SPECIALTY OCCUPATION

A. Legal Framework

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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) states, in pertinent part, the following:

> *Specialty occupation* means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must meet one of the following criteria:

> (*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;
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> (*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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Fed. Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets 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 proffered 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"). Applying this standard, USCIS regularly approves H-1B petitions for qualified individuals who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the individual, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires 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, as required by the Act.

B. The Proffered Position

On the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner described itself as a 22-employee company that engages in the business of "Software Services." The Petitioner seeks to employ the Beneficiary as a "business analyst" from October 1, 2015, to July 29, 2018, at an annual salary of $65,500.

The labor condition application (LCA) submitted to support the visa petition states that the proffered position corresponds to Standard Occupational Classification (SOC) code and occupation title 13-1111, "Management Analysts," from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

In its cover letter, the Petitioner explained that it "has built a multi channel digital ordering (Software as a Service – SaaS) platform – [redacted] . . . [that] is an online food ordering service." The Petitioner stated that the Beneficiary "will be designated to primarily work at the [Petitioner's] business premises in [redacted] CA on [its] internal software product suite - [redacted] The Petitioner then described the duties of the proffered position as follows (verbatim):

> [The Beneficiary] will be responsible for defining and documenting customer business functions and processes involving consulting with functional unit management and personnel to identify, define and document business needs and objectives, current operational procedures, problems, input and output requirements, and levels of systems access. Her duties will include acting as a liaison between end-users, technical analysts, information technology analysts, consultants and other organizations in the analysis, design, configuration, testing and maintenance of case management systems to ensure optimal operational performance. She will also be involved in tracking and fully documenting changes for functional and business specifications; Identifying opportunities for improving business processes through information systems and/or non-system driver changes and assisting in the preparation of proposals to develop new systems and/or operational changes; Conducting change impact analysis to assess the potential implications of changes and documenting business rules, functions and requirements; Resolving problems including organizational, procedural, technical and fiscal research and analysis; and Developing policy and procedures to improve efficiency, cost-effectiveness, and monitoring changes.

In response to the Director's request for evidence (RFE), the Petitioner elaborated upon the duties of the proffered position, as well as the time spent on each duty, as follows (verbatim):

	Tasks	**Difficulty Level**	**% Time to be Spent**
1.	Works closely with the business and technical teams and is a major contributor to the requirements specification deliverable, writes the business and functional requirements. This person understands the business and ensures that there is integration between business and technology.	4	30%
2.	Performs feasibility analysis, scopes projects, and works with the project management team to prioritize deliverables, and negotiate on product functionalities.	4	30%
3.	Creates detailed Business Requirement Document (BRD) and translate it into functional specifications.	4	10%
4.	Provides analytic support by coordinating data extraction from various databases and data interpretation.	4	10%
5.	Partners with development and analytic teams to provide reporting on software solutions.	3	10%
6.	Participates in Integration Testing and User Acceptance Testing (UAT) and Functionality Testing.	4	10%

Notes on Difficulty Level	
1	Novice
2	Some Exposure

3	Familiarity with Computers
4	Bachelor's
5	Master's

The Petitioner stated that the proffered position requires "a Bachelor's Degree in Business administration, management, information systems, or IT," plus a minimum of two to four years of related experience.

In support of the petition, the Petitioner submitted two Employment Agreements with the Beneficiary which provide the following description of duties (verbatim):[1]

> [The Beneficiary] will be responsible for Requirements Gathering , Gap analysis and documentation for the front office product, Training the development and testing team on domain and system functionalities.Involved in preparation of business requirement specification.Provided knowledge transition and training to in house project teams.Provided client demos and presentations.

C. Analysis

As a preliminary matter, the Petitioner's claim that a bachelor's degree in "Business administration" or "management" is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. 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. 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" or "management," 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).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose "Business administration" or "management" degree may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.[2] Without more, the Petitioner's degree requirement, alone,

[1] The Petitioner submitted an "amended" Employment Agreement in response to the Director's RFE which had noted several impermissible provisions relating to the LCA in the original Employment Agreement. Both Employment Agreements contain the same description of duties.

[2] Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

indicates that the proffered position is not in fact a specialty occupation.

Moreover, it also cannot be found that the proffered position qualifies a specialty occupation because the Petitioner has not credibly and sufficiently demonstrated what work its company or the Beneficiary will perform on the product.

As duly noted by the Director, is a product that belongs to the corporation The evidence of record contains, for example, the "Terms of User Agreement" which authorizes the use of the product by a corporation, incorporated under the laws of the State of Delaware." The U.S. Patent and Trademark Office application to trademark the mark also identifies ' as the applicant. Other evidence in the record, such as marketing documents, invoices, and bank statements, similarly reference as the corporate entity which owns

However, the Petitioner has not sufficiently explained the nature of its relationship to That is, the Petitioner has not explained the roles, responsibilities, division of labor, and other salient aspects of the relationship between these two companies with respect to the product.[3] The Petitioner also has not submitted contracts or other evidence establishing the actual terms of agreement, if any, between and the Petitioner. Without additional information and evidence, we cannot determine whether the Petitioner has actual work available on the project, and can make a *bona fide* offer of employment for such work on the project.[4] While the Petitioner and may share a common owner, a corporation is nevertheless a separate and distinct legal entity from its owners or

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> The courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D. Mass. 2000); *Shanti*, 36 F. Supp. 2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: elsewise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

Id.

[3] We note that the Petitioner initially signed the Attorney-Client Agreement for attorney services to trademark the mark. Subsequently, however, the actual trademark application was filed by not the Petitioner. We also note that the website states that was copyrighted by The website also states that is "A Product of and is "Brought to you by [the Petitioner]." Furthermore, and the Petitioner share the same address. Overall, while it is evident that the Petitioner and are related, the specific relationship between the two companies is unclear.

[4] The California Secretary of State website indicates that the Petitioner's corporate status has been suspended. That is, the Petitioner's powers, rights and privileges, including the right to use its corporate name in California, were suspended. *See* attached print-outs. The Petitioner's corporate status raises additional questions regarding its ability to make a *bona fide* offer of employment.

stockholders. *See Matter of M-*, 8 I&N Dec. 24, 50-51 (A.G., BIA 1958); *Matter of Aphrodite Invs. Ltd.*, 17 I&N Dec. 530 (Comm'r 1980); and *Matter of Tessel, Inc.*, 17 I&N Dec. 631 (Act. Assoc. Comm'r 1980).

Nevertheless, assuming *arguendo* that [redacted] is a product of the Petitioner or that the Petitioner is otherwise authorized to perform work on [redacted] the Petitioner has not submitted sufficient evidence to demonstrate exactly what work the Petitioner has available and will perform on the [redacted] project.

The Petitioner provided generalized, broad descriptions of the work to be performed on the [redacted] project. The "milestones" described in the "Product Overview with Milestone Development Plan" document are broadly termed and do not explain the actual work to be performed, and by whom. For example, the "milestones" to be completed include a "Private-Label and POS integration release" in May 2016 and [redacted] release" in December 2016. However, there is no further explanation of what specific tasks are needed to achieve these broad milestones, who will perform these specific tasks, how many work hours are needed to accomplish each task, or any other pertinent information about the work to the completed. The Petitioner likewise provided a "Workstreams" chart which lists broad activities and phases to be completed, but does not further explain what specific tasks will be performed, who will perform these specific tasks, how many work hours are needed to accomplish each task, or other pertinent information.

The Petitioner has not specifically identified which of its employees are actively working on the [redacted] product. The Petitioner's organizational chart does not specifically identify which employees have been assigned to the [redacted] team.[5] Moreover, the product overview lists the project's "Core Team" as: (1) the Petitioner's CEO/Founder; (2) an individual in "Engineering"; (3) an individual in "Marketing & Operations"; and (4) an individual in "Business Development." However, there is insufficient evidence establishing that these "Core Team" members were actively working for the Petitioner as of the time of filing. There is insufficient evidence that the Petitioner employs or has employed the individuals in "Engineering" and "Business Development" within the past several years, as neither individual appears on the Petitioner's organizational chart, 2013 and 2014 W-2 forms, or 2015 payroll information, among other documents. While the individual in "Marketing & Operations" appears to have been a former employee, she was not actively working for the Petitioner at the time of filing, according the Petitioner's organizational chart, 2015 Quarter 1 Form 941, and 2015 payroll records.[6] Even the Petitioner's CEO/Founder was not listed in the Petitioner's payroll records for all months in 2015. In the five months of 2015 that he appeared on the payroll, he was listed as having worked zero hours. Overall, there is insufficient evidence in the record to demonstrate what staff the Petitioner has actually dedicated to the [redacted] project.

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[5] The organizational chart does, however, specifically identify two of the Petitioner's contractors that are on the [redacted] team (i.e., the UI Architect and UI Designer, both identified as a '[redacted]').

[6] This individual was listed as a paid employee on the Petitioner's March, April, May, and June payroll records. However, she was listed as having worked zero hours in each of these months. She was no longer on the Petitioner's July and subsequent payroll records.

"[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. "Doubt cast on any aspect of the Petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition." *Id.* at 591.

It is important to note the Director's finding that the Petitioner had previously obtained approvals for at least 20 H-1B beneficiaries to work on the project. The Director also found that the Petitioner filed at least 15 new H-1B petitions to employ additional workers on the project starting from October 1, 2015. The record therefore indicates that the Petitioner has requested to employ at least 35 individuals on the project. In contrast, the Petitioner stated that it "will employ approximately 11 people to work out of [its] 2 office premises." Moreover, the Director found that four of the Petitioner's H-1B beneficiaries who were supposed to have been assigned to the project were actually assigned to work in states far from California. The Petitioner has not provided an explanation, corroborated by objective evidence, reconciling its various claims regarding the required personnel for the project.[7] Again, it is incumbent upon the Petitioner to resolve inconsistencies in the record, and doubt cast on any aspect of the Petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition." *Id.* at 591-2.

Regarding the sufficiency of the Petitioner's work space, the Petitioner initially indicated that the Beneficiary will work on the project from its office located in California. The Director also found that the 35 H-1B beneficiaries whom the Petitioner claimed were to work on the project were also supposed to be working from the same office. However, the lease for this particular office address reflects that these premises consist of only 250 square feet. The Petitioner has not sufficiently explained and documented how its office premises were sufficient to house the entire team, even at the time it entered into the lease on September 11, 2014. While the Petitioner has subsequently leased a larger office located in California, this new lease nevertheless does not overcome the Petitioner's initial lack of office space. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Considering all of the above factors – including the Petitioner's vague descriptions of the work to be done on the inconsistent levels of staffing claimed, as well as the lack of adequate office space – we cannot find that the Petitioner has sufficiently demonstrated what work it has available and will actually perform on the project.

[7] On appeal, the Petitioner does not directly contest the Director's findings. Instead, the Petitioner vaguely states that the Service erred in "any and all other and/or relating issues raised in the denial or in this appeal."

Moreover, the Petitioner has not consistently and credibly demonstrated what work, if any, the Beneficiary will actually perform for the [redacted] project.

The Director determined that the duties of the proffered position are more closely aligned with the "Computer Systems Analysts" occupational classification. On appeal, the Petitioner asserts that the Director erred in this determination, but did not further explain why.[8] Upon review, we agree with the Director's determination that the "Computer Systems Analyst" occupational classification is more appropriate here.

While the "Management Analysts" occupational category may have been appropriate for some of the Beneficiary's business-related duties, the "Management Analysts" occupational classification is insufficient to cover the computer-specific duties the Beneficiary will perform, such as writing functional requirements, integration testing, and user acceptance testing. Neither the *Occupational Outlook Handbook* (*Handbook*) nor the Occupational Information Network (O*NET), both of which we consider as authoritative sources on the duties of the wide variety of occupations that they address, indicate that management analysts have computer-specific duties.[9] *See* U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Management Analysts," http://www.bls.gov/ooh/business-and-financial/management-analysts.htm#tab-2 (last visited May 11, 2016); O*NET Online Details Report for "Management Analysts," http://www.onetonline.org/link/details/13-1111.00 (last visited May 11, 2016).

In contrast, positions within the "Computer Systems Analysts" occupational classification, corresponding to SOC code and title 15-1121, "Computer Systems Analysts," typically perform duties to "study an organization's current computer systems and procedures and design information systems solutions to help the organization operate more efficiently and effectively" and "bring business and information technology (IT) together by understanding the needs and limitations of both." *See* U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Computer Systems Analysts," http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-2 (last visited May 11, 2016). They also "[a]nalyze user requirements, procedures, and problems to automate or improve existing systems and review computer system capabilities, workflow, and scheduling limitations." O*NET Online Details Report for "Computer Systems Analysts," http://www.onetonline.org/link/details/15-1121.00 (last visited May 11, 2016). These duties closely align with the proffered duties which include, for example, "work[ing] closely with the business and technical teams and is a major contributor to the requirements specification deliverable, writ[ing] the business and functional requirements . . . [and] understand[ing] the business and ensur[ing] that there is integration between business and technology."

[8] Although the Petitioner indicated that it would submit a supplemental appeal brief and supporting documentation within 30 days of the Form I-290B, Notice of Appeal or Motion, it did not submit an additional brief or documentation.

[9] The *Handbook,* which is available in printed form, may also be accessed at http://www.bls.gov/oco/. All our references to the *Handbook* are to the 2016 – 17 edition available online. O*NET is accessed online at http://www.onetonline.org/.

Considering that the Petitioner chose the "Management Analysts" occupational classification instead of the "Computer Systems Analysts" classification, and did not explain its choice on appeal, we cannot find that the Petitioner has sufficiently established the substantive nature of the work that the Beneficiary will purportedly perform for the project.

Moreover, there is no specific mention of the Beneficiary or the role of the management analyst in the "Product Vision/Business Plan," "Product Overview with Milestone Development Plan," or other project documentation about The Petitioner has not specifically explained how the Beneficiary's duties correlate to the "milestones" or "Workstreams" described in the project documentation.

The Petitioner has provided inconsistent descriptions of the proffered position in other aspects. The job duties described in the Petitioner's Employment Agreements with the Beneficiary are different from those provided in the cover letter and in response to the Director's RFE. For example, the Employment Agreements list the job duty to "[provide] client demos and presentations." However, this or another similar duty is not found in the Petitioner's other job descriptions. In fact, the job duties listed in the Employment Agreements appear to have been copied directly from the Beneficiary's resume (i.e., her prior job duties from June 2006 to June 2007). We therefore question the accuracy and credibility of the Petitioner's descriptions and documents. Even if the job duties described in the Employment Agreements were reflective of the proffered duties, the Petitioner has not explained how job duties such as "[p]rovided knowledge transition and training to in house project teams" are relevant to the project.

Not only are the Petitioner's job descriptions inconsistent, but they are vague and duplicative as well. For example, the Petitioner stated that the Beneficiary will spend 30% of her time "[contributing] to the requirements specification deliverable" and "[writing] the business and functional requirements." The Petitioner then stated that the Beneficiary will spend another 30% of her time on the duties of "[performing] feasibility analysis, scopes projects, and works with the project management team to prioritize deliverables, and negotiate on product functionalities," and yet another 10% of her time on "[creating] detailed Business Requirement Document (BRD) and translate it into functional specifications." The Petitioner has not adequately distinguished each of these stated job duties from one another, even though they account for separate percentages of time. Furthermore, the Petitioner has not explained in detail what specific tasks the Beneficiary will perform (e.g., what is meant by the broad terms "[w]orks closely with the business and technical teams" and "major contributor to the requirements specification deliverable").
Finally, we note the Petitioner's statement that the Beneficiary "will be designated to primarily work at the [Petitioner's] business premises in CA on [its] internal software product suite - The use of the word "primarily" denotes that the Beneficiary may also be assigned to perform work other than at the Petitioner's business premises and/or on the project. We also note the Petitioner's Employment Agreements with the Beneficiary which state that the Beneficiary "shall also perform such other duties in the ordinary course of business as performed by other persons in similar such positions, as well as such other reasonable duties as may be assigned from time to time by the [Petitioner]." These Employment Agreements further state that

the Beneficiary's "duties shall be rendered at [Petitioner's] business premises or at such other places as the [Petitioner] may require." When considered as a whole, the evidence of record lacks a sufficient, detailed explanation of all the work the Beneficiary will be assigned to perform during the entire validity period requested, including the location(s) of such work and the specific job duties to be performed.

For all of the above reasons, we find the evidence of record insufficient to demonstrate that the Petitioner has work available to perform on the project, and that the Petitioner will assign the Beneficiary to work on the project in the manner asserted. We are therefore precluded from understanding the substantive nature of the proffered position and its constituent duties.

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

Accordingly, as the evidence does not satisfy any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

II. LCA

The petition also cannot be approved because the Petitioner has not provided a certified LCA that corresponds to and supports the petition. As discussed above, the proffered position should have been classified under SOC code and title 15-1121, "Computer Systems Analysts," not under the SOC code and title 13-1111, "Management Analysts."

Even if the proffered position were a combination of "Management Analysts" and "Computer Systems Analysts," the Petitioner should have chosen the relevant occupational code for the highest paying occupation, which in this case is "Computer Systems Analysts." With respect to the LCA, DOL provides clear guidance for selecting the most relevant O*NET occupational code classification. The "Prevailing Wage Determination Policy Guidance" states the following:

> In determining the *nature of the job offer*, the first order is to review the requirements of the employer's job offer and determine the appropriate occupational classification. The O*NET description that corresponds to the employer's job offer shall be used to identify the appropriate occupational classification . . . . If the employer's job opportunity has worker requirements described in a combination of O*NET

> occupations, the [determiner] should default directly to the relevant O*NET-SOC occupational code for the highest paying occupation. For example, if the employer's job offer is for an engineer-pilot, the [determiner] shall use the education, skill and experience levels for the higher paying occupation when making the wage level determination.

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.

The Petitioner stated on the LCA that the wage level for the proffered position is Level I (entry). The Petitioner provided the prevailing wage that corresponds to the occupation "Management Analysts," which is $63,024 per year for the [redacted] location, and $56,971 for the [redacted] location. However, the prevailing wage for a Level I position within the "Computer Systems Analysts" occupational category is significantly higher than that for Level I "Management Analysts." More specifically, the prevailing wage for Level I "Computer Systems Analysts" is $66,602 per year for the [redacted] location, and $60,111 for the [redacted] location. As such, the Petitioner was required to provide at the time of filing an LCA certified for a position located within the higher-paying occupational category of "Computer Systems Analysts" which corresponds to SOC code 15-1121 (not "Management Analysts" corresponding to SOC code 13-1111) in order for it to correspond to and support the petition.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

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

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the Beneficiary. Here, the Petitioner has not submitted a valid LCA that has been certified for the proper occupational classification, and the petition cannot be approved for this additional reason.

III. BENEFICIARY QUALIFICATIONS

The Director also found that the Beneficiary would not be qualified to perform the duties of the proffered position. However, a beneficiary's credentials to perform a particular job are relevant only

when the job is found to be a specialty occupation. As discussed in this decision, the proffered position does not qualify as a specialty occupation. Therefore, we need not and will not address the Beneficiary's qualifications further.

IV. CONCLUSION

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of N-, Inc.*, ID# 16762 (AAO May 31, 2016)