



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

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

MATTER OF A-S-, INC.

DATE: FEB. 16, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an information technology company, seeks to temporarily employ the Beneficiary as a “quality assurance 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 Director, California Service Center, denied the petition. The Director concluded that the Petitioner did not establish that the proffered position is a specialty occupation.

On appeal, the Petitioner asserts that the evidence of record satisfies all evidentiary requirements.

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

### I. LEGAL FRAMEWORK

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

8 C.F.R. § 214.2(h)(4)(iii)(A). U.S. Citizenship and Immigration Services (USCIS) has consistently interpreted the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

## II. PROFFERED POSITION

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as a “quality assurance analyst.” The Petitioner provided the following description of the duties of the proffered position:

- Design test cases, plans, scenarios, scripts, or procedures.
- Develop testing programs that address areas such as database impacts, software scenarios, regression testing, negative testing, error or bug retests, or usability.
- Document software defects, using a bug tracking system, and report defects to software developers and project managers.
- Involved in requirements gathering and understanding and identify, analyze, and document problems.
- Monitor bug resolution efforts and track successes.
- Create or maintain databases of known test defects.
- Plan test schedules or strategies in accordance with project scope or delivery dates.
- Adhere to the Organization wide process and project specific processes.
- Involved in client interaction and status reports.
- Reporting to the [Petitioner’s] local manager.

The Petitioner stated, “The position requires a bachelor’s degree in Computer Science, Engineering, Math, or a related field.”

Subsequently, the Petitioner provided the following additional duty description:

- Develop, implement and maintain detailed project schedule to coordinate multiple activities.
- Requirement gathering, analyzing and understanding
- Identify the testing approach to suit the requirements
- Preparing Test plans, estimates, delivery milestones
- Track and review the progress on daily basis
- Designing framework for automation testing
- Developing automation test scripts
- Analyzing results from continuous integration, finding the root cause for script failures and fixing them
- Trouble shooting production issues and verification of fixes
- Complete responsibility of all QA deliverables

### III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.<sup>1</sup> Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.<sup>2</sup>

#### A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. To inform this inquiry, we recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>3</sup>

On the labor condition application (LCA)<sup>4</sup> submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Computer Occupations, All

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<sup>1</sup> Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

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

<sup>3</sup> All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not, however, 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 USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, 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.

<sup>4</sup> The Petitioner is required to submit a certified LCA to USCIS to demonstrate that it will pay an H-1B worker the

Other” corresponding to the Standard Occupational Classification code (SOC) 15-1199, which includes SOC 15-1199.01, “Software Quality Assurance Engineers and Testers.”<sup>5</sup> The *Handbook* discusses software quality assurance analyst positions within its chapter describing the “Computer Systems Analysts” occupational category and states the following:

A bachelor’s degree in a computer or information science field is common, although not always a requirement. Some firms hire analysts with business or liberal arts degrees who have skills in information technology or computer programming.

It further states:

Most computer systems analysts have a bachelor’s degree in a computer-related field. Because these analysts also are heavily involved in the business side of a company, it may be helpful to take business courses or major in management information systems.

Some employers prefer applicants who have a master’s degree in business administration (MBA) with a concentration in information systems. For more technically complex jobs, a master’s degree in computer science may be more appropriate.

Although many computer systems analysts have technical degrees, such a degree is not always a requirement. Many analysts have liberal arts degrees and have gained programming or technical expertise elsewhere.

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-4> (last visited Feb. 13, 2017).<sup>6</sup>

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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 experience and qualifications who are performing the same services. See *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542, 545-546 (AAO 2015).

<sup>5</sup> The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). We will consider this selection in our analysis of the position. The “Prevailing Wage Determination Policy Guidance” issued by the DOL provides a description of the wage levels. A Level I wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. This wage rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that he will be closely supervised and his work closely monitored and reviewed for accuracy; and (3) that he will receive specific instructions on required tasks and expected results. U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://flcdatacenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf). A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner’s job opportunity. *Id.*

<sup>6</sup> The Petitioner also submits this information.

(b)(6)

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The *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for these positions. This section of the narrative begins by stating that a bachelor's degree in a related field is not a requirement. The *Handbook* continues by stating that there is a wide-range of degrees that are acceptable for positions in this occupation, including general purpose degrees such as business and liberal arts. While the *Handbook* indicates that a bachelor's degree in a computer or information science field is common, it does not report that such a degree is normally a minimum requirement for entry.

According to the *Handbook*, many systems analysts have liberal arts degrees and have gained programming or technical expertise elsewhere. It further reports that many analysts have technical degrees. We observe that the *Handbook* does not specify a degree level (e.g., associate's degree, baccalaureate) for these technical degrees. Moreover, it specifically states that such a degree is not always a requirement. Thus, the *Handbook* does not support the claim that the occupational category of computer systems analyst is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent. Even if it did, the record lacks sufficient evidence to support a finding that the particular position proffered here, an entry-level position with the Level I characteristics discussed above, would normally have such a minimum, specialty degree requirement or its equivalent.

In support of the petition, the Petitioner submits information from O\*NET as well as the evaluation of the position provided by [REDACTED] a professor at [REDACTED]

[REDACTED] We find neither persuasive.

We will first discuss the materials from O\*NET. In accessing the O\*NET Summary Report for 15-1199.01 – the provision referenced by the Petitioner – we observe that O\*NET does not state a requirement for a bachelor's degree for this occupation. Rather, it assigns this occupation a Job Zone “Four” rating, which groups it among occupations for which “most . . . require a four-year bachelor's degree, but some do not.” O\*NET OnLine Summary Report for “15-1199.01 – Software Quality Assurance Engineers and Testers,” <http://www.onetonline.org/link/summary/15-1199.01> (last visited Feb. 13, 2017). Further, O\*NET does not indicate that 4-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty directly related to the occupation. Therefore, O\*NET does not establish the proffered position as a specialty occupation.

Nor are we persuaded by [REDACTED] evaluation, which was prepared for a “Consultant-Quality Assurance Analyst” position. Though the Petitioner claims that the position discussed by [REDACTED] is similar to the proffered position here, we are not persuaded. First, the two positions do not have the same title, which raises questions as to whether [REDACTED] opinion applies to the position offered here. Further, we note that according to [REDACTED] the information upon which he based his conclusions was provided by [REDACTED]. It is not clear who [REDACTED] is and his relationship to the Petitioner. Moreover, while [REDACTED] provides a brief, general description of the Petitioner's business activities, he does not demonstrate in-depth knowledge of its operations or how the duties of the position would actually be performed in the context of its business enterprise.

(b)(6)

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In addition, [REDACTED] opinion letter does not cite specific instances in which his past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that he has conducted any research or studies pertinent to the educational requirements for such positions (or parallel positions) in the Petitioner's industry for similar organizations, and no indication of recognition by professional organizations that he is an authority on those specific requirements. His curriculum vitae does not reflect that he has published any works on the academic/experience requirements for quality assurance analysts (or related issues).

Even assuming [REDACTED] possessed expertise on the degree requirements for quality assurance analysts, his opinion letter does not substantiate his conclusions, such that we can conclude that the Petitioner has met its burden of proof. First, [REDACTED] does not reference, cite, or discuss any studies, surveys, industry publications, authoritative publications, or other sources of empirical information which he may have consulted to complete his evaluation. Second, [REDACTED] does not indicate that he considered, or was even aware of, the fact that the Petitioner submitted an LCA for a Level I, entry-level position. Through this designation, the Petitioner indicated that the position is a comparatively low, entry-level position relative to others within its occupation. We consider this a significant omission, in that it suggests an incomplete review of the position in question and a faulty factual basis for [REDACTED] ultimate conclusion as to the educational requirements of the position upon which he opines.

For the reasons discussed, we find that [REDACTED] opinion letter lends little probative value to the matter here. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988) (The service is not required to accept or may give less weight to an advisory opinion when it is "not in accord with other information or is in any way questionable.").

Therefore, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

## B. 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 casts its gaze upon the common industry practice, while the alternative prong narrows its focus to the Petitioner's specific position.

### 1. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the "degree requirement" (i.e., a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *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 attest 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)).

Here and as already discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative source) reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals." Nor is there any other evidence for our consideration under this prong.

Thus, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

## 2. Second Prong

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the Petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

A review of the record of proceedings finds that the Petitioner has not credibly demonstrated that the duties the Beneficiary will be responsible for or perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty, or its equivalent. Even when considering the Petitioner's general descriptions of the proffered position's duties, the evidence of record does not establish why a few related courses or industry experience alone is insufficient preparation for the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the position, the Petitioner has not demonstrated how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position. The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

Further, the Petitioner attested on the submitted LCA that the wage level for the proffered position is a Level I wage.<sup>7</sup> Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for such positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the Petitioner did not demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the Petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

### C. Third Criterion

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position.

The Petitioner provided a list of ten people whom it stated, "are or were employed by [the Petitioner] in H-1B status in the position of Quality Assurance Analyst" and submitted copies of their diplomas. However, our analysis under this criterion encompasses all of the Petitioner's quality assurance analysts and is not limited to those who held H-1B status. Though the Petitioner did not indicate whether these 10 individuals are the only people it has employed as quality assurance analysts, we observe that the Petitioner claims that it has 75 employees and has been in business for more than 20 years. Further, the current record is insufficient to demonstrate that the duties of the positions held by these 10 individuals mirror the ones proffered here. These ten diplomas therefore do not establish eligibility under this criterion.

We have reviewed the job vacancy announcement placed by the Petitioner advertising a QA Analyst position in New York. It states that the position requires a "BS/MS in Computer Science or a relevant field." However, that position is apparently not similar to the position proffered here, as that position requires 5 years of work experience in a software testing role and 3 years of managing onsite/offshore testing teams. The proffered position, on the other hand, is a Level I, entry-level position.

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<sup>7</sup> The issue here is that the Petitioner's designation of this position as a Level I position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), such a position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty or its equivalent. That is, a position's wage level designation may be a consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.



Finally, the Petitioner's own statement about the requirements of the proffered position does not indicate that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. As was noted above, in a letter submitted with the H-1B petition, the Petitioner stated that the proffered position requires at least a bachelor's degree in "Computer Science, Engineering, Math, or a related field."

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).

In the instant case, the Petitioner has not demonstrated how computer science, mathematics, any and all branches of engineering,<sup>8</sup> and all subjects related to them are each directly related to the duties of the proffered position such that those apparently disparate subjects should be construed as a specific specialty. Absent additional explanation, the Petitioner's own requirements for the position appear to show that it is not a specialty occupation position.

We cannot conclude that the Petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).<sup>9</sup>

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<sup>8</sup> The field of engineering is a broad category that covers numerous and various specialties, some of which are only related through the basic principles of science and mathematics, e.g., nuclear engineering and aerospace engineering. Therefore, besides a degree in electrical engineering, it is not readily apparent that a general degree in engineering or one of its other sub-specialties, such as chemical engineering or nuclear engineering, is closely related to computer science or that engineering or any and all engineering specialties are directly related to the duties and responsibilities of the particular position proffered in this matter.

<sup>9</sup> While a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

D. 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.

Again, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. The duties of the proffered position, such as troubleshooting and debugging computer applications, contain insufficient indication of a nature so specialized and complex that they require knowledge usually associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent.

In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than those positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Further, as was noted above, the Petitioner filed the instant H-1B petition for a wage Level I position, a position for a beginning-level employee with only a basic understanding of the position. This does not support the proposition that the nature of the specific duties of the proffered position is so specialized and complex that their performance is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, directly related to computers, especially as the *Handbook* indicates that some such positions require no such degree. In other words, if typical positions located within the occupational category do not require a bachelor's degree in a specific specialty, or the equivalent, then it is unclear how a position with the Level I characteristics described above would, regardless of the Petitioner's assertions

For the reasons discussed above, the evidence of record does not satisfy the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation.

IV. CONCLUSION

The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of A-S-, Inc.*, ID# 163417 (AAO Feb. 16, 2017)