



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

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

MATTER OF K- INC.

DATE: APR. 3, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

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

The Director of the California Service Center denied the petition, concluding that the evidence of record did not establish that: (1) the proffered position qualifies as a specialty occupation; and (2) the Petitioner will engage the Beneficiary in an employer-employee relationship.

On appeal, the Petitioner asserts that the Director erred in the decision. Upon *de novo* review, we will dismiss the appeal.

**I. SPECIALTY OCCUPATION**

We will first address whether the Petitioner has established that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

**A. Legal Framework**

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

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

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

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

8 C.F.R. § 214.2(h)(4)(iii)(A). We have consistently interpreted 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).

#### B. Proffered Position

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as a “security software engineer.” In addition, the Petitioner stated that the Beneficiary would work for its end-client [REDACTED] located at [REDACTED] in [REDACTED] Washington.

In its letter of support and in response to the Director’s request for evidence (RFE), the Petitioner provided the following job duties for the position, along with the approximate percentage of time the Beneficiary will spend on each duty:

- Design and Implement WCF services layer hosted on [REDACTED] This layer is the middle tier between SQL [REDACTED] and SharePoint online external content. (10%)
- Write code to extract data from the Cosmos data center using Scope on the Cosmos system, C#, batch files, T-SQL for the MSN NIF pipeline, aggregate data for forwarding to internal teams. (20%)
- Maintain high degree of competency across the [REDACTED] focusing on .NET Framework, WCF, [REDACTED] AppFabric, and SQL [REDACTED] (10%)

- Build Data Sync Job on [REDACTED] to synchronize data from SQL 2012 databases to SQL [REDACTED] (20%)
- Create a new automatic build system using [REDACTED] and TFS. (10%)
- Perform code review, work with team members to ensure consistence to code standards. (5%)
- Participate in developing the WCF, Web services and integrating with different applications. (5%)
- Work on database scripts, Store Procedures, View, Indexes and Functions in SQL server 2008. (5%)
- Participate in gathering client requirements, design requirements for development team and plan for different releases. (5%)
- Participate in developing requirements with C#, MVC Applications, WCF and Web services in .Net Technologies, unit testing, and system testing and release management. (10%)

According to the Petitioner, the position requires a bachelor's degree in computer science, electrical engineering, or a closely related field.

The Petitioner also submitted a letter from the end-client. The letter, signed by the "SR SW ENG MGR," states:

[REDACTED] [the vendor] has requested a letter from [REDACTED] to supplement its petition for the above-referenced foreign national ("Beneficiary"), so [REDACTED] can employ the Beneficiary in a nonimmigrant work status in the U.S.

The Beneficiary is currently assigned, or will be assigned in the next six months, as an on-shore resource in the United States to a project at [REDACTED] through [REDACTED] as per a finalized and valid Statement of Work.

The end-client does not state the Beneficiary's job duties or that there are any specific requirements for the position.

### C. Analysis

For the reasons set out below, we have determined that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.<sup>1</sup> Specifically, the record (1) does not describe

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

the position's duties with sufficient detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.<sup>2</sup>

As recognized by the court in *Defensor*, where the work is to be performed for entities other than the Petitioner, evidence of the client's job requirements is critical. *Defensor*, 201 F.3d at 387-88. The court held that the former Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the Petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the Beneficiary's services. *Id.* at 384. Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

In the instant case, the record lacks sufficient substantive documentation from the end-client regarding not only the specific job duties to be performed by the Beneficiary, but also information regarding whatever the client may or may not have specified with regard to the educational credentials of persons to be assigned to its project. The record does not contain sufficient probative documentation on this issue from (or endorsed by) [REDACTED] the company that will actually be utilizing the Beneficiary's services (according to the Petitioner) that establishes any particular academic requirements for the proffered position.

The Petitioner, thus, has not established the substantive nature of the work to be performed by the Beneficiary, which precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Nevertheless, assuming, for the sake of argument, that the proffered duties as described in the record would in fact be the duties to be performed by the Beneficiary, we will analyze them and the evidence of record to determine whether the proffered position as described qualifies as a specialty occupation. To that end and to make its determination as to whether the employment described above qualifies as a specialty occupation, we turn to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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<sup>2</sup> The Petitioner submitted documentation in support of 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.

## 1. 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 Systems Analysts" corresponding to the Standard Occupational Classification code 15-1121.<sup>5</sup>

The *Handbook* subchapter entitled "How to Become a Computer Systems Analyst" states, in pertinent part: "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." 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 Mar. 27, 2017). The *Handbook* also states: "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." *Id.*

The *Handbook* reports that a bachelor's degree in a computer or information science field may be common, but not that it is a requirement for entry into these jobs. In fact, this chapter reports that "many" computer systems analysts may only have liberal arts degrees and programming or technical experience, but does not further qualify the amount of experience needed. The *Handbook* also notes

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<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 we regularly review 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 us 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 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 II wage. 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 II wage rate is for a petitioner who expects its employee to perform moderately complex tasks that require limited judgment. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://flcdatcenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://flcdatcenter.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.*

that many analysts have technical degrees, but does not specify a degree level (e.g., associate's degree) for these degrees. The *Handbook* further specifies that such a technical degree is not always a requirement. Thus, this passage of the *Handbook* reports that there are several paths for entry into the occupation.

The Petitioner has not provided documentation from a probative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

## 2. 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 the common industry practice, while the alternative prong narrows its focus to the Petitioner's specific position.

### a. 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 us 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)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports a 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.

In support of this criterion, the Petitioner submitted copies of job announcements placed by other employers. However, upon review of the documents, we find that the Petitioner's reliance on the job announcements is misplaced. First, we note that some of the job postings do not appear to involve organizations similar to the Petitioner. For example, the Petitioner is a software development and information technology firm with 135 employees, whereas the postings are for companies including a storage company with 1,000 employees, as well as a company with over 100,000 employees. Furthermore, one of the postings appears to be for a staffing agency for which no information is

provided regarding the hiring employer. The Petitioner did not supplement the record of proceedings to establish that these advertising organizations are similar.

When determining whether the Petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the Petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

Moreover, many of the advertisements do not appear to be for parallel positions. For example, some of the positions appear to be for more senior positions than the proffered position.<sup>6</sup> The Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

As the documentation does not establish that the Petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary.<sup>7</sup> That is, not every deficit of every job posting has been addressed.

Without more, the Petitioner has not provided sufficient evidence to establish that a bachelor's degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations.<sup>8</sup> Thus, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

b. 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.

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<sup>6</sup> For instance, the posting for [REDACTED] requires a degree and "4-6 years of related experience." In addition, the advertisement for [REDACTED] requires a degree and "5+ years' experience in related field."

<sup>7</sup> The Petitioner did not provide any independent evidence of how representative the job postings are of the particular advertising employers' recruiting history for the type of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the actual hiring practices of these employers.

<sup>8</sup> It must be noted that even if all of the job postings indicated that a requirement of a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the Petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

In support of its assertion that the proffered position qualifies as a specialty occupation, the Petitioner described the proffered position and its business operations. In response to the RFE, the Petitioner asserted that the proffered position has complex duties. However, the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. Again, it appears that the Petitioner expects the Beneficiary to perform moderately complex tasks that require limited exercise of judgment (by its selection of a Level II wage on the LCA) compared to other positions within the same occupation.<sup>9</sup> The description of the duties provided by the Petitioner does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them and does not refute the *Handbook's* narrative indicating that a bachelor's degree in a specific specialty, or its equivalent, is not required.

The Petitioner claims that the Beneficiary is well-qualified for the position, and references his qualifications. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position, and it did not identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. Accordingly, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

### 3. 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.

Upon review of the record, we find that the Petitioner did not submit information regarding employees who currently or previously held the position.<sup>10</sup> The record does not establish that the Petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, directly related to the duties of the position. Therefore, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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<sup>9</sup> Nevertheless, a low-wage designation does not preclude a proffered position from classification as a specialty occupation, just as a high-wage designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a low-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty, or its equivalent. That is, a position's wage-level designation may be a relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

<sup>10</sup> In support of this criterion, the Petitioner submitted copies of its job postings for the positions of software developer, quality assurance analyst, business analyst, and CTI analyst, but did not submit a posting for the proffered position. Therefore, without more, this information does not appear to be relevant to the instant matter.



#### 4. 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.

In support of this criterion, the Petitioner submitted a letter from [REDACTED] of [REDACTED] based his opinion on his education and his professional and academic experience.

[REDACTED] analyzes the Petitioner's duties of the proffered position and opines that the position requires a bachelor's degree in computer science, computer information systems, or a field such as electronics engineering with a concentration in computer science. [REDACTED] concludes "that these job duties are specialized and require the theoretical and practical application of a body of highly specialized knowledge." He describes the position as complex and specialized. However, it is unclear if [REDACTED] was informed of the Petitioner's attestation on the LCA that the proffered position was a Level II wage position. As noted above, a Level II position indicates that it appears that the Petitioner expects the Beneficiary to perform moderately complex tasks that require limited exercise of judgment compared to other positions within the same occupation. The omission of a discussion or acknowledgement of the wage designation diminishes the evidentiary value of this opinion as the opinion does not appear to be based on a complete understanding of the proffered position.

Further, the record does not include evidence that [REDACTED] has for example, published, conducted research, run surveys, or engaged in an enterprise, pursuit, or employment - academic or otherwise - regarding the minimum education requirements for the performance of the duties of the proffered position. [REDACTED] states that his opinion is based on his review of the *Handbook*, the Occupational Information Network (O\*NET) OnLine Summary Report, and job advertisements for computer systems analyst positions. However, as previously noted, the *Handbook* does not state that a bachelor's degree in a specific specialty, or its equivalent, is required. Moreover, as also discussed, the job advertisements submitted are not sufficient evidence to establish that the proffered position is a specialty occupation.

In addition, the O\*NET does not support the assertion that the proffered position qualifies as a specialty occupation. For example, the Specialized Vocational Preparation (SVP) rating cited within O\*NET's Job Zone designates this occupation as 7 < 8. An SVP rating of 7 to less than ("<") 8 indicates that the occupation requires "over 2 years up to and including 4 years" of training. While the SVP rating indicates the total number of years of vocational preparation required for a particular

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<sup>11</sup> We observe that [REDACTED] references another company in his opinion letter. The record provides no explanation for this inconsistency and, thus, we must question the accuracy of [REDACTED] letter and whether the information provided is correctly attributed to this particular position and this Beneficiary.

position, it is important to note that it does not describe how those years are to be divided among training, formal education, and experience – and it does not specify the particular type of degree, if any, that a position would require.<sup>12</sup>

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.”).

Although the Petitioner claims that the Beneficiary is performing complex and specialized duties, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than other positions in the occupational category that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. We also reiterate our earlier comments and findings regarding the implications of the position's wage level designation on the LCA. Thus, the Petitioner has not demonstrated in the record that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

## II. EMPLOYER-EMPLOYEE RELATIONSHIP

Finally, we will briefly address the issue of whether or not the Petitioner will have a valid employer-employee relationship with the Beneficiary. We find that the record of proceedings lacks sufficient documentation evidencing what exactly the Beneficiary would do for the period of time requested or where exactly and for whom the Beneficiary would be providing services.

Here, the Petitioner requested the Beneficiary be granted H-1B classification from October 2016, to August 2019. However, the Petitioner has not established the duration of the relationship between the parties. With the initial petition, the Petitioner submitted a work order for the Beneficiary from [REDACTED] (a vendor management system). Notably, the work order does not indicate that the Beneficiary will serve as a security software engineer (as stated in the H-1B petition) but rather as a “developer.” There is a lack of evidence establishing that the duties of a security software engineer are the same as a developer. In addition, the work order provides a service period from September 2015, to December 2016.

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<sup>12</sup> For additional information, see the O\*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

The Petitioner also submitted a statement of work (SOW) between [REDACTED] (the vendor) and [REDACTED] (the end-client). Neither the Petitioner nor the Beneficiary is mentioned in the SOW. Furthermore, the SOW states a start date of July 2016, and an end date of June 2017.

The record does not establish that the [REDACTED] project will continue through August 1, 2019 - and it is the only project claimed by the Petitioner in this filing. Thus, without more, the record does not demonstrate that the Petitioner will have sufficient work and that it will maintain an employer-employee relationship for the duration of the validity of the requested period. A petition must be filed for non-speculative work for the Beneficiary, for the entire period requested, that existed as of the time of the petition's filing. Our regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the Petitioner or Beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248. Therefore, the appeal is dismissed for this additional reason.

### III. CONCLUSION

For the reasons outlined above, the Petitioner has not established eligibility for the benefit sought.

**ORDER:** The appeal is dismissed.

Cite as *Matter of K- Inc.*, ID# 188370 (AAO Apr. 3, 2017)