



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

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

MATTER OF A-I-, INC.

DATE: JAN. 13, 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 "programmer 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 had not demonstrated that the proffered position qualifies for treatment as a specialty occupation position.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the evidence of record satisfies all evidentiary requirements.

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

I. LAW

An occupation is a "specialty occupation" if it 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.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1). 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 “programmer analyst.” In a letter submitted with the petition, the Petitioner provided the following description of the duties of the proffered position:

- Analyze, design, develop, configure/install and maintain web applications/services using one or more of the following technologies: ASP, VB components, ASP.Net, C#, VB.NET, HTML, DHTML, CSS VB Script, AJAX, XML, XSL, SQL Server 2000/2005, Oracle, HS, and Apache
- Document all phases of the analysis, design, programming, implementation, and maintenance of technical projects; create user documentation for the utilization of on-line systems, reports, procedures, and training materials
- Codes software applications to adhere to designs supporting internal and external customer needs
- Maintains and modifies programs; make approved coding changes per direction of technical architect
- Works with testers and architects to resolve issues
- Troubleshoots, resolves or escalates project issues in a timely manner
- Remains current to developments and issues by researching and analyzing software trends and technologies
- Increases knowledge of business and product

The Petitioner stated that all of those duties require “a bachelor’s degree in Computer Science, Information Technology, a related degree, or the foreign equivalent.”

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.¹ Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.²

A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), 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.³

On the labor condition application (LCA)⁴ submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category “Computer Programmers” corresponding to the Standard Occupational Classification code 15-1131.⁵ The *Handbook* states the following about the educational requirements of positions located within this occupational category:

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

² 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.

³ 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.

⁴ The Petitioner is required to submit a certified LCA to USCIS 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).

⁵ 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://flcdatcenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf. A prevailing wage determination starts

Most computer programmers have a bachelor's degree; however, some employers hire workers who have an associate's degree. Most programmers get a degree in computer science or a related subject. Programmers who work in specific fields, such as healthcare or accounting, may take classes in that field to supplement their degree in computer programming. In addition, employers value experience, which many students gain through internships.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Computer Programmers," <http://www.bls.gov/ooh/computer-and-information-technology/computer-programmers.htm#tab-4> (last visited Jan. 12, 2017).

According to the *Handbook*, the occupation accommodates a wide spectrum of educational credentials, including less than a bachelor's degree in a specific specialty. For example, the *Handbook* states that some employers hire workers who have an associate's degree. Furthermore, while the *Handbook's* narrative indicates that most computer programmers obtain a degree (either a bachelor's degree or an associate's degree) in computer science or a related field, the *Handbook* does not report that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. The *Handbook* also reports that employers value computer programmers who possess experience, which can be obtained through internships.

Notably, the Petitioner designated the proffered position as a Level I position on the LCA. As noted, in designating the proffered position at a Level I wage, the Petitioner has indicated that the proffered position is a comparatively low, entry-level position relative to others within the occupation. Given the *Handbook's* implication that positions located within this occupational category do not require a bachelor's degree in a specific specialty, it appears unlikely that an entry-level position with these characteristics would have such a requirement.⁶

For all of these reasons, the Petitioner has not established that the proffered position falls within an occupational category for which the *Handbook*, or any other relevant, authoritative source, indicates that the normal minimum entry requirement is at least a bachelor's degree in a specific specialty, or the equivalent. Consequently, the evidence of record does not support a finding that the particular position proffered here, an entry-level position located within the computer programmers occupational category, would normally have such a minimum specialty degree requirement, or the equivalent. The Petitioner therefore has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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.*

⁶ Given the assertions of record regarding the proffered position, the Petitioner's wage-level designation on the LCA raises questions as to whether the LCA actually corresponds to and supports the H-1B petition. While we will not explore the issue of the LCA in depth here, the Petitioner should be prepared to address it in any future H-1B filings because it appears to constitute an additional ground of ineligibility.

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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)).

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. 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.”

The Petitioner provided an evaluation prepared by [REDACTED] Ph.D., an associate professor of computer applications and information systems at the [REDACTED] discussed the duties of the proffered position and concluded, “the described job duties . . . require preparation at the Bachelor’s Degree level in Computer Science, Information Technology, or a related area at a minimum.” Upon review, we find this evaluation insufficient to establish eligibility.

[REDACTED] reiterated the duty description provided by the Petitioner and based his opinion on them. However, he does not demonstrate in-depth knowledge of the specific business operations or how the duties of the position would actually be performed in the context of the Petitioner’s business enterprise. For instance, there is no evidence that [REDACTED] has visited the Petitioner’s business, observed the Petitioner’s employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job.

After reviewing the general duties described by the Petitioner, [REDACTED] asserts a general industry educational standard for computer programmer or programmer analyst positions, but does not reference any supporting authority or empirical basis for his finding. For example, he does not relate his conclusion to specific, concrete aspects of the Petitioner's business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue.

Furthermore, there is no indication that the Petitioner advised [REDACTED] that it characterized the proffered position as a low, entry-level computer programmer position, for a beginning employee who has only a basic understanding of the occupation (as indicated by the wage-level on the LCA) relative to other positions within the occupational category. It appears that [REDACTED] would have found the Petitioner's Level I designation relevant to his analysis and conclusion. In any event, the Petitioner has not demonstrated that [REDACTED] possessed the requisite information necessary to adequately assess the nature of the Petitioner's position and appropriately determine parallel positions based upon job duties and responsibilities. For example, in his letter, [REDACTED] stated: "The duties described above are . . . those of a professional employee with a strong background in computer science and information technology concepts and principles and a great level of responsibility within the company." This description of the proffered position conflicts with the Petitioner's characterization of the position as a wage Level I position.

We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). As a reasonable exercise of our discretion we discount [REDACTED] letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, we hereby incorporate the above discussion and analysis regarding [REDACTED] letter into our discussion of each of the specialty-occupation criteria.

For all of these reasons, the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to parallel positions with organizations that are in the Petitioner's industry and otherwise similar to the Petitioner. The Petitioner has not, therefore, satisfied the criterion of 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.

This is further evidenced by the LCA submitted by the Petitioner in support of the instant petition. As noted, the Petitioner attested on the LCA that the wage level for the proffered position is a Level I (entry-level) wage. Such a wage level is for a position which only requires the performance of routine tasks that require limited, if any, exercise of judgment; close supervision and work closely monitored and reviewed for accuracy; and the receipt of specific instructions on required tasks and expected results, and is contrary to a position that requires the performance of complex duties.⁷ It is, instead, a position for an employee who has only basic understanding of the occupation.

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 less than a bachelor's degree and degrees that are 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).

⁷ The issue here is that the Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, 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), an entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree 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.

C. Third Criterion

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

We have reviewed the evidence submitted by the Petitioner for our consideration under this criterion. However, we do not find it persuasive.

While the Petitioner's spreadsheet listing 11 individuals it claims to have employed as programmer analysts is acknowledged, we observe that it only submitted payroll information regarding 3 of them. Further, it is not apparent whether these individuals occupied Level I positions requiring only a basic understanding of computer programming and performed closely-monitored tasks that required little or no exercise of judgement based on specific instructions.⁸ In other words, the Petitioner has not explained whether these individuals occupied the type of entry-level position proffered here.⁹ This evidence, therefore, has not been shown to be directly relevant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).¹⁰ In addition, whether this group of individuals constitutes the entirety of the Petitioner's hiring history for programmer analysts is unclear.

The Petitioner, therefore, has provided insufficient evidence to satisfy the third criterion.

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 are 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.

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 analyzing, designing, developing, coding, troubleshooting, installing, maintaining, and modifying web applications; and documenting all phases of the process; contain insufficient indication of a nature so specialized and

⁸ In this regard, we observe that many of these individuals' resumes indicate substantial training and experience.

⁹ The DOL guidance referenced above states that a Level I wage should be considered when the job offer is for a research fellow, a worker in training, or an internship. Again, the Petitioner does not indicate whether the eleven referenced individuals also occupied this type of position.

¹⁰ 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, supra*, 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").

complex that they require knowledge usually associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, as was noted above, the Petitioner filed the petition for a wage Level I computer programmer position, a position for a beginning-level employee with only a basic understanding of computer programming. Again, in classifying the proffered position at a Level I (entry-level) wage, the Petitioner effectively attested to DOL that the Beneficiary would perform routine tasks that require limited, if any, exercise of judgment, that he would be closely supervised and his work closely monitored and reviewed for accuracy, and that he would receive specific instructions on required tasks and expected results.¹¹ The DOL guidance referenced above states that an employer should consider a Level I wage designation when the job offer is for a research fellow, a worker in training, or an internship.

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 computer programming, especially as the *Handbook* indicates that some computer programmer positions require no such degree.

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

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)(4).

IV. EMPLOYER-EMPLOYEE RELATIONSHIP

As the Petitioner did not demonstrate that the proffered position is a specialty occupation, we need not fully address other issues evident in the record. Nevertheless, we note that, in any future proceedings, the Petitioner must establish that it meets the regulatory definition of a United States employer. 8 C.F.R. § 214.2(h)(4)(ii).¹²

The United States Supreme Court determined that where federal law fails to clearly define the term "employee," courts should conclude that the term was "intended to describe the conventional master-servant relationship as understood by common-law agency doctrine." *Nationwide Mut. Ins. Co. v.*

¹¹ Again, the Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*.

¹² In reviewing a matter *de novo*, we may identify additional issues not addressed below in the Director's decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003) ("The AAO may deny an application or petition on a ground not identified by the Service Center.").

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Darden, 503 U.S. 318, 322-23 (1992) (quoting *Cnty. for Creative Non-Violence v. Reid*, 490 U.S. 730 (1989)). The Supreme Court stated:

“In determining whether a hired party is an employee under the general common law of agency, we consider the hiring party’s right to control the manner and means by which the product is accomplished. Among the other factors relevant to this inquiry are the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party’s discretion over when and how long to work; the method of payment; the hired party’s role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.”

Id.; see also *Clackamas Gastroenterology Assocs., P.C. v. Wells*, 538 U.S. 440, 445 (2003) (quoting *Darden*, 503 U.S. at 323). As the common-law test contains “no shorthand formula or magic phrase that can be applied to find the answer, . . . all of the incidents of the relationship must be assessed and weighed with no one factor being decisive.” *Darden*, 503 U.S. at 324 (quoting *NLRB v. United Ins. Co. of Am.*, 390 U.S. 254, 258 (1968)).

Although the Petitioner is located in Illinois, the Beneficiary would provide his services to an end-client in Arizona pursuant to an agreement between the Petitioner and [REDACTED] (vendor). In its support letter, the Petitioner stated that it would directly supervise the Beneficiary. However, a letter from the vendor submitted in response to the Director’s request for evidence (RFE) stated that the Beneficiary would work “under [its] direct supervision and support.” In another letter submitted in response to the RFE, the vendor stated that its managing director would coordinate the Beneficiary’s activities. The record, therefore, contains contradictory assertions as to who would “directly supervise” the Beneficiary as he works in Arizona. “[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.

Further complicating the matter of supervision and control is the Petitioner’s Level I designation. Again, that wage-level designation indicates that the Beneficiary will perform routine tasks that require limited, if any, exercise of judgment; will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results. Thus, while it is clear someone will be supervising the Beneficiary closely, given the large distance between Illinois and Arizona it is not apparent that the Petitioner would be the one to do it.

While social security contributions, worker’s compensation contributions, unemployment insurance contributions, federal and state income tax withholdings, and other benefits are still relevant factors in determining who will control a beneficiary, other incidents of the relationship, e.g., who will oversee and direct the work of the Beneficiary, who will provide the instrumentalities and tools,

where will the work be located, and who has the right or ability to affect the projects to which the Beneficiary is assigned, must also be assessed and weighed in order to make a determination as to who will be the Beneficiary's employer.

Therefore, the current record is insufficient to establish that the Petitioner qualifies as a United States employer, as defined by 8 C.F.R. § 214.2(h)(4)(ii). The Petitioner should be prepared to address this issue in any future filings.

V. CONCLUSION

Because the Petitioner has not established the substantive nature of the work the Beneficiary would perform if the H-1B petition were approved, and because the Petitioner has not satisfied any 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.

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-I, Inc.*, ID# 211457 (AAO Jan. 13, 2017)