



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

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

MATTER OF S-S-, INC.

DATE: JAN. 23, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a software development and consulting company with 42 employees, 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 the Petitioner did not establish that it will have an employer-employee relationship with the Beneficiary. Further, the Director found that the Petitioner did not demonstrate that the proffered position qualifies as a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director erred in denying the petition.

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

I. EMPLOYER-EMPLOYEE RELATIONSHIP

We will first address whether the evidence of record establishes that the Petitioner will be a "United States employer" having "an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee." 8 C.F.R. § 214.2(h)(4)(ii).

A. Legal Framework

Section 101(a)(15)(H)(i)(b) of the Act defines an H-1B nonimmigrant in pertinent part as an individual:

[S]ubject to section 212(j)(2), who is coming temporarily to the United States to perform services . . . in a specialty occupation described in section 214(i)(1) . . . , who meets the requirements for the occupation specified in section 214(i)(2) . . . , and with respect to whom the Secretary of Labor determines and certifies to the [Secretary of Homeland Security] that the intending employer has filed with the Secretary [of Labor] an application under section 212(n)(1)

The term “United States employer” is defined in the Code of Federal Regulations as follows:

United States employer means a person, firm, corporation, contractor, or other association, or organization in the United States which:

- (1) Engages a person to work within the United States;
- (2) *Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and*
- (3) Has an Internal Revenue Service Tax identification number.

8 C.F.R. § 214.2(h)(4)(ii) (emphasis added); *see* Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act 56 Fed. Reg. 61,111, 61,121 (Dec. 2, 1991) (to be codified at 8 C.F.R. pt. 214).

Although “United States employer” is defined in the regulations at 8 C.F.R. § 214.2(h)(4)(ii), we note that the terms “employee” and “employer-employee relationship” are not defined for purposes of the H-1B visa classification. Section 101(a)(15)(H)(i)(b) of the Act indicates that a foreign national coming to the United States to perform services in a specialty occupation will have an “intending employer” who will file a Labor Condition Application (LCA) with the Secretary of Labor pursuant to section 212(n)(1) of the Act, 8 U.S.C. § 1182(n)(1). The intending employer is described as offering full-time or part-time “employment” to the H-1B “employee.” Subsections 212(n)(1)(A)(i) and 212(n)(2)(C)(vii) of the Act, 8 U.S.C. § 1182(n)(1)(A)(i), (2)(C)(vii). Further, the regulations indicate that “United States employers” must file a Form I-129, Petition for a Nonimmigrant Worker, in order to classify individuals as H-1B temporary “employees.” 8 C.F.R. §§ 214.2(h)(1), (2)(i)(A). Finally, the definition of “United States employer” indicates in its second prong that the Petitioner must have an “employer-employee relationship” with the “employees under this part,” i.e., the H-1B beneficiary, and that this relationship be evidenced by the employer’s ability to “hire, pay, fire, supervise, or otherwise control the work of any such employee.” 8 C.F.R. § 214.2(h)(4)(ii) (defining the term “United States employer”).

Neither the legacy Immigration and Naturalization Service (INS) nor U.S. Citizenship and Immigration Services (USCIS) defined the terms “employee” or “employer-employee relationship” by regulation for purposes of the H-1B visa classification, even though the regulation describes

H-1B beneficiaries as being “employees” who must have an “employer-employee relationship” with a “United States employer.” *Id.* Therefore, for purposes of the H-1B visa classification, these terms are undefined.

The United States Supreme Court has 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 Mutual Ins. Co. v. Darden*, 503 U.S. 318, 322-323 (1992) (quoting *Community 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)).

In this matter, the Act does not exhibit a legislative intent to extend the definition of “employer” in section 101(a)(15)(H)(i)(b) of the Act, “employment” in section 212(n)(1)(A)(i) of the Act, or “employee” in section 212(n)(2)(C)(vii) of the Act beyond the traditional common law definitions. See generally 136 Cong. Rec. S17106 (daily ed. Oct. 26, 1990); 136 Cong. Rec. H12358 (daily ed. Oct. 27, 1990). On the contrary, in the context of the H-1B visa classification, the regulations define the term “United States employer” to be even more restrictive than the common law agency definition.¹

¹ While the *Darden* court considered only the definition of “employee” under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1002(6), and did not address the definition of “employer,” courts have generally refused to extend the common law agency definition to ERISA’s use of employer because “the definition of ‘employer’ in ERISA, unlike the definition of ‘employee,’ clearly indicates legislative intent to extend the definition beyond the traditional common law definition.” See, e.g., *Bowers v. Andrew Weir Shipping, Ltd.*, 810 F. Supp. 522 (S.D.N.Y. 1992).

Specifically, the regulatory definition of “United States employer” requires H-1B employers to have a tax identification number, to engage a person to work within the United States, and to have an “employer-employee relationship” with the H-1B “employee.” 8 C.F.R. § 214.2(h)(4)(ii). Accordingly, the term “United States employer” not only requires H-1B employers and employees to have an “employer-employee relationship” as understood by common-law agency doctrine, it imposes additional requirements of having a tax identification number and to employ persons in the United States. The lack of an express expansion of the definition regarding the terms “employee” or “employer-employee relationship” combined with the agency’s otherwise generally circular definition of United States employer in 8 C.F.R. § 214.2(h)(4)(ii) indicates that the regulations do not intend to extend the definition beyond “the traditional common law definition” or, more importantly, that construing these terms in this manner would thwart congressional design or lead to absurd results. *Cf. Darden*, 503 U.S. at 318-319.²

Accordingly, in the absence of an express congressional intent to impose broader definitions, both the “conventional master-servant relationship as understood by common-law agency doctrine” and the *Darden* construction test apply to the terms “employee” and “employer-employee relationship” as used in section 101(a)(15)(H)(i)(b) of the Act, section 212(n) of the Act, and 8 C.F.R. § 214.2(h).³

Therefore, in considering whether a beneficiary is an “employee” in an “employer-employee relationship” with a “United States employer” for purposes of H-1B nonimmigrant petitions, USCIS must focus on the common-law touchstone of “control.” *Clackamas*, 538 U.S. at 450; *see also* 8 C.F.R. § 214.2(h)(4)(ii) (defining a “United States employer” as one who “has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise *control* the work of any such employee” (emphasis added)).

The factors indicating that a worker is or will be an “employee” of an “employer” are clearly delineated in both the *Darden* and *Clackamas* decisions. *Darden*, 503 U.S. at 323-24; *Clackamas*, 538 U.S. at 445; *see also* *Restatement (Second) of Agency* § 220(2) (1958). Such indicia of control include when, where, and how a worker performs the job; the continuity of the worker’s relationship with the employer; the tax treatment of the worker; the provision of employee benefits; and whether the work performed by the worker is part of the employer’s regular business. *See Clackamas*, 538 U.S. at 445; *see also* EEOC Compl. Man. at § 2-III(A)(1) (adopting a materially identical test and indicating that said test was based on the *Darden* decision); *Defensor v. Meissner*, 201 F.3d 384, 388

² To the extent the regulations are ambiguous with regard to the terms “employee” or “employer-employee relationship,” the agency’s interpretation of these terms should be found to be controlling unless “plainly erroneous or inconsistent with the regulation.” *Auer v. Robbins*, 519 U.S. 452, 461 (1997) (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 359 (1989) (quoting *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 414, (1945))).

³ That said, there are instances in the Act where Congress may have intended a broader application of the term “employer” than what is encompassed in the conventional master-servant relationship. *See, e.g.*, section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F) (referring to “unaffiliated employers” supervising and controlling L-1B intracompany transferees having specialized knowledge); section 274A of the Act, 8 U.S.C. § 1324a (referring to the employment of unauthorized individuals).

(5th Cir. 2000) (determining that hospitals, as the recipients of beneficiaries' services, are the "true employers" of H-1B nurses under 8 C.F.R. § 214.2(h), even though a medical contract service agency is the Petitioner, because the hospitals ultimately hire, pay, fire, supervise, or otherwise control the work of the beneficiaries).

It is important to note, however, that the factors listed in *Darden* and *Clackamas* are not exhaustive and must be evaluated on a case-by-case basis. Other aspects of the relationship between the parties relevant to control may affect the determination of whether an employer-employee relationship exists. Furthermore, not all or even a majority of the listed criteria need be met; however, the fact finder must weigh and compare a combination of the factors in analyzing the facts of each individual case. The determination must be based on all of the circumstances in the relationship between the parties, regardless of whether the parties refer to it as an employee or as an independent contractor relationship. See *Clackamas*, 538 U.S. at 448-49; EEOC Compl. Man. at § 2-III(A)(1).

Furthermore, when examining the factors relevant to determining control, USCIS must assess and weigh each actual factor itself as it exists or will exist and not the claimed employer's right to influence or change that factor, unless specifically provided for by the common-law test. See *Darden*, 503 U.S. at 323-324. For example, while the assignment of additional projects is dependent on who has the *right* to assign them, it is the *actual* source of the instrumentalities and tools that must be examined, not who has the *right* to provide the tools required to complete an assigned project. See *id.* at 323.

Lastly, the "mere existence of a document styled 'employment agreement'" shall not lead inexorably to the conclusion that the worker is an employee. *Clackamas*, 538 U.S. at 450. "Rather, . . . the answer to whether [an individual] is an employee depends on 'all of the incidents of the relationship . . . with no one factor being decisive.'" *Id.* at 451 (quoting *Darden*, 503 U.S. at 324).

B. Analysis

As a preliminary matter, we find that the Petitioner has not established the Beneficiary's employment throughout the duration of the requested period. On the Form I-129, the Petitioner requested that the Beneficiary be granted H-1B classification from October 1, 2016, to September 5, 2019. The petition and supporting documents indicate that the Beneficiary would be working at an end-client location, [REDACTED] in [REDACTED] Utah. The evidence further reflected that the Petitioner provides services to a mid-vendor [REDACTED] who in turn provides services to the end-client's direct vendor [REDACTED].

In an itinerary, the Petitioner sets forth dates of engagement at the end-client location consistent with the period of the requested employment specified in the Form I-129. However, none of the other supporting evidence supports a conclusion that the Beneficiary will be engaged during this entire period at the end-client location. For instance, a submitted employment letter from the Petitioner lists a start date of August 24, 2016, but no other period of employment. Another letter from a mid-vendor, [REDACTED] states that the Beneficiary is required at the end-client's location and that his

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services could lead to “a possible extension,” but otherwise does not set forth the duration of his services. Likewise, a letter from the other mid-vendor [REDACTED] does not specify the Beneficiary’s period of engagement. Further, an email submitted by the Petitioner from an [REDACTED] contact, apparently overseeing the Beneficiary at the end-client location in [REDACTED] states that the Beneficiary will be used on a “long term project,” but does not clearly specify the time period of this engagement. In addition, the record does not contain written agreements, statements of work, work orders, or other such documentation between the Petitioner and [REDACTED] the Petitioner and the mid-vendors, or between the mid-vendors and [REDACTED] demonstrating that H-1B caliber work exists for the Beneficiary for the duration of the requested period. A petitioner’s unsupported statements are of very limited weight and normally will be insufficient to carry its burden of proof, particularly when supporting documentary evidence would reasonably be available. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)); *see also Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

As such, rather than establish definitive, non-speculative employment for the Beneficiary for the entire period requested, the Petitioner simply claimed in the itinerary that the Beneficiary would be working with [REDACTED] for the entire period set forth in the Form I-129. However, the Petitioner did not submit probative evidence substantiating the Beneficiary’s work for the entire duration of the requested period.

We find that the Petitioner has not established non-speculative work for the Beneficiary at the time of the petition’s filing for the entire period requested. USCIS 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 (Reg’l Comm’r 1978). Thus, even if it were found that the Petitioner would be the Beneficiary’s United States employer as that term is defined at 8 C.F.R. § 214.2(h)(4)(ii), the Petitioner has not demonstrated that it would maintain such an employer-employee relationship for the duration of the period requested.⁴

⁴ The agency made clear long ago that speculative employment is not permitted in the H-1B program. For example, a 1998 proposed rule documented this position as follows:

Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor’s degree. *See* section 214(i) of the Immigration and Nationality Act (the “Act”). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis

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Furthermore, applying the *Darden* and *Clackamas* tests to this matter, we find that the evidence of record does not sufficiently establish that the Petitioner will be a "United States employer" having an "employer-employee relationship" with the Beneficiary as an H-1B temporary "employee." Specifically, we find that the record of proceedings does not contain sufficient, consistent, and credible documentation confirming and describing who exercises control over the Beneficiary.

As noted, the Petitioner asserted that the Beneficiary will work for the end-client [REDACTED] at its work-site in [REDACTED] UT through two contracts with mid-vendors. The Petitioner states that it has submitted sufficient evidence to demonstrate by a preponderance of the evidence that the Beneficiary will be controlled by the Petitioner while assigned to the end-client's location. The Petitioner emphasizes a professional services agreement between itself and the mid-vendor [REDACTED] which states that the Petitioner's employees assigned to end-client locations will remain its employees and indicating that it will administer all pay, leave, vacation, and benefits for these assigned employees. The Petitioner contends that it will "retain all supervisory control over the Beneficiary" and "be responsible for directing the manner in which the Beneficiary's work will be accomplished." The Petitioner points to submitted timesheets from April through July 2016, which it asserts reflect that the Petitioner paid the Beneficiary for the services provided at the [REDACTED] location. In addition, the Petitioner references a submitted organizational chart showing that the Beneficiary will act as a quality assurance analyst, but which otherwise does not clearly indicate the name or title of his supervisor or who oversees him at the end-client location.

The Petitioner provided other conflicting evidence leaving question as to whether it actually controls the Beneficiary's work on a daily basis or that it has the power to assign additional work to the Beneficiary. As noted, the Petitioner provides an organizational chart that does not clearly reflect the Beneficiary's supervisor or who will be responsible for controlling him at the end-client location. The Petitioner does not explain in detail how the Beneficiary is supervised by the Petitioner on a daily basis and how it controls his work. In fact, the Petitioner provides several emails indicating that the Beneficiary is supervised and controlled by the end-client. The submitted emails reflect that the Beneficiary is referred to as a member of the greater [REDACTED] "team" and they indicate that he is regularly receiving assignments from the end-client. For instance, one email shows a project manager with [REDACTED] writing to the Beneficiary "can you please facilitate scrum tomorrow?" while another reflects an [REDACTED] quality assurance engineer requesting that the Beneficiary "kindly do a round of regression testing." Indeed, the Beneficiary's emails show that he is using [REDACTED] contact information and utilizing an end-client email address. Otherwise, the Petitioner submits little documentary evidence indicating that it directs or regularly supervises the Beneficiary. In fact, this evidence strongly suggests that the end-client is solely responsible for the

and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

Petitioning Requirements for the H Nonimmigrant Classification, 63 Fed. Reg. 30,419, 30,419-20 (proposed June 4, 1998) (to be codified at 8 C.F.R. pt. 214). While a petitioner is certainly permitted to change its intent with regard to non-speculative employment, e.g., a change in duties or job location, it must nonetheless document such a material change in intent through an amended or new petition in accordance with 8 C.F.R. § 214.2(h)(2)(i)(E).

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Beneficiary's work assignments. The Petitioner has not resolved these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As mentioned, the Petitioner also refers to the Beneficiary's timesheets and payroll documentation, and to a professional services agreement between itself and the mid-vendor [REDACTED] as evidence of an employer-employee relationship between itself and the Beneficiary. Although payroll, tax withholdings, and other employment benefits are relevant factors in determining who will control the 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.

Here, as we have discussed, the submitted evidence indicates that the Beneficiary is primarily overseen and directed by the end-client. This suggests that the instrumentalities and tools for the work are provided by the end-client, the work is being performed at the end-client's location, and that the end-client decides the projects assigned to the Beneficiary. The Beneficiary's timesheets and payroll documentation does little to overcome this evidence. For instance, the provided emails also reflect that the Beneficiary requests approval of his timesheets from the end-client and documentation of these timesheets indicates their approval by an unidentified individual not listed in the Petitioner's provided organizational chart. Further, the submitted organizational chart does not show who supervises the Beneficiary, despite the Petitioner citing this as evidence of its control over the Beneficiary. In addition, although the referenced professional services agreement between the Petitioner and [REDACTED] states that the Petitioner's assigned employees will remain employees of the Petitioner and that the pay, benefits, leave and other such aspects for these employees will remain the responsibility of the Petitioner, this does little to overcome the direct evidence from the end-client reflecting his daily supervision and control. The Petitioner does not provide evidence to overcome these apparent discrepancies.

Based on the above, the Petitioner has not established that it qualifies as a "United States employer" as defined at 8 C.F.R. § 214.2(h)(4)(ii). The Director's decision must be affirmed and the petition denied on this basis.

II. SPECIALTY OCCUPATION

The second issue before us is whether the evidence of record demonstrates by a preponderance of the evidence that the Petitioner will employ the Beneficiary in a specialty occupation position.

A. Legal Framework

A "specialty occupation" is 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.

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). 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*, 201 F.3d at 387.

B. Proffered Position

The LCA submitted to support the visa petition states that the proffered position corresponds to Standard Occupational Classification (SOC) code and title 15-1121, "Computer Systems Analysts." As previously stated, the LCA listed the client location in Utah as the Beneficiary's place of employment.

In response to the Director's RFE, the Petitioner explained the Beneficiary's job duties and responsibilities as follows:

(b)(6)

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1. Analyzing the complete requirements from the client.
Understanding the high level functional spec which is provided by client and analyze impacts and required feature changes.

Review low level functional document and get clarify if any gaps in functionality.

2. Participating in preparing Test Plans.
Based on high level functional spec will split each test feature and prepare estimations and will decide if any new tools need to implement and mention what type of testing need to be done for particular release and resource plan and also test environment details.
3. Preparing Test Scenarios, Test cases and Defect Tracking.
Based on how level functional spec prepare test scenarios for each feature and test cases for respective test scenario and defect tracking through rally.
4. Participating in Manual Test Case and writing Automation Scripts and also performing Automation Execution.
Will write manual test cases for each user story based on task assigned in rally and execute particular test once development completed and raise a bugs and will do re testing for fixed bugs and at the same time and make sure that existing functionality working fine (Regression testing)[.]

After manual test done, design automation script of each scenario using selenium web driver and cucumber framework.

5. Preparing suggestion documents to improve the application quality.
Participating in preparing different types of documents to improve the application quality like check list documents, Requirement traceably matrix, CAR Analysis document.
6. Communication with Test Lead/Test Manager and conducting review meetings regularly with team.
Attending every status call to discuss status of work with team and weekly twice with manager and lead to discuss risks and mitigations to active milestones.

In addition, the Petitioner provided letters from mid-vendors [REDACTED] and [REDACTED] setting forth the same fundamental duties for the Beneficiary. The Petitioner stated that the position required a "minimum [of] a bachelor's degree in computers, technology, engineering, or a related field."

C. Analysis

Upon review of the record in its totality and for the reasons set out below, we determine that the evidence is insufficient to establish that the proffered position qualifies for classification as a specialty occupation. As recognized in *Defensor*, 201 F.3d at 387-88, it is necessary for the end-client to provide sufficient information regarding the proposed job duties to be performed at its location(s) in order to properly ascertain the minimum educational requirements necessary to perform those duties. In other words, as the nurses in that case would provide services to the end-client hospitals and not to the petitioning staffing company, the petitioner-provided job duties and alleged requirements to perform those duties were irrelevant to a specialty occupation determination. *See id.*

Here, the record of proceeding is similarly absent of sufficient information from the end-client regarding the specific job duties to be performed by the Beneficiary for that company. The Petitioner provides no evidence from the end-client, such as a statement of work, a work order, a letter, or other such documentation clearly setting forth the duties of the Beneficiary. Although we acknowledge the Petitioner's assertion that the end-client refuses to provide a letter stating the Beneficiary's duties, this does not explain the lack of other substantiating documentation, such as contracts, statements of work, work orders, or similar documents, including letters from the mid-vendors to the client which explain the services in detail.

This lack of evidence from the end-client is particularly noteworthy since the duties submitted by the Petitioner, and the mid-vendors, are vague and do not convey the specific work and assignments to be completed by the Beneficiary. For example, the letters from the Petitioner and mid-vendors list vague duties such as "analyzing complete requirements from the client," "understanding the high level functional spec," setting testing for a particular release, "preparing test scenarios," completing "defect tracking through rally," "performing Automation execution," "writ[ing] manual test cases," "design[ing] automation script using [the] selenium web driver and cucumber framework," and communicating with the "Test Lead/Test Manager." However, the Petitioner and mid-vendors do not explain the nature of the applications with which the Beneficiary will work or the specific work he will perform. The record of proceedings does not contain a more detailed description explaining what particular duties the Beneficiary will perform on a day-to-day basis. Nor is there a detailed explanation regarding the demands, level of responsibilities, complexity, or requirements necessary for the performance of these duties (e.g., what "rally," "the selenium web driver," or the "cucumber framework" are and what body of knowledge is required to perform the duties).⁵ In fact, the evidence of record, including two mid-vendor letters, does not specifically identify the particular project to which the Beneficiary will be assigned and makes no reference to the specifics of his assigned project. Indeed, the provided emails reflect that the Beneficiary is titled '[REDACTED]

⁵ While the Petitioner and mid-vendor letters state the educational requirements for this position (i.e., a minimum [of] a bachelor's degree in computers, technology, engineering, or a related field), this general statement regarding the minimum educational requirement is insufficient to explain what body of knowledge is required to perform each of the listed job duties.

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[REDACTED] an apparent project at the end-client location which is left unexplained and undocumented by the Petitioner.

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

Accordingly, as the Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies for classification as a specialty occupation. For this additional reason, the petition cannot be approved.

III. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reasons. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of S-S-, Inc.*, ID# 163560 (AAO Jan. 23, 2017)