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

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

MATTER OF C-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 information technology consulting company, seeks to temporarily employ the Beneficiary as a systems 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 has 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 submits additional evidence and asserts that the Director erred in denying the petition.

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

I. PROFFERED POSITION

On the Form I-129, the Petitioner described itself as a 76-employee information technology services company located in Georgia. The Petitioner indicated on the labor condition application that the Beneficiary would work in [REDACTED] California, and supporting evidence reflected that this work would be for [REDACTED] through a mid-vendor [REDACTED]. In response to the Director's request for evidence (RFE), the Petitioner stated that the Beneficiary had been reassigned to a new end-client, [REDACTED] located in [REDACTED] California, and that he had been assigned to this location pursuant to a contract between the end-client and a mid-vendor, [REDACTED].

II. 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 at 8 C.F.R. § 214.2(h)(4)(ii) 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.

(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), it is noted 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 an individual coming to the United States to perform services in a specialty occupation will have an "intending employer" who will file a Labor Condition Application 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 former 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 Mut. Ins. Co. v. 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)).

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

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 318-19.²

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 or not one will be an "employee" in an "employer-employee

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).

However, 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. Instead, in the context of the H-1B visa classification, the term "United States employer" was defined in the regulations to be even more restrictive than the common law agency definition. A federal agency's interpretation of a statute whose administration is entrusted to it is to be accepted unless Congress has spoken directly on the issue. See *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 844-45 (1984).

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).

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 (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).

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 323-24. 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, and 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, the Petitioner has not established the duration of the Beneficiary's employment for the entire requested period. On the Form I-129, the Petitioner requested that the Beneficiary be granted H-1B classification from October 12, 2015, to February 19, 2018. However, the Petitioner has not submitted supporting documentation to substantiate that the Beneficiary will be engaged at the end-client location during the entire period of the requested visa. For instance, a letter from the mid-vendor [REDACTED] who has a direct contract with the end-client, [REDACTED] states that the work order covering the Beneficiary began in February 2016, but did not indicate a specific duration of the project, stating only that the "project is expected to be extended again, based on the ongoing requirements of the project." Otherwise, the Petitioner submits no supporting documentation to support the duration of the Beneficiary's assignment. The Petitioner provides a contract between it and the mid-vendor, [REDACTED] stating that the assignment of each Petitioner resource must be covered by a work order. However, the Petitioner does not provide the work order specific to the Beneficiary, or any other documentation reflecting the duration of the Beneficiary's assignment. In fact, a letter provided by the end-client on appeal sets forth no definitive duration for the project, stating only that the Beneficiary's work "will continue...as long as the contract is renewed," thereby reflecting the very speculative nature of the Beneficiary's work. Indeed, the agreement between the Petitioner and [REDACTED] states in paragraph 3 that the end-client may terminate any work order under the agreement with only 10 days' notice, further illustrating the tenuous nature of the proffered employment. 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.

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

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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.

The Petitioner states that the Beneficiary will work for the end-client, [REDACTED] at its work-site in [REDACTED] California. The Petitioner asserts that it has submitted sufficient evidence to demonstrate by a preponderance of the evidence that it will control the Beneficiary while he is assigned to the end-client's location, including a letter from the end-client provided on appeal stating that it will "not provide any employment benefits" to the Beneficiary and that the Petitioner will have the right to pay, hire, fire, supervise, and otherwise control the Beneficiary's employment. The Petitioner emphasizes its agreement with [REDACTED] which states that the Petitioner's employees will remain that, including language specifying that in no event will Petitioner employees be considered employees of [REDACTED] or its clients. The Petitioner also points to payroll and tax documentation reflecting that the Beneficiary is paid by the Petitioner and not [REDACTED] or the end-client.

However, the Petitioner has submitted little supporting documentation to corroborate that it does, and that it will continue to, exact daily control over the Beneficiary while assigned to the end-client location. First, it is noteworthy that the Petitioner has provided no direct evidence to substantiate that the Beneficiary is, or will be, under the supervision and control of the Petitioner. For instance, the Petitioner, despite the direct request of the Director, provides no organizational chart reflecting to whom the Beneficiary will report on a daily basis. Support letters from the Petitioner, the mid-vendor [REDACTED] and the end-client [REDACTED] do not specifically articulate the Beneficiary's supervisor or the nature of his day-to-day oversight. The Petitioner does not provide a work order applicable to the project, a document stated in its agreement with [REDACTED] as required for every project. Again, 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. at 165; see also *Matter of*

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 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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Chawathe, 25 I&N Dec. at 376. The Petitioner must support its assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. at 376.

The Petitioner also provides other conflicting evidence leaving question as to whether it actually controls the Beneficiary's work on a daily basis. An end-client letter provided on appeal from an IT BSA manager states that the project is under her supervision. The Petitioner's agreement with [REDACTED] reflects that the Petitioner provides "staffing services" and the letter from [REDACTED] references "staffing services," "human capital," and "staff augmentation" provided by the Petitioner. The Petitioner's own marketing materials also cite its "staff augmentation" services provided for clients. Similarly, the Petitioner submits evidence indicating that the Beneficiary is responsible for submitting his weekly timesheet in an end-client system, indicating that he is likely contracted labor under the direct supervision of the end-client. The Petitioner does not otherwise submit any evidence reflecting its oversight of the Beneficiary or the provision of materials and instrumentalities necessary for the completion of his work. Indeed, the record shows that the Beneficiary utilizes an end-client email and that his badge at the client location reflects that he is an [REDACTED] contact. 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). The evidence strongly suggests that the Beneficiary acts largely autonomous from the Petitioner, reacting to client requests as they arise, and in essence, under the direction of the end-client.

Although we do not doubt that the Beneficiary is likely being paid and that his benefits are being administered by the Petitioner, the preponderance of the evidence appears to indicate that the Beneficiary is primarily under the direction of the end-client and that he only occasionally checks in with the Petitioner as to his progress. While payroll, tax withholdings, and other employment benefits are relevant factors in determining who will control the Beneficiary, other aspects 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, we find that the preponderance of the evidence demonstrates that the Beneficiary will be primarily under the control of the end-client and not the Petitioner.

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.

III. 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

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). 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. Cherstoff*, 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. 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.

The record of proceeding is absent sufficient information from the end-client regarding the specific job duties to be performed by the Beneficiary for that company. The end-client letter makes no mention of the Beneficiary's job duties and does not convey the substantive nature of the proffered position and its duties. The Petitioner contends on appeal that the Director misinterpreted *Defensor* as applicable to the current matter, noting that it is not binding as a federal case from the 11th Circuit.

First, although we are not bound to the holding in *Defensor*, we have regularly accepted it as persuasive in interpreting matters involving a beneficiary primarily working at an end-client location. As recognized in *Defensor*, it is necessary for the end-client to provide sufficient information regarding the proposed job duties to be performed at its location(s), as well as any hiring requirements that it may have specified, in order to properly ascertain the minimum educational requirements necessary to perform those duties. See *Defensor*, 201 F.3d at 387-88. 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 is insufficient to establish that, in fact, the Beneficiary would be performing services for the type of position for which the petition was filed, in this matter, a systems analyst position. Accordingly, we concur with the Director's determination that the record is insufficient to establish that the duties of the proffered position comprise the duties of a specialty occupation.

However, the Petitioner did submit a letter from the end-client explaining the Beneficiary's duties, but these duties are vague and convey only general tasks and not the specific work and assignments to be completed by the Beneficiary. For example, the largely identical letters from the end-client and [REDACTED] list duties such as "understand[ing] the firm wide initiative and technical requirements," "using SQL, Excel, and Microsoft products extensively to understand and perform complex data analysis," "assist[ing] and support[ing] development and QA," "validat[ing] of user acceptance testing," "analyz[ing] and understand[ing] AFS, INFOLEASE loan data," "perform[ing] Data analysis," and prepar[ing] data mapping documents." However, these letters, nor the other evidence, explain the nature of these applications or the specific work to be performed by the Beneficiary. The record of proceeding 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 "AFS" or "INFOLEASE loan data" are and what body of knowledge is required to perform the duties). In fact, the evidence of record does not specifically identify the particular project to which the Beneficiary will be assigned at the end-client's premises. Further, the end-client letter makes no reference to the specifics of the project. Once again, a petitioner's unsupported statements are of very limited weight and normally will be insufficient to carry its burden of proof. See *Matter of Soffici*, 22 I&N Dec. at 165; see also *Matter of Chawathe*, 25 I&N Dec. at 376. The Petitioner must support its assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. at 376.

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.

Furthermore, even if the Petitioner had established the substantive nature of the Beneficiary's position, it has not articulated what bachelor's degree in a specific specialty is required for the proffered position. For instance, in a petition support letter, the Petitioner states that the systems analyst position requires the minimum of a bachelor's degree in engineering, computer science, math, accounting, business administration or an information technology related field, while the letter from the end client provided on appeal indicates that a bachelor's degree in "a related technical field" would suffice. As such, the Petitioner's statements and the evidence submitted indicate that the position does not require a bachelor's degree in a specific specialty for minimum entry. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Also, in general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988).

In addition, a minimum entry requirement of a degree in two disparate fields, such as accounting and engineering, does not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless it is established that each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added). In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. *See* section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

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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.

IV. CONCLUSION

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of C-S-, Inc.*, ID# 270950 (AAO Jan. 23, 2017)