



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

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

MATTER OF A-S- INC.

DATE: MAR. 23, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

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

The Director of the California Service Center denied the petition concluding that the Petitioner did not establish that the proffered position is a specialty occupation.

On appeal, the Petitioner submits additional evidence and asserts that the Director erred in her findings.

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

I. LEGAL FRAMEWORK

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

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

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

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

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

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

II. THE PROFFERED POSITON

In the letter submitted in support of the petition, the Petitioner described the duties of the proffered position at its client’s facility as including the following:

- Create, modify, and test the code, forms and script that allow computer applications to run, using Visual Studio, C#, ASP.NET, Java, J2EE, UI, Business Objects, Crystal Reports, OBIEE, Oracle and PL/SQL;
- Correct errors by making appropriate changes and rechecking the program to ensure that the desired results are produced;
- Conduct trial runs of programs and software applications to be sure they will produce the desired information and that the instructions are correct;
- Write, update, and maintain computer programs or software packages to handle specific jobs;

- Write, analyze, review, and rewrite programs, using workflow chart and diagram, and applying knowledge of computer capabilities, subject matter, and symbolic logic;
- Perform or direct revision, repair, or expansion of existing programs to increase operating efficiency or adapt to new requirements;
- Consult with managerial, engineering, and technical personnel to clarify program intent, identify problems, and suggest changes;
- Compile and write documentation of program development and subsequent revisions, inserting comments in the coded instructions so others can understand the program;
- Prepare detailed workflow charts and diagrams that describe input, output, and logical operations, and convert them into a series of instructions coded in a computer language;
- Consult with and assist computer operators or system analysts to define and resolve problems in running computer programs; and
- Test and debug programs for accuracy and reliability[.]

The Petitioner stated that it requires “a minimum of a Bachelor degree or equivalent in Engineering, Computer Science, Information Technology, or a related field.”

In a letter signed by the end client, [REDACTED] the end client stated that it needed “several software development & administration positions.” The end client listed a number of tools and technologies needed to perform the job and identified the job responsibilities of the pertinent position as follows:

- Interact with business systems as appropriate and gather requirements.
- Document requirements and business scenarios[.]
- Develop applications using the above technologies.
- Test and Roll out application(s).
- Provide daily support to the application and provide immediate solutions to the operational/functional/data related issues proactively.
- Monitor the daily, weekly, and monthly processes/routines and fix any issues.
- Analyze the data quality issues and discuss solutions with the functional teams.
- Take proactive measures to avoid repetitive issues.
- Be the Point of Contact for any issues and take the lead responsibility to provide the solution.
- Interact directly with the application leads to gather the requirements, analyze, and validate design decision.
- Interact directly with the customers to validate the data-related issues foreseen in reporting applications.
- Primarily responsible for application design and development using the above Technologies.

The end client stated, verbatim, that a “Bachelor’s/Masters degree in Computer Science or Bachelors/Masters Degree in Engineering with related work experience preferred.”

III. ANALYSIS

For the reasons set out below, we determine that the Petitioner has not demonstrated that it would employ the Beneficiary in a specialty occupation. Specifically, the record (1) does not describe the position’s duties with sufficient detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.¹

The record includes two different descriptions of the duties the Beneficiary will perform in the proffered position. The Petitioner provides an overview of a computer programmer occupation, the occupation the Petitioner designated on the labor condition application (LCA).² The occupational category “Computer Programmers” corresponds to the Standard Occupational Classification code 15-1131.³ As noted above, however, the job requirements of the client using the Beneficiary’s services are critical. The end client in this matter stated its need for “software developers and administration” personnel, not computer programmers, and described duties that more closely align with the occupational category “Software Developers, Applications” corresponding to the Standard Occupational Classification code 15-1132.⁴ The Petitioner has not explained the different versions

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

² The Petitioner is required to submit a certified LCA 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, 545-46 (AAO 2015).

³ 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 she will be closely supervised and her work closely monitored and reviewed for accuracy; and (3) that she will receive specific instructions on required tasks and expected results. U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf. A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner’s job opportunity. *Id.*

⁴ The prevailing annual wage for a Level I computer programmer is \$52,832 in the area the Beneficiary will work. See Foreign Labor Certification Data Center Online Wage Library at <http://www.flcdatacenter.com/OesQuickResults.aspx?code=15-1131&area= &year=16&source=1> (last visited Mar. 17, 2017). However, the annual prevailing wage for a Level I software developer, applications, in the same area is \$98,342. See *id.* at <http://www.flcdatacenter.com/OesQuickResults.aspx?code=15-1132&area= &year=16&source=1> (last visited Mar. 17, 2017). The attested salary of \$60,000 per year on the Form I-129 falls well below that required by law for a position with duties that fall primarily within the parameters of a software developer, applications. Thus, if the end client’s need is for a software developer, the LCA submitted would not correspond to the certified LCA submitted in support of the petition. This would also result in the petition being

of the proposed duties and has not submitted sufficient detail to determine that the proposed duties correspond to its characterization of the proffered position as a computer programmer position on the LCA. The Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Without additional information and documentation establishing the specific duties the Beneficiary will perform, we are unable to discern the substantive nature of the position and whether the proffered position indeed qualifies as a specialty occupation. As such, we are 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 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.

We will nevertheless perform a complete specialty occupation analysis under each of the four, alternative criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) for the occupation of computer programmer, the occupation certified on the LCA.

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 Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁵

denied.

⁵ All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and we regularly review the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

The subchapter of the *Handbook* entitled “How to Become a Computer Programmer” states, in relevant part, the following:

Most computer programmers have a bachelor’s degree in computer science or a related subject; however, some employers hire workers with an associate’s degree. Most programmers specialize in a few programming languages.

Education

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.

Most programmers learn a few computer languages while in school. However, a computer science degree gives students the skills needed to learn new computer languages easily. During their classes, students receive hands-on experience writing code, testing programs, fixing errors, and doing many other tasks that they will perform on the job.

To keep up with changing technology, computer programmers may take continuing education and professional development seminars to learn new programming languages or about upgrades to programming languages they already know.

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

According to the *Handbook*, the requirements to perform the duties of the computer programmer occupation incorporate 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 or 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. However, the Petitioner designated the proffered position as a Level I wage position on the LCA. As noted above, 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 inference 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 computer programmer position would have such a requirement.

We have also reviewed the Occupational Information Network (O*NET) Summary Reports, referenced by the Petitioner, and find that this source is insufficient to establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor's degree in a specific specialty, or its equivalent. O*NET OnLine does not state a requirement for a bachelor's degree for this occupation. Rather, it assigns this occupation a Job Zone "Four" rating, which groups it among occupations for which "most . . . require a four-year bachelor's degree, but some do not." O*NET OnLine Summary Report for "15-1131.00 – Computer Programmers," <http://www.onetonline.org/link/summary/15-1131.00> (last visited Mar. 17, 2017); O*NET OnLine Help – Job Zones, <http://www.onetonline.org/help/online/zones> (last visited Mar. 17, 2017). Further, O*NET OnLine does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty directly related to the occupation. Therefore, O*NET OnLine information is not probative of the proffered position being a specialty occupation. The Petitioner also referenced the DOL's Prevailing Wage Guidance, Appendix D: Professional Occupations Education and Training Categories, which also refers to a bachelor's degree in an unspecified specialty as a general requirement for a computer programmer occupation.

The Petitioner's assertion on appeal that if the position is a computer programmer position, "it would defeat logic that an employer would require an application to have a degree in an unrelated field," is not persuasive. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). The Petitioner has not done so here. The record does not establish that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

B. Second Criterion

The second criterion presents two alternative prongs: "The degree requirement is common to the industry in parallel positions among similar organizations *or, in the alternative*, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree[.]" 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong concentrates 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.

When determining whether there is such a common degree requirement, factors often considered by us include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or

affidavits from firms or individuals in the industry attest that such firms “routinely employ and recruit only degreed individuals.” See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As already discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative sources) reports an industry-wide requirement for at least a bachelor’s degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry’s professional association indicating that it has made a degree a minimum entry requirement.

We reviewed the advertisements the Petitioner submitted to establish that its requirements to perform the proffered position are an industry standard. The advertisements submitted in response to the Director’s request for evidence (RFE) do not include sufficient information regarding the advertising companies to determine that they are similar to the Petitioner. The two advertisements submitted on appeal, while including some background information on the advertising employers, do not appear to be similar to the Petitioner’s two-employee business in type, size, or scope. Additionally, the descriptions of duties in all the advertisements submitted are not parallel to the Petitioner’s description of the position except in the most general sense. Further, of the five advertisements submitted in response to the Director’s RFE, four of them require only a general bachelor’s degree and of those, two also require some form of experience. One of the two advertisements submitted on appeal requires a bachelor’s degree in computer science and two years of experience. The second advertisement requires a bachelor’s degree in computer science or a related technical degree, but also will substitute an undefined number of years of experience to perform the advertised position. Thus, the advertisements do not offer a consensus on the type of degree that is required. Also, as the Petitioner has designated the position as requiring only a Level I wage, a wage level not associated with experience in the occupation, the advertised positions requiring experience further confirm the positions are not for parallel positions. The job advertisements do not establish that similar organizations to the Petitioner routinely employ individuals with degrees in a specific specialty, in parallel positions in the Petitioner’s industry.

As the record does not include probative evidence that a “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, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

2. Second Prong

Next, the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), 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.

The record does not distinguish the proffered position as unique from or more complex than other computer programmer positions that can be performed by persons without at least a bachelor’s

degree in a specific specialty, or its equivalent. As determined above, the record does not credibly demonstrate exactly what the Beneficiary will do on a day-to-day basis such that complexity or uniqueness can even be determined. Additionally, while a few related courses may be beneficial 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. For example, the Petitioner has not explained or presented evidence substantiating that the proffered position requires a bachelor's degree in a specific technology field, rather than technical certifications in programming languages or computer frameworks.

The lack of uniqueness or complexity is further evidenced by the LCA submitted by the Petitioner in support of the instant petition.⁶ The LCA indicates that, relative to other positions located within the "Computer Programmers" occupational category, the Beneficiary would perform routine tasks that require only a basic understanding and require limited, if any, exercise of judgment. Without further evidence, the record does not demonstrate that the proffered position is complex or unique as such a position falling under this occupational category would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage.

The Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position, and it did not identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. Thus, it cannot be concluded that the Petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

C. Third Criterion

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. The Petitioner does not claim and the record does not demonstrate that it employs individuals with a bachelor's degree in a specific discipline for the position; thus, we cannot conclude that the Petitioner has satisfied the third criterion.

⁶ The issue here is that the Petitioner's designation of this position as a Level I position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions within the same occupation. Nevertheless, a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I, 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 relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

D. Fourth Criterion

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

As determined above, the Petitioner has not described the duties of the proffered position with any specificity as those duties specifically relate to its business operations or the end client's project. 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. We also incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the position in the LCA as a Level I position (the lowest of four assignable wage-levels) relative to others within the same occupational category.

The record does not include probative evidence that the duties as generally described require more than technical proficiency in the information technology field. The Petitioner has not demonstrated in the record that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation. Accordingly, the appeal is dismissed and the denial of the petition affirmed for this reason.

IV. EMPLOYER-EMPLOYEE RELATIONSHIP

We will also briefly address the issue of whether or not the Petitioner qualifies as an H-1B employer. 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. 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)).

Other than the end client letter submitted by the Petitioner, the record does not include a services agreement, a statement of work, purchase order, or any information on the specific project to which the Beneficiary would be assigned while working at the end client facility. Thus, we are unable to ascertain whether the end client has placed any restrictions on the Petitioner’s right to control the Beneficiary’s work. Without disclosure of all of the relevant factors, we are unable to conclude that the requisite employer-employee relationship will exist between the Petitioner and the Beneficiary. The evidence 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); therefore, the petition will be denied for this additional reason.

V. CONCLUSION

The record does not establish that, more likely than not, the Petitioner will have an employer-employee relationship with the Beneficiary, and the proffered position is a specialty occupation.

ORDER: The appeal is dismissed.

Cite as *Matter of A-S- Inc.*, ID# 263650 (AAO Mar. 23, 2017)