



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUL 29 2014** OFFICE: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:   
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition, the petitioner describes itself as online news publisher with five employees established in 2012.<sup>1</sup> In order to employ the beneficiary in what it designates as a full-time web developer at a minimum salary of \$63,000 per year,<sup>2</sup> the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, concluding that the evidence of record failed: to demonstrate that the offered position is a specialty occupation; to establish the existence of an employer-employee relationship between the petitioner and the beneficiary; and to establish that the petitioner would have sufficient in-house work to employ the beneficiary.

The record of proceeding before us contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's letter denying the petition; and (5) the Form I-290B.

On the Form I-290B the petitioner, through counsel, stated that it would be submitting a brief within 30 days of filing the appeal. More than eight months later, nothing further has been submitted into the record. The record is complete.

Upon review of the entire record of proceeding, we find that the evidence of record does not overcome the director's grounds for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

We agree with the director that the proffered position is not a specialty occupation.<sup>3</sup> For this reason alone, the petition must be denied.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an

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<sup>1</sup> The petitioner provided a North American Industry Classification System (NAICS) Code of 516110, "Internet Publishing and Broadcasting." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "519130 Internet Publishing and Broadcasting and Web Search Portals" <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited July 6, 2014).

<sup>2</sup> The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for use with a job prospect within the occupational classification of "Information Security Analysts, Web Developers, and Computer Network Architects" SOC (O\*NET/OES) Code 15-1179, and for which the appropriate prevailing wage level is Level I (the lowest of the four assignable wage rates).

<sup>3</sup> We conduct appellate review on a *de novo* basis (*See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)).

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) states, in pertinent part, the following:

*Specialty occupation* means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must also meet one of the following criteria:

- (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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this

section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets 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 proffered 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"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

In its April 1, 2013 letter of support, which was signed by the petitioner's Accounting Manager, the petitioner claimed that it was "a company that specializes in online news publishing. We create content for diverse audiences on web sites, mobile sites, mobile apps and online video." The beneficiary's proposed duties are listed as follows:

- Responsible for keeping websites and computer programs operating properly.
- Launch new programs like social media platforms to meet the needs of business and industry.
- Develop and write computer programs to store, locate, and retrieve documents, data and information of the company.
- Develop new websites of social media platform.
- Testing websites, providing support and performing maintenance tasks such as repairing bugs and errors.

- Develop program in assisting web social marketing like Facebook advertising.

In response to the director's RFE, the petitioner added the following description of the beneficiary's duties:

- Design and maintain websites, including site layout and function, to client's specifications.
- Create a user-friendly design, ensuring easy navigation, organize content, and integrate graphics and audio, including monitoring website performance and capacity.
- Vital to take into account a client's products or services as well as its target market to create a site that appeals to its customers or intended audience.
- The position requires a knowledge of relevant software programs, Web applications, and programming languages such as HTML, as well as a solid understanding of design principals.

We will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is satisfied by establishing that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of the petition.

We recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.<sup>4</sup> The proposed duties generally align with those performed by web developers.

In relevant part, the *Handbook* summarizes the duties typically performed by web developers as follows:

**Web developers** design and create websites. They are responsible for the look of the site. They are also responsible for the site's technical aspects, such as performance and capacity, which are measures of a website's speed and how much traffic the site can handle. They also may create content for the site.

Web developers typically do the following:

- Meet with their clients or management to discuss the needs of the website and the expected needs of the website's audience and plan how it should look
- Create and debug applications for a website
- Write code for the site, using programming languages such as HTML or XML

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<sup>4</sup> The *Handbook*, which is available in printed form, may also be accessed online at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are from the 2014-15 edition available online.

- Work with other team members to determine what information the site will contain
- Work with graphics and other designers to determine the website's layout
- Integrate graphics, audio, and video into the website
- Monitor website traffic

When creating a website, developers have to make their client's vision a reality. They work with clients to determine what sites should be used for, including ecommerce, news, or gaming. The developer has to decide which applications and designs will fit the site best.

The following are some types of web developers:

**Web architects or programmers** are responsible for the overall technical construction of the website. They create the basic framework of the site and ensure that it works as expected. Web architects also establish procedures for allowing others to add new pages to the website and meet with management to discuss major changes to the site.

**Web designers** are responsible for how a website looks. They create the site's layout and integrate graphics; applications, such as a retail checkout tool; and other content into the site. They also write web-design programs in a variety of computer languages, such as HTML or JavaScript.

**Webmasters** maintain websites and keep them updated. They ensure that websites operate correctly and test for errors such as broken links. Many webmasters respond to user comments as well.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Information Security Analysts, Web Developers, and Computer Network Architects," <http://www.bls.gov/ooh/computer-and-information-technology/information-security-analysts-web-developers-and-computer-network-architects.htm#tab-2> (accessed July 6, 2014).

The *Handbook* states the following with regard to the educational requirements necessary for entrance into this field:

Educational requirements for web developers vary with the setting they work in and the type of work they do. Requirements range from a high school diploma to a bachelor's degree. An associate's degree may be sufficient for webmasters who do not do a lot of programming.

*Id.* at <http://www.bls.gov/ooh/computer-and-information-technology/information-security-analysts-web-developers-and-computer-network-architects.htm#tab-4>. The statements made by the DOL in the *Handbook* do not support a finding that a bachelor's degree, or the equivalent, in a specific field of study is required for entry into the occupation. The DOL specifically states that educational

requirements vary, and that such requirements range from a high school diploma to a bachelor's degree, and does not indicate that for those positions which do require a bachelor's degree, the degree must be in a specific specialty.

Nor does the record of proceeding contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in this occupational category is sufficient in and of itself to establish the proffered position as, in the words of this criterion, a "particular position" for which "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry."

Finally, it is noted that the petitioner submitted an LCA that was certified for a wage-level that is only appropriate for an entry-level position, which signifies that the beneficiary is expected to possess a basic understanding of the occupation.<sup>5</sup>

As the evidence in the record of proceeding does not establish that a baccalaureate degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of this petition, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we find that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to

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<sup>5</sup> The *Prevailing Wage Determination Policy Guidance* (available at [http://www.foreignlaborcert.doleta.gov/pdf/Policy\\_Nonag\\_Progs.pdf](http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf) (last accessed July 7, 2014)) issued by DOL states the following with regard to Level I wage rates:

**Level 1** (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered [emphasis in original].

The level of the proposed duties is not particularly complex, unique, and specialized, nor do the duties require a specialized level of independent judgment and occupational understanding. The LCA's wage-level indicates that the proffered position is the lowest level position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is required to possess a basic understanding of the occupation; that he will be expected to perform routine tasks requiring limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results.

the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. The petitioner has not submitted any documentation from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

Nor has the petitioner satisfied the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that the degree requirement is common to the industry in parallel positions among similar organizations. The petitioner has not submitted any advertisements, recruitment materials, job vacancy announcements, studies, reports or any other documentation to show that companies similar to the petitioner in size, scope, and scale of operations, require a bachelor's degree for positions parallel to the proffered position. Nor has the petitioner submitted any evidence to establish the industry's usual recruiting and hiring practices. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Therefore, the petitioner has not satisfied the first of the two alternative prongs described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish a requirement for at least a bachelor's degree in a specific specialty as common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

Next, we find that the petitioner did not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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."

In this particular case, the petitioner has failed to credibly demonstrate that the duties the beneficiary will perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

The record of proceeding does not contain evidence establishing relative complexity or uniqueness as aspects of the proffered position, or that the position is so complex or unique as to require the

theoretical and practical application of a body of highly specialized knowledge such that a person with a bachelor's or higher degree in a specific specialty or its equivalent is required to perform the duties of the position. The petitioner has not distinguished either the proposed duties, or the position that they comprise, from generic web-development work, which, the *Handbook* indicates, does not necessarily require a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

The petitioner has therefore failed to establish how the beneficiary's responsibilities and day-to-day duties comprise a position so complex or unique that the position can be performed only by an individual with a bachelor's degree, or the equivalent, in a specific specialty.

Additionally, we reiterate our earlier discussion that, as indicated on the LCA, the petitioner would be paying a wage-rate that is appropriate for an entry-level position. Based upon the wage rate, the beneficiary is required to have a basic understanding of the occupation. Moreover, that wage rate indicates that the beneficiary will perform routine tasks that require limited, if any, exercise of independent judgment; that the beneficiary's work will be closely supervised and monitored; that he will receive specific instructions on required tasks and expected results; and that his work will be reviewed for accuracy.

Consequently, the petitioner did not show that the particular position for which it filed this petition is so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We turn next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which entails an employer demonstrating that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position, and that the petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position.<sup>6</sup> In the instant case, the record does not establish that the petitioner has a prior history of recruiting and hiring for the proposed position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty.

Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific

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<sup>6</sup> Any such assertion would be undermined in this particular case by the fact that the petitioner indicated in the LCA that its proffered position is a comparatively low, entry-level position relative to others within its occupation.

specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 387. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in a specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proposed position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

The petitioner failed to submit evidence that the proffered position satisfies this criterion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158 at 165.

As the petitioner has failed to demonstrate a history of recruiting and hiring only individuals with a bachelor's degree, or the equivalent, in a specific specialty for the proffered position, it has failed to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, we find that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered position's 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 the specialty.

Both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, the petitioner's designation of an LCA wage-level I is indicative of duties of relatively low complexity.

As earlier noted, the *Prevailing Wage Determination Policy Guidance* issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

**Level I** (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine

tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered [emphasis in original].

By virtue of this submission the petitioner effectively attested that the proffered position is the lowest level position relative to others within the occupation. We also find that, separate and apart from the petitioner's submission of an LCA with a wage-level I designation, the petitioner has also failed to provide any documentary evidence to establish that the nature of the specific duties that would be performed 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.

For all of these reasons, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, the proffered position does not qualify as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

The director also denied the petition because he found that the petitioner did not have a valid employer-employee relationship with the beneficiary. In his RFE, the director requested that the petitioner provide evidence to document whether the beneficiary has an ownership interest in the petitioning entity, and if so, the percentage of ownership interest, as well as evidence of the petitioner's right to control the beneficiary's proposed employment. The director requested a copy of the petitioner's signed employment agreement with the beneficiary, the employment offer letter, a description of the performance review process, and/or a copy of the organization chart documenting the beneficiary's proposed supervisory chain. The director also requested evidence of the petitioner's corporate structure, such as a copy of the articles of incorporation and/or organization, bylaws, shareholders' agreement, company minutes, and any joint venture agreements. The director requested evidence of the petitioner's shareholders' ownership and investment. Finally, the director requested copies of the petitioner's recently filed federal income taxes with schedules.

In response to the director's RFE, the petitioner submitted copies of its Certificate of Incorporation, a letter from the Internal Revenue Service (IRS) assigning the petitioner a Federal Employer Identification Number (FEIN), copies of materials from its website at [REDACTED] a copy of the employment offer issued to the beneficiary, and a copy of the employee handbook.

In the decision denying the petition, the director stated that the documents submitted in response to the RFE did not address the ownership of the petitioner, or whether the beneficiary was an owner of the company. The director stated that the employment offer did not identify an officer to whom the

beneficiary would report, and that the petitioner did not identify any reporting structure. The director thus found that the petitioner did not have a valid employer-employee relationship with the beneficiary.

The record of proceeding lacks sufficient documentation evidencing that the petitioner is an ongoing entity.<sup>7</sup> The petitioner failed to submit the names of its officers and directors, an organizational chart, and failed to describe its corporate structure. The petitioner failed to submit any tax returns in response to the director's request. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Given the lack of evidence regarding the proposed work environment, the petitioner has failed to establish who has or will have actual control over the beneficiary's work or duties, or the condition and scope of the beneficiary's services. In other words, the petitioner has failed to establish that it has made a bona fide offer of employment to the beneficiary based on the evidence of record or that the petitioner will have and maintain an employer-employee relationship with the beneficiary for the duration of the requested employment period. *See* 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "United States employer" and requiring the petitioner to engage the beneficiary to work such that it will have and maintain an employer-employee relationship with respect to the sponsored H-1B nonimmigrant worker). There is insufficient evidence detailing the chain of command where the beneficiary will work or to whom the beneficiary will report when working in the proposed position. Therefore, the director's decision is affirmed, and the petition must be denied for this additional reason.

The director also found that the petitioner has not established that it will have sufficient work to perform in-house. In the RFE, the director requested that the petitioner provide copies of contracts, tax returns, critical reviews of its product, and other materials illustrating the nature of the work to be performed at the petitioner's premises. In response, the petitioner failed to submit the information requested. Given the petitioner's failure to establish that it has any work to employ the beneficiary for the period of time requested, we affirm the director's finding that the petitioner will employ the beneficiary in a specialty occupation. For this additional reason, the appeal will be dismissed.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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<sup>7</sup> The petition was filed on April 15, 2013. The petitioner described itself on the Form I-129 as an online news publisher and stated that it has been in business since 2012, that it currently employs five individuals, and that it has a (projected) gross annual income of approximately \$1.5 million. By the time of its August 2, 2013 response to the director's Request for Evidence (RFE), the petitioner claimed to employ 18 individuals. A review of public records indicates that the petitioner has no officers and directors, no income and no employees. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

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*NON-PRECEDENT DECISION*

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**ORDER:** The appeal is dismissed. The petition is denied.