



U.S. Citizenship  
and Immigration  
Services

(b)(6)

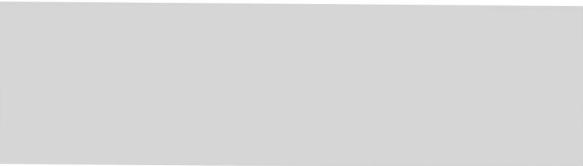


DATE: **APR 27 2015**

OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE:           Petitioner:   
                  Beneficiary: 

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

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

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a two-employee "IT consulting" business established in [REDACTED]. In order to employ the beneficiary in what it designates as a full-time "Software Developer" position at a salary of \$61,755 per year, 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 does not demonstrate that: (1) the petitioner qualifies as a U.S. employer having an employer-employee relationship with the beneficiary; and (2) the proffered position qualifies as a specialty occupation.

On appeal, the petitioner asserts that the director's basis for denial was erroneous and contends that the submitted evidence was sufficient.

The record of proceeding 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; (5) the Notice of Appeal or Motion (Form I-290B), and supporting documentation; (6) our request for additional and missing evidence (RFE); and (7) the petitioner's response to our RFE and supporting documentation. We have reviewed the record in its entirety before issuing our decision.

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.

## I. FACTUAL AND PROCEDURAL HISTORY

The petitioner filed the Form I-129 on April 1, 2014, listing its business address as [REDACTED] New Jersey. The petitioner indicated that it seeks to employ the beneficiary as a software developer at the address of "[REDACTED] [Colorado]." No other addresses of employment were listed on the Form I-129. The petitioner checked the box on the Form I-129 at Part 5, Question 5 confirming that the beneficiary will work off-site. The petitioner listed the dates of intended employment as October 1, 2014 to September 14, 2017.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a "Software Developer," and that it corresponds to Standard Occupational Classification (SOC) code and title "15-1132, Software Developers, Applications" from the Occupational Information Network (O\*NET). The LCA further states that the proffered position is a Level I, entry-level, position. The petitioner indicated on the LCA that the beneficiary will be

working for [REDACTED] located at [REDACTED], Colorado. No other places of employment were listed on the LCA.

In support of the petition, the petitioner submitted a letter dated March 20, 2014 describing itself as "a rapidly growing Innovative Technology Company engaged in providing software solutions." The petitioner stated that it has "an excellent group of Architects, Data Modelers, Business Analysts, Administrators and Developers that can address any client's needs." As to the minimum requirements of the proffered position, the petitioner stated: "Our company consistently requires that the Software Developers working for our company possess the usual minimum requirements for performance of job duties namely Bachelor's degree in Computer Science, Information Systems, Information Technology, Engineering, Business Administration, or related field of study [sic]."

In the same letter, the petitioner stated that it "intend[s] to employ the beneficiary in the specialty occupation of Software Developer." The petitioner provided a non-exclusive list of job duties for the proffered position and stated that the beneficiary will also perform "other responsibilities as assigned." The petitioner explained that the "[b]eneficiary will be working at the office of the end client, [REDACTED]. Beneficiary will be employed at [REDACTED] as part of the [REDACTED] project located at [REDACTED] CO [REDACTED] pursuant to a valid contract between [the petitioner] and Vendor, [REDACTED]." The petitioner further explained that [REDACTED] has entered into a contract with another vendor, [REDACTED] and [REDACTED] with [REDACTED]. The petitioner summarized the contractual relationship as follows:

Petitioner → [REDACTED] (Mid Vendor) → [REDACTED] (Mid Vendor) → [REDACTED] (End-Client)

With respect to the employer-employee relationship between the petitioner and the beneficiary, the petitioner asserted that it "will retain all control over the employment including but not limited to the right to hire, fire, pay, supervise and other regular control over the employee." The petitioner asserted that it "is responsible for the overall direction of the beneficiary's work," and that "[t]he beneficiary will be supervised by Ms. [REDACTED] President of [the petitioner]." The petitioner further provided the following explanation regarding the manner in which it will purportedly control the beneficiary's employment:

[A]s a standard company policy and operating procedure, [the petitioner] has the right to control the employment of the beneficiary especially as to when, where and how to perform the job. [The petitioner] requires its employees, including those working at client sites, to report at its office for the purposes of interacting with its managers, reporting about projects and its statuses, and work evaluation from time to time. [The petitioner] uses this opportunity to evaluate the employee work performance based on manager's review reports and the client feedback, if available, and recommend improvements when necessary, and provide required skills enhancement training at its business location to improve employee performance. Accordingly, beneficiary will be required to visit company office location from time to time in order to attend meetings, report on the status of the on-going projects of which the beneficiary is a part and confer with beneficiary's managers on the direction and methodology to be

employed during project execution at client location. This enables beneficiary to seek professional advice and guidance, receive training in various information technologies and improve beneficiary's technical knowledge and professional skills.

In support of the petition, the petitioner submitted, *inter alia*, a supplemental letter dated March 20, 2014 reaffirming that the petitioner "is the employing entity . . . that remains in control of all salient employment incidents including hiring, remunerations, benefits, supervision, termination, promotion, etc. of all its employees." This letter also reiterates that "Mrs. [REDACTED] President will supervise the beneficiary. This supervision will take place on a weekly basis through status reports, weekly meetings and via e-mail."

The petitioner submitted a letter dated March 19, 2014 from [REDACTED] stating that that the beneficiary "will be performing duties on a project for [REDACTED]." The letter states that the beneficiary has been working on this project since March 2013. The letter confirms the beneficiary's assignment location at [REDACTED]. The letter further asserts that the beneficiary "is not employed by [REDACTED] and [REDACTED] does not have the right to assign [the beneficiary] to another project or location or company as part of this assignment." [REDACTED] letterhead identifies the company's address as [REDACTED] Virginia.

The petitioner submitted a Master Service Agreement dated March 4, 2013 between the petitioner ("Sub-Contractor") and [REDACTED].<sup>1</sup> ("Client"), under which the petitioner will "provide technically qualified personnel and staffing services to [REDACTED] for assignment with Customer (hereinafter referred to as the 'Designated Client') on a temporary basis." This agreement identifies the petitioner's principal office location as [REDACTED] New Jersey.

The petitioner submitted the beneficiary's resume which lists his present work experience for the petitioner as a software developer, and the project on which he is working as "[REDACTED]." The petitioner also submitted evidence of the beneficiary's employment authorization to work on a full-time basis for [REDACTED] located at [REDACTED] New Jersey, from February 10, 2012 to May 20, 2013. The petitioner submitted the beneficiary's transcript from the [REDACTED] issued on January 22, 2014, which lists his address as [REDACTED] New Jersey.

The director issued an RFE instructing the petitioner to submit additional documentation establishing that an employer-employee relationship will exist between the petitioner and the beneficiary, and that the proffered position qualifies as a specialty occupation. In particular, the director listed contractual agreements between the petitioner and the ultimate end-client as one of the types of evidence that may be submitted.

In response to the RFE, the petitioner submitted, *inter alia*, a letter dated May 27, 2014 describing the beneficiary's assigned project in greater detail. In pertinent part, the petitioner stated that the

<sup>1</sup> [REDACTED] is also referred to in the record as [REDACTED] and "[REDACTED]."

beneficiary's project will be "performed for the Colorado State Government" and will involve "Colorado state offering a statewide customer support network of Customer Service Center Representatives, Health Coverage Guides and licensed agents/brokers to help Coloradans find the best health plan for their needs."

Regarding its overall staffing, the petitioner stated that "besides the president of the company [REDACTED] there are three other employees – [the beneficiary] (Software Developer), [REDACTED] (Programmer Analyst) and [REDACTED] (Data Analyst), all of whom report to President [REDACTED]"

In the letter, the petitioner asserted that the proffered position requires "a bachelor's-level degree in Computer Science, Information Systems, Information Technology, Engineering, or a closely related field [sic]," then subsequently asserted that the proffered position requires "a Bachelor's degree in a relevant computing field such as Computer Science, Information Systems, Computer Applications, Electronic Engineering or Information Technology." Later on in the same letter, the petitioner stated that it is industry standard for software developers to have a bachelor's degree "in Computer Science, Information Systems, Information Technology, Engineering, Business Administration, or related field of study."

The petitioner submitted a Certificate of Achievement issued to the beneficiary by [REDACTED] in recognition of his previous work on Colorado's Health Insurance Marketplace.

The petitioner submitted a letter dated May 21, 2014 from [REDACTED] verifying that the beneficiary "has been working as an independent consultant with [REDACTED] since 03/07/2013, in the role of Java Developer [sic] on an on-going project."<sup>2</sup> The letter identifies the project as [REDACTED]. The letter explains that [REDACTED] has entered into a contract with [REDACTED] to provide the resources to satisfy the aforesaid project. [REDACTED] has also entered into a contract with [the petitioner] whereby [the petitioner] will provide the Consultant to meet the project resources." The letter asserts that the beneficiary is not an employee of [REDACTED] or [REDACTED], and that "[t]he H1-B petitioner will be responsible for all incidents of employment of the beneficiary including, but not limited to, hiring, payment of wages & fringe benefits, supervision, promotion, demotion, giving bonuses, termination and/or discipline."

The petitioner submitted a letter dated May 22, 2014 from [REDACTED] that is almost identical to the May 21, 2014 letter from [REDACTED]. Like the [REDACTED] letter, [REDACTED] letter attests that the beneficiary "has been working as an independent consultant with [REDACTED] since 03/07/2013, in the role of Java Developer on an on-going project at [REDACTED] and that the beneficiary is an employee of the petitioner, and not an employee of [REDACTED]. The letter also identifies the project as [REDACTED]"

<sup>2</sup> [REDACTED] is also referred to in the record as [REDACTED]

The petitioner submitted a statement titled, "Affidavit on Employer-Employee Relationship," from [redacted] attesting that the beneficiary has been employed by the petitioner as a software developer since August 15, 2012. The affidavit further attests that the petitioner "controls all incidents of beneficiary's employment," including the right to "control and re-assign beneficiary" and to "perform periodic checks as well as appraisals for all beneficiary's work and work related performance." The petitioner also submitted an affidavit from the beneficiary attesting to the same.

The petitioner submitted copies of direct deposit statements and Wage and Tax Statements (Form W-2) issued to the beneficiary in 2012 and 2013. In all of these statements, the petitioner's address is listed as [redacted] North Carolina.

The petitioner submitted its Employment Agreement with the beneficiary, dated August 4, 2012, in which the beneficiary's position is listed as "Jr. Programmer."<sup>3</sup> The petitioner's address is listed on this agreement as [redacted], North Carolina.

The director denied the petition, concluding that the evidence of record does not demonstrate that: (1) the petitioner qualifies as an U.S. employer having an employer-employee relationship with the beneficiary; and (2) that the proffered position qualifies as a specialty occupation.

The petitioner subsequently filed an appeal. On appeal, the petitioner asserted that the submitted evidence is sufficient to show the petitioner's employer-employee relationship with the beneficiary, and that the proffered position qualifies as a specialty occupation. In the petitioner's appeal brief, the petitioner asserted that the director "erroneously concluded that [redacted] [sic] as end client and that [redacted] was a staffing firm." The petitioner provided a new "chain of contractual relationship" as follows:

[The beneficiary] → [The petitioner] → [redacted] → [redacted]

The petitioner explained that [redacted] refers to "[redacted]" which is a public exchange to provide health insurance benefits for Colorado residents. The petitioner further stated that "[redacted] is] developing a product (insurance application for individuals and employers) to [redacted] Since [redacted] was a small company providing multiple solutions for healthcare and could not maintain whole project based on implementation basis, [redacted] came in to existence acting as an implementing partner for the project." The petitioner asserted that "[redacted] is strictly a product based company and not a staffing company and in this case the end-client among the contracting parties." The petitioner stated that "[t]he beneficiary is involved in a project undertaken by [redacted] and therefore, [redacted] is the end client." The petitioner identified the "project name" as "[redacted]"

In support of the appeal, the petitioner submitted, *inter alia*, a copy of an email message the beneficiary sent to "Manager" requesting confirmation that the beneficiary is "working for [redacted] project – [redacted] . . . and [that] [redacted] is not a staffing firm." In

<sup>3</sup> The proffered position in this matter is not a "Jr. Programmer" position.

response to this message, [REDACTED] HR Business Partner of [REDACTED], emailed the beneficiary with the following: "Yes, You are working at [REDACTED] office for [REDACTED] project – [REDACTED], there is no relationship between you and [REDACTED] beyond [REDACTED]"

During our preliminary review of the record of proceeding, we noted inconsistencies regarding the petitioner's business addresses and corporate status. For instance, we noted that the petitioner's address as listed on the Form I-129 ([REDACTED] New Jersey) appeared to be a virtual office, and that the petitioner also indicated a North Carolina residential address. We subsequently issued an RFE on January 8, 2015.

In response to our RFE, the petitioner explained that its "corporate registered office is located at [REDACTED] [North Carolina]." The petitioner asserted that this [REDACTED] address "is a residence of the previous officer ([REDACTED] . . . [and] was used for registration only and there were/are no employees working at that address." The petitioner again affirmed that the [REDACTED] address "is a residence of the officer [REDACTED]" and that "[t]his address was used for registration only and there were/are no employees working at that address."

With respect to the petitioner's address of [REDACTED] New Jersey, the petitioner asserted that "[REDACTED] is the only officer (President) working at this location. All other employees work in other project sites." The petitioner further stated:

Please note that [the petitioner] in it is [*sic*] initial stages did not see the need for taking an office space. However, as business grew (evidenced in Federal Income Tax Returns), petitioner decided to take the office space at [REDACTED] NJ. Please note that [REDACTED] office is not a virtual office. [The petitioner] have actually leased office space there. The lease submitted (**Exhibit 4**) shows that [the petitioner] has been assigned suite # and mentions the monthly rent.

All [the petitioner's] business is and will be conducted from [REDACTED] NJ address.

Attached as Exhibit 4, the petitioner submitted its one-page lease from [REDACTED] ("Landlord") for [REDACTED] New Jersey. This lease, signed on January 26, 2015, is for a three-month period commencing on February 1, 2015 and ending on April 30, 2015. The lease identifies [REDACTED] New Jersey as the home address of [REDACTED] and [REDACTED]

The petitioner also submitted, *inter alia*, its Certificate of Authority filed on January 26, 2015 with the New Jersey Department of the Treasury certifying the petitioner's registration as a foreign for-profit corporation. This certificate lists the petitioner's main business address as [REDACTED] New Jersey, and its registered office address as [REDACTED] New Jersey.

The petitioner submitted its Wage Withholding License from the State of Colorado, Georgia State Withholding Tax Registration, and recent quarterly wage reports from the states of Colorado, Georgia, and California. These documents show that the petitioner is using its [REDACTED] New Jersey address, its [REDACTED] New Jersey address, as well as its [REDACTED] North Carolina address.

Finally, the petitioner submitted its organizational chart. This chart depicts Ms. [REDACTED] President, at the top, directly overseeing the following: (1) [REDACTED] Employee; (2) the beneficiary, Employee; (3) (unidentified) HR & Finance; (4) [REDACTED] Employee; (5) [REDACTED] Contractor; (6) [REDACTED] Contractor; (7) [REDACTED] Contractor; and (8) [REDACTED] Contractor.

## II. PRELIMINARY FINDINGS

Based upon a complete review of the record of proceeding, we will make some preliminary findings that are material to the determination of the merits of this appeal.

In the instant matter, the petitioner asserts that the beneficiary will work off-site at the address of [REDACTED] Colorado. The petitioner does not identify any other work location on the Form I-129, LCAs, and supporting documentation. However, the petitioner has not credibly established for whom and through whom the beneficiary will ultimately be providing his services to at the address of [REDACTED] Colorado.

The petitioner has made inconsistent and confusing claims regarding the end-client and mid-vendors in this matter. For instance, on the Form I-129 and LCA, the petitioner listed the end-client as [REDACTED]. In the petitioner's March 20, 2014 letter submitted with the petition, the petitioner specifically stated that the "[b]eneficiary will be working at the office of the end client, [REDACTED] . . . located at [REDACTED]"<sup>4</sup>

In response to the RFE, however, the petitioner indicated that the Colorado State Government/[REDACTED] is the end-client.<sup>5</sup> Specifically, the petitioner

<sup>4</sup> According to [REDACTED] website, [REDACTED] has an office at [REDACTED] Colorado. See [REDACTED]

<sup>5</sup> Despite the petitioner's claims on appeal, the evidence of record indicates that "[REDACTED]" is a separate business entity and not merely the name of a "project." For instance, [REDACTED] letter states that the beneficiary "will be performing duties on a project for [REDACTED], [REDACTED]," and that the beneficiary "is not employed by [REDACTED] and [REDACTED] does not have the right to assign [the beneficiary] to another project or location or company." These references clearly indicate that [REDACTED] is more than just the project name.

stated in its May 27, 2014 letter that the beneficiary's project will be "performed for the Colorado State Government." The petitioner submitted a letter from hCentive stating that the beneficiary "will be performing duties on a project for [REDACTED]." The petitioner also submitted a Certificate of Achievement issued by [REDACTED] to the beneficiary.

To confuse matters more, the petitioner now asserts on appeal that [REDACTED] is the end-client, and not a mid-vendor as initially claimed. Specifically, the petitioner stated in its appeal brief that "[t]he beneficiary is involved in a project undertaken by [REDACTED] and therefore, [REDACTED] is the end client." We observe that [REDACTED] address is [REDACTED] Virginia, and therefore it is not clear how [REDACTED] could be the end-client for the beneficiary's work located at [REDACTED].

The petitioner has not submitted a credible explanation, corroborated by objective evidence, resolving these inconsistencies.<sup>6</sup> Based on these significant discrepancies, the evidence of record fails to establish who the end-client is, what mid-vendor(s) are involved, and the nature of the relationship between the petitioner, the beneficiary, and all the third parties mentioned in the record of proceeding. Moreover, we cannot determine which, if any, of the petitioner's assertions and submitted evidence are entitled to probative value. When a petition includes numerous errors and discrepancies, those inconsistencies raise serious concerns about the petitioner's credibility.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

There are additional discrepancies and deficiencies with regards to the petitioner's organization and business operations that further undermine the petitioner's credibility. For example, the petitioner stated on the Form I-129 that it has two employees. However, in response to the RFE, the petitioner stated that "besides the president of the company [REDACTED] there are three other employees [including the beneficiary]." On appeal, the petitioner submitted an organizational chart which depicts at least four employees (including the beneficiary), in addition to an unidentified "HR &

---

For simplicity, we will consider Colorado State Government and [REDACTED] to be the same entity. We note that [REDACTED] website states that "[REDACTED] is a non-profit entity established by a state law." See [REDACTED] (last visited April 15, 2015).

<sup>6</sup> The petitioner's uncorroborated explanation on appeal - that [REDACTED] is a small company and partnered with [REDACTED] - does not explain why the petitioner has claimed several different end-clients, nor establish who the actual end-client is in this matter.

Finance" position or department, and several contractors. The petitioner also stated that it has "an excellent group of Architects, Data Modelers, Business Analysts, Administrators and Developers," which conveys that the petitioner has more than two employees as initially claimed on the Form I-129. Furthermore, the petitioner has only identified one employee – [REDACTED] – as having a managerial position within the company, but then refers to its "managers" (in the plural) when describing the employer-employee relationship between the petitioner and the beneficiary.

The petitioner's assertions and evidence with respect to its business address(es) and premises are unclear and inconsistent. For instance, the petitioner initially listed its address on the Form I-129 and LCA as [REDACTED] New Jersey, having no suite or office number. In the petitioner's March 20, 2014 letter, the petitioner specifically characterized this address as the location of its "office," "business location," and "company office location," whereat the petitioner's employees would "report at" and "visit" for purposes such as interacting with and reporting to management, attending meetings, and receiving training. The petitioner's initial descriptions imply that the petitioner has physical office premises at [REDACTED] New Jersey. However, during our preliminary review of the record of proceeding, we observed that [REDACTED] New Jersey appears to be a virtual office. In response to our RFE, the petitioner ambiguously stated that "[the petitioner] in its initial stages did not see the need for taking an office space. However, as business grew . . . the petitioner decided to take the office space at [REDACTED] NJ. Please note that [REDACTED] office is not a virtual office." The petitioner's response did not directly address whether its original address of [REDACTED], New Jersey, with no suite or office number, is a virtual office.<sup>7</sup> If this address is a virtual office, it is not readily apparent how its employees could "report at" and "visit" this location, as claimed.

In addition, some of the petitioner's evidence lists its address as [REDACTED] North Carolina. We noted during our preliminary review that this appeared to be a residential address. In response to our RFE, the petitioner stated that this "is a residence of the previous officer . . . [and] was used for registration only and there were/are no employees working at that address." However, the petitioner's explanation is undermined by the fact that the petitioner has used and continues to use this address on a variety of documents such as its W-2 forms, its Employment Agreement with the beneficiary, and its most recent 2014 quarterly tax and wage reports.

Furthermore, we now observe that the petitioner recently listed its "Registered Office" address as [REDACTED] New Jersey on its registration as a foreign for-profit corporation with

<sup>7</sup> The petitioner's ambiguous statements, coupled with the fact that petitioner subsequently entered into a new, short-term lease for an actual suite number (Suite [REDACTED]), suggests that the petitioner's original address (with no suite or office number) is a virtual office. We note that the petitioner's lease to Suite [REDACTED] was entered into on February 1, 2015, *after* we issued our RFE, and is valid for only three months. In addition, we note that the petitioner did not submit the lease to its initial address of [REDACTED] New Jersey (no suite or office number).

the State of New Jersey on January 26, 2015. The petitioner's lease with [REDACTED] identifies this address as the home address of [REDACTED]. The petitioner also listed the same residential address on its Master Service Agreement with [REDACTED] entered into in March 2013. The evidence of record does not contain any explanation for why the petitioner is also using this residential address and what business activities, if any, are being conducted from this address. We further observe that the beneficiary was previously granted employment authorization to work for another company, [REDACTED], located at the same address as the petitioner, during a time period which overlaps with when the petitioner also claimed to have employed the beneficiary.<sup>8</sup> The evidence of record does not contain any explanation for what relationship, if any, exists between the petitioner and Sofutek Inc.

Considering the numerous discrepancies and deficiencies in the record as discussed above, we cannot determine the true nature of the petitioner's business operations. As we also previously discussed above, we cannot determine who the end-client is, what mid-vendor(s) are involved, and the nature of the relationship between the petitioner, the beneficiary, and all the other third parties mentioned in this record of proceeding. Overall, we cannot determine the substantive nature of the proffered position or even if the petitioner has made a *bona fide* offer of employment. Again, when a petition includes numerous errors and discrepancies, those inconsistencies raise serious concerns about the petitioner's credibility. *Id.* Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

### III. EMPLOYER-EMPLOYEE RELATIONSHIP

We will now address the director's finding that the evidence fails to establish that the petitioner qualifies as a United States employer having an employer-employee relationship with the beneficiary throughout the entire validity period requested.

#### A. The Law

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

subject 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) . . . .

<sup>8</sup> The beneficiary was granted employment authorization to work for [REDACTED] on a full-time basis from February 10, 2012 through May 20, 2013. The petitioner's Employment Agreement and the beneficiary's affidavit both indicate that the beneficiary's employment began with the petitioner in August 2012.

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 also* 56 Fed. Reg. 61111, 61121 (Dec. 2, 1991).

#### B. Analysis

Upon review, we agree with the director that the evidence of record does not establish that the petitioner is a "United States employer" who will have "an employer-employee relationship" with the beneficiary. 8 C.F.R. § 214.2(h)(4)(ii); Section 101(a)(15)(H)(i)(b) of the Act.

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 alien 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) (2012). 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) (2012). Further, the regulations indicate that "United States employers" must file a Petition for a Nonimmigrant Worker (Form I-129) in order to classify aliens 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 Mutual Ins. Co. v. Darden*, 503 U.S. 318, 322-323 (1992) (hereinafter "*Darden*") (quoting *Community for Creative Non-Violence v. Reid*, 490 U.S. 730 (1989)). The Supreme Court stated:

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

*Darden*, 503 U.S. at 323-324 (quoting *Community for Creative Non-Violence v. Reid*, 490 U.S. at 751-752); see also *Clackamas Gastroenterology Associates, P.C. v. Wells*, 538 U.S. 440, 445 (2003) (hereinafter "*Clackamas*"). 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 America*, 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.<sup>9</sup>

<sup>9</sup> 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), *aff'd*, 27 F.3d 800 (2nd Cir.), *cert. denied*, 513 U.S. 1000 (1994).

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

Specifically, the regulatory definition of "United States employer" requires H-1B employers to have a tax identification number, to engage a person to work within the United States, and to have an "employer-employee relationship" with the H-1B "employee." 8 C.F.R. § 214.2(h)(4)(ii). Accordingly, the term "United States employer" not only requires H-1B employers and employees to have an "employer-employee relationship" as understood by common-law agency doctrine, it imposes additional requirements of having a tax identification number and to employ persons in the United States. The lack of an express expansion of the definition regarding the terms "employee" or "employer-employee relationship" combined with the agency's otherwise generally circular definition of United States employer in 8 C.F.R. § 214.2(h)(4)(ii) indicates that the regulations do not intend to extend the definition beyond "the traditional common law definition" or, more importantly, that construing these terms in this manner would thwart congressional design or lead to absurd results. *Cf. Darden*, 503 U.S. at 318-319.<sup>10</sup>

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).<sup>11</sup>

Therefore, in considering whether or not one will be an "employee" in an "employer-employee relationship" with a "United States employer" for purposes of H-1B nonimmigrant petitions, USCIS must focus on the common-law touchstone of "control." *Clackamas*, 538 U.S. at 450; *see also* 8 C.F.R. § 214.2(h)(4)(ii) (defining a "United States employer" as one who "has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise *control* the work of any such employee . . ." (emphasis added)).

---

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 Resources Defense Council, Inc.*, 467 U.S. 837, 844-845 (1984).

<sup>10</sup> 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, 109 S.Ct. 1835, 1850, 104 L.Ed.2d 351 (1989) (quoting *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 414, 65 S.Ct. 1215, 1217, 89 L.Ed. 1700 (1945))).

<sup>11</sup> 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 aliens).

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 323-324; *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 *New Compliance Manual*, Equal Employment Opportunity Commission, § 2-III(A)(1) (adopting a materially identical test and indicating that said test was based on the *Darden* decision); see also *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 actual 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 448-449; *New Compliance Manual* at § 2-III(A)(1).

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

Applying the *Darden* and *Clackamas* tests to this matter, the petitioner has not established that it will be a "United States employer" having an "employer-employee relationship" with the beneficiary as an H-1B temporary "employee."

As detailed above, the record of proceeding lacks sufficient documentation evidencing who the end-client is, what mid-vendor(s) are involved, the nature of the relationship between the petitioner, the beneficiary, and all the other third parties mentioned in this record of proceeding. The record of proceeding lacks sufficient documentation establishing the substantive nature of the proffered position and the *bona fide* nature of the job offer. This lack of evidence precludes any finding of

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 evidence of record fails to establish that the petitioner will have and maintain the requisite 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).

Although the petitioner asserts that it "is the employing entity . . . that remains in control of all salient employment incidents," the evidence of record does not corroborate this assertion. The petitioner has not credibly and sufficiently explained and documented how the company, through its President [REDACTED] will supervise and otherwise control the beneficiary's day-to-day work performed off-site in Colorado. For instance, the petitioner initially claimed that its employees are required to "visit" and "report at its office" located at [REDACTED] New Jersey to receive supervision from management. The evidence of record, however, is unclear as to whether this address is a virtual office, and if so, how the petitioner could supervise its employees in the manner asserted from a virtual office. While the petitioner has entered into a new lease for suite [REDACTED] at [REDACTED] New Jersey, its new lease did not commence until February 1, 2015 – well after the date the Form I-129 was filed – and is only for a three-month term. Moreover, while the petitioner has also used other addresses in [REDACTED], North Carolina, and [REDACTED] New Jersey address, these are residential addresses from where the petitioner does not claim to conduct any business activity.

In addition, the petitioner asserts that Ms. [REDACTED] "will supervise the beneficiary . . . on a weekly basis through status reports, weekly meetings and via e-mail." However, the petitioner has not submitted any evidence of these purported weekly interactions, despite the petitioner's claim that it has employed the beneficiary since August 2012. The petitioner also claims that it has "managers" in the plural, but the only manager specifically identified by the petitioner is Ms. [REDACTED].

We note that the email the beneficiary sent to [REDACTED] of [REDACTED] addressed her as "Manager." The petitioner has not provided any explanation for why the beneficiary would refer to Ms. [REDACTED] as "Manager," and the nature of the relationship between her, the beneficiary, and the petitioner, if any. We also note that the documentation from [REDACTED] does not contain a detailed explanation of the nature of its relationship with the beneficiary, which it has had since March 2013. For instance, the email from Ms. [REDACTED] vaguely states that "there is no relationship between [the beneficiary] and [REDACTED] beyond [REDACTED]" but does not provide any further explanation. The letter dated March 19, 2014 from [REDACTED] states that the beneficiary "is not employed by [REDACTED] and [REDACTED] does not have the right to assign [the beneficiary] to another project or location or company," but it does not explain what rights [REDACTED] has or does not have with respect to the beneficiary.

While the petitioner submitted letters from [REDACTED] and [REDACTED] summarily asserting that the beneficiary is not their employee and that "[t]he H1-B petitioner" will be his employer, these letters are almost identical in substance and format. The use of identical language and phrasing across the

letters suggests that the language in the letters is not the authors' own. *Cf. Surinder Singh v. BIA*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an adverse credibility determination in asylum proceedings based in part on the similarity of the affidavits); *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source).

Moreover, both the letters from [REDACTED] and [REDACTED] state that the beneficiary "has been working as an independent consultant with [REDACTED]." On appeal, the petitioner restated the "chain of contractual relationship between the parties" as starting with the beneficiary to the petitioner, which is consistent with the description of the beneficiary as an "independent consultant." If the beneficiary is an "independent consultant" as indicated by some of the evidence, then the petitioner's entire claim that it has an employer-employee relationship with the beneficiary is undermined.

Thus, even if the petitioner were to establish that it pays for the beneficiary's salary, taxes, and other employment benefits, these factors, alone, are insufficient to establish that the petitioner qualifies as the beneficiary's employer having an employer-employee relationship with him. Taken as a whole, 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). Merely claiming that the petitioner exercises complete control over the beneficiary, without competent evidence supporting the claim, is insufficient to establish eligibility in this matter. 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. 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

As the evidence does not establish that the petitioner qualifies as a United States employer having an "employer-employee relationship" with the beneficiary, the petition must be denied.

#### IV. SPECIALTY OCCUPATION

We also agree with the director that the evidence of record fails to establish that the proffered position is a specialty occupation.

##### A. The Law

To meet its burden of proof in establishing the proffered position as a specialty occupation, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires [(1)] 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 requires [(2)] 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, the 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), 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 rely simply upon a proffered position's title. The specific duties of the 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 beneficiary, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 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.

As recognized in *Defensor v. Meissner*, it is necessary for the end-client to provide sufficient information regarding the proposed job duties to be performed at its location(s) in order to properly ascertain the minimum educational requirements necessary to perform those duties. *See Defensor v. Meissner*, 201 F.3d at 387-388. 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.*

## B. Analysis

Here, and as previously discussed, the petitioner has not credibly established who the end-client is in the instant matter. The failure to establish the identity of the end-client and, accordingly, to submit credible documentation from the end-client, precludes the petitioner from establishing the substantive nature of the proffered position and its constituent duties. The record of proceeding is noticeably absent any documentation from [REDACTED] which the petitioner has alternatively characterized as the end-client as well as an "implementing partner" for the beneficiary's project. As previously noted, the petitioner's Employment Agreement with the beneficiary refers to a "Jr. Programmer"

position, not a "Software Developer" position as stated on the Form I-129 and other supporting documentation.

The failure to establish the substantive nature of the work to be performed by the beneficiary consequently precludes a 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 evidence of record fails to satisfy any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation.

Finally, even if the petitioner were able to establish the substantive nature of the work to be performed by the beneficiary (which it has not), the petitioner has not credibly established the minimum educational requirements for the proffered position. That is, the record contains inconsistent descriptions regarding the minimum educational requirements for the proffered position, i.e., whether it includes a bachelor's degree in Business Administration and/or all Engineering disciplines. Specifically, the petitioner asserted in its May 27, 2014 letter that the proffered position can be satisfied by a bachelor's-level in Engineering, then narrowed the requirement down to a degree in Electronic Engineering, and then later on in the same letter indicated that a bachelor's degree in Business Administration is also acceptable. The petitioner has not submitted an explanation reconciling these discrepancies. This failure to articulate in which specific specialty a degree is required further precludes any finding that the proffered position constitutes a specialty occupation. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position.

Assuming *arguendo* that the minimum requirement for the proffered position includes a bachelor's degree in Business Administration and/or all Engineering disciplines, this would further support the conclusion that the proposed position does not qualify as a specialty occupation. 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. Since there must be a close correlation between the required specialized studies and the position, the acceptance of a degree with a generalized title, such as Business Administration or Engineering, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its

equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in Business Administration or Engineering, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).<sup>12</sup>

For the above reasons, it cannot be found that the proffered position qualifies as a specialty occupation. The petition must be denied for this additional reason.

## V. CONCLUSION AND ORDER

As set forth above, we agree with the director's findings that the evidence of record does not establish an employer-employee relationship between the petitioner and the beneficiary. We also agree with the director that the evidence of record does not establish that the proffered position qualifies for classification as a specialty occupation. Accordingly, the petition will be denied.

An application or petition that does not comply with the technical requirements of the law may be denied by us even if the service center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of the enumerated grounds. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1037, *aff'd*, 345 F.3d 683; see also *BDPCS, Inc. v. Fed. Communications Comm'n*, 351 F.3d 1177, 1183 (D.C. Cir. 2003) ("When an agency offers multiple grounds for a decision, we will affirm the agency so long as any

<sup>12</sup> Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. See, e.g., *Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; cf. *Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

one of the grounds is valid, unless it is demonstrated that the agency would not have acted on that basis if the alternative grounds were unavailable.").

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative 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.

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