U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JUL 27 2015

PETITION RECEIPT #:

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:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

I. PROCEDURAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a 34-employee "IT Services and Solutions" company established in In order to employ the beneficiary in what it designates as a full-time "Computer Programmer Analyst" position at a salary of $70,000 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 petitioner is requesting to employ the beneficiary from October 1, 2014 to September 3, 2017 at its business address of in New Jersey. The petitioner indicated on the Form I-129 that the beneficiary will not work off-site or at any other addresses.

The Director denied the petition, concluding that the evidence of record did not establish that specialty occupation work exists for the beneficiary, and thus, that the proffered position qualifies for classification as a specialty occupation.[1] The petitioner now files this appeal, asserting that the Director's decision was erroneous.

We base our decision upon our review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the Director's Request for Evidence (RFE); (3) the petitioner's response to the RFE; (4) the Director's letter denying the petition; and (5) the Notice of Appeal or Motion (Form I-290B) and submissions on appeal.

As will be discussed below, we have determined that the Director did not err in her decision to deny the petition.[2] Beyond the Director's decision, we have identified an additional ground of ineligibility, i.e., that the evidence does not demonstrate that the petitioner qualifies as a United States employer with an employer-employee relationship with the beneficiary. Accordingly, the appeal will be dismissed, and the petition will be denied.

II. THE PROFFERED POSITION

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a "Computer Programmer," and that it corresponds to Standard Occupational

---

[1] The Director separately addressed the issue of whether the petitioner demonstrated that it had sufficient working space at the time of filing to support the employment of the beneficiary and others for whom it had petitioned. As will be discussed *infra,* in this petition the sufficiency of work space relates to the ultimate issue of whether the proffered position qualifies as a specialty occupation.

[2] We conduct appellate review on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Classification (SOC) code and title "15-1131, Computer Programmers" from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I (entry) position.

In a letter dated March 20, 2014, the petitioner provided an overview of the proffered position and its constituent duties, stating that the beneficiary's job duties include the following:

- *Analyze, develop and write complex high-end, mission critical role-based computer programs requiring high degree of security and computational ability.*
- *Work with project architect and /or technical lead to confirm and substantiate functional, technical designs, and project specifications.*
- *Perform projects using open-source technologies.*
- *Review and analyze complex programming specifications to resolve any possible misunderstandings.*
- *Perform application programming assignments, typically maintenance or modification of existing systems.*
- *Enforce coding standards and deploy new technologies as needed*
- *Install new and improved application systems-enhancement, compilation, and testing.*
- *Utilize appropriate software tools to develop, document, test and debug programs/objects.*
- *Create procedures and batch processing control statements, user materials, documentation, and moving programs into production mode.*
- *Understand and realize the design document using applicable Design Patterns.*
- *Provide various reusable Design approaches to solve business functionalities for various modules.*
- *Implement Web Services; develop business logic and test cases.*
- *Involve in Developer Testing during application release every month.*
- *Perform various forms of testing- unit, string, system, acceptance, volume, etc., to ensure that desired test results are achieved.*
- *Troubleshoot applications.*

(Verbatim.)

In the same letter, the petitioner stated that "[t]he beneficiary will work at [the petitioner's] office premises at NJ on the IMCLAP project. IMCLAP is the most complete mobile app for automation projects . . . . This is not an offsite position . . . . The beneficiary will be supervised at [the petitioner's office] by Mr. President."

With regard to the minimum educational requirement for the proffered position, the petitioner stated that "[o]ur company consistently requires that the Computer Programmer Analysts working for our company possess the usual minimum requirements for performance of job duties namely Bachelor's degree in Computer Science, Information Systems, Engineering, Business Administration, or

related field of study."

In a separate letter dated March 15, 2014, the petitioner confirmed that the beneficiary "will be serving in the role of Computer Programmer on the IMCLAP (Intelligent Mobile Cloud App) project for [the petitioner]" and that the beneficiary will work on this project at the petitioner's office at in , New Jersey. The petitioner further stated that the beneficiary will be directly supervised by Project Manager on the IMCLAP project. The petitioner reiterated the same job duties and minimum educational requirements as listed in its March 20, 2014 letter.

The petitioner also submitted a series of letters describing the beneficiary's responsibilities during different phases of the TRN IMCLAP project. The first in this series of letters describes the beneficiary's responsibilities during the "Product Design (Core Product)" phase of the project, which would last from October 6, 2014 to November 5, 2015, as follows:

- Will be responsible for planning, Analyzing and execution of **IMCLAP** and environments.
- Responsible in Standardize business processes and deliver end to end business process model; Facilitate workshops, present client reports, business cases and other deliverables ensuring clarity around process reorganization and ownership are effectively communicated and trained in conformance to program objective
- Gather client's key business drivers & document Business, Functional/non-functional requirements, Data flow models, Use Cases, and systems with various kinds of Content Management needs.
- Perform rigorous unit and system testing before releasing application to the end users.
- Will perform end-to-end testing, which includes Functional, Regression and Retesting.
- Involve in integration testing, UAT, **data migration and Product Rollout and support**
- **Integration of data model updates into code base**
- Mentor junior Analyst
- Create and execute Unit test plans
- Defect management and resolution –
- Manage a variety of programming and design staff according to project(s) scheduled.

(Verbatim.)

The second in these series of documents describes the beneficiary's responsibilities during the "Software Analysis" phase of the project, which would last from November 5, 2014 to December 4, 2014, as follows:

> In addition to the above-mentioned duties, candidate will identify problems, study existing systems to evaluate effectiveness and develop new systems to improve production of workflow . . . . Analyst will assist in developing application software on specific needs. He will provide technical evaluation of new products, assess time estimation and provide technical support within the organization . . . .

The third in these series of documents describes the beneficiary's responsibilities during the "Technical Design/Implementation/Testing" phases of the project, which would last from December 5, 2014 to March 30, 2015, as follows:

> Analyst job duties shall include analyzing and gathering project requirements, developing and designing business programs customized to meet specific needs, training users on the use of software applications and providing trouble shooting and debugging support. It is thus her responsibilities and the time spent on the same would be as under:[3]
>
> - Gather, analyze the business requirements from end-users
> - Lead and co-ordinate with teams for project deliverables
> - Design, develop and integrate the Business Process Management and Enterprise Application module
> - Provide subject matter expertise on workflow and database products
> - Provide dynamic reporting capability
> - Resolve technical issues in the systems by research and investigation.
> - Standardize and automate the build process
> - Using Design Methodologies & Tools:

(Verbatim.)

The fourth in these series of documents describes the beneficiary's responsibilities during the "Mobile Add-On/Release 1.0/2.0 and 3.0" phases of the project, which would last from March 31, 2015 to September 29, 2017, as follows:

> - Beneficiary will enter program codes into the computer systems and enter commands into the computer to run and test the programs. He will replace, delete or modify codes to correct errors. He will provide technical support, solve problems and troubleshoot systems.
> - He will specialize in developing programs for specific applications to certain industries. He will be involved in systems integration, debugging, troubleshooting and installation. Beneficiary will offer solutions for various software and hardware problems and compatibility of various systems.

---

[3] Despite the petitioner's reference to "her responsibilities," the beneficiary in this case is a male.

- The Beneficiary will also be responsible for updating existing software systems and updating management on new software that is developed. Beneficiary will maintain records to document various steps in the programming process.
- Involve in creating sequence diagrams as part of design using Visio.
- Develop marketing strategies, operating model and lead business transformation by standardizing business processes, restructuring organization, enabling Culture/Behavior change, effectively communicating policies, processes and procedures in alignment with strategic direction and business plans
- Increase sales turnover by 30% by identifying commercial opportunities and expanded market share, through the management of various organizational, operational and technology changes
- Improve management efficiency by 10% by integrating information systems for accounts and HR management enabling staff to focus on critical value added activities
- 15% reduction in inventory costs, and improved customer retention, by modifying proprietary inventory management database to reflect product-brand sales
- Analyze business's core and support processes to standardize processes by reducing process variance and eliminating waste
- Develop technology roadmap, facilitate IT system procurement and implementation by collaborating with finance team to negotiate deals resulting in an integrated technology infrastructure

(Verbatim.)

III. SPECIALTY OCCUPATION

A. Legal Framework

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 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.

B. Analysis

We find that the evidence of record does not demonstrate that a work assignment exists for the beneficiary, and thus, that the duties of the proffered position are in fact associated with a specialty occupation. That is, the petitioner has not submitted sufficient, credible evidence to establish that the beneficiary will be exclusively assigned to its in-house TRN IMCLAP project, as claimed.

As evident from the job descriptions quoted above, the record of proceeding presents the duties comprising the proffered position in terms of relatively abstract and generalized functions. The job descriptions lack sufficient detail and concrete explanation to establish the substantive nature of the work within the context of the TRN IMCLAP project, and the associated applications of specialized knowledge that their actual performance would require. For example, the petitioner stated that the beneficiary will "assist in developing application software on specific needs," and "will provide technical evaluation of new products, assess time estimation and provide technical support within the organization." The petitioner did not clarify what it meant by the broad terms "assist" and "provide technical support," what associated applications of specialized knowledge are involved, and how these duties specifically relate to the TRN IMCLAP project. As another example, the petitioner stated that the beneficiary will "[d]esign, develop and integrate the Business Process Management and Enterprise Application module." The petitioner did not further explain what substantive tasks and bodies of knowledge are involved, what these Business Process Management and Enterprise Application modules are, and how they relate to TRN IMCLAP. Notably, there are

no specific references to the Business Process Management and Enterprise Application modules within the TRN IMCLAP documents.

Despite the petitioner's assertion that the beneficiary will be exclusively assigned to its in-house TRN IMCLAP project, the petitioner stated in its March 20, 2014 letter that the beneficiary will analyze, develop, and write "computer *programs*," perform "*projects*," perform "application programming *assignments*, typically maintenance or modification of existing *systems*," and troubleshoot "*applications*" (plural emphasized). In other documentation, the petitioner also described the proffered duties as including work on unidentified programs, applications, and systems in the plural, such as "developing *programs* for specific *applications* to certain industries" and "study[ing] existing *systems* to evaluate effectiveness and develop new *systems* (emphasis added)." Here, however, the petitioner has identified only one product - the TRN IMCLAP mobile application - that is being developed through the TRN IMCLAP project to which the beneficiary will be exclusively assigned. The petitioner has not specified what other projects, programs, software packages, applications, and systems the beneficiary will work on, and how they specifically relate to TRN IMCLAP project. Further, the petitioner has not articulated the nature of the beneficiary's work on *existing* systems, considering that the TRN IMCLAP project seeks to develop a *new* mobile application.

Moreover, the petitioner repeatedly referenced unspecified clients and end-users to whom the beneficiary will provide his services. To illustrate, some of the proffered duties include "[g]ather client's key business drivers . . . [and] requirements," and "[g]ather, analyze the business requirements from end-users." The petitioner has not explained who these clients and end-users are and why there would be client and end-user requirements, particularly during the initial design and development stages of an in-house project. Similarly, the petitioner listed one of the proffered duties as "[s]tandardize business processes and deliver end to end business process model; Facilitate workshops, present client reports, business cases and other deliverables." The petitioner has not explained why there would be client workshops and reports in the beginning product design stage of an in-house project.

In fact, there are several job duties which are clearly not limited to the TRN IMCLAP project, such as "[i]mprove management efficiency by 10% by integrating information systems for accounts and HR management enabling staff to focus on critical value added activities." Other duties include "15% reduction in inventory costs, and improved customer retention, by modifying proprietary inventory management database to reflect product-brand sales," and "facilitat[ing] IT system procurement and implementation by collaborating with finance team to negotiate deals." These duties involving the petitioning company's systems for accounts, HR management, and inventory are outside of the scope of the TRN IMCLAP project, which the petitioner has described as the development of a mobile application related to home appliances automation. These aspects of the petitioner's descriptions undermine the petitioner's assertion that the beneficiary will be exclusively assigned to the TRN IMCLAP project, and raise additional questions as to the actual nature of the proffered position.

Another problematic aspect of the petitioner's job descriptions is that many of the proffered duties appear inconsistent with the wage level selected here. As previously discussed, the petitioner designated the proffered position on the LCA as a Level I (entry) position. In designating the proffered position at a Level I wage, the petitioner has indicated that the proffered position is a comparatively low, entry-level position relative to others within the occupation.[4] However, the petitioner listed several duties indicating that the beneficiary will have relatively high-level responsibilities over others in the company, such as "[m]anage a variety of programming and design staff," "[l]ead and co-ordinate with teams for project deliverables," and "mentor junior Analyst." Other relatively high-level duties include "lead business transformation by . . . restructuring organization," "[i]mprove management efficiency by . . . integrating information systems," and "[d]evelop technology roadmap, facilitate IT system procurement and implementation." Moreover, on appeal the petitioner repeatedly emphasizes the "advanced, complex nature of the position's duties." The petitioner's designation of the proffered position as a Level I, entry-level position is inconsistent with these and other stated duties, and raises additional questions regarding the substantive nature of the proffered position.[5]

---

[4] A Level I wage rate is described in DOL's "Prevailing Wage Determination Policy Guidance" as follows:

> **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.

See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), *available at* http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

Thus, in accordance with the above DOL explanatory information on wage levels, the Level I wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that he would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results.

[5] The issue here is that the petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is relatively higher than other positions *within the same occupation*. Nevertheless, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), an entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its

In addition to being inconsistent with the Level I wage rate, many of the proffered duties are also outside of the scope of general duties for the SOC code and occupation title "15-1131, Computer Programmers." More specifically, the petitioner stated that the beneficiary will "[d]evelop marketing strategies, operating model and lead business transformation by standardizing business processes, restructuring organization, enabling Culture/Behavior change, effectively communicating policies, processes and procedures in alignment with strategic direction and business plans." The petitioner also stated that the beneficiary will "[i]ncrease sales turnover by 30% by identifying commercial opportunities and expanded market share, through the management of various organizational, operational and technology changes." The "15-1131, Computer Programmers" occupational classification does not, however, include any sales, marketing, or management-type duties.[6] Not only are these duties outside of the computer programmers occupational classification, but the petitioner has not explained how they specifically relate to the TRN IMCLAP project.[7]

---

equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty or its equivalent. That is, a position's wage level designation may be a consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

[6] *See* O*NET Details Report, 15-1131, Computer Programmers, http://www.onetonline.org/link/details/15-1131.00 (last visited July 22, 2015).

[7] With respect to the LCA, DOL provides clear guidance for selecting the most relevant O*NET occupational code classification. The "Prevailing Wage Determination Policy Guidance" states the following:

> In determining the *nature of the job offer*, the first order is to review the requirements of the employer's job offer and determine the appropriate occupational classification. The O*NET description that corresponds to the employer's job offer shall be used to identify the appropriate occupational classification . . . . If the employer's job opportunity has worker requirements described in a combination of O*NET occupations, the SWA should default directly to the relevant O*NET-SOC occupational code for the highest paying occupation. For example, if the employer's job offer is for an engineer-pilot, the SWA shall use the education, skill and experience levels for the higher paying occupation when making the wage level determination.

U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), *available at* http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

Here, however, the petitioner has not identified which other occupational classifications are applicable to the proffered position. Therefore, we are unable to determine whether the petitioner has selected the most relevant O*NET occupational code, i.e., the code for the highest-paying occupation.

The petitioner submitted a document entitled "TRN – IMCLAP – 2014: Intelligent Mobile Cloud Application," and a technical document entitled "TRNIMCLAP – INTELLIGENT HOME APPLIANCES AUTOMATION."[8] However, it is not evident how these documents constitute evidence of the beneficiary's assignment. Neither document specifically references the beneficiary. While both documents indicate that several programmer analyst positions (among other positions)

Moreover, where a petitioner seeks to employ a beneficiary in two or more distinct occupations, the petitioner should file separate petitions requesting concurrent, part-time employment for each distinct occupation. While it is not the case here, if a petitioner does not file separate petitions and if only one aspect of a combined position qualifies as a specialty occupation, USCIS would be required to deny the entire petition as the pertinent regulations do not permit the partial approval of only a portion of a proffered position and/or the limiting of the approval of a petition to perform only certain duties. *See generally* 8 C.F.R. § 214.2(h). Furthermore and as is the case here, the petitioner would need to ensure that it separately meets all requirements relevant to each occupation and the payment of wages commensurate with the higher paying occupation. *See generally* 8 C.F.R. § 214.2(h); U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), *available at* http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. Thus, filing separate petitions would help ensure that the petitioner submits the requisite evidence pertinent to each occupation and would help eliminate confusion with regard to the nature of the position being offered.

[8] These documents vary significantly in their descriptions of major aspects of the project, such as the milestones, timelines, and resources dedicated to the project. For instance, the first document, "TRN – IMCLAP – 2014: Intelligent Mobile Cloud Application," lists the milestones as: (1) Product Design (10/5/14 to 11/5/14); (2) Software Analysis (11/5/14 to 12/4/14); (3) Technical design (12/5/14 to 1/15/15); (4) Implementation (1/15/15 to 3/15/15); (5) Unit Testing (2/18/15 to 3/16/15); (6) Beta Testing (3/15/15 to 3/30/15); (7) Release 1 (3/31/15 to 6/29/15); (8) Mobile Add-on release (6/30/15 to 3/30/16); (9) Release 2 (3/31/16 to 3/30/17); and (10) Release 3 (3/31/17 to 9/29/17). It lists the required personnel as consisting of 10 programmer analysts, 6 systems analysts, 3 database administrators, 7 application engineers, and 4 support engineers (total of 30 positions).

The second document, "TRNIMCLAP - Intelligent Home Appliances Automation," divides the project milestones into four levels, each of which contains different timelines for planning, requirements gathering, design, development, integration and testing, and deployment. In addition, it lists the required personnel as consisting of 22 programmer analysts, 1 systems analyst, 2 database administrators, 1 quality analyst, and 1 human resource person (total of 27 positions).

While understandably some plans may change over time, the petitioner is obligated to explain these changes, especially if the changes are significant as in this case. It is incumbent upon the petitioner to resolve inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has not done so here.

are involved in the project, neither document details the specific tasks to be performed by each programmer analyst, or by the programmer analyst position generally.[9]

The petitioner also submitted a document entitled "TRN –IMCLAP: Product Development Differentiators & Timeline – 2014." Like the two documents referenced above, this document also does not specifically mention the beneficiary. This document broadly depicts the "Proposed Team Structure" as consisting of the following teams or positions: Project Executive Management; Project Manager; Business Analyst; Quality Assurance Team; Development Team; and Database Team. It is not clear which of the above teams or positions include the proffered position, as the duties of the proffered position confusingly overlap with almost all of the roles and responsibilities for the above-listed teams or positions.[10] These overlapping duties raise additional questions regarding the actual role of the proffered position in the TRN IMCLAP project.

In addition, there are discrepancies regarding who will directly supervise the beneficiary on the TRN IMCLAP project. The petitioner specifically stated in its March 20, 2014 letter that "[t]he beneficiary will be supervised at [the petitioner's office] by Mr. , President." However, the petitioner also stated in its March 15, 2014 letter and Offer Letter that the beneficiary will report to and be directly supervised by Mr. , Project Manager on the IMCLAP project, at the petitioner's premises. The petitioner's organizational chart submitted on appeal also identifies Mr. as a "Project Manager" who oversees numerous technical positions, including twenty computer programmers (to be hired). The same organizational chart indicates that Mr. , President, does not directly supervise any computer programmers. The petitioner has not explained these inconsistencies.

Moreover, if the beneficiary will be supervised by Mr. as alternatively asserted by the petitioner, then this raises additional questions regarding the beneficiary's claimed assignment to the

---

[9] Again, we note that one document states that 10 programmer analysts are needed, while the other states that 22 are needed.

[10] For instance, the Project Manager is "[r]esponsible for the successful planning executions, monitoring, control and closure of a project [*sic*]," while the beneficiary will also be "responsible for planning, [a]nalyzing and execution of **IMCLAP** and environments." The Business Analyst is to "[a]ct a liaison between business users and technical team developing TRN-Imclap [*sic*]." The beneficiary will also be responsible for a variety of duties related to gathering and analyzing requirements from business users (i.e., clients and end-users) as well as to "[l]ead and co-ordinate with teams for project deliverables." The Quality Assurance Team is to "[test] the product for bugs, defects and other software issues." Similarly, the beneficiary will perform numerous testing functions, such as "rigorous unit and system testing," "end-to-end testing," "integration testing," and "[c]reate and execute Unit test plans." The Database Team is responsible for "[setting up] the entire database and . . . for its functioning and security." The beneficiary will likewise be responsible for a variety of database functions, including "[providing] subject matter expertise on . . . database products."

TRN IMCLAP project. That is because Mr. is identified by the petitioner in its list of employees and their present work locations pursuant to their LCA as a "Systems Analyst" working at Washington Blvd. in Jersey City, New Jersey.[11] The petitioner has not explained how Mr. could be the beneficiary's direct supervisor on the petitioner's in-house project when Mr. is not actually working at the petitioner's worksite. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92. 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.*

Furthermore, we agree with the Director that the petitioner did not demonstrate that it had sufficient work space at the time of filing to support the employment of the beneficiary and the additional beneficiaries for whom it had petitioned. Although not clearly articulated by the Director, we find that the petitioner's lack of sufficient office space is a relevant factor to consider in assessing whether the proffered position qualifies as a specialty occupation.

In the RFE and decision, the Director pointed out that the petitioner claimed to have 34 employees, and recently petitioned for 29 additional employees to work at the petitioner's office location at New Jersey. The Director also pointed out that Suite consists of only five individual offices and 688 square feet of general office space. On appeal, the petitioner clarified that only seven of its employees are working onsite. The petitioner then asserted that its current office space is sufficient "to accommodate these current [seven] employees in addition to conveniently accommodating additional at least seven (7) employees at its work location [*sic*]." The petitioner concurrently asserted that its current "Lease agreement for the work location . . . can conveniently accommodate more than twenty five (25) employees [*sic*]."

However, the evidence of record does not corroborate these assertions, as there is no information in the floorplan or lease specifying the maximum occupancy allowed. Nevertheless, and more importantly, the petitioner has not explained how its current premises are sufficient to accommodate its seven on-site employees plus the entire TRN IMCLAP team. As outlined in the evidence of record, the TRN IMCLAP project will require 27-30 employees, for a total of 34-37 employees on-site. Thus, even if the petitioner's premises could accommodate more than 25 employees as alternatively asserted, it is still not apparent that the petitioner has sufficient work space for its current on-site employees and the entire TRN IMCLAP team. The lack of adequate work space leads us to further question the credibility of the petitioner's descriptions of the beneficiary's assignment and of the TRN IMCLAP project overall.[12]

---

[11] In another list of employees submitted on appeal, the petitioner indicated that Mr. joined the petitioner in 2014.

[12] The petitioner also indicated that it can enter into a new lease for additional workspace, as needed, located at New Jersey. However, the petitioner must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date

Finally, we share the Director's concern that many of the petitioner's documents contain descriptions, diagrams, and other statements copied verbatim or virtually verbatim from materials created by other individuals or companies. On appeal, the petitioner asserts that "mere similarity in certain literature of brochures or certain pictorial diagrams in brochures to contents of another product description on web sites do not and cannot affect the veracity and genuine nature of the originality of the product developer/petitioner's concept." However, the petitioner's assertions are unpersuasive. The unauthorized reproduction of literature created by other individuals or companies undermines the petitioner's credibility, and precludes us from comprehending the true nature and scope of the TRN IMCLAP project.[13] It is again emphasized that 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.*

For all of the above reasons, we find that the evidence of record does not sufficiently demonstrate that the beneficiary will be assigned to the TRN IMCLAP project, as claimed. Moreover, even if it were established that the beneficiary will be assigned to the TRN IMCLAP project, the evidence still does not sufficiently describe the duties to be performed by the beneficiary. Consequently, we find that the evidence of record does not demonstrate the substantive nature of the proffered position and its constituent duties. The failure to establish the substantive nature of the work to be performed by the beneficiary 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

---

after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

Even if the petitioner had entered into the new lease for additional workspace as of the time of filing, the petitioner still has not explained and documented that this new lease would be sufficient to house the entire TRN IMCLAP team in addition to the petitioner's current on-site employees. Both the lease proposal letter and the floorplan of the prospective premises are silent as to the maximum occupancy allowed. The floorplan shows that the proposed premises have 15 individual offices, and two areas of general office space. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

[13] For instance, because the petitioner copied the work of others in its "TRN – IMCLAP – 2014: Intelligent Mobile Cloud Application" document, we cannot determine the level of research, planning, and other resources that the petitioner has actually devoted to TRN IMCLAP. We also cannot determine which aspects of the document are credible and accurately represent the petitioner's work, and which do not.

Thus, we find that the petitioner's response to this particular concern of the Director (i.e., the petitioner's statements and documents focusing on the originality of the petitioner's product) does not fully address the questions posed by the unauthorized reproduction of materials. As such, we will not further address these aspects of the petitioner's evidence, including the opinion letter from Mr. and the petitioner's patent application.

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 does not 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.

Even if the petitioner were able to establish the substantive nature of the work to be performed by the beneficiary, we still could not find that the proffered the proffered position qualifies as a specialty occupation. Specifically, the petitioner asserts that the proffered position can be satisfied by a degree in "Business Administration, or related field of study."

The claimed requirement of a degree in Business Administration for the proffered position, without specialization, is inadequate to establish that the proposed position qualifies as a specialty occupation. The 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 requirement of a degree with a generalized title, such as Business Administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). *See Royal Siam Corp.*, 484 F.3d at 147.[14] For this additional reason, the evidence of record does not demonstrate that the proffered position is a specialty occupation.

For all of the reasons specified above, the evidence of record does not demonstrate that the proffered position qualifies for classification as a specialty occupation. Accordingly, the appeal will be dismissed and the petition denied.

---

[14] 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).

Id.

IV. EMPLOYER-EMPLOYEE RELATIONSHIP

Since the identified basis for denial is dispositive of the petitioner's appeal, we need not address another ground of ineligibility we observe in the record of proceeding. Nevertheless, we will briefly note and summarize it here with the hope and intention that, if the petitioner seeks again to employ the beneficiary or another individual as an H-1B employee in the proffered position, it will submit sufficient independent objective evidence to address and overcome this additional ground in any future filing.

More specifically, the petition cannot be approved because the evidence does not demonstrate that the petitioner qualifies as a United States employer having an employer-employee relationship with the beneficiary. As detailed above, the record of proceeding lacks sufficient documentation evidencing what exactly the beneficiary would do for the period of time requested or where exactly and for whom the beneficiary would be providing services. Given this specific lack of evidence, the petitioner has not corroborated 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 not established whether it has made a bona fide offer of employment to the beneficiary based on the evidence of record or that the petitioner, or any other company which it may represent, 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). Again and as previously discussed, there is insufficient evidence detailing where the beneficiary will work, the specific projects to be performed by the beneficiary, or for which company the beneficiary will ultimately perform these services. Therefore, the petition cannot be approved for this additional reason.

V. CONCLUSION AND ORDER

As set forth above, we find the evidence of record insufficient to establish that the proffered position qualifies for classification as a specialty occupation. We also find the evidence of record insufficient to establish that the petitioner qualifies as a United States employer that will have an employer-employee relationship with the beneficiary. Accordingly, the appeal will be dismissed and the petition denied.[15]

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).

---

[15] As these issues preclude approval of the petition, we will not address any of the additional deficiencies we have identified on appeal.

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 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.