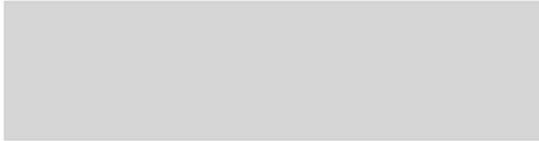




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUL 31 2015

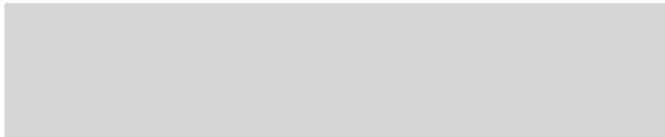
PETITION RECEIPT #: 

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 [REDACTED]. In order to employ the beneficiary in what it designates as a full-time "Computer Programmer Analyst" position at a salary of \$80,000 per year, the petitioner seeks to classify her 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 5, 2017 at its business address of [REDACTED] in [REDACTED], 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 the petitioner will have a valid employer-employee relationship with the beneficiary. 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. Beyond the Director's decision, we have identified additional grounds of ineligibility, i.e., that the evidence does not demonstrate that the proffered position qualifies for classification as a specialty occupation, and that the beneficiary qualifies to perform services in a specialty occupation.¹ 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 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:

¹ We conduct appellate review on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

- *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 [REDACTED], NJ on the [REDACTED] project. [REDACTED] 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. [REDACTED] 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 [REDACTED] project for [the petitioner]" and that the beneficiary will work on this project at the petitioner's office at [REDACTED], Suite [REDACTED] in [REDACTED], New Jersey. The petitioner further stated that the beneficiary will be directly supervised by [REDACTED] Project Manager on the [REDACTED] 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 [REDACTED] 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 [REDACTED] 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:

- 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.
- 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.)

In response to the Director's request for a more detailed job description of the work to be performed by the beneficiary with the percentage of time to be spent on each duty, the petitioner reiterated the same job duties as listed in its March 20, 2014 and March 15, 2014 letters, and indicated that the beneficiary will spend 100% of her time on these duties.

III. EMPLOYER-EMPLOYEE RELATIONSHIP

The primary issue to be addressed is whether the petitioner has established that it qualifies as a United States employer that will have an employer-employee relationship with the beneficiary.

A. Legal Framework

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)

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).

Although "United States employer" is defined in the regulations at 8 C.F.R. § 214.2(h)(4)(ii), 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.²

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 318-319.³

² 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 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).

³ 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)).

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).⁴

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)).

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

(quoting *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 414, 65 S.Ct. 1215, 1217, 89 L.Ed. 1700 (1945)).

⁴ 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).

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).

B. Analysis

Applying the *Darden* and *Clackamas* tests to this matter, we find that the evidence of record does not establish that the petitioner will be a "United States employer" having an "employer-employee relationship" with the beneficiary as an H-1B temporary "employee." More specifically, the petitioner has not submitted sufficient, credible evidence to establish that the beneficiary will be exclusively assigned to its in-house [REDACTED] project, as claimed.

There are numerous deficiencies and discrepancies which undermine the credibility of the petitioner's descriptions of the proffered position and the beneficiary's assignment. For instance, despite the petitioner's assertion that the beneficiary will be exclusively assigned to its in-house [REDACTED] 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 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 [REDACTED] mobile application - that is being developed through the [REDACTED] 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 [REDACTED] project. Further, the petitioner has not articulated the nature of the beneficiary's work on *existing* systems, considering that the [REDACTED] project seeks to develop a *new* mobile application.

Moreover, the petitioner repeatedly referenced unspecified clients and end-users to whom the beneficiary will provide her 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 [REDACTED] 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 similar 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 [REDACTED] 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 further undermine the petitioner's assertion that the beneficiary will be exclusively assigned to the [REDACTED] project, and raise additional questions as to the actual nature of the proffered position.

Furthermore, 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 [REDACTED] project. 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" and how these duties specifically relate to the [REDACTED] 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 these Business Process Management and Enterprise Application modules are, and how they relate to [REDACTED]. Notably, there are no specific references to the Business Process Management and Enterprise Application modules within the [REDACTED] documents.

We note that in the petitioner's response to the RFE, the petitioner indicated that the beneficiary will spend 100% of her time on the job duties previously listed in its March 20, 2014 and March 15, 2014 letters. However, the petitioner also listed numerous other job duties that are not included in the March 20, 2014 and March 15, 2014 letters, namely, the job duties listed in the series of letters describing the beneficiary's responsibilities during different phases of the [REDACTED] project. The petitioner has not submitted an explanation reconciling this inconsistency, and clarifying the beneficiary's actual duties with the percentage of time spent on each duty.

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.⁵ 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.⁶

⁵ 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 she would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she would receive specific instructions on required tasks and expected results.

⁶ 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 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.

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.⁷ Not only are these duties outside of the computer programmers occupational classification, but the petitioner has not explained how they specifically relate to the [REDACTED] project.⁸

⁷ See O*NET Details Report, 15-1131, Computer Programmers, <http://www.onetonline.org/link/details/15-1131.00> (last visited July 22, 2015).

⁸ 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.

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),

The petitioner submitted a document entitled "[REDACTED] – 2014: [REDACTED], [REDACTED]" and a technical document entitled "[REDACTED] – [REDACTED] [REDACTED]"⁹ However, it is not evident how these documents constitute evidence of the beneficiary's assignment, as neither document specifically references the beneficiary. While both documents indicate that several programmer analyst positions (among other positions) 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.¹⁰

The petitioner also submitted a document entitled "[REDACTED] Product Development Differentiators & Timeline – 2014." Like the two documents referenced above, this document 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

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.

⁹ 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, "[REDACTED] – 2014: [REDACTED]" 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, "[REDACTED] - [REDACTED]" 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.

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

above-listed teams or positions.¹¹ These overlapping duties raise additional questions regarding the actual role of the proffered position in the [REDACTED] project.

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

Moreover, if the beneficiary will be supervised by Mr. [REDACTED] as alternatively asserted by the petitioner, then this raises additional questions regarding the beneficiary's claimed assignment to the [REDACTED] project. That is because Mr. [REDACTED] 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 [REDACTED] in [REDACTED], New Jersey.¹² The petitioner has not explained how Mr. [REDACTED] could be the beneficiary's direct supervisor on the petitioner's in-house project when Mr. [REDACTED] 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 lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

Furthermore, the evidence does not demonstrate that the petitioner has sufficient work space to support the employment of the beneficiary, as well as the entire "team" for the [REDACTED]

¹¹ 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, Analyzing and execution of [REDACTED] and environments." The Business Analyst is to "[a]ct a liaison between business users and technical team developing [REDACTED] [*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."

¹² In another list of employees submitted on appeal, the petitioner indicated that Mr. [REDACTED] joined the petitioner in 2014.

project, at the petitioner's premises at [REDACTED] in Suite [REDACTED] in [REDACTED], New Jersey. In particular, the petitioner stated on appeal that its current premises at Suite [REDACTED] are sufficient to accommodate its seven employees currently working on-site, "in addition to conveniently accommodating additional at least seven (7) employees at its work location [sic]." The petitioner also stated on appeal that its current "Lease agreement for the work location . . . can conveniently accommodate more than twenty five (25) employees." 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.¹³ Nevertheless, and more importantly, the petitioner has not explained and documented how its current premises are sufficient to accommodate its seven on-site employees plus the entire [REDACTED] team. As outlined in the evidence of record, the [REDACTED] 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 asserted, it is still not apparent that the petitioner has sufficient work space for its current on-site employees and the entire [REDACTED] 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 [REDACTED] project overall.¹⁴

Finally, we find 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 [REDACTED]

¹³ The floorplan of the petitioner's current premises consists of five (5) individual offices and one general office area of 688 square feet.

¹⁴ The petitioner also indicated that it can enter into a new lease for additional workspace, as needed, located at [REDACTED], Suite [REDACTED] in [REDACTED], 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 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 [REDACTED] 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)).

██████████ project.¹⁵ 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.*

In summary, we find that the record of proceeding lacks sufficient documentation evidencing that the beneficiary will be exclusively assigned to the petitioner's in-house ██████████ project, as claimed. The record of proceeding thus does not reflect what exactly the beneficiary will do for the period of time requested or where exactly and for whom the beneficiary will 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.¹⁶

As the evidence of record is insufficient to demonstrate 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

Beyond the Director's decision, we also find that the evidence of record is insufficient to establish

¹⁵ For instance, because the petitioner copied the work of others in its "██████████ - 2014: ██████████ ██████████" document, we cannot determine the level of research, planning, and other resources that the petitioner has actually devoted to ██████████. 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.

¹⁶ The Director's conclusion that all of the petitioner's employees are contractors due to the petitioner's inclusion of their salaries in cost of goods sold (as opposed to deductions for wages) is not supported by further explanation. It is not clear whether the Director considered the petitioner's previous explanation that "Cost of Goods Sold (COGS) is the category of expenses directly related to producing a service. It includes all the costs directly involved in delivering a service. These costs can include labor, material, and shipping."

that the proffered position qualifies for classification as a specialty occupation.¹⁷

For the reasons discussed above, 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 therefore 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. 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.

Furthermore, 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. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).¹⁸

¹⁷ Since the above-identified basis for denial is dispositive of the petitioner's appeal, we need not address other grounds of ineligibility we observe in the record of proceeding. Nevertheless, we will briefly note and summarize them 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 these additional grounds in any future filing.

¹⁸ 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*

While the petitioner submitted an "Expert Opinion Letter" from Dr. [REDACTED] concluding that the duties of the proffered position "require the ability to apply the knowledge associated with the attainment of a bachelor's-level degree in Computer Science, Information Technology or a closely related field," we accord little probative weight to this letter. Among other deficiencies, Dr. [REDACTED] letter does not sufficiently explain the factual basis for his conclusions, does not specify which particular job duties and other salient aspects of the proffered position he relied upon in coming to his conclusion, and does not mention [REDACTED] at all. Where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

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. The appeal will be dismissed and the petition denied for this additional reason.

V. BENEFICIARY QUALIFICATIONS

The petition also cannot be approved because the evidence does not demonstrate that the beneficiary is qualified to perform services in a specialty occupation.¹⁹ That is, the petitioner has not submitted a sufficient evaluation of the beneficiary's foreign degree or other evidence that meets the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D).

Here, the petitioner submitted an "Evaluation of Training, Education, and Experience" from the Trustforte Corporation stating that the beneficiary has the educational equivalent in the United States to a Bachelor of Science Degree in Computer Information Systems based on a combination of her education and employment experience.²⁰ However, 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) allows for "[a]n evaluation of *education* by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials (emphasis added)." In accordance with this provision, we will accept a credential evaluation service's evaluation of *education only*, not training and/or work experience. Furthermore, while the petitioner submitted several documents pertaining to the beneficiary's past employment, the petitioner has not submitted an explanation of how these documents establish eligibility under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) or any other provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D).²¹ As sufficient evidence has not been presented that the beneficiary

Michael Hertz Assocs., 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision).

Id.

¹⁹ See *supra* footnote 17.

²⁰ This evaluation states that the beneficiary "completed the equivalent of three years of academic studies leading to a Bachelor of Science Degree in the field of Computer Information Systems."

²¹ 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) requires the petitioner to "clearly demonstrate[]" that the beneficiary's work experience included the theoretical and practical application of specialized knowledge required by the

has at least a U.S. bachelor's degree in a specific specialty, or its equivalent, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

VI. CONCLUSION AND ORDER

As set forth above, we 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. We also find the evidence of record insufficient to establish that the proffered position qualifies for classification as a specialty occupation, and that the beneficiary is qualified to perform services in a specialty occupation. Accordingly, the appeal will be dismissed and the petition denied.²²

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 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.

specialty occupation, and was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. It also requires the petitioner to demonstrate that the beneficiary has recognition of expertise in the specialty as evidenced by at least one type of specific documentation, such as recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation. Merely submitting the beneficiary's employment contracts, resignation letters, and/or other similar documentation from prior employers, without more, is insufficient to meet all of the specific requirements set forth in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

²² As these issues preclude approval of the petition, we will not address any of the additional deficiencies we have identified on appeal.