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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUN 12 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, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a "Software Development" firm with one employee established in In order to employ the beneficiary in what it designates as a "Software Engineer" position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director expressly specified two separate and independent grounds for denying the petition, namely: (1) that the evidence of record does not demonstrate the existence of an employer-employee relationship between the petitioner and the beneficiary; and (2) that the evidence of record does not establish that the proffered position qualifies for classification as a specialty occupation. On appeal, the petitioner asserts that the director's basis for denial was erroneous and contends that it has satisfied all evidentiary requirements.

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

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

I. FACTUAL AND PROCEDURAL HISTORY

As indicated above, the petitioner seeks to employ the beneficiary in a position that it describes as a "Software Engineer" on a full-time basis. The Labor Condition Application (LCA) that the petitioner submitted in support of the petition was certified for use with a job prospect within the "Software Developers, Applications" occupational classification, SOC (O*NET/OES) Code 15-1132, and a Level I prevailing wage rate. The LCA also reflects that, as mentioned above, the petitioner assigned "Software Engineer" as the position's job title.

In a letter dated March 28, 2014, the petitioner's Founder/CEO described the beneficiary's specific duties as follows:

- Provide thought leadership to the Adobe CQ and SAP Platform Services organization and to business on how to achieve results.
- Ensure that the applications developed are fit for purpose, meet the Adobe & SAP standards and expectations of the business[.]
- Regular interaction with business technology roadmap, and planning on future business objectives[.]

- Review & approve functional design, develop POC and provide standard solutions to the business[.]
- Provides expert level support for operational problem resolutions; acts as a catalyst to recommend improvements in system.
- Work within the framework of the Project Management standards to deliver business needs quickly.
- Assist business partners in all stages of process of defining key capabilities/requirements that will enable their strategy and participate in the review of functional requirements that lead to projects or enhancements.
- Prototype the solution to our business partners.
- Work with Enterprise Application Architecture, Project Management, and Development to plan, design and delivery of solutions.
- Understand capability of applications Adobe and SAP) in environment and provide guidelines to business partners on current capabilities vs. offers that require development work.
- Participate in and/or manage various process improvement projects to increase operational efficiency.
- Work with Business Services Support Management to coordinate the handling/escalation of daily production support issues in a timely and efficient manner.
- Have a good understanding of industry standard Quote to Cash processes.
- Good understanding of Adobe's creative cloud analytics processes or equivalent processes in subscription companies[.]
- Being recognized as an expert on one or more applications vendors/products within the Info Services portfolio.
- Creating complex conceptual designs (including application interfaces and interactions) and dashboards.
- Identifying and monitoring interdependencies between various application implementation activities.

- Planning and establishing post go-live activities including ongoing application support.

- Collaboratively get work done by working with high performing teams across multiple geographies.

- Responsible for driving adoption of standard delivered solutions.

Mr. stated in a section headed "Requirements" that a "Bachelor's Degree in Computer Science or Information Systems is highly desired." Mr. also stated that the proffered position: "requires a minimum of a Bachelor's Degree or equivalent in Computer Science, Information Technology, Business or Engineering or a related field along with experience."

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and she issued an RFE on May 28, 2014. The director requested, *inter alia*, evidence that, if the visa petition were approved, the petitioner would have an employer-employee relationship with the beneficiary and evidence that the petitioner has sufficient specialty occupation work available to which it could assign the beneficiary throughout the entire period of requested employment. The petitioner was also asked to submit additional information about the business.

In response, the petitioner submitted, *inter alia,* (1) company information; (2) federal and state tax documentation pertaining to the petitioner; (3) the offer letter, employment contract, and non-compete agreement between the petitioner and the beneficiary; (4) a copy of the petitioner's "onboarding package"; (5) copies of two U.S. Citizenship and Immigration Services (USCIS) memoranda; (6) what purports to be a description of a "Trading Application Data Mapping" project, and (5) a document headed, "Employee Performance Development Plan."

The director denied the petition on September 11, 2014, finding, as was noted above: (1) that the evidence of record does not demonstrate the existence of an employer-employee relationship between the petitioner and the beneficiary; and (2) that the evidence of record does not establish that the proffered position qualifies for classification as a specialty occupation. On appeal, the petitioner submitted a brief.

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

II. EVIDENTIARY STANDARD ON APPEAL

As a preliminary matter, we affirm that, in the exercise of our appellate review in this matter, as in all matters that come within its purview, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010). In pertinent part, that decision states the following:

> Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.
>
> * * *
>
> The "preponderance of the evidence" of "truth" is made based on the factual circumstances of each individual case.
>
> * * *
>
> Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.
>
> Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Id.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, we find that upon review of the entire record of proceeding, and with close attention and due regard to all of the evidence submitted in support of this petition, we find that the record does not contain sufficient relevant, probative, and credible evidence to lead us to believe that it is "more likely than not" or "probably" true that that a valid employer-employee relationship exists between the petitioner and the beneficiary, and that the proffered position qualifies for classification as a specialty occupation.

III. PRELIMINARY OBSERVATIONS

Upon review of the file, we note that there are obvious inconsistencies and inaccuracies in the information provided by the petitioner that call into question the accuracy of the petitioner's assertions overall. Moreover, we note substantive inconsistencies in the information that the petitioner has provided about the nature of the work that the petitioner claims that the beneficiary would perform. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies.

Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). We therefore make the following preliminary observations:

i. With Respect to the Petitioner's Number of Employees

The American Competitiveness and Workforce Improvement Act (ACWIA) of 1998[1] was enacted to, among other things, provide protections in the H-1B process against the displacement of United States workers. ACWIA requires that every petitioner pay a "training" fee for each H-1B petition that it files. The collected fees are used to provide education, training and job placement assistance to United States workers in job areas that petitioners traditionally use H-1B workers. The programs that are funded by ACWIA are part of the government's efforts to help ensure that United States workers are trained in new and emerging fields by raising the technical skill levels of these workers, and that growing businesses have access to the skilled American workforce they need in order to reduce the need to use the H-1B program. The fee is currently $750 for petitioners who employ a total of 25 or fewer full-time workers in the United States, and $1,500 for petitioners who employ 26 or more full-time workers in the United States.

In the instant case, the petitioner reported on the Form I-129 petition that it employed one individual and that it was subject to the lower ACWIA fee of $750. We note, however, that USCIS records indicate that the petitioner filed over 50 nonimmigrant petitions on behalf of foreign workers in 2014 alone. Moreover, in the petitioner's letter in response to the director's RFE, the petitioner stated that it "currently employs four (4) employees." Thus, we must question whether the information provided on the H-1B petition accurately reflects the petitioner's workforce and whether it has met its full obligation with regard to the ACWIA fee. Nevertheless, because the director's grounds for denying the petition are dispositive, we do not need to further discuss these issues. We note, however, that if the petitioner were to overcome the director's bases for denying the petition (which it has not), the petitioner would be required to address these issues and provide probative evidence in support of its statements for USCIS to review before the petition could be approved. Full compliance with the H-1B petition process is critical to the U.S. worker protection scheme established in the Act and necessary for H-1B visa petition approval.

ii. With Respect to the Job Title

On the Form I-129 and in numerous documents submitted in support of the petition, the petitioner stated that the beneficiary would be employed as a "Software Engineer." However, in the petitioner's March 12, 2014 employment offer letter to the beneficiary, the job title for the beneficiary was "Adobe CQ Consultant." The Employment Contract, executed by the petitioner and the beneficiary in March 2014, also references the position offered as "Adobe CQ Consultant." Although a specialty occupation eligibility determination is not based on the proffered position's job title but instead on the actual duties to be performed, we note that it incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Doubt

[1] ACWIA, Pub. L. 105-277, 112 Stat. 2681 (1998).

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.*

iii. With Respect to the Petitioner's Headquarters and Proposed Worksite Address

On the certified LCA, in numerous letters in support provided by the petitioner, and in the executed Employment Contract, the petitioner's address is listed as: CA However, based on a review of public records, we find that said address and suite correspond to Working Location. Public records also indicate that defines itself as a coworking space.

USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or 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).

iv. With Respect to the Credentials Requirement to Perform the Duties of the Position

The petitioner has also provided inconsistent statements regarding the minimum educational requirements for the proffered position. In its March 28, 2014 letter, the petitioner stated that it would find acceptable bachelor's degrees in computer science, information technology, business, or engineering. However, in the August 8, 2014 letter it submitted in response to the RFE, the petitioner narrowed the range of acceptable fields of study, and stated that it would only accept an individual with a bachelor's degree in computer or information science, information systems, or another closely-related field. The petitioner has not reconciled these discrepancies, i.e., whether it would still find acceptable an individual with a bachelor's degree in business or a general engineering degree. The petitioner's inconsistent statements further undermine the petitioner's credibility with regard to the actual nature of the proffered position and its requirements.

IV. REVIEW OF THE DIRECTOR'S DECISION

Specialty Occupation

For ease of reading, we will first address whether the proffered position qualifies for classification as a specialty occupation. We hereby incorporate into our analysis of each of the criteria at 8 C.F.R. §214.2(h)(4)(iii)(A) all of our earlier comments and observations regarding the inconsistencies and conflicts in the information provided by the petitioner. We find that the combined effect of these features of this record of proceeding fatally undermine the petitioner's attempt to establish the proffered position as a specialty occupation.

Based upon a complete review of the record of proceeding, we agree with the director and find that the evidence does not establish that the position as described constitutes a specialty occupation.

A. Law

To meet the petitioner's burden of proof with regard to the proffered position's classification as an H-1B 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)(l) of the Act, 8 U.S.C. § 1184(i)(l), defines the term "specialty occupation" as an occupation that requires:

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

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

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

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

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute

as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

B. Analysis

The evidence of record does not establish how a continuously employed, full-time Software Engineer would be utilized by the petitioner. In that regard, we have reviewed the information in the record regarding the petitioner's software development business. Upon review of this information, we find that the record of proceeding lacks documentation regarding the petitioner's business activities and the actual work that the beneficiary will perform to sufficiently substantiate the claim that the petitioner has H-1B caliber work for the beneficiary for the period of employment

requested in the petition. That is, the record does not include sufficient work product or other documentary evidence to confirm that the petitioner has ongoing projects to which the beneficiary will be assigned. Thus, the petitioner has not provided the underlying documentation necessary to corroborate that the beneficiary would perform the claimed duties set out in the petitioner's letter of support. 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)).

As observed above, USCIS in this matter must review the actual duties the beneficiary will be expected to perform to ascertain whether those duties require at least a baccalaureate degree in a specific specialty, or its equivalent, as required for classification as a specialty occupation. To accomplish that task in this matter, USCIS must analyze the actual duties in conjunction with the specific project(s) to which the beneficiary will be assigned. To allow otherwise, results in generic descriptions of duties that, while they may appear (in some instances) to comprise the duties of a specialty occupation, are not related to any actual services the beneficiary is expected to provide.

Of critical importance to the outcome of this appeal, and directly bearing on each of the bases that the director specified for denial, we find as follows with regard to the submissions related to the asserted "Trading Application Data Mapping" project upon which the beneficiary purportedly would work.

The documentation submitted by the petitioner is a general and relatively abstract discussion of the type of work that the petitioner appears to attribute to the project to which it claims the beneficiary would be assigned. We further find that the petitioner does not provide any substantive information with regard to particular work, and associated educational requirements, that the petitioner's particular business operations would generate for the beneficiary if this petition were approved. None of the submissions in the record convey exactly what the end-product of the project would be, the particular scope of the project, any persuasive indications of actual milestones that would be involved, persuasive indications that project staging and planning had taken place to any serious extent, or assignments of labor and divisions of responsibility consonant with what the petitioner claims to be a serious project under development. Further, we find no persuasive evidence in the record of proceeding of any particular role that that the beneficiary would play, let alone any persuasive evidence of particular work that he would perform, the period of such work, and the nature and educational level of any highly specialized knowledge that the beneficiary would apply in any specific specialty for the period of employment specified in the petition. Strictly on the basis of the extent and quality of the totality of the evidence in the record of proceeding, we find that, in context with the nature of the petitioner's business, the weakness and unpersuasive weight of the overall evidence *both* regarding the claimed in-house project to which it is asserted that the beneficiary would be assigned, its duration. and its claimed location, *and also* regarding the substantive nature and duration of any work that the beneficiary would actually perform with regard to that project, renders it impossible for us to reasonably conclude what work, if any, the beneficiary would actually perform at any particular location or for any particular duration if this petition were approved. Accordingly, without further information, the evidence regarding the project for which the beneficiary would be assigned is of limited probative value.

The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). The agency made clear long ago that speculative employment is not permitted in the H-1B program. For example, a 1998 proposed rule documented this position as follows:

> Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. See section 214(i) of the Immigration and Nationality Act (the "Act"). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

63 Fed. Reg. 30419, 30419 - 30420 (June 4, 1998).

Without additional information describing the specific duties the petitioner requires the beneficiary to perform, as those duties relate to specific projects, USCIS is unable to discern the nature of the position and whether the position indeed qualifies as a specialty occupation. Without a meaningful job description within the context of non-speculative employment, the petitioner may not establish any of the alternate criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The duties as described by the petitioner do not establish that the work proposed for the beneficiary actually exists. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or 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).

We also find that the record does not establish relative complexity, specialization and/or uniqueness as distinguishing aspects of either the proposed duties or the position that they are said to comprise. As evident in the job description quoted above, the record of proceeding presents the duties comprising the proffered position in terms of relatively abstract and generalized functions. More specifically, they lack sufficient detail and concrete explanation to establish the substantive nature of the work and associated applications of specialized knowledge that their actual performance would require within the context of the petitioner's particular business operations. Take for example the following duty description:

> Provide thought leadership to the Adobe CQ and SAP Platform Services organization and to business on how to achieve results

The evidence of record contains neither substantive explanation nor documentation showing the range and volume of the services for which the beneficiary must provide "thought leadership." Likewise, the petitioner does not provide substantive information with regard to the particular work, methodologies, and applications of knowledge that would be required for the above-referenced duties.

Overall, we find that the description of the duties of the proffered position does not adequately convey the substantive work that the beneficiary will perform within the petitioner's business operations. The description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's assertion that the proffered position qualifies as a specialty occupation. Thus, we conclude that, as generally described as all of the elements of the constituent duties are, they do not - even in the aggregate - establish the nature of the position or the nature of the position's duties as more complex, specialized, and/or unique than those of Software Engineer positions that do not require the services of a person with at least a bachelor's degree in a specific specialty, or the equivalent.

Next, there are the adverse implications of the acceptability of a bachelor's degree in business or engineering with no further specification.

The petitioner initially stated that the proffered position requires "a minimum of a Bachelor's Degree or equivalent in Computer Science, Information Technology, Business or Engineering or a related field." The petitioner's claim that a bachelor's degree in "business" is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the 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).

As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).[2]

---

[2] 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

Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business. This assertion is essentially an admission that the proffered position is not in fact a specialty occupation.

Moreover, with respect to the minimum educational requirements for the proffered position outlined by the petitioner, we note that in general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. *See* section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

The issue here is that the field of engineering is a broad category that covers numerous and various specialties, some of which are only related through the basic principles of science and mathematics, e.g., nuclear engineering and aerospace engineering. Therefore, it is not readily apparent that a general degree in engineering or one of its other sub-specialties, such as chemical engineering or nuclear engineering, is closely related to computer science or that engineering or any and all engineering specialties are directly related to the duties and responsibilities of the particular position proffered in this matter.

Here and as indicated above, the petitioner, who bears the burden of proof in this proceeding, has not established either (1) that computer science, information technology, business and engineering in general are closely related fields or (2) that engineering or any and all engineering specialties are directly related to the duties and responsibilities of the proffered position.

> analysis in connection with a conceptually similar provision). This is as it should be: elsewise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

Id.

Therefore, absent evidence of a direct relationship between the claimed degrees required and the duties and responsibilities of the position, it cannot be found that the proffered position requires anything more than a general bachelor's degree.

The petitioner's 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 minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Accordingly, as the petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition will be denied for this reason.

Employer-Employee Relationship

Finally, we will briefly address the issue of whether or not the petitioner qualifies as a United States employer with standing to file the H-1B petition. 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 established 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 an employer-employee relationship with the beneficiary for the duration of the requested employment period. *See* 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "United States employer" and requiring the petitioner to engage the beneficiary to work such that it will have and maintain an employer-employee relationship with respect to the sponsored H-1B nonimmigrant worker). 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 director's decision is affirmed, and the appeal is dismissed for this additional reason.

V. CONCLUSION AND ORDER

For the reasons discussed above, we conclude that the evidence of record does not establish the existence of an employer-employee relationship between the petitioner and the beneficiary and that the proffered position qualifies for classification as a specialty occupation.

An application or petition that fails to 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 at 145 (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 our enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd.* 345 F.3d 683.

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.[3] 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.

[3] As the grounds discussed above are dispositive of the petitioner's eligibility for the benefit sought in this matter, we will not address and will instead reserve our determination on the additional issues and deficiencies that we observe in the record of proceeding with regard to the approval of the H-1B petition.