



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **MAY 13 2015**

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:

NO REPRESENTATIVE OF RECORD

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](http://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 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 6-employee "franchise restaurant and fast food services" company established in [REDACTED]. In order to continuously employ the beneficiary to which it assigned the job title "Computer Software Engineer" at a salary of \$70,800 per year, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

On June 2, 2014, the director denied the petition concluding that the petitioner did not establish that the proffered position qualifies for classification as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that it satisfied all evidentiary requirements.

The record of proceeding before this office 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) a Notice of Appeal or Motion (Form I-290B), a brief, and supporting documentation.

Upon review of the entire record of proceeding, we find that the evidence of record does not overcome the director's ground for denying this petition.<sup>1</sup> Accordingly, the appeal will be dismissed, and the petition will be denied.

## I. FACTUAL AND PROCEDURAL HISTORY

In support of the Form I-129, the petitioner provided two identical letters, neither dated.<sup>2</sup> In the letters, the petitioner states that it is "under the ownership of [REDACTED] (sic) Restaurant and fast food services." The petitioner stated that due to its success and plans for expansion, it has decided to "switch to an entirely computerized system for the handling of all our transactions." The petitioner described the computer system as follows:

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

<sup>2</sup> We note that the content of the letters is verbatim including the business description and the duties for the proffered position. However, the first letter requests "extension of the H-1B visa petition" and the second letter requests "approval for the H-1B visa petition." Based on the evidence provided, it appears that the second letter was submitted with the previously approved petition ([REDACTED]) filed by the petitioner for the beneficiary.

Specifically, the computerized system manages our daily operations, and includes the following capabilities: Payment of accounts and invoicing; Handling of personnel (wait staff, and bus-boys) by means of personal codes; Functions for the administration of the tables (table changes, changes of wait staff, the joining of tables, the re-opening of tabs or accounts, etc.); It supports multiple forms of payment such as cash, credit cards, coupons, and/or credits, with the option of adding additional methods of payment; The use of remote commands for printing, without limiting the number of printers for ticket orders, from defined areas; The production and maintenance of product catalogues; the handling of users and profiles of functions to control access to, and the security of the system; The real-time monitoring of sales, in detail, at a general level; Products sold, costs, and sales by individual wait staff/employees, and the administration of funds in the cashier(s) terminals.

The petitioner claimed that "[t]his complex computerized system" "requires its own personnel, continuously available, and able to design the system of operations for the program, install the program into the system, create and maintain the network of the computerization throughout the business establishment, as well as training and enabling our employees (and users of our system) to use the same." The petitioner further claimed that the beneficiary "is solely responsible for implementing, and managing the programming of the entire Restaurant Catering portion for the business, as well as the implementation, and continued servicing of the Franchising portion of the business."

The petitioner stated that the beneficiary will be responsible for the following responsibilities:

- Analyze science, engineering, business, and all other data processing problems for application to electronic data processing systems. Analyze user requirements, procedures, and problems to automate or improve our systems and review computer system capabilities, workflow, and scheduling limitations **(15% of the time weekly-basis/6 hrs)[.]**
- Analyze information processing or computation needs and plan and design computer systems, using techniques such as structured analysis, data modeling and information engineering. **(15% of the time weekly-basis/6 hrs)[.]**
- Convert project specifications and statements of problems and procedures to detailed logical flow charts for coding into computer language. **(10% of the time weekly-basis/4 hrs).**
- Develop and write computer programs to store, locate, and retrieve specific documents, data, and information for [REDACTED]'s operation. **(10% of the time weekly-basis/4 hrs).**

- Compile and write documentation of program development and subsequent revisions, inserting comments in the coded instructions so others can understand the program. **(10% of the time weekly-basis/4 hrs).**
- Conduct trial runs of programs and software applications to be sure they will produce the desired information and that the instructions are correct. **(10% of the time weekly-basis/4 hrs).**
- Correct errors by making appropriate changes and rechecking the program to ensure that the desired results are produced. **(5% of the time weekly-basis/2 hrs).**

All [of] the following duties are performed by the Computer System [Analyst] in approximately 25% of the time weekly-basis/12 hrs, according the business necessities:

- Investigate whether networks, workstations, the central processing unit of the system, or peripheral equipment are responding to a program's instructions.
- Perform systems analysis and programming tasks to maintain and control the use of computer systems software as a system programmer.
- Write, update, and maintain computer programs or software packages to handle specific jobs such as tracking inventory, storing or retrieving data, or controlling other equipment[.]
- Develop and maintain the database.
- Develop records management system[.]
- Implement computer system changes[.]

[Verbatim.]

The petitioner also provided a document entitled "I [REDACTED]-Exhibit D."<sup>3</sup> The petitioner described the beneficiary's duties as follows:

The restaurants use Digital Touch Screens to process orders which may vary according to the weekly offers of the restaurant. That is why he will be constantly making updates and restructure of the programs, supplying the constant changes in the program and database, constantly adjusting prices, changing and introducing the constant offers and combinations of products, etc. He will also perform the installation, maintenance and repair of the basic program of operations in each of the branches; the maintenance and

<sup>3</sup> According to USCIS records, the petition ( [REDACTED] ) was filed by the petitioner for the beneficiary and approved on September 30, 2010, valid from October 1, 2010 to September 19, 2013.

feeding of the network; maintenance and repair of the hardware. Coordinate installation of software system. Communicate with staff and management to understand specific system requirements. He will provide advice on project costs, design concepts, or design changes. He will also evaluate current or emerging technologies to consider factors such as cost, portability, compatibility, or usability. Provide technical guidance or support for the development or troubleshooting of systems. Identify system data, hardware, or software components required to meet restaurant needs. Provide guidelines for implementing secure systems, and [m]onitor system operation to detect potential problems.

\* \* \*

- Design, develop and test the operating systems software of the restaurants- 20% (8 hrs)
- Modify the existing software in order to correct errors – Occasionally.
- Analyze information to determine, recommend and plan installation of new systems or modification of an existing system – 5% (2 hrs)
- Direct the software programming and development of documentation within the company – 10% (4 hrs)
- Make updates and restructure of the programs, supplying the constant changes in the program and database, adjusting prices, changing and introducing the constant offers and combinations of products, etc. – 30% (12 hrs.)
- Perform the installation, maintenance and repair of the basic program of operations in each of the branches.-15% (6 hrs)
- Provide the maintenance and feeding of the network; maintenance and repair of the hardware – Constantly
- Coordinate installation of software system – Occasionally
- Communicate with staff and management to understand specific system requirements, - Constantly
- Provide advice of project costs, design concepts, or design changes – 10% (4 hrs.)
- Evaluate current or emerging technologies to consider factors such as cost, portability, compatibility, or usability – Occasionally
- Provide technical guidance or support for the development or troubleshooting of systems. Identify system data, hardware, or software components required to meet restaurant needs. – 10% (4 hrs)
- Provide guidelines for implementing secure systems, and Monitor system operation to detect potential problems. – Occasionally

[Verbatim.]

The Labor Condition Application (LCA) filed in support of the petition was certified for use with a job prospect within the "Software Developers, Systems Software" occupational classification, SOC (O\*NET/OES) Code 15-1133 at a Level II (qualified) wage. The LCA also reflects that, as mentioned above, the petitioner assigned "Computer Software Engineer" as the position's job title.



The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on February 4, 2014. The petitioner was asked, in part, to submit probative evidence to establish that the position required a bachelor's degree in a specific field of study in order to perform the duties of the position. Further, the petitioner was asked to submit additional information about the business. The director outlined some of the types of specific evidence that could be submitted.

In response, the petitioner provided, among other things, job advertisements, the petitioner's business plan, promotional materials; and a document very briefly explaining how the petitioner's information/computer system "handles the control of sales, purchases increase and decrease in inventory, preparation of work schedules, payroll, and payment of supplier's sales reports, purchase reports, inventory reports, etc."

The director denied the petition, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation.

## II. SPECIALTY OCCUPATION

### A. The Law

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), 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

When determining whether a position is a specialty occupation, we must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, USCIS looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

For H-1B approval, the petitioner must demonstrate a legitimate need for an employee exists and to substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition. It is incumbent upon the petitioner to demonstrate it has sufficient work to require the services of a person with at least a bachelor's degree in a specific specialty, or its equivalent, to perform duties at a level that requires the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty for the period specified in the petition. 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)).

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. As mentioned, the petitioner is a 6-employee "franchise restaurant and fast food services" company established in [REDACTED]. The petitioner operates two restaurants called "[REDACTED]" in [REDACTED], Florida, and also in [REDACTED], Florida. The petitioner further indicated that it decided to "switch to an entirely computerized system for handling our transactions" due to its success and plans for expansion.

However, the petitioner did not provide documents to substantiate its claim for expansion. In support of the petition, the petitioner initially submitted a 30-page business plan dated April 2007, 6 years prior to filing this petition. According to the section entitled "Expansion Strategy" in the business plan, "the next goal is to open multiple ' [REDACTED] ' sandwiches shops." In response to the RFE, the petitioner submitted another business plan dated April 2012: While this document is 28 pages, it is verbatim from the business plan dated April 2007, including its expansion plan, where it claims that its goal is to open multiple restaurants. Likewise, in support of the Form I-129, the petitioner also had submitted a document entitled " [REDACTED] "Exhibit C," which appears to have been submitted as a part of the previously filed petition for the beneficiary, approved on September 30, 2010. The petitioner claimed that it "intends to sell at least 10 franchises; it is installing 10 new branches during the next two years." However, 3 years after approval of the previous petition, the petitioner did not submit evidence of expansion including franchising and installing new branches.<sup>4</sup>

Moreover, the petitioner did not sufficiently substantiate its need for a full-time computer software engineer. In response to the RFE, the petitioner submitted examples of restaurant systems utilized by other restaurants which appear to have similar functions that the petitioner claimed that the beneficiary would develop such as payment options, table management and more. The petitioner did not explain why this type of system could not be purchased. Further, the petitioner also did not explain why the beneficiary is still working on developing the system three years since the approval of the previous petition. While the petitioner submitted a brief description of the system and a document that contains computer codes, the petitioner did not submit sufficient evidence to establish that the beneficiary actually wrote the program or developed the system for the restaurant. In addition, a part of the job description states that the beneficiary will maintain the system and update

<sup>4</sup> 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.

the information of the system such as changing prices, adding new dishes or specials, or new inventory. The petitioner did not explain why duties such as updates of the system such as changes in prices, inventory and promotions require a full-time computer software engineer.

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)).

The petitioner stated on the Form I-129 that the beneficiary would be employed in a computer software engineer position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, 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 evidence in the record of proceeding establishes that performance of the particular proffered position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in a specific specialty as the minimum for entry into the occupation, as required by the Act.

We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>5</sup> As previously discussed, the petitioner asserted in the LCA that the proffered position falls within the occupational category "Software Developer, Systems Software."

We reviewed of the information in the *Handbook* regarding the occupational category "Software Developers," including the sections regarding the typical duties and requirements for this occupational category.<sup>6</sup> Although the petitioner titled the position computer software engineer and categorized the occupational category as "Software Developers, Systems Software" on the LCA, upon review of the job description provided by the petitioner, we are not persuaded that the proffered position falls under the occupational category of "Software Developers."

<sup>5</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet at <http://www.bls.gov/ooh/>. Our references to the *Handbook* are to the 2014-2015 edition available online.

<sup>6</sup> For additional information regarding the occupational category "Software Developers," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Software Developers, on the Internet at <http://www.bls.gov/ooh/computer-and-information-technology/software-developers.htm> (last visited May 6, 2015).

The subchapter of the *Handbook* entitled "What Software Developers Do" states the following about this occupational category:

Software developers are the creative minds behind computer programs. Some develop the applications that allow people to do specific tasks on a computer or other device. Others develop the underlying systems that run the devices or control networks.

### **Duties**

Software developers typically do the following:

- Analyze users' needs, then design, test, and develop software to meet those needs
- Recommend software upgrades for customers' existing programs and systems
- Design each piece of the application or system and plan how the pieces will work together
- Create a variety of models and diagrams (such as flowcharts) that instruct programmers how to write the software code
- Ensure that the software continues to function normally through software maintenance and testing
- Document every aspect of the application or system as a reference for future maintenance and upgrades
- Collaborate with other computer specialists to create optimum software

Software developers are in charge of the entire development process for a software program. They begin by asking how the customer plans to use the software. They design the program and then give instructions to programmers, who write computer code and test it. If the program does not work as expected or people find it too difficult to use, software developers go back to the design process to fix the problems or improve the program. After the program is released to the customer, a developer may perform upgrades and maintenance.

Developers usually work closely with computer programmers. However, in some companies, developers write code themselves instead of giving instructions to computer programmers.

Developers who supervise a software project from the planning stages through implementation sometimes are called information technology (IT) project managers.

These workers monitor the project's progress to ensure that it meets deadlines, standards, and cost targets. IT project managers who plan and direct an organization's IT department or IT policies are included in the profile on computer and information systems managers.

The following are types of software developers:

*Applications software developers* design computer applications, such as word processors and games, for consumers. They may create custom software for a specific customer or commercial software to be sold to the general public. Some applications software developers create complex databases for organizations. They also create programs that people use over the Internet and within a company's intranet.

*Systems software developers* create the systems that keep computers functioning properly. These could be operating systems that are part of computers the general public buys or systems built specifically for an organization. Often, systems software developers also build the system's interface, which is what allows users to interact with the computer. Systems software developers create the operating systems that control most of the consumer electronics in use today, including those in phones or cars.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Software Developers, on the Internet at <http://www.bls.gov/ooh/computer-and-information-technology/software-developers.htm#tab-2> (last visited May 6, 2015).

We find that the evidence of record does not establish the substantive nature of the proffered position. The petitioner submitted multiple versions of job duties and they vary greatly from the duties listed in the *Handbook* for Software Developers and thus, do not appear to fall within the occupational category "Software Developers."

Further, we note that the wording of the duties is virtually verbatim from different categories of occupations such as "Computer Systems Analysts" or "Computer Programmers" as described in the Occupational Information Network (O\*NET) Code Connector. This type of generalized description may be appropriate when defining the range of duties that may be performed within an occupational category, but it fails to adequately convey the substantive work that the beneficiary will perform within the petitioner's business operations and, thus, cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in the context of the petitioner's business operations, demonstrate a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition.

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.

Without additional information describing the specific duties the petitioner requires the beneficiary to perform, 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 did 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. The evidence of record contains neither substantive explanation nor documentation showing the range and volume of company products that the beneficiary would have to organize and manage. Likewise, the record does not clarify the substantive work and associated applications of specialized knowledge that would be involved in the referenced duty. Also, the petitioner does not provide substantive information with regard to the particular work, methodologies, and applications of knowledge that would be required for the percentage-assigned duties.

The petitioner has failed to provide sufficient details regarding the nature and scope of the beneficiary's employment or any substantive evidence regarding the actual work that the beneficiary would perform. Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The tasks as described fail to communicate (1) the actual work that the beneficiary would perform, (2) the complexity, uniqueness and/or specialization of the tasks, and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty. The petitioner's assertions with regard to the position's educational requirement are conclusory and unpersuasive, as they are not supported by the job descriptions or substantive evidence.

The record's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under 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 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 denied for this reason.<sup>7</sup>

### III. CONCLUSION

The evidence of record fails to establish that the proffered position is a specialty occupation. Accordingly, the petition will be denied.

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.

<sup>7</sup> As the grounds discussed above preclude approval of the petition, we will not address additional issues and deficiencies that we observe in the record of proceeding.