



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF H-D- LLC

DATE: NOV. 10, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a computer consulting and software development firm, seeks to temporarily employ the Beneficiary as a “programmer analyst” under the H-1B nonimmigrant classification. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. ISSUE

The issue before us is whether the Petitioner has established that it qualifies as a “United States employer” having an employer-employee relationship with the Beneficiary.<sup>1</sup>

II. EMPLOYER-EMPLOYEE ISSUE

A. Legal Framework

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

[S]ubject 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) . . . .

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<sup>1</sup> We conduct appellate review on a *de novo* basis. *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015); *see also* 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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* Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act 56 Fed. Reg. 61,111, 61,121 (Dec. 2, 1991) (to be codified at 8 C.F.R. pt. 214).

Although “United States employer” is defined in the regulations at 8 C.F.R. § 214.2(h)(4)(ii), it is noted that the terms “employee” and “employer-employee relationship” are not defined for purposes of the H-1B visa classification. Section 101(a)(15)(H)(i)(b) of the Act indicates that an individual 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). 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). Further, the regulations indicate that “United States employers” must file a Form I-129, Petition for a Nonimmigrant Worker, in order to classify individuals 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 Mut. Ins.*

*Co. v. Darden*, 503 U.S. 318, 322-23 (1992) (quoting *Cmty. 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.

*Id.*; see also *Clackamas Gastroenterology Assocs., P.C. v. Wells*, 538 U.S. 440, 445 (2003) (quoting *Darden*, 503 U.S. at 323). 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 Am.*, 390 U.S. 254, 258 (1968)).

In this matter, the Act does not exhibit a legislative intent to extend the definition of "employer" in section 101(a)(15)(H)(i)(b) of the Act, "employment" in section 212(n)(1)(A)(i) of the Act, or "employee" in section 212(n)(2)(C)(vii) of the Act beyond the traditional common law definitions. See generally 136 Cong. Rec. S17106 (daily ed. Oct. 26, 1990); 136 Cong. Rec. H12358 (daily ed. Oct. 27, 1990). On the contrary, in the context of the H-1B visa classification, the regulations define the term "United States employer" to be even more restrictive than the common law agency definition.<sup>3</sup>

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

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<sup>3</sup> While the *Darden* court considered only the definition of "employee" under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1002(6), and did not address the definition of "employer," courts have generally refused to extend the common law agency definition to ERISA's use of employer because "the definition of 'employer' in ERISA, unlike the definition of 'employee,' clearly indicates legislative intent to extend the definition beyond the traditional common law definition." See, e.g., *Bowers v. Andrew Weir Shipping, Ltd.*, 810 F. Supp. 522 (S.D.N.Y. 1992).

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 318-19.<sup>4</sup>

Accordingly, in the absence of an express congressional intent to impose broader definitions, both the “conventional master-servant relationship as understood by common-law agency doctrine” and the *Darden* construction test apply to the terms “employee” and “employer-employee relationship” as used in section 101(a)(15)(H)(i)(b) of the Act, section 212(n) of the Act, and 8 C.F.R. § 214.2(h).<sup>5</sup>

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

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 323-24; *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* EEOC Compl. Man. at § 2-III(A)(1) (adopting a materially identical test and indicating that said test was based on the *Darden* decision); *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 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

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<sup>4</sup> To the extent the regulations are ambiguous with regard to the terms “employee” or “employer-employee relationship,” the agency’s interpretation of these terms should be found to be controlling unless “plainly erroneous or inconsistent with the regulation.” *Auer v. Robbins*, 519 U.S. 452, 461 (1997) (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 359 (1989) (quoting *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 414 (1945)).

<sup>5</sup> That said, there are instances in the Act where Congress may have intended a broader application of the term “employer” than what is encompassed in the conventional master-servant relationship. *See, e.g.*, section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F) (referring to “unaffiliated employers” supervising and controlling L-1B intracompany transferees having specialized knowledge); section 274A of the Act, 8 U.S.C. § 1324a (referring to the employment of unauthorized individuals).

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 448-49; EEOC Compl. Man. at § 2-III(A)(1).

Furthermore, when examining the factors relevant to determining control, USCIS must assess and weigh each actual factor itself as it exists or will exist and not the claimed employer's right to influence or change that factor, unless specifically provided for by the common-law test. *See Darden*, 503 U.S. at 323-24. 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. Proffered Position

In the Labor Condition Application (LCA), the Petitioner indicated that the proffered position corresponds to the occupational category "Computer Programmers" with SOC (ONET/OES) code 15-1131, at a Level I (entry level) wage.

In a letter dated March 28, 2014, the Petitioner described the proffered position as follows:

[The Beneficiary] will work on the ongoing assignments to assist as a team member to convert project specifications and statements of problems and procedures to detailed logical flow charts for coding using multiple technologies. She will be required to develop and write computer programs and work on reporting, querying and analyzing solutions requiring installation of software applications on a distributed architecture. In addition, she will perform data validations and create test plans using multiple technologies and techniques. Additionally, she may be required to assist as part of the team to resolve technical problems requiring good judgment and creativity in developing solutions.

The duties involve programming issues, developing and working on enhancements to meet the current and project needs making the professional knowledge and background in computer Science or Engineering or Mathematics or a closely related field virtually indispensable. The position therefore requires the [B]eneficiary to have the intellectual and conceptual content of a bachelor's degree as specified . . . .

(b)(6)

*Matter of H-D- LLC*

Concerning [the Beneficiary's] itinerary we confirm that she will work at [redacted] NY [redacted] and [redacted] NY [redacted] until September 04, 2017 as a Programmer Analyst.

In our business we cannot line up contracts for years to come; we have a current assignment which is likely to get extended however, we have enough in-house work for her to work until we will have another placement if the current one ends early . . . .

The Petitioner included a letter from [redacted] dated March 15, 2014, confirming the Beneficiary's consulting assignment as a programmer analyst for its company. This letter listed the same duties for the Beneficiary as those listed in the Petitioner's March 28, 2014, letter.

Additionally, the Petitioner included a copy of its Employment Agreement with the Beneficiary, dated March 14, 2014.

In a letter dated September 3, 2014, submitted as a response to the request for evidence (RFE), the Petitioner stated the following:

The Beneficiary will be working on a project at [redacted] located at [redacted] and [redacted] NY [redacted]. Our understanding with our end client is that our employees will under no circumstances be deemed to be employees of [redacted] and our employees working on assignments as contractors are not eligible for any paid benefits from [redacted] and they do not have the ability to assign her to a different employer. You will appreciate that it is practically impossible to determine when exactly a project will be completed. This is because rarely does an IT project end with just the development of a system/application. Most often the projects require constant support, maintenance, upgrades and enhancements and SOWs that may be issued for short durations are constantly extended over further, longer periods. Based on the nature of [the Beneficiary's] project with [redacted] we fully anticipate that she will work at this location for the entire duration of her H-1B validity.

In the denial decision, the Director stated as follows:

Additionally, a search of publicly available Internet resources reveals that the end client worksite, [redacted] is exclusively a staffing company. This raises questions as to the location of the work and whether it is a place of employment that can accommodate the [B]eneficiary for the duration of the requested validity period as required by regulation. Although the accuracy of Internet resources is not always guaranteed, the information summarized above casts significant doubt upon the validity of the employment offered at the end client worksite, [redacted]

(b)(6)

*Matter of H-D- LLC*

On appeal, the Petitioner states that the Beneficiary “will be assigned to work as a Programmer Analyst for in-house project of [REDACTED] (formerly known as [REDACTED] at their work location at [REDACTED]”<sup>2</sup> The Petitioner further states:

Please note that regardless of [REDACTED] (formerly known as The [REDACTED] being a staffing company, we have an understanding with [REDACTED] (formerly known as [REDACTED]) for executing their IT projects in house and thus to provide them qualified software professionals.

Thus, the Beneficiary will be solely assigned to work on revamping the client’s job portal. [REDACTED] (formerly known as [REDACTED] is working on enhancing their job portal search engine and need qualified professionals to work on a continued basis to complete the enhancement of their job search feature.

The Petitioner includes a letter from [REDACTED] which briefly explains the job portal project to which the Beneficiary will be assigned. The letter also breaks the project down into five phases and briefly describes the subtasks to be completed in each phase. The letter further states that the Beneficiary will be part of a five-person development team comprised of two Software Developers, a Solutions Architect, and two Programmer Analysts.

### C. Analysis

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

A key element in this matter is who would have the ability to supervise and otherwise control the work of the Beneficiary for the duration of the H-1B petition. Here, the Petitioner has stated that the Beneficiary will be assigned to work for another company, [REDACTED] (formerly known as The [REDACTED] at their work location of [REDACTED] New York. Despite this placement, the Petitioner repeatedly stated that [REDACTED] “has no employment relationship with [the Beneficiary],” and that the Petitioner will be the Beneficiary’s “employer.” However, the Petitioner has not provided sufficient probative evidence with regard to how it will have the ability to supervise and control the Beneficiary’s work performed at the office premises of [REDACTED]. That is, the evidence of record is insufficient to establish how the Petitioner will supervise and control the manner and means by which the Beneficiary will provide her services off-site.

For instance, the Petitioner did not provide detailed information regarding the Beneficiary’s supervisor at [REDACTED] (e.g., her supervisor’s name, job title, brief description of duties, job location, and employer). The letter from [REDACTED] states that the Beneficiary will be a part of a

<sup>2</sup> The Petitioner explained that [REDACTED] merged with [REDACTED] on [REDACTED].

(b)(6)

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five-person development team comprised of two Software Developers, a Solutions Architect, and two Programmer Analysts. This letter does not, however, indicate which of the above positions (if any) will supervise the Beneficiary. We also note that the Employment Agreement states that the Beneficiary will submit to the Petitioner “periodic written reports relating to [her] performance,” thus raising additional questions as to the extent of the Petitioner’s supervision over the Beneficiary’s day-to-day work.

The Petitioner acknowledges that [REDACTED] is a “staffing company.” Nevertheless, the Petitioner asserts that it has “an understanding with [REDACTED] (formerly known as [REDACTED] for executing their IT projects in house and thus to provide them qualified software professionals.” However, the Petitioner has not submitted sufficient, credible documentation evidencing and specifying the nature of its “understanding” with [REDACTED]. The Petitioner did not submit copies of actual contractual agreements, purchase orders, statements of work (SOWs), or other similar, objective documentation between its company and [REDACTED].<sup>3</sup> Without additional information and documentation, we are unable to determine the nature of the relationship between the Petitioner and [REDACTED], and consequently, the nature of the relationship between the Petitioner and the Beneficiary.

The Petitioner also made inconsistent statements with respect to its in-house work for the Beneficiary. More specifically, the Petitioner initially asserted on the Form I-129, LCA, and supporting documentation that the Beneficiary will also perform in-house work for the Petitioner at its business premises, in addition to her off-site work for [REDACTED]. However, the Petitioner now asserts on appeal that the Beneficiary “will be solely assigned to work on revamping the client’s job portal.” The letter from [REDACTED] indicates that their job portal project requiring the Beneficiary’s services has a “tentative duration . . . [of] around 4 years.”<sup>4</sup> The Petitioner has not explained these apparent inconsistent statements.

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<sup>3</sup> The Petitioner acknowledged in its September 3, 2014, letter that “[m]ost often the projects require constant . . . SOWs.”

<sup>4</sup> 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.

“[I]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence.” *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92. Furthermore, “[d]oubt 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.* at 591. These unresolved inconsistencies undermine the Petitioner’s overall credibility, and the Petitioner’s claimed employer-employee relationship with the Beneficiary.

Overall, the evidence of record is insufficient to establish that the Petitioner will have the requisite employer-employee relationship with the Beneficiary. Merely claiming in its letters and other submitted documentation that the Petitioner will perform all employment obligations with respect to the Beneficiary, without sufficient detail and evidence supporting the claim, is inadequate to establish eligibility in this matter. “[G]oing on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.” *In re Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). As previously discussed, 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.

Based on the tests outlined above, the Petitioner has not established that it qualifies as a “United States employer” having an “employer-employee relationship” with the Beneficiary as an H-1B temporary “employee.” 8 C.F.R. § 214.2(h)(4)(ii).

### III. SPECIALTY OCCUPATION

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

We note that, as recognized by the court in *Defensor*, 201 F.3d at 387-88, where the work is to be performed for entities other than the petitioner, evidence of the client companies’ job requirements is critical. *See Defensor v. Meissner*, 201 F.3d at 387-88. The court held that the former Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the

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Petitioning Requirements for the H Nonimmigrant Classification, 63 Fed. Reg. 30,419, 30,419-20 (proposed June 4, 1998) (to be codified at 8 C.F.R. pt. 214). While a petitioner is certainly permitted to change its intent with regard to non-speculative employment, e.g., a change in duties or job location, it must nonetheless document such a material change in intent through an amended or new petition in accordance with 8 C.F.R. § 214.2(h)(2)(i)(E).

petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. *Id.* at 384. Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

Here, the letter from the end-client did not state the requirements for the proffered position. Further, as discussed, the Petitioner did not provide credible and consistent information regarding the Beneficiary's assignment. The Petitioner's 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.

#### IV. CONCLUSION

The Petitioner has not established eligibility for the benefit sought. The appeal will be dismissed.<sup>6</sup> 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.

Cite as *Matter of H-D- LLC*, ID# 14422 (AAO Nov. 10, 2015)

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<sup>6</sup> Since the identified bases for denial are dispositive of the Petitioner's appeal, we need not address other ineligibilities we observe in the record of proceeding.