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

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

MATTER OF A-, INC.

DATE: OCT. 7, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a software development firm, seeks to employ the Beneficiary as a Software Engineer and to classify him as a nonimmigrant worker in a specialty occupation. *See* 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, California Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

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 bases for denial were 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, Notice of Appeal or Motion, 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. THE PROFERRED POSITION

The Petitioner indicated on the Form I-129 that is a four-employee software development firm located at [REDACTED] California. With respect to the Beneficiary, the Petitioner seeks to employ the Beneficiary in a full-time "Software Engineer" position. The Petitioner indicated on the Form I-129 that the Beneficiary would work at the Petitioner's office address above, and would not work off-site.

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

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classification, SOC (O*NET/OES) Code 15-1132, and a Level I prevailing wage rate. The Petitioner listed the position's job title as "Software Engineer" on the LCA.

In a letter dated March 28, 2014, the Petitioner 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 [REDACTED] 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.

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- Collaboratively get work done by working with high performing teams across multiple geographies.
- Responsible for driving adoption of standard delivered solutions.

In the same letter, the Petitioner 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.”

In a letter dated September 17, 2014 submitted in response to the Director’s RFE, the Petitioner asserted that it “seeks to employ [the Beneficiary] and directly manage his work on critical Adobe CQ projects.” The Petitioner also asserted that the Beneficiary “will be expected to build an extensive foreign exchange trading platform.” Other documentation submitted with this letter identified the foreign exchange trading platform which the Beneficiary will build as [REDACTED]. The Petitioner provided a breakdown of the Beneficiary’s “key duties” along with percentages of time spent on each duty, as follows:

- SCOPING: Assist in all stages of process for defining key capabilities, requirements that will enable strategy participate in the review of functional requirements that lead to projects deliverables, features and functionalities (15%).
- DESIGN: Work with enterprise resource planners (ERP), architects and project managers to design, plan and develop delivery of solutions. Review and approve functional design, develop proof of concept (POC) and provide standard solutions (20%).
- USER EXPERIENCE ARCHITECTURE: Participate in and/or manage various process improvement projects to increase operational efficiency. Creating complex user experience conceptual designs (including application interfaces and interactions) and dashboards (15%).
- PROGRAMMING: Understand capability of applications (Adobe and SAP) in environment and provide guidelines to business partners on current capabilities vs. offers that require development work. Identifying and monitoring interdependencies between various application implementation activities (25%).
- SUPPORT: Planning and establishing post go-live activities including ongoing application support. Collaboratively get work done by working with high performing teams across multiple geographies (10%).
- ENHANCEMENTS: Provides expert level support for operational problem resolution; acts as a catalyst to recommend improvements in system. Participate in and/or manage various process improvement projects to increase operational efficiency (15%).

In the same letter, the Petitioner stated that it “requires a minimum of a Bachelor’s degree in Computer or Information Science, Information Systems, or closely-related field.”

On appeal, the Petitioner reaffirmed that “[t]he specific project on which the Petitioner intends the Beneficiary to work is the Petitioner’s foreign exchange trading platform.” The Petitioner also affirmed

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that “the Beneficiary’s proposed duties will be performed at the Petitioner’s headquarters and do not involve any consulting agreements with third parties.” The I-129 Petition specifically listed the Petitioner’s address as the worksite location, as did the underlying Labor Condition Application submitted with the I-129 Petition.”

II. EVIDENTIARY STANDARD ON APPEAL

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. 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 proffered 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)(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 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

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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

Upon review of the file, we find that there are deficiencies and inconsistencies that call into question the nature of the work that the Petitioner claims the Beneficiary would perform, and the accuracy of the Petitioner's assertions overall.

First, of critical importance to the outcome of this appeal, the Petitioner asserted that the Beneficiary would work exclusively on its in-house [REDACTED] project. This project was described as a "foreign exchange trading platform." However, the Petitioner has not submitted credible, objective documentation establishing that this is a *bona fide* project that exists and is actively being developed by the Petitioner. For instance, the Petitioner submitted an "Application Lifecycle – Development to QA to Production" document which depicts an application to be used by physicians and physician offices. It is not clear how this document, which contains depictions of a "Physician Office Admin Portal" and a "Physician Mobile Recording App," is related to the foreign exchange trading platform.

The Petitioner also submitted a technical document entitled [REDACTED] that 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. This document does not provide any substantive information with regard to the particular work, and associated educational requirements, that would be required for this project. For instance, this document does not 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, there are no references to any particular role 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. Accordingly, the submitted evidence regarding the project to which the Beneficiary would purportedly be assigned is of limited probative value.

The Petitioner's employment offer letter to the Beneficiary states that the Beneficiary will be "supporting [the Petitioner's] Adobe CQ Consulting initiatives." The Petitioner's response to the RFE similarly states that the Beneficiary will work "on critical Adobe CQ projects." The Petitioner has not adequately explained what these Adobe CQ "projects" and "initiatives" are (in the plural), and how they are related to the foreign exchange trading platform.

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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: "[p]rovide 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. 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.

The Petitioner listed job duties indicating that the Beneficiary would work with other employees and/or third parties, such as "[w]ork with enterprise resource planners (ERP), architects and project managers" and "[c]ollaboratively get work done by working with high performing teams across multiple geographies." However, the Petitioner has neither explained nor documented who these "enterprise resource planners," "architects," "project managers," and "high performing teams" are. We observe that, according to the Petitioner's most recent pay stubs and other submitted evidence, the Petitioner's five other employees appear to be working off-site in different states.¹ As such, it is not apparent that the Beneficiary would be working with these employees on the Petitioner's in-house project. We also observe that the Petitioner expressly stated that "the Beneficiary's proposed duties . . . do not involve any consulting agreements with third parties." It is thus unclear who the Beneficiary would be working with, and whether the above-mentioned duties relate to the Petitioner's actual operations.

The Petitioner has also indicated that the Beneficiary will have managerial or leadership-type duties. For example, the Petitioner stated that the Beneficiary "will be accountable for managing the activities of all enterprise applications organizations," "oversees the business requirements . . . and approves all functional specifications," and will "lead delivery team." Other job duties indicate that the Beneficiary will serve as an "expert." However, the Petitioner designated the proffered position on the LCA as a Level I (entry) position. In designating the proffered position at a Level I wage, the Petitioner has indicated that the proffered position is a comparatively low, entry-level position relative to others within the occupation.² The petitioner's designation of the proffered position as a Level I, entry-

¹ More specifically, the pay stubs reflect that [REDACTED] and [REDACTED] reside in [REDACTED] [REDACTED] resides in [REDACTED] and [REDACTED] resides in [REDACTED]. We note that the Petitioner's pay stubs and other evidence indicate that the Petitioner has five employees, not four employees as indicated on the Form I-129.

² A Level I wage rate is described in DOL's "Prevailing Wage Determination Policy Guidance" as follows:

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level position is inconsistent with these and other stated duties, and raises additional questions regarding the substantive nature of the proffered position.³

The record also does not establish that the Petitioner has sufficient work space for the Beneficiary to work on-site, as claimed. Here, the Petitioner attested that “the Beneficiary’s proposed duties will be performed at the Petitioner’s headquarters” located at [REDACTED] California. However, the Petitioner’s rent invoices for this address show that this a shared work space area at [REDACTED] wherein the Petitioner has access to one “[d]edicated desk.”⁴ The Petitioner has not explained and documented how this one desk in a shared office space is sufficient for the Beneficiary and the Petitioner’s employee(s) to work on the claimed in-house project.

Finally, we observe that the Petitioner stated that the Beneficiary would be employed as a “Software Engineer.” However, in the Petitioner’s January 9, 2014 employment offer letter to the Beneficiary and the Employment Contract between the Petitioner and the Beneficiary, the job title for the Beneficiary is “Solution Architect.” 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, it is nevertheless incumbent upon the Petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92.

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer’s methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

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

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

³ The issue here is that the Petitioner’s designation of this position as a Level I, entry-level position undermines its claim that the position is relatively higher than other positions *within the same occupation*. Nevertheless, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), an entry-level position would still require a minimum of a bachelor’s degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor’s degree in a specific specialty or its equivalent. That is, a position’s wage level designation may be a consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

⁴ According to its website, [REDACTED] defines itself as a “coworking space.” See [REDACTED] (last accessed Sept. 29, 2015).

Based on all of the above reasons, the evidence of record is insufficient to establish that the Petitioner has a *bona fide* in-house project to which the Beneficiary would be assigned. Consequently, we cannot find that the Petitioner has demonstrated that it has non-speculative specialty-occupation work for the Beneficiary.

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. 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'l Comm'r 1978).

The failure to establish the substantive nature of the work to be performed by the Beneficiary precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal 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

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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.

There are also adverse implications of the acceptability of a bachelor's degree in business 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."⁵ 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 or 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 at 147.⁶ For this addition reason, it cannot be found that the

⁵ In subsequently submitted documentation, the Petitioner stated that it "requires a minimum of a Bachelor's degree in Computer or Information Science, Information Systems, or closely-related field." The Petitioner has not clarified whether its minimum educational requirement includes a Business degree as initially stated, or is limited to a degree in or related to Computer or Information Science and Information Systems. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and 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.

⁶ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass. 2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, 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.

proffered position qualifies as a specialty occupation.

IV. 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 project(s) 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 that the proffered position qualifies for classification as a specialty occupation, or that there exists an employer-employee relationship between the Petitioner and the Beneficiary.

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

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considered as an independent and alternative basis for the decision.⁷ 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 A-, Inc.*, ID# 13818 (AAO Oct. 7, 2015)

⁷ 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 approval of the H-1B petition.