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

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

MATTER OF M-

DATE: OCT. 7, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: I-129, PETITION FOR A NONIMMIGRANT WORKER

On the Form I-129, the Petitioner describes itself as a 23-employee “software” business established in [REDACTED] and seeks to employ the Beneficiary as a “programmer analyst.” The Petitioner seeks to classify the Beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The record of proceeding includes: (1) the Form I-129 and supporting documentation; (2) the service center’s request for evidence (RFE); (3) the Petitioner’s response to the RFE; (4) the notice of decision; and (5) the Form I-290B, Notice of Appeal or Motion, and supporting materials. We reviewed the record in its entirety before issuing our decision.¹

The Director, California Service Center, denied the petition determining that the record did not establish: (1) an employer-employee relationship between the Petitioner and the Beneficiary; and (2) that the proffered position is a specialty occupation. The matter is now before us on appeal. Upon review of the entire record of proceeding, we find that the Petitioner has not overcome the Director’s grounds for denying this petition. Accordingly, the appeal will be dismissed.

I. THE PROFFERED POSITION

On the Form I-129, the Petitioner identified the proffered position as a “programmer analyst” position, and indicated that the Beneficiary will work off-site. In the March 24, 2014, letter submitted in support of the petition, the Petitioner provided the following three job duties of the proffered position: “Install, maintain and may design internal software operating systems and/or business applications”; “Prepare concepts for information system solutions”; and “Be responsible for project control, quality and implementation[.]” The Petitioner submitted the required Labor

¹ We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We note, in light of the Petitioner’s references to the requirement that U.S. Citizenship and Immigration Services (USCIS) apply the “preponderance of the evidence” standard, we affirm that, in the exercise of our appellate review in this matter, as in all matters that come within our 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).

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Condition Application (LCA) certified for a job prospect within the occupational classification of “Computer Systems Analysts” - SOC (ONET/OES Code) 15-1121, at a Level I wage.

In response to the service center’s RFE, the Petitioner stated that although it was calling the proffered position a “programmer analyst” position, the Beneficiary would be working as a “programmer analyst – sas developer.” The Petitioner submitted a photocopy of a July 14, 2014, letter authored by the Application Development Manager at “██████” to confirm that the Beneficiary “is contracted as a Programmer Analyst-.SAS Developer” and is currently working at ██████ on a SAS development project effective in July 2013 and is expected to continue in this role with a strong possibility of extension.” The primary duties as listed in the ██████ letter are listed below verbatim:

- Design, develop and implement data analytics using large national data sets, managing and analyzing large complex data sets to measure quality of content
- Design, develop and maintain the application code for the complex reporting application deliverables - Customer Analytics Package and Collaborative Accountable Care
- Working with informatics teams to define development requirements, while following development protocols and procedures
- Investigating and implementing new application solutions based on business requirements and reporting needs
- Serving as the SAS development consultant for cross-functional project teams
- Working across multiple development platforms and programs to achieve results
- Processing system (MMIS – claims, eligibility and provider etc.) and other division data sources using various SAS BI tools

On appeal, the Petitioner submits a second photocopy of a letter authored by the Application Development Manager at ██████, dated October 10, 2014. The October 10, 2014, letter substantially repeats the above description of duties and adds language that the data sets will involve healthcare/medical data and that the complex claims involve medical claims. The author of the letter also adds that the revised duties “require at least a bachelor’s degree (health care/medical background or related) with strong computer programming skills or equivalent experience.”

II. EMPLOYER-EMPLOYEE RELATIONSHIP

We will first consider whether the Petitioner has established that it meets the regulatory definition of a United States employer as that term is defined at 8 C.F.R. § 214.2(h)(4)(ii).

A. Legal Framework

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

subject to section 212(j)(2), who is coming temporarily to the United States to perform services . . . in a specialty occupation described in section 214(i)(1) . . . , who meets the requirements for the occupation specified in section 214(i)(2) . . . ,

and with respect to whom the Secretary of Labor determines and certifies to the [Secretary of Homeland Security] that the intending employer has filed with the Secretary [of Labor] an application under section 212(n)(1)

The term “United States employer” is defined in the Code of Federal Regulations at 8 C.F.R. § 214.2(h)(4)(ii) as follows:

United States employer means a person, firm, corporation, contractor, or other association, or organization in the United States which:

- (1) Engages a person to work within the United States;
- (2) *Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and*
- (3) Has an Internal Revenue Service Tax identification number.

(Emphasis added); *see also* 56 Fed. Reg. 61111, 61121 (Dec. 2, 1991).

Although “United States employer” is defined in the regulations at 8 C.F.R. § 214.2(h)(4)(ii), 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 alien coming to the United States to perform services in a specialty occupation will have an “intending employer” who will file a Labor Condition Application with the Secretary of Labor pursuant to section 212(n)(1) of the Act, 8 U.S.C. § 1182(n)(1) (2012). The intending employer is described as offering full-time or part-time “employment” to the H-1B “employee.” Subsections 212(n)(1)(A)(i) and 212(n)(2)(C)(vii) of the Act, 8 U.S.C. § 1182(n)(1)(A)(i), (2)(C)(vii) (2012). Further, the regulations indicate that “United States employers” must file a Form I-129 in order to classify aliens as H-1B temporary “employees.” 8 C.F.R. § 214.2(h)(1), (2)(i)(A). Finally, the definition of “United States employer” indicates in its second prong that the Petitioner must have an “employer-employee relationship” with the “employees under this part,” i.e., the H-1B beneficiary, and that this relationship be evidenced by the employer’s ability to “hire, pay, fire, supervise, or otherwise control the work of any such employee.” 8 C.F.R. § 214.2(h)(4)(ii) (defining the term “United States employer”).

Neither the former Immigration and Naturalization Service (INS) nor USCIS defined the terms “employee” or “employer-employee relationship” by regulation for purposes of the H-1B visa classification, even though the regulation describes H-1B beneficiaries as being “employees” who must have an “employer-employee relationship” with a “United States employer.” *Id.* Therefore, for purposes of the H-1B visa classification, these terms are undefined.

The United States Supreme Court has determined that where federal law fails to clearly define the term “employee,” courts should conclude that the term was “intended to describe the conventional

master-servant relationship as understood by common-law agency doctrine.” *Nationwide Mutual Ins. Co. v. Darden*, 503 U.S. 318, 322-323 (1992) (hereinafter “*Darden*”) (quoting *Community for Creative Non-Violence v. Reid*, 490 U.S. 730 (1989)). The Supreme Court stated:

“In determining whether a hired party is an employee under the general common law of agency, we consider the hiring party’s right to control the manner and means by which the product is accomplished. Among the other factors relevant to this inquiry are the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party’s discretion over when and how long to work; the method of payment; the hired party’s role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.”

Darden, 503 U.S. at 323-324 (quoting *Community for Creative Non-Violence v. Reid*, 490 U.S. at 751-752); see also *Clackamas Gastroenterology Associates, P.C. v. Wells*, 538 U.S. 440, 445 (2003) (hereinafter “*Clackamas*”). As the common-law test contains “no shorthand formula or magic phrase that can be applied to find the answer, . . . all of the incidents of the relationship must be assessed and weighed with no one factor being decisive.” *Darden*, 503 U.S. at 324 (quoting *NLRB v. United Ins. Co. of America*, 390 U.S. 254, 258 (1968)).

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

² While the *Darden* court considered only the definition of “employee” under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1002(6), and did not address the definition of “employer,” courts have generally refused to extend the common law agency definition to ERISA’s use of employer because “the definition of ‘employer’ in ERISA, unlike the definition of ‘employee,’ clearly indicates legislative intent to extend the definition beyond the traditional common law definition.” See, e.g., *Bowers v. Andrew Weir Shipping, Ltd.*, 810 F. Supp. 522 (S.D.N.Y. 1992), *aff’d*, 27 F.3d 800 (2nd Cir.), *cert. denied*, 513 U.S. 1000 (1994).

However, in this matter, the Act does not exhibit a legislative intent to extend the definition of “employer” in section 101(a)(15)(H)(i)(b) of the Act, “employment” in section 212(n)(1)(A)(i) of the Act, or “employee” in section 212(n)(2)(C)(vii) of the Act beyond the traditional common law definitions. Instead, in the context of the H-1B visa classification, the term “United States employer” was defined in the regulations to be even more restrictive than the common law agency definition. A federal agency’s interpretation of a statute whose administration is entrusted to it is to be accepted unless Congress has spoken directly on the issue. See *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844-845 (1984).

Specifically, the regulatory definition of “United States employer” requires H-1B employers to have a tax identification number, to engage a person to work within the United States, and to have an “employer-employee relationship” with the H-1B “employee.” 8 C.F.R. § 214.2(h)(4)(ii). Accordingly, the term “United States employer” not only requires H-1B employers and employees to have an “employer-employee relationship” as understood by common-law agency doctrine, it imposes additional requirements of having a tax identification number and to employ persons in the United States. The lack of an express expansion of the definition regarding the terms “employee” or “employer-employee relationship” combined with the agency’s otherwise generally circular definition of United States employer in 8 C.F.R. § 214.2(h)(4)(ii) indicates that the regulations do not intend to extend the definition beyond “the traditional common law definition” or, more importantly, that construing these terms in this manner would thwart congressional design or lead to absurd results. *Cf. Darden*, 503 U.S. at 318-319.³

Accordingly, in the absence of an express congressional intent to impose broader definitions, both the “conventional master-servant relationship as understood by common-law agency doctrine” and the *Darden* construction test apply to the terms “employee” and “employer-employee relationship” as used in section 101(a)(15)(H)(i)(b) of the Act, section 212(n) of the Act, and 8 C.F.R. § 214.2(h).⁴

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

The factors indicating that a worker is or will be an “employee” of an “employer” are clearly delineated in both the *Darden* and *Clackamas* decisions. *Darden*, 503 U.S. at 323-324; *Clackamas*, 538 U.S. at 445; *see also Restatement (Second) of Agency* § 220(2) (1958). Such indicia of control include when, where, and how a worker performs the job; the continuity of the worker’s relationship with the employer; the tax treatment of the worker; the provision of employee benefits; and whether the work performed by the worker is part of the employer’s regular business. *See Clackamas*, 538 U.S. at 445; *see also New Compliance Manual*, Equal Employment Opportunity Commission, § 2-III(A)(1) (adopting a materially identical test and indicating that said test was based on the *Darden* decision); *see*

³ To the extent the regulations are ambiguous with regard to the terms “employee” or “employer-employee relationship,” the agency’s interpretation of these terms should be found to be controlling unless “plainly erroneous or inconsistent with the regulation.” *Auer v. Robbins*, 519 U.S. 452, 461 (1997) (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 359, 109 S.Ct. 1835, 1850, 104 L.Ed.2d 351 (1989) (quoting *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 414, 65 S.Ct. 1215, 1217, 89 L.Ed. 1700 (1945))).

⁴ That said, there are instances in the Act where Congress may have intended a broader application of the term “employer” than what is encompassed in the conventional master-servant relationship. *See, e.g.*, section 214(c)(2)(F) of the Act, 8 U.S.C. § 1184(c)(2)(F) (referring to “unaffiliated employers” supervising and controlling L-1B intracompany transferees having specialized knowledge); section 274A of the Act, 8 U.S.C. § 1324a (referring to the employment of unauthorized aliens).

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also Defensor v. Meissner, 201 F.3d 384, 388 (5th Cir. 2000) (determining that hospitals, as the recipients of beneficiaries' services, are the "true employers" of H-1B nurses under 8 C.F.R. § 214.2(h), even though a medical contract service agency is the actual petitioner, because the hospitals ultimately hire, pay, fire, supervise, or otherwise control the work of the beneficiaries).

It is important to note, however, that the factors listed in *Darden* and *Clackamas* are not exhaustive and must be evaluated on a case-by-case basis. Other aspects of the relationship between the parties relevant to control may affect the determination of whether an employer-employee relationship exists. Furthermore, not all or even a majority of the listed criteria need be met; however, the fact finder must weigh and compare a combination of the factors in analyzing the facts of each individual case. The determination must be based on all of the circumstances in the relationship between the parties, regardless of whether the parties refer to it as an employee or as an independent contractor relationship. See *Clackamas*, 538 U.S. at 448-449; *New Compliance Manual* at § 2-III(A)(1).

Furthermore, when examining the factors relevant to determining control, USCIS must assess and weigh each actual factor itself as it exists or will exist and not the claimed employer's right to influence or change that factor, unless specifically provided for by the common-law test. See *Darden*, 503 U.S. at 323-324. For example, while the assignment of additional projects is dependent on who has the *right* to assign them, it is the *actual* source of the instrumentalities and tools that must be examined, and not who has the *right* to provide the tools required to complete an assigned project. See *id.* at 323.

Lastly, the "mere existence of a document styled 'employment agreement'" shall not lead inexorably to the conclusion that the worker is an employee. *Clackamas*, 538 U.S. at 450. "Rather, . . . the answer to whether [an individual] is an employee depends on 'all of the incidents of the relationship . . . with no one factor being decisive.'" *Id.* at 451 (quoting *Darden*, 503 U.S. at 324).

B. Analysis

Applying the *Darden* and *Clackamas* tests to this matter, 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."

The Petitioner asserts that the Beneficiary will work at the offices of [REDACTED] in [REDACTED] Connecticut, but that it retains the authority to assign and reassign the Beneficiary and that it determines the assignments or re-assignments of the Beneficiary. The Petitioner, however, has not provided sufficient information on how it supervises the Beneficiary's work or how it directly manages the Beneficiary in all matters related to his employment. Other than the photocopies of two letters that the Petitioner claims were authored by the Application Development Manager at [REDACTED] the Petitioner has not submitted any contracts, documentation, statements of work, or other evidence establishing the duties and responsibilities of the two companies in relation to the Beneficiary.

There are a number of factors which weigh against a favorable determination of the Petitioner's claim that it satisfies the employer-employee requirement. The record shows that the Beneficiary

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will be assigned to work at [REDACTED] location in [REDACTED] Connecticut, and not at the Petitioner's location in California. There is no evidence in the record showing that the Petitioner will maintain any supervisory presence at the [REDACTED] work location. Moreover, the evidence of record reflects that [REDACTED] would ultimately generate and determine the substantive scope and duration of any work the Beneficiary would perform. The record does not include sufficient probative evidence that the Petitioner would play any substantial role in determining the particular duties and tasks of any worker requisitioned by [REDACTED]. The record does not include documentary evidence from [REDACTED] that identifies any specific management authorities and responsibilities that have been reserved for the Petitioner to exercise over the Beneficiary, such as designating the Beneficiary's day-to-day tasks, evaluating the quality and efficiency of the Beneficiary's work, and providing guidance to the Beneficiary as work-related issues arise. Finally, there is no evidence that any work to which the Beneficiary might be assigned would require the Petitioner to provide its own proprietary information or technology. The totality of the evidence reflects that the Beneficiary's work would inherently require *access to and use of* [REDACTED] IT instrumentalities (such as IT systems, computer programs, and software applications).

Based upon our review, the only documents submitted into the record impacting the Petitioner's right to control the Beneficiary are the two letters submitted by [REDACTED] which state broadly that [REDACTED] does not have an employment relationship with the Beneficiary and that the Petitioner "retains the right of control over [the Beneficiary's] scope of work, source of instrumentalities and tools." However, without the underlying contractual instruments and statements of work, the two letters do not provide specific information with regard to the actual supervisory and management framework that would determine, direct, and supervise the Beneficiary's day-to-day work at [REDACTED]. Based upon this fact and upon all of the aspects of the record that bear on the employer-employee issue, we find that the evidence of record is inconclusive on the issue of whether it is more likely than not that the Petitioner and the Beneficiary would have the requisite employer-employee relationship in the context of the work to be performed if this petition were approved. We reach this conclusion based upon the application of the above-discussed common law principles to the totality of the evidence of record.

The Petitioner's reliance on claims that it would pay the Beneficiary's salary, set wages, control work locations, and assign the Beneficiary to its clients is misplaced. As we have noted, the record of proceeding before us does not document the full panoply of employer-employee related terms and conditions that would control the Beneficiary's day-to-day work; therefore, we do not have before us a sufficiently comprehensive record to identify and weigh all of the indicia of control that should be assessed to resolve the employer-employee issue under the above-discussed common law touchstone of control. As the Petitioner has not met its burden to establish that an employer-employee relationship exists, the appeal will be dismissed and the petition will be denied for this reason.

Without full disclosure of all of the relevant factors relating to the end-client, including evidence corroborating the Beneficiary's actual work assignment, we are unable to find that the requisite employer-employee relationship will exist between the Petitioner and the Beneficiary. The evidence of record, therefore, is also insufficient to establish that the Petitioner qualifies as a "United States

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employer,” as defined by 8 C.F.R. § 214.2(h)(4)(ii). Merely claiming in its letters that the Beneficiary is the Petitioner’s employee does not establish that the Petitioner exercises any substantial control over the Beneficiary and the substantive work that he performs. Nor do clauses in photocopied letters, such as the letters from [REDACTED] carry probative weight in the absence of specific contractual documents that bring such agreements into play with regard to work for which it is shown that the Beneficiary would be employed.

For the reasons discussed above, the evidence of record does not establish the requisite employer-employee relationship between the Petitioner and the Beneficiary. For this reason the petition must be denied.

III. SPECIALTY OCCUPATION

The next issue in this matter is whether the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. For an H-1B petition to be granted, the Petitioner must provide sufficient evidence to establish that it will employ the Beneficiary in a specialty occupation position.

A. Legal Framework

To meet its burden of proof in this regard, 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), 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

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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.

As recognized by the court in *Defensor, supra*, where the work is to be performed for entities other than the petitioning entity, evidence of the client companies' job requirements is critical. See *Defensor v. Meissner*, 201 F.3d at 387-388. The court held that the former Immigration and Naturalization Service (INS) had reasonably interpreted the statute and regulations as requiring the 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. Again, 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.

B. Analysis

Here, the record of proceeding does not provide sufficient probative documentary evidence from the end-client, [REDACTED] regarding the job duties of the Beneficiary's work. We note that [REDACTED] descriptions of the Beneficiary's proposed duties in the two letters submitted by the Petitioner significantly expand upon the Petitioner's three-sentence general description of the proposed duties. However, even upon review of [REDACTED] descriptions of the Beneficiary's duties, the duties are stated generally and in the abstract. That is, [REDACTED] does not identify any of its particular projects or products for which it requires the Beneficiary's services. Ultimately, the record does not have a probative description of duties the Beneficiary will perform while working at [REDACTED] location as those duties might relate to one or more specific projects. Instead, the descriptions are overly broad and lack substantive detail of the actual tasks that will engage the Beneficiary as those tasks relate to particular projects. Thus, we cannot ascertain the scope or nature of the Beneficiary's actual duties while working on any of [REDACTED] projects.⁵

⁵ Again, the Petitioner has not submitted evidence such as contractual agreements or statements of work demonstrating that [REDACTED] has specific projects that require the duties it describes as the Beneficiary's proposed duties. 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'l Comm'r 1972)).

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As the Petitioner here has not provided information regarding the proposed project(s) that will engage the Beneficiary, it is not possible to discern what stage the project(s) is in, what modules require work, if any, whether, the Beneficiary will be primarily designing, developing and implementing data analytics or maintaining application code or working with informatics teams, gathering client requirements, or being responsible for project control, quality and implementation. The Petitioner has not submitted evidence of the role this specific Beneficiary will play in the project(s), and how the Beneficiary will contribute to the execution of the project(s) deliverables. Thus, it is not possible to ascertain whether the Beneficiary will be required to perform duties that fall within the parameters of a specialty occupation position. That is, to the extent that they are described, the proposed duties do not provide a sufficient factual basis for conveying the substantive matters that would engage the Beneficiary in the performance of the proffered position for the entire period requested.

The job descriptions do not persuasively support the claim that the position's day-to-day job responsibilities and duties would require the theoretical and practical application of a particular educational level of highly specialized knowledge in a specific specialty directly related to those duties and responsibilities. Also, as recognized in *Defensor v. Meissner*, it is necessary for the end-client to provide sufficient information regarding the proposed job duties to be performed at its location and its requirements to perform those duties in order to properly ascertain the minimum educational requirements necessary to perform those duties. See *Defensor v. Meissner*, 201 F.3d at 387-388. As noted earlier, as the nurses in that case would provide services to the end-client hospitals and not to the petitioning staffing company, the petitioner-provided job duties and alleged requirements to perform those duties were irrelevant to a specialty occupation determination. See *id.* In the [REDACTED] letter submitted on appeal, the letter-writer states that [REDACTED] requires a bachelor's degree (health care/medical background or related) with strong computer programming skills or equivalent experience to perform the duties it generally described. However, the Petitioner has not demonstrated how or why the performance of the duties of the proffered position, as generally described by it or as broadly described by [REDACTED] would require the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent.

Here, the record of proceeding lacks sufficient probative evidence from the end-client, [REDACTED] regarding the specific job duties to be performed by the Beneficiary for that company and the requirements for the position. The requirement of a bachelor's degree with a health care/medical background does not describe a degree in a specific specialty. There is no information in the record detailing which specific degree, of the numerous degrees that may include a health care/medical component, are acceptable. Moreover, it appears that any general bachelor's degree with a few medical and health care classes would suffice to perform the duties as described by [REDACTED]. As the Petitioner has not established the substantive nature of the work to be performed by the Beneficiary, a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), is precluded. It is the substantive nature of that work that determines (1) the normal minimum educational

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

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

IV. CONCLUSION

As set forth above, we find that the evidence of record does not sufficiently establish that the proffered position qualifies for classification as a specialty occupation. We also find that the evidence of record is insufficient to establish that the Petitioner will have the requisite employer-employee relationship with the Beneficiary. Accordingly, the appeal will be dismissed and the petition denied.

An application or petition that does not comply with the technical requirements of the law may be denied by us even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that we conduct appellate review on a *de novo* basis).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of the enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1037, *aff'd*, 345 F.3d 683; *see also BDPCS, Inc. v. Fed. Communications Comm'n*, 351 F.3d 1177, 1183 (D.C. Cir. 2003) ("When an agency offers multiple grounds for a decision, we will affirm the agency so long as any one of the grounds is valid, unless it is demonstrated that the agency would not have acted on that basis if the alternative grounds were unavailable.").

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of M-*, ID# 13823 (AAO Oct. 7, 2015)