



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

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

MATTER OF Q-S-S- INC.

DATE: APR. 20, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a data analytics and software consulting firm, seeks to temporarily employ the Beneficiary as a “business systems analyst” under the H-1B nonimmigrant classification for specialty occupations. See Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director, California Service Center, denied the petition. The Director concluded that the Petitioner did not demonstrate that (1) it will have the requisite employer-employee relationship with the Beneficiary, and (2) the proffered position qualifies as a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director erred in finding that the Petitioner will not have a valid employer-employee relationship with the Beneficiary and that the evidence demonstrates that the proffered position is a specialty occupation.

Upon *de novo* review, we will dismiss the appeal.

I. SPECIALTY OCCUPATION

We will first address the Director’s finding that the evidence of record is insufficient to establish that the proffered position qualifies as a specialty occupation.

A. Law

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and

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- (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) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

- (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.

8 C.F.R. § 214.2(h)(4)(iii)(A). U.S. Citizenship and Immigration Services (USCIS) has consistently interpreted 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 proposed 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"); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

B. Proffered Position

The Petitioner claims in the Labor Condition Application that the proffered position corresponds to Standard Occupational Classification (SOC) code and title 15-1121, Computer Systems Analyst, from the Occupational Information Network (O*NET).

In its support letter, the Petitioner provided the following description of the duties of the proffered position (verbatim):

- Analyze and evaluate clients existing software and database management systems and information technology needs.(approximately 10% of daily work time);
- Design and Develop a high performing [REDACTED] platform team responsible for configuration, customizations, release planning and deployment using EDI, X12, Sterling Integrator, Websphere Transformation extender, XML,

XSLT, Hibernate, Javascript, SQL, PL/SQL, ODBC, JDBC, Web Services, and Oracle Applications.

- Work on client application for EDI systems that use data integration software.
- Identify and configure the overall supplier and consignee on boarding process, drug safety and CRO customizations development for production and non-production global deployments of product based applications and operational activities.
- Identification of application interdependencies, configuration of staging/performance environments, risk mitigation, creation of process artifacts and documentation.
- Analyze trading software code; Initiating changes and improvements to real time software and systems for market place analysis.
- Primary liaison to various Client teams like Client Launch Team, Products.
- Ensure availability and scalability of deployment and QA environments for various projects.
- Management escalation point for customization requirements, environment and related issues occurring in all environments (production, QA, Development)
- Advocate new tools and processes to continuously improve Trading partner on boarding activities.
- Designing software to meet clients' needs (Approximately 15% of work time)
- Develop software programs, unit test, and errors resolution (approximately 30% of work time)
- Generating Daily/Weekly/Monthly reports for management (approximately 10% of work time)
- Creating and maintaining relational database management system in a client/server environment using Oracle and other database design (approximately 10% of work time)
- Validating, Calculating, coding, testing and updating data (approximately 10% of work time).
- Design Web application and develop use case diagrams, class and sequence diagrams for the application.
- Evaluate user request for new or modified computer systems for cost effectiveness and clarify program objectives using optimization analysis (Operational research) (approximately 15% of work time)
- Daily error and Abort Management
- Create test data in the tables and write SQL queries and manipulate tables to execute test cases.
- Write and modify required SQL validation scripts to validate the outputs.
- Log Issues in silk central issue manager and assign severity to them and link Issues to test cases and test cases to requirements.
- Prepare Test Summary reports end of each iteration and communicate the status of testing within the project team and management.

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- Design of Test scripts based on the System requirements from Business Analysts and the development teams.

With respect with the educational requirement of the proffered position, the Petitioner stated, "This position requires minimum of US Bachelor's degree or Equivalent Degree in Science or Engineering" Elsewhere in the same letter, the Petitioner stated that the position requires, "a minimum of a Bachelor's degree in Computer Science or Computer Engineering or Computer application, or Engineering related discipline with at least 2 years of related experience."

A document headed, "Itinerary of Services" provides the following duty description (verbatim):

- Analyze and develop technical specification and software code for [REDACTED] and Data Integration software applications using EDI, X12, Sterling Integrator, BPML, Database Interface Designer, Resource Registry, Type Designer, Type Tree Maker, Launcher Administration, Launcher Monitor, Management Console, Command Server, Snapshot Viewer, IKEYMAN, Sybase ECmap, Open SSL, Sterling Integrator, IBM Gentran Integration Suite, Sterling File Gateway, XML, XSLT, JavaScript, SQL, PL/SQL, ODBC, JDBC and Web Services
- Participate in the configuration, mapping setup, optimization, testing process, through test review and analysis, test witnessing, and certification of data warehousing and integration applications;
- Design, Configure, Test and Implement Logistics software applications;
- Validate data retrieval, and business reporting software code;
- Perform data transformations, data cleansing, data loading and application Data reconciliation procedures for various client projects using Oracle, Microsoft SQL Server, T-SQL, PL/SQL, Oracle, Java, JAX-WS, Unix, FTP, SFTP, HTTP, AS2, VAN Work with detailed specifications, designs, code, test plans, test cases and test scripts;
- Review, test, implement, and analyze Data Transformation & Integration test plans.

That document further states (verbatim):

[The Beneficiary] will work at our client's location [REDACTED] and will continue to work on the same project, performing the same job duties, at the same location for a period of three years as stated on form I-129 for a period ending in 8/30/2018.

[The Beneficiary] reports directly to [REDACTED] as his immediate supervisor.

Another document with the title, "[The Petitioner's] Right of Control Over [the Beneficiary]," which was signed by both the Beneficiary and [REDACTED] who is identified as the Petitioner's Manager

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– Human Resources, states, “[The Petitioner’s] supervisor, to whom [the Beneficiary] will report, is named [REDACTED]”

The Petitioner provided a Master Services Agreement (MSA), executed by the Petitioner and [REDACTED] on November 14, 2014, in which they agree that the Petitioner will perform services described in Appendix A. That document further states: [REDACTED] client] shall prepare the entire direction, scope, control and interpretation of any systems work to be performed by [the Petitioner]. [REDACTED] client] shall provide the required facilities and services necessary for the successful completion of the project.”

Appendix A is a purchase order in which the Petitioner agrees to provide the Beneficiary to [REDACTED] for a period of “6 Months +” beginning on November 24, 2014. That document was signed by the Petitioner and [REDACTED] on November 14, 2014. It states that the Beneficiary would work at [REDACTED] Illinois location as an [REDACTED] systems analyst.

A flow chart headed, “Petitioner/Client Chart” indicates that the Petitioner will provide the Beneficiary to [REDACTED] which will provide him directly to [REDACTED]

In response to the Director’s request for evidence (RFE), the Petitioner provided additional evidence, including vacancy announcements placed by other companies for various systems analyst positions.

The Petitioner submitted a letter from [REDACTED] who identifies himself as “Business Head” at [REDACTED]. That letter states that [REDACTED] will supervise the Beneficiary’s work. The submitted organizational chart shows that [REDACTED] is the Petitioner’s vice president and [REDACTED] is its administrator.

The Petitioner also submitted a letter from [REDACTED] who identifies himself as “Mgr, B2B Integration” for [REDACTED]. That letter states that the Beneficiary is currently working at [REDACTED] Illinois location and will continue to work there “for what we anticipate to be an extended service engagement.” It states that the Beneficiary was provided to [REDACTED] by [REDACTED], “through [REDACTED]. With respect to the educational requirement for the position, the letter states that [REDACTED] required [REDACTED] to “staff the project with a professional who holds at least a U.S. four-year bachelor’s degree, or its educational/experiential equivalent, in a relevant specialty occupation field.”

The Director denied the visa petition on August 3, 2015. On appeal, the Petitioner provided, *inter alia*, a brief, asking for a decision on the record, which it states amply supports approval of the visa petition.

C. Analysis

A baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position

Turning to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), we will first discuss the record of proceedings in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

As was noted above, the Petitioner claims in the LCA that the proffered position corresponds to SOC code and title 15-1121, Computer Systems Analysts, from O*NET. The LCA further states that the proffered position is a wage Level I, entry-level, position.

We recognize the *Handbook*, cited by the Petitioner, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹ The *Handbook* states the following about the educational requirements of Computer Systems Analyst positions:

Most computer systems analysts have a bachelor's degree in a computer-related field. Because these analysts also are heavily involved in the business side of a company, it may be helpful to take business courses or major in management information systems.

Some employers prefer applicants who have a master's degree in business administration (MBA) with a concentration in information systems. For more technically complex jobs, a master's degree in computer science may be more appropriate.

Although many computer systems analysts have technical degrees, such a degree is not always a requirement. Many analysts have liberal arts degrees and have gained programming or technical expertise elsewhere.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Computer Systems Analysts," <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-4> (last visited Apr. 15, 2016).

The *Handbook* makes clear that computer systems analyst positions do not, as a category, require a minimum of a bachelor's degree or the equivalent, as it indicates that many systems analysts have a liberal arts degree and programming knowledge, rather than a degree in a specific specialty directly related to systems analysis.

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2016 – 2017 edition available online.

When reviewing the *Handbook*, it also must be noted that the Petitioner designated the proffered position as a Level I (entry level) position on the LCA. The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is described as follows:

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 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. In accordance with the relevant DOL explanatory information on wage levels, this 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. As noted above, according to DOL guidance, a statement that the job offer is for a research fellow, worker in training or an internship is indicative that a Level I wage should be considered.

When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the Petitioner to provide persuasive evidence that the proffered position more likely than not satisfies this or one of the other three criteria, notwithstanding the absence of the *Handbook's* support on the issue. In such cases, it is the Petitioner's responsibility to provide probative evidence (e.g., documentation from other objective, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation.

However, the record of proceedings does not contain sufficient persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion

within the occupational category of computer systems analyst establishes the proffered position as, in the words of this criterion, a “particular position” for which “[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry.”

Further, we find that, to the extent that they are described in the record of proceedings, the numerous duties that the Petitioner ascribes to the proffered position indicate a need for a range of technical knowledge in the computer/IT field, but do not establish any particular level of formal, postsecondary education leading to a bachelor’s or higher degree in a specific specialty as minimally necessary to attain such knowledge.

For the reasons explained above, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

*The requirement of a baccalaureate or higher degree in a specific specialty,
or its equivalent, is common to the industry in parallel
positions among similar organizations*

Next, we will review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent, is common for positions that are: (1) in the petitioner’s industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms “routinely employ and recruit only degreed individuals.” See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Here and as already discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative source) reports an industry-wide requirement for at least a bachelor’s degree in a specific specialty or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry’s professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner’s industry attesting that such firms “routinely employ and recruit only degreed individuals.”

As was noted above, the Petitioner did provide vacancy announcements placed by other companies to satisfy this criterion.

The Internet vacancy announcements submitted by the Petitioner do not establish that the degree requirement is common to the industry in parallel positions among similar organizations. First, we note that the Petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers' recruiting history for the type of jobs advertised. Further, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices.

Second, upon review of the advertisements, they do not provide sufficient information about the advertising organizations to establish that they are similar to the Petitioner. Without such evidence, these advertisements are generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the Petitioner.

Moreover, some of the vacancy announcements provided are for positions entitled, Senior Business Systems Analyst and IT Sr. Business Systems Analyst. The designation of a position as "Senior" suggests that it is not an entry-level position for an employee with only basic understanding of the occupation, to perform tasks that require limited, if any, exercise of judgment. As the Petitioner has designated the proffered position as wage Level I, those positions do not appear to be positions parallel to the proffered position.

Finally, even if all of the vacancy announcements were for parallel positions with organizations similar to the Petitioner and in the Petitioner's industry and required a minimum of a bachelor's degree in a specific specialty or its equivalent, the Petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from a few vacancy announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.²

Thus, the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to parallel positions with organizations that are in the Petitioner's industry and otherwise similar to the Petitioner. The Petitioner has not, therefore, satisfied the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The particular position is so complex or unique that it can be performed only by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent

The evidence of record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so

² USCIS "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." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). As just discussed, the Petitioner has not established the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the Petitioner still would not have demonstrated what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

complex or unique that it can be performed only by an individual with a degree.” A review of the record of proceedings indicates that the Petitioner has not credibly demonstrated that the duties the Beneficiary will be responsible for or perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor’s degree in a specific specialty, or its equivalent. Even when considering the Petitioner’s general descriptions of the proffered position’s duties, the evidence of record does not establish why a few related courses or industry experience alone is insufficient preparation for the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the position, the Petitioner has not demonstrated how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position. The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor’s degree in a specific specialty, or its equivalent.

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook*’s information to the effect that there is a spectrum of degrees acceptable for such positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor’s degree in a specific specialty, or its equivalent. As the Petitioner did not demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the Petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The employer normally requires a baccalaureate or higher degree in a specific specialty, or its equivalent, for the position

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor’s degree in a specific specialty, or its equivalent, for the position. To this end, we usually review a petitioner’s past recruiting and hiring practices, as well as information regarding employees who previously held the position.

The Petitioner’s organizational chart shows that the Petitioner presently employs several systems analysts. However, the record does not reveal what their educational qualifications are. The Petitioner has not submitted evidence under this criterion.

While a petitioner may believe or otherwise assert that a proffered position requires a specific degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner’s claimed self-imposed requirements, then any individual with a bachelor’s degree could be brought to the United States to

perform any occupation as long as the petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The evidence submitted does not demonstrate that the Petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position, and does not, therefore, satisfy the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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 in a specific specialty, or its equivalent

Finally, we will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the evidence of record establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. In the instant case, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. We again refer to our earlier comments and findings with regard to the implication of the Petitioner's designation of the proffered position in the LCA as a Level I (the lowest of four assignable levels) wage. That is, the Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category, and hence one not likely distinguishable by relatively specialized and complex duties.³ Upon review of the totality of the record, the Petitioner has not established that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

For the reasons discussed above, the evidence of record does not satisfy the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 particularly complex, specialized, or unique compared to 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.

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

II. EMPLOYER-EMPLOYEE RELATIONSHIP

We will briefly address the issue of whether or not the Petitioner qualifies as an H-1B employer. The United States Supreme Court 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 *Cnty. 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)).

As such, while social security contributions, worker’s compensation contributions, unemployment insurance contributions, federal and state income tax withholdings, and other benefits are still relevant factors in determining who will control the Beneficiary, other incidents of the relationship, e.g., who will oversee and direct the work of the Beneficiary, who will provide the instrumentalities and tools, where will the work be located, and who has the right or ability to affect the projects to which the Beneficiary is assigned, must also be assessed and weighed in order to make a determination as to who will be the Beneficiary’s employer.

In the provided itinerary, the Petitioner stated that [REDACTED] who is identified in the organizational chart as the Petitioner’s vice president, would supervise the Beneficiary. In another document, submitted contemporaneously, the Petitioner stated that the Beneficiary would be supervised by [REDACTED], who is identified on that document as the Petitioner’s Manager – Human Resources, and on the organizational chart as “Administration.” The organizational chart

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indicates that [REDACTED] identified only as "Software Engineering," supervises the Beneficiary.

Doubt 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). It is incumbent upon the Petitioner to resolve any inconsistencies in the record with independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* At 591-592.

In the Itinerary of Services, the Petitioner stated, "[The Beneficiary] will work at our client's [REDACTED] Illinois location]," thus representing that it was providing the Beneficiary directly to its client, [REDACTED]. In a chart and in its support letter, submitted contemporaneously with the itinerary, the Petitioner indicated that the Petitioner would provide the Beneficiary to [REDACTED] an intervening contractor. The July 17, 2015, letter from [REDACTED] however, states that [REDACTED] would provide the Beneficiary to [REDACTED].

Further, the MSA states that [REDACTED] client] shall prepare the entire direction, scope, control and interpretation of any systems work to be performed by [the Petitioner]," and [REDACTED] client] shall provide the required facilities and services necessary for the successful completion of the project." Such statements indicate that [REDACTED] will oversee and direct the work of the Beneficiary.

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." Again, while social security contributions, worker's compensation contributions, unemployment insurance contributions, federal and state income tax withholdings, and other benefits are still relevant factors in determining who will control a beneficiary, other incidents of the relationship, e.g., who will oversee and direct the work of the beneficiary, who will provide the instrumentalities and tools, where will the work be located, and who has the right or ability to affect the projects to which the alien beneficiary is assigned, must also be assessed and weighed in order to make a determination as to who will be the beneficiary's employer. Merely claiming in its letters that the Petitioner exercises complete control over the Beneficiary, which assertion is rendered unlikely by other evidence, does not establish eligibility in this matter. Without full disclosure of all of the relevant factors and the inconsistencies present in the evidence of record, we are unable to find that the requisite employer-employee relationship will exist between the Petitioner and the Beneficiary.

The evidence, therefore, is insufficient to establish that the Petitioner qualifies as a United States employer, as defined by 8 C.F.R. § 214.2(h)(4)(ii). The appeal will be dismissed and the petition denied for this additional reason.

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III. CONCLUSION

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 Q-S-S- Inc.*, ID# 16181 (AAO Apr. 20, 2016)