



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

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

MATTER OF T-S- INC

DATE: JAN. 4, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an information technology services firm, seeks to employ the Beneficiary as a "Computer Programmer" under the H-1B nonimmigrant classification. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. ISSUES

The Director denied the petition, finding that the evidence of record does not establish that the Petitioner has specialty occupation work available for the Beneficiary, and thus, that the proffered position qualifies as a specialty occupation. Beyond the decision of the Director, we will also address the issue of whether the Petitioner qualifies as a United States employer with an employer-employee relationship with the Beneficiary.

II. SPECIALTY OCCUPATION

A. Legal Framework

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. Fed. 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 individuals 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 individual, 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 or 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.

We note that, as recognized by the court in *Defensor*, 201 F.3d at 387-88, where the work is to be performed for entities other than the petitioner, evidence of the client companies’ job requirements is critical. *See Defensor v. Meissner*, 201 F.3d at 387-88. The court held that the former Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary’s services. *Id.* at 384. Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

B. The Proffered Position

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a computer programmer position, and that it corresponds to Standard Occupational Classification (SOC) code and title 15-1131, “Computer Programmers,” from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I (entry) position.

In a letter dated March 31, 2014, the Petitioner provided an overview of the proffered position and its constituent duties, stating that the Beneficiary will work on “specific programming projects” that will involve duties including “analyzing and gathering project requirements, developing and designing business programs customized to meet specific needs.” The Petitioner also stated that the Beneficiary’s duties will include “writing, updating and maintaining computer programs or latest software packages,” “analyz[ing], review[ing], and rewrit[ing] software programs,” “conducting trial runs of programs and software applications,” “revis[ing], repair[ing], fine tun[ing] the expansion of existing programs,” and “perform[ing] systems analysis and programming tasks to maintain and control the use of computer systems software as a computer programmer.” With respect to the

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minimum educational requirement for the proffered position, the Petitioner stated that “[t]he usual minimum requirement for performance of the job duties of a Computer Programmer in our company, as with any other similar organization, is a Bachelor’s degree in Science, computer science, computer engineering, electronics, engineering, physical sciences or equivalent.”

The Petitioner indicated that the Beneficiary will be exclusively assigned to work on its in-house project, [REDACTED] during the entire validity period requested. The Petitioner submitted a series of letters describing the Beneficiary’s responsibilities during different phases of the [REDACTED] project. The first in this series of letters describes her responsibilities during the “Product Design (Core Product)” phase of the project, which would last from October 6, 2014, to November 5, 2015,¹ as follows (verbatim):

- Will be responsible for planning, Analyzing and execution of [REDACTED] and environments.
- Responsible in Standardize business processes and deliver end to end business process model; Facilitate workshops, present client reports, business cases and other deliverables ensuring clarity around process reorganization and ownership are effectively communicated and trained in conformance to program objective
- Gather client’s key business drivers & document Business, Functional/non-functional requirements, Data flow models, Use Cases, and systems with various kinds of Content Management needs.
- Perform rigorous unit and system testing before releasing application to the end users.
- Will perform end-to-end testing, which includes Functional, Regression and Retesting.
- Involve in integration testing, UAT, **data migration and Product Rollout and support**
- **Integration of data model updates into code base**
- Mentor junior Analyst
- Create and execute Unit test plans
- Defect management and resolution –
- Manage a variety of programming and design staff according to project(s) scheduled.

The second in this series of documents describes the Beneficiary’s responsibilities during the “Software Analysis” phase of the project, which would last from November 5, 2014, to December 4, 2014, as follows (verbatim):

In addition to the above-mentioned duties, candidate will identify problems, study existing systems to evaluate effectiveness and develop new systems to improve

¹ Based on other information in the record, we believe the Petitioner may have meant to state that the product design phase would end on November 5, 2014, not November 5, 2015.

production of workflow Analyst will assist in developing application software on specific needs. He will provide technical evaluation of new products, assess time estimation and provide technical support within the organization

The third in this series of documents describes the Beneficiary's responsibilities during the "Technical Design/Implementation/Testing" phases of the project, which would last from December 5, 2014, to March 30, 2015, as follows:

Analyst job duties shall include analyzing and gathering project requirements, developing and designing business programs customized to meet specific needs, training users on the use of software applications and providing trouble shooting and debugging support. It is thus her responsibilities and the time spent on the same would be as under:

- Gather, analyze the business requirements from end-users
- Lead and co-ordinate with teams for project deliverables
- Design, develop and integrate the Business Process Management and Enterprise Application module
- Provide subject matter expertise on workflow and database products
- Provide dynamic reporting capability
- Resolve technical issues in the systems by research and investigation.
- Standardize and automate the build process
- Using Design Methodologies & Tools:

The fourth in this series of documents describes the Beneficiary's responsibilities during the "Mobile Add-On/Release 1.0/2.0 and 3.0" phases of the project, which would last from March 31, 2015, to September 29, 2017, as follows (verbatim):

- Beneficiary will enter program codes into the computer systems and enter commands into the computer to run and test the programs. He will replace, delete or modify codes to correct errors. He will provide technical support, solve problems and troubleshoot systems.
- He will specialize in developing programs for specific applications to certain industries. He will be involved in systems integration, debugging, troubleshooting and installation. Beneficiary will offer solutions for various software and hardware problems and compatibility of various systems.
- The Beneficiary will also be responsible for updating existing software systems and updating management on new software that is developed. Beneficiary will maintain records to document various steps in the programming process.
- Involve in creating sequence diagrams as part of design using Visio.
- Develop marketing strategies, operating model and lead business transformation by standardizing business processes, restructuring organization, enabling Culture/Behavioral change, effectively communicating policies, processes and procedures in alignment with strategic direction and business plans

(b)(6)

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- Increase sales turnover by 30% by identifying commercial opportunities and expanded market share, through the management of various organizational, operational and technology changes
- Improve management efficiency by 10% by integrating information systems for accounts and HR management enabling staff to focus on critical value added activities
- 15% reduction in inventory costs, and improved customer retention, by modifying proprietary inventory management database to reflect product-brand sales
- Analyze business's core and support processes to standardize processes by reducing process variance and eliminating waste.
- Develop technology roadmap, facilitate IT system procurement and implementation by collaborating with finance team to negotiate deals resulting in an integrated technology infrastructure

In response to the RFE, the Petitioner confirmed that it has specialty occupation work available for the Beneficiary to provide her services on its in-house project, [REDACTED] at the Petitioner's work location for the duration of her employment. The Petitioner provided another description of the proffered duties, along with percentages of time spent on each duty, as summarized below:

- Taking business and functional specifications as input and developing application program code (25%)
- Fixing [REDACTED] bugs as reported by the users, modifying code, and testing fixes (20%)
- Extending current application code to implement the new enhancements under review (10%)
- Generate audit trail reports of user/license information for the Accounts Department, and review, fine tune, and optimize existing code for performance and efficiency (20%)
- Implement code to extract and migrate data from a variety of database platforms and raw data formats (15%)
- Analyze and write SQL program scripts to automate system maintenance related tasks (10%).

C. Analysis

We agree with the Director that the evidence of record does not establish that a work assignment exists for the Beneficiary, and thus, that the duties of the proffered position are in fact associated with a specialty occupation. That is, the Petitioner has not submitted sufficient, credible evidence to establish that the Beneficiary will be exclusively assigned to its in-house [REDACTED] project, as claimed.

As evident from the job descriptions quoted above, the record of proceeding presents the duties comprising the proffered position in terms of relatively abstract and generalized functions. The job

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descriptions lack sufficient detail and concrete explanation to establish the substantive nature of the work within the context of the [REDACTED] project, and the associated applications of specialized knowledge that their actual performance would require. For example, the Petitioner stated that the Beneficiary will “assist in developing application software on specific needs,” and “will provide technical evaluation of new products, assess time estimation and provide technical support within the organization.” The Petitioner did not clarify what it meant by the broad terms “assist” and “provide technical support,” and how these duties specifically relate to the [REDACTED] project. As another example, the Petitioner stated that the Beneficiary will “[d]esign, develop and integrate the Business Process Management and Enterprise Application module.” The Petitioner did not further explain what specific tasks are involved, what these Business Process Management and Enterprise Application modules are, and how they relate to [REDACTED]. Notably, there are no specific references to the Business Process Management and Enterprise Application modules within the [REDACTED] documents.

Despite the Petitioner’s assertion that the Beneficiary will be exclusively assigned to its in-house [REDACTED] project, the Petitioner stated in its March 31, 2014, letter that the Beneficiary will be “developing and designing business *programs* customized to meet specific needs (emphasis added).” The Petitioner also stated that the Beneficiary’s duties will include “writing, updating and maintaining computer *programs* or latest software *packages*,” “analyz[ing], review[ing], and rewrit[ing] software *programs*,” “conducting trial runs of *programs* and software *applications*,” and “revis[ing], repair[ing], fine tun[ing] the expansion of existing *programs* (plural emphasized).” In other documentation, the Petitioner described the proffered duties as including work on unidentified programs, applications, and systems in the plural, such as “developing *programs* for specific *applications* to certain industries” and “study[ing] existing *systems* to evaluate effectiveness and develop new *systems* (emphasis added).” Here, however, the Petitioner has identified only one product - the [REDACTED] mobile application - that is being developed through the [REDACTED] project to which the Beneficiary will be exclusively assigned. The Petitioner has not specified what other projects, programs, software packages, applications, and systems the Beneficiary will work on, and how they specifically relate to [REDACTED] project. Further, the Petitioner has not articulated the nature of the Beneficiary’s work on *existing* systems and programs, considering that the [REDACTED] project seeks to develop a *new* mobile application.

Moreover, the Petitioner repeatedly referenced unspecified clients and end-users to whom the Beneficiary will provide her services. To illustrate, some of the proffered duties include “[g]ather client’s key business drivers . . . [and] requirements,” and “[g]ather, analyze the business requirements from end-users.” The Petitioner has not explained who these clients and end-users are

² Nor has the Petitioner adequately explained what bodies of knowledge are needed for the Beneficiary to perform these and other stated duties. The Petitioner vaguely stated that the Beneficiary will “apply the theories and principles of computer science and electronic engineering,” but did not provide additional details to explain these statements. Furthermore, the Petitioner indicated that a bachelor’s degree in “Science” would be a sufficient qualification for the proffered position. However, a degree in “Science” could include a diverse array of subjects - such as geology, meteorology, and zoology - that are not directly related to computer science and electronic engineering. As such, the Petitioner’s statements regarding the bodies of knowledge needed for the proffered position are not sufficient.

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and why there would be client and end-user requirements, particularly during the initial design and development stages of an in-house project. Similarly, the Petitioner listed one of the proffered duties as “[s]tandardize business processes and deliver end to end business process model; Facilitate workshops, present client reports, business cases and other deliverables.” The Petitioner has not explained why there would be client workshops and reports in the beginning product design stage of an in-house project.

In fact, there are several job duties which are clearly not limited to the [REDACTED] project, such as “[i]mprove management efficiency by 10% by integrating information systems for accounts and HR management enabling staff to focus on critical value added activities.” Other similar duties include “15% reduction in inventory costs, and improved customer retention, by modifying proprietary inventory management database to reflect product-brand sales,” and “facilitat[ing] IT system procurement and implementation by collaborating with finance team to negotiate deals.” These duties involving the Petitioner’s systems for accounts, HR management, and inventory appear outside of the scope of the [REDACTED] project, which the Petitioner has described as the development of a mobile application related to home appliances automation. These aspects of the Petitioner’s descriptions undermine the Petitioner’s assertion that the Beneficiary will be exclusively assigned to the [REDACTED] project, and raise additional questions as to the actual nature of the proffered position.³

Another problematic aspect of the Petitioner’s job descriptions is that many of the proffered duties appear inconsistent with the wage level selected here. As previously discussed, 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.⁴ However, the

³ We also note that the Petitioner’s job descriptions of the proffered position in its RFE response did not account for these and several other duties initially listed. The Petitioner did not provide an explanation reconciling its different job descriptions. It is incumbent upon the Petitioner to resolve inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As such, our analysis is based upon all the job duties as initially described.

⁴ A Level I wage rate is described in DOL’s “Prevailing Wage Determination Policy Guidance” 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.

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Petitioner listed several duties indicating that the Beneficiary will have relatively high-level responsibilities over others in the company, such as “[m]anage a variety of programming and design staff,” “[l]ead and co-ordinate with teams for project deliverables,” “mentor junior Analyst,” and “lead business transformation by . . . restructuring organization.” Moreover, the Petitioner repeatedly emphasizes the “advanced, complex nature of the position’s duties.” The Petitioner’s designation of the proffered position as a Level I, entry-level position is inconsistent with these and other stated duties, and raises additional questions regarding the substantive nature of the proffered position.⁵

In addition to being inconsistent with the Level I wage rate, many of the proffered duties are also outside of the scope of general duties for the SOC code and occupation title 15-1131, Computer Programmers. More specifically, the Petitioner stated that the Beneficiary will “[d]evelop marketing strategies, operating model and lead business transformation by standardizing business processes, restructuring organization, enabling Culture/Behavioral change, effectively communicating policies, processes and procedures in alignment with strategic direction and business plans.” The Petitioner also stated that the Beneficiary will “[i]ncrease sales turnover by 30% by identifying commercial opportunities and expanded market share, through the management of various organizational, operational and technology changes.” The computer programmer occupational classification does not, however, include any sales, marketing, or management-type duties.⁶ Not only are these duties outside of the computer programmers occupational classification, but the Petitioner has not explained how they specifically relate to the [REDACTED] project.⁷

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, would perform routine tasks that require limited (if any) exercise of judgment, and would be closely supervised and monitored.

⁵ 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, a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I, 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 relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

⁶ See O*NET Details Report, 15-1131, Computer Programmers, <http://www.onetonline.org/link/details/15-1131.00> (last visited Dec. 9, 2015).

⁷ With respect to the LCA, DOL provides clear guidance for selecting the most relevant O*NET occupational code classification.⁷ The “Prevailing Wage Determination Policy Guidance” states the following:

In determining the *nature of the job offer*, the first order is to review the requirements of the employer’s job offer and determine the appropriate occupational classification. The O*NET description that corresponds to the employer’s job offer shall be used to identify the appropriate occupational classification If the employer’s job opportunity has worker requirements described in a combination of O*NET occupations, the NPWHC should default directly to the relevant O*NET-SOC occupational code for the highest paying occupation. For example, if the employer’s job offer is for an engineer-pilot, the NPWHC shall use the education, skill and experience levels for the higher paying occupation when making the wage level determination.

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The Petitioner submitted a document entitled ‘ [REDACTED] and a technical document entitled ‘ [REDACTED]’⁸ However, it is not evident how these documents constitute evidence of the Beneficiary’s assignment. Neither document specifically references the Beneficiary. While both documents indicate that several programmer analyst positions (among other positions) are involved in the project, neither document details the specific tasks to be performed by each programmer analyst, or by the programmer analyst position generally.⁹

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.

Here, however, the Petitioner has not identified which other occupational classifications are applicable to the proffered position. Therefore, we are unable to determine whether the Petitioner has selected the most relevant O*NET occupational code, i.e., the code for the highest-paying occupation.

Moreover, where a petitioner seeks to employ a beneficiary in two or more distinct occupations, the petitioner should file separate petitions requesting concurrent, part-time employment for each distinct occupation. While it is not the case here, if a petitioner does not file separate petitions and if only one aspect of a combined position qualifies as a specialty occupation, USCIS would be required to deny the entire petition as the pertinent regulations do not permit the partial approval of only a portion of a proffered position and/or the limiting of the approval of a petition to perform only certain duties. See generally 8 C.F.R. § 214.2(h). Furthermore, and as is the case here, a petitioner would need to ensure that it separately meets all requirements relevant to each occupation and the payment of wages commensurate with the higher paying occupation. See generally 8 C.F.R. § 214.2(h); 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, filing separate petitions would help ensure that a petitioner submits the requisite evidence pertinent to each occupation and would help eliminate confusion with regard to the nature of the position being offered.

⁸ These documents vary significantly in their descriptions of major aspects of the project, such as the milestones, timelines, and resources dedicated to the project. For instance, the first document, ‘ [REDACTED] lists the milestones as: (1) Product Design (10/5/14 to 11/5/14); (2) Software Analysis (11/5/14 to 12/4/14); (3) Technical design (12/5/14 to 1/15/15); (4) Implementation (1/15/15 to 3/15/15); (5) Unit Testing (2/18/15 to 3/16/15); (6) Beta Testing (3/15/15 to 3/30/15); (7) Release 1 (3/31/15 to 6/29/15); (8) Mobile Add-on release (6/30/15 to 3/30/16); (9) Release 2 (3/31/16 to 3/30/17); and (10) Release 3 (3/31/17 to 9/29/17). It lists the required personnel as consisting of 10 programmer analysts, 6 systems analysts, 3 database administrators, 7 application engineers, and 4 support engineers (total of 30 positions).

The second document, [REDACTED] divides the project milestones into four levels, each of which contains different timelines for planning, requirements gathering, design, development, integration and testing, and deployment. In addition, it lists the required personnel as consisting of 22 programmer analysts, 1 systems analyst, 2 database administrators, 1 quality analyst, and 1 human resource person (total of 27 positions).

While understandably some plans may change over time, the Petitioner is obligated to explain these changes, especially if the changes are significant as in this case. Again, it is incumbent upon the Petitioner to resolve inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92.

⁹ Again, we note that one document states that 10 programmer analysts are needed, while the other states that 22 are needed.

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The Petitioner also submitted a document entitled [REDACTED] [REDACTED]” Like the two documents referenced above, this document also does not specifically mention the Beneficiary. This document broadly depicts the “Proposed Team Structure” as consisting of the following teams or positions: Project Executive Management; Project Manager; Business Analyst; Quality Assurance Team; Development Team; and Database Team. It is not clear which of the above teams or positions include the proffered position, as the duties of the proffered position confusingly overlap with almost all of the roles and responsibilities for the above-listed teams or positions.¹⁰ These overlapping duties raise additional questions regarding the actual role of the proffered position in the [REDACTED] project.

The Petitioner asserted that the Beneficiary will be directly supervised by a “Project Manager of Petitioner in a senior supervisory capacity,” and that “such supervision is at Petitioner’s work location.” The Petitioner’s Offer Letter to the Beneficiary specifically states that she is “required to report to [REDACTED] on October 2014 at [the Petitioner’s] corporate office at [REDACTED]

The Petitioner’s organizational chart submitted on appeal also identifies [REDACTED] as a “Project Manager” who oversees numerous technical positions, including twenty computer programmers to-be-hired.¹¹ However, according to the Petitioner’s list of employees and their present work locations pursuant to their LCA, [REDACTED] is a “Systems Analyst” working at [REDACTED] New Jersey.¹² The Petitioner has not explained how [REDACTED] could be the Beneficiary’s direct supervisor on the Petitioner’s in-house project when [REDACTED] is not actually working at the Petitioner’s worksite. Again, it is 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. 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. *Id.*

Furthermore, the evidence does not demonstrate that the Petitioner has sufficient work space to support the employment of the Beneficiary, as well as the entire “team” for the [REDACTED] project, at the Petitioner’s premises at [REDACTED] New

¹⁰ For instance, the Project Manager is “[r]esponsible for the successful planning executions, monitoring, control and closure of a project [*sic*],” while the Beneficiary will also be “responsible for planning, [a]nalyzing and execution of [REDACTED] and environments.” The Business Analyst is to “[a]ct a liaison between business users and technical team developing [REDACTED] [*sic*].” The Beneficiary will also be responsible for a variety of duties related to gathering and analyzing requirements from business users (i.e., clients and end-users) as well as to “[l]ead and co-ordinate with teams for project deliverables.” The Quality Assurance Team is to “[test] the product for bugs, defects and other software issues.” Similarly, the Beneficiary will perform numerous testing functions, such as “rigorous unit and system testing,” “end-to-end testing,” “integration testing,” and “[c]reate and execute Unit test plans.” The Database Team is responsible for “[setting up] the entire database and . . . for its functioning and security.” The Beneficiary will likewise be responsible for a variety of database functions, including “[providing] subject matter expertise on . . . database products.”

¹¹ The Petitioner previously submitted another organizational chart which depicted a significantly different operational structure and which did not identify individual employees.

¹² In another list of employees submitted on appeal, the Petitioner indicated that [REDACTED] joined the company in 2014.

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Jersey. In particular, the Petitioner stated on appeal that its current premises at [REDACTED] are sufficient to accommodate its seven employees currently working on-site, "in addition to conveniently accommodating additional at least seven (7) employees at its work location [*sic*]." The Petitioner also stated on appeal that its current "Lease agreement for the work location . . . can conveniently accommodate more than twenty five (25) employees." However, the evidence of record does not corroborate these assertions, as there is no information in the floorplan or lease specifying the maximum occupancy allowed.¹³ Nevertheless, and more importantly, the petitioner has not explained and documented how its current premises are sufficient to accommodate its seven on-site employees plus the entire [REDACTED] team. As outlined in the evidence of record, the [REDACTED] project will require 27-30 employees, for a total of 34-37 employees on-site. Thus, even if the Petitioner's premises could accommodate more than 25 employees as asserted, it is still not apparent that the Petitioner has sufficient work space for its current on-site employees and the entire [REDACTED] team. The lack of adequate work space leads us to further question the credibility of the Petitioner's descriptions of the Beneficiary's assignment and of the [REDACTED] project overall.¹⁴

Finally, we share the Director's concern that many of the Petitioner's documents contain descriptions, diagrams, and other statements copied verbatim or virtually verbatim from materials created by other individuals or companies. On appeal, the Petitioner asserts that "mere similarity in certain literature of brochures or certain pictorial diagrams in brochures to contents of another product description on web sites do not and cannot affect the veracity and genuine nature of the originality of the product developer/petitioner's concept." However, the Petitioner's assertions are unpersuasive. The unauthorized reproduction of literature created by other individuals or companies undermines the Petitioner's credibility, and precludes us from comprehending the true nature and scope of the [REDACTED] project.¹⁵ It is again emphasized that doubt cast on any aspect of the

¹³ The floorplan of the Petitioner's current premises consists of five individual offices and one general office area of 688 square feet.

¹⁴ The Petitioner also indicated that it can enter into a new lease for additional workspace, as needed, located at [REDACTED] New Jersey. However, the Petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the Petitioner or Beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978).

Even if the Petitioner had entered into the new lease for additional workspace as of the time of filing, the Petitioner still has not explained and documented that this new lease would be sufficient to house the entire [REDACTED] team in addition to the Petitioner's current on-site employees. Both the lease proposal letter and the floorplan of the prospective premises are silent as to the maximum occupancy allowed. The floorplan shows that the proposed premises have 15 individual offices, and two areas of general office space. "[G]oing on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings." *In re Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

¹⁵ For instance, because the Petitioner copied the work of others in its [REDACTED] document, we cannot determine the level of research, planning, and other resources that the Petitioner has actually devoted to [REDACTED]. We also cannot determine which aspects of the document are credible and accurately represent the Petitioner's work, and which do not.

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Petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

For all of the above reasons, we find that the evidence of record does not sufficiently demonstrate that the Beneficiary will be assigned to the [REDACTED] project, as claimed. Moreover, even if it were established that the Beneficiary will be assigned to the [REDACTED] project, the evidence still does not sufficiently describe the duties to be performed by the Beneficiary. Consequently, we find that the evidence of record does not demonstrate the substantive nature of the proffered position and its constituent duties. 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 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 evidence does not satisfy any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

III. EMPLOYER-EMPLOYEE RELATIONSHIP

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

More specifically, the petition cannot be approved because the evidence does not demonstrate that the Petitioner qualifies as a United States employer having an employer-employee relationship with the Beneficiary. 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 her services.¹⁶ Given this specific lack of

Thus, we find that the Petitioner's response to this particular concern of the Director (i.e., the Petitioner's statements and documents focusing on the originality of the Petitioner's product) does not fully address the questions posed by the unauthorized reproduction of materials. As such, we will not further address these aspects of the Petitioner's evidence, including the opinion letter from [REDACTED] and the Petitioner's patent and trademark applications.

¹⁶ We observe that only seven of the Petitioner's current employees work at the Petitioner's worksite. The Petitioner stated that all its other employees "are based at different client locations."

evidence, the Petitioner has not corroborated 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 the requisite 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). Again and as previously discussed, there is insufficient evidence detailing where the Beneficiary will work, the specific projects to be performed by the Beneficiary, or for which company the Beneficiary will ultimately perform these services. Therefore, the petition cannot be approved for this additional reason.

IV. CONCLUSION AND ORDER

As set forth above, we find the evidence of record insufficient to establish that the proffered position qualifies for classification as a specialty occupation. We also find the evidence of record insufficient to demonstrate that the Petitioner qualifies as a United States employer that will have an employer-employee relationship with the Beneficiary. Accordingly, the appeal will be dismissed and the petition denied.¹⁷

We may deny an application or petition that does not comply with the technical requirements of the law even if the Director does not identify all of the grounds for denial in the initial decision. See *Spencer Enters., Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001); see also *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015) (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 Enters., Inc. v. United States*, 229 F. Supp. 2d at 1037; see also *BDPCS, Inc. v. FCC*, 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

¹⁷ As these issues preclude approval of the petition, we will not address any additional deficiencies we have identified on appeal.

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Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013) (citing *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966)). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of T-S- Inc*, ID# 15008 (AAO Jan. 4, 2016)