



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

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

MATTER OF V-I- INC.

DATE: JUNE 1, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a computer company, seeks to temporarily employ the Beneficiary as a “business development manager” 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, Vermont Service Center, denied the petition. The Director concluded that the Petitioner did not establish that the proffered position qualifies as a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the evidence submitted on appeal establishes that the minimum of a bachelor’s degree is required by organizations similar to it for the same position, that it normally requires a bachelor’s degree, and that the proffered duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

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

## I. 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.

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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. The Proffered Position

In the H-1B petition, the Petitioner identified the proffered position as a “business development manager.” The Petitioner indicated that the Beneficiary would work off-site for a hotel located in ██████ New Jersey. The initial record submitted in support of the petition included a work order on the letterhead of ██████ in ██████ New Jersey, identifying the Beneficiary as its business development manager.<sup>1</sup> The initial record also included the required labor condition application (LCA), on which the Petitioner attested that the occupational classification for the position is “Business Operations Specialists, All Other,” corresponding to Standard Occupational Classification code 13-1199 at a Level II wage.

In response to the Director’s request for evidence (RFE), the Petitioner submitted an overview of the occupation of a business development manager and listed a summary of the main duties of a business development manager, as follows:

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<sup>1</sup> The work order identifies ██████ as “[i]ndependently owned and managed by ██████

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- Prospect for potential new clients and turn this into increased business.
- Cold call as appropriate within your market or geographic area to ensure a robust pipeline of opportunities. Meet potential clients by growing, maintaining, and leveraging your network.
- Identify potential clients, and the decision makers within the client organization.
- Research and build relationships with new clients.
- Set up meetings between client decision makers and company's practice leaders/Principals.
- Plan approaches and pitches. Work with team to develop proposals that speaks to the client's needs, concerns, and objective.
- Participate in pricing the solution/service.
- Handle objections by clarifying, emphasizing agreements and working through differences to a positive conclusion. Use a variety of styles to persuade or negotiate appropriately.
- Present an image that mirrors that of the client.

Also in response to the Director's RFE, the Petitioner submitted, *inter alia*, another letter from [REDACTED] stating that the Beneficiary "will work on various projects of [REDACTED] through the vendor [the Petitioner] via contract in the position of Business Development Manager." The letter further states that the Beneficiary "will work on different ongoing projects and will perform the tasks at [REDACTED]. The letter describes the "primary role" of the business development manager as to "prospect for new clients by networking, cold calling, advertising or other means of generating interest from potential clients," and lists the following duties and responsibilities:

Polished communication skills suitable for C level clients

- Sell deals our delivery team can deliver successfully
- Be responsible for 2M+ revenue
- Negotiating agreements with new and existing clients
- Build and maintain relationships with customers
- Tracking your pipeline in Salesforce
- Develop relationships with our main lead channel, account executives at Salesforce
- Be responsive to requests from management
- Know your competition
- Long range vision of developing markets
- Perpetually aware of technology changes and improvements
- Manage involvement of architect resources in our sales funnel.

The Petitioner also submitted a letter describing similar duties for the Beneficiary involving client retention, business development planning, and management and research.

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On appeal, the Petitioner submits a letter from [REDACTED] confirming the Beneficiary's work location at its [REDACTED] in [REDACTED] New Jersey, and providing the following duties for the Beneficiary:

- Work with specific computer systems, such as financial, scientific or engineering and tailor such systems to the needs of the employer.
- Has to coordinate with supervisors to determine company needs and then designing a system to meet those needs.
- Has to prepare cost analyses to assist management in determining the financial feasibility of a system as well as work with project managers to ensure that time lines are met.
- Has to design the software programs for the new system and then translate the designs into various programming languages for the computer to follow.
- Responsible for testing software to ensure there are no problems and debugging programs whenever problems arise.
- Research and build relation between new clients.
- Work with technical staff and other Internal colleagues to meet customer needs.

### C. Analysis

As a preliminary matter, neither the Petitioner nor the claimed end-client in this matter has specified whether the proffered position requires a bachelor's degree in a specific specialty, or its equivalent, to perform the duties of the proffered position.<sup>2</sup> Although on appeal the Petitioner references a requirement of a bachelor's degree to perform the job duties, the Petitioner does not specify that the bachelor's degree must be in a specific field. We thus find, based on the evidence in the record, that the minimum entry requirement for this position is a general bachelor's degree.

The Petitioner's minimum entry requirement for the proffered position of a general bachelor's degree is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. There must be a close correlation between the required specialized studies and the position; thus, the mere requirement of a degree, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility."). Thus, while a general-purpose bachelor's degree may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty

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<sup>2</sup> 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.

occupation.<sup>3</sup> *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. The Director's decision must therefore be affirmed and the appeal dismissed on this basis alone.

In addition, we cannot find that the proffered position qualifies as a specialty occupation, as the Petitioner has not adequately established the substantive nature of the proffered position and its associated job duties. For instance, the initial record in this matter did not include any description of the Beneficiary's proposed duties as a business development manager. In response to the Director's RFE, the Petitioner submitted a vague overview of the duties of a generic business development manager. These generalized job duties do not specifically relate any job duties for the Beneficiary in the context of the claimed end-client's hotel operations. The claimed end-client letter states that the Beneficiary's "primary role" would be to "prospect for new clients by networking, cold calling, advertising or other means of generating interest from potential clients." The letter further lists job duties such as "[s]ell deals our delivery team can deliver successfully" and "[n]egotiating agreements with new and existing clients." However, there is no further explanation of what types of services, products, or agreements the Beneficiary would sell on behalf of the hotel.

On appeal, the Petitioner submits a revised description of the Beneficiary's proposed duties that contains, for the first time, express software design, programming, and testing duties for him. For example, the Beneficiary's proposed duties provided on appeal include "design the software programs for the new system and then translate the designs into various programming languages" and "testing software to ensure there are no problems and debugging programs whenever problems arise." The Petitioner has not explained how these computer-related duties and responsibilities provided on appeal correspond to the duties of the position as previously stated.<sup>4</sup> Nor has the Petitioner explained how these computer-related duties correspond to the "Business Operations Specialists, All Other" occupational classification selected here. Subsequent to filing the initial petition, the Petitioner cannot offer a new position to the Beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, the associated job

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<sup>3</sup> A general degree requirement does not necessarily preclude a proffered position from qualifying as a specialty occupation. For example, an entry requirement of a bachelor's or higher degree in business administration with a concentration in a specific field, or a bachelor's or higher degree in business administration combined with relevant education, training, and/or experience may, in certain instances, qualify the proffered position as a specialty occupation. In either case, it must be demonstrated that the entry requirement is equivalent to a bachelor's or higher degree in a specific specialty that is directly related to the proffered position. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

It is also important to note that a position may not qualify as a specialty occupation based solely on either a preference for certain qualifications for the position or the claimed requirements of a petitioner. See *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). Instead, the record must establish that the performance of the duties of the proffered position requires both the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as the minimum for entry into the occupation. See section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

<sup>4</sup> We acknowledge that the Petitioner describes itself as a "software and development services" company on the H-1B petition. We also acknowledge the Petitioner's master services agreement with the end-client's management company identifying the services the Petitioner will perform pursuant to the agreement as "software development services." However, these documents are not specific to the Beneficiary, and thus are insufficient to establish that the Beneficiary's claimed sales-related duties are consistent with his claimed software development duties.

responsibilities, or the requirements of the position. The Petitioner must establish eligibility at the time of filing the nonimmigrant visa petition, i.e., that the position offered to the Beneficiary when the petition was filed merits classification for the benefit sought. 8 C.F.R. § 103.2(b)(1). See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). If the Petitioner seeks to offer a new position to the Beneficiary, the Petitioner must file a new petition.<sup>5</sup>

Even if the Petitioner's duties provided in response to the RFE and on appeal were consistent, it still would not be readily apparent what types of services the Beneficiary would perform on behalf of the claimed end-client. That is, the Petitioner has not sufficiently explained what types of software development services the Beneficiary would purportedly perform and sell on behalf of the hotel. More generally, the Petitioner has not explained what need for software development services the hotel has and would like to sell by "[prospecting] for potential new clients" and "[c]old call as appropriate."

In addition, the end-client's letter states that the Beneficiary would be working on "various" and "different ongoing projects" at the hotel. However, there are no additional details about these "projects," such as the names, nature, and length of these projects. "[G]oing 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 Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Overall, we find that the descriptions of duties submitted for the record are insufficient to convey the nature of the Beneficiary's services and the actual tasks he would perform on a day-to-day basis. As the Petitioner has not established the substantive nature of the work to be performed by the Beneficiary, we are precluded from 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 entry into 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.

Moreover, as previously stated, the Petitioner has not established whether the proffered position 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

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<sup>5</sup> The regulation at 8 C.F.R. § 214.2(h)(2)(i)(E) states, in pertinent part, the following: "The petitioner shall file an amended or new petition, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or training or the alien's eligibility as specified in the original approved petition."

the occupation. For all of the above reasons, we find the evidence of record insufficient to establish the proffered position as a specialty occupation.

The lack of consistent information regarding the proposed duties and the lack of information regarding the Petitioner's or the end client's academic requirements to perform the duties of the position preclude the approval of this petition. Nevertheless for the Petitioner's information only, we will briefly review the new information submitted on appeal.

The Petitioner, in support of its assertion that a bachelor's degree requirement is common to the Petitioner's industry in parallel positions among similar organizations, submitted copies of four advertisements as evidence that a degree requirement is standard amongst its peer organizations for parallel positions in the software and development services industry. However, none of the advertisements submitted provide sufficient information regarding the advertising organizations to establish that they are similar to the Petitioner and in the Petitioner's industry. Additionally, all but one of the submitted advertisements states a requirement for a general bachelor's degree.<sup>6</sup> As such, the advertisements do not establish that a requirement of a bachelor's or higher degree *in a specific specialty*, or its equivalent, is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The Petitioner also submitted a list of the names, job titles, and visa statuses for its 11 claimed employees.<sup>7</sup> However, the Petitioner has not demonstrated the reliability and relevance of this information. For instance, out of these 11 claimed employees, only 2 of them have the job title of "business analyst." The Petitioner did not identify the duties of these two "business analyst" positions or of the other positions to establish that they are the same as the proffered position.<sup>8</sup> Moreover, the Petitioner provided evidence of the educational credentials for only one of these employees.<sup>9</sup> The Petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from this limited information. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (7th ed. 1995). Even if some of these individuals have H-1B status, the positions approved for H-1B classification could not be compared to the Petitioner's position that is the subject of this petition.<sup>10</sup> Therefore, the evidence submitted on appeal does not demonstrate that the Petitioner

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<sup>6</sup> The only advertisement that requires a more specific degree calls for a "[b]achelor's degree in a technical area," but does not clarify the term "technical area."

<sup>7</sup> In contrast, the Petitioner claimed to have only eight employees on the H-1B petition.

<sup>8</sup> The other claimed employees have the job titles of UI developer, programmer analyst, websphere administrator, and tableau developer.

<sup>9</sup> This individual possesses a U.S. master of business administration degree and a foreign degree in a computer engineering. The Petitioner did not submit an evaluation of his or her foreign education. The Petitioner did not submit or explain the educational credentials of its other claimed employees.

<sup>10</sup> If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the Director. We are not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be "absurd to suggest that [USCIS] or any agency must treat acknowledged errors as binding precedent." *Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987).

normally requires a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The Petitioner also has not developed relative complexity, uniqueness, or specialization as aspects of the proffered position and its associated job duties. The Petitioner does not establish how the inconsistently and generally described duties of its business development manager elevate the proffered position to a specialty occupation. The overall responsibilities for the proffered position do not provide sufficient information regarding the particular work, and associated educational requirements, into which the duties would manifest themselves in their day-to-day performance within the Petitioner's or its end client's operations. Thus, the Petitioner has not demonstrated how the duties of the proffered position would be so complex, unique, or specialized so as to require the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), (4).

Upon review of the record in its entirety, including the evidence submitted on appeal, the Petitioner has not established the substantive nature of the work to be performed by the Beneficiary and has not established that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The Petitioner has not established that the proffered position qualifies as a specialty occupation.

## II. EMPLOYER-EMPLOYEE RELATIONSHIP

We also find that the Petitioner has not demonstrated that it qualifies as a United States employer having an employer-employee relationship with the Beneficiary. 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 individual:

[S]ubject to section 212(j)(2), who is coming temporarily to the United States to perform services . . . in a specialty occupation described in section 214(i)(1) . . . , who meets the requirements for the occupation specified in section 214(i)(2) . . . , and with respect to whom the Secretary of Labor determines and certifies to the [Secretary of

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Moreover, while a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, 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 employer 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 387. In other words, if a petitioner's degree requirement is only symbolic and 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 section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

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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 at 8 C.F.R. § 214.2(h)(4)(ii), as follows:

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

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

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

Although “United States employer” is defined in the regulations at 8 C.F.R. § 214.2(h)(4)(ii), the terms “employee” and “employer-employee relationship” are not defined for purposes of the H-1B visa classification. 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 will look to common-law agency doctrine and focus on the common-law touchstone of “control.” *See Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318 (1992); *Clackamas Gastroenterology Assocs., P.C. v. Wells*, 538 U.S. 440 (2003).

The factors indicating that a worker is or will be an “employee” of an “employer” are clearly delineated in both the *Darden* and *Clackamas* decisions. *Darden*, 503 U.S. at 323-24; *Clackamas*, 538 U.S. at 445; *see also* *Restatement (Second) of Agency* § 220(2) (1958) (defining “servant”). Such indicia of control include when, where, and how a worker performs the job; the continuity of the worker’s relationship with the employer; the tax treatment of the worker; the provision of employee benefits; and whether the work performed by the worker is part of the employer’s regular business. *See Clackamas*, 538 U.S. at 445; *see also* EEOC Compl. Man. at § 2-III(A)(1) (adopting a materially identical test and indicating that said test was based on the *Darden* decision); *Defensor v. Meissner*, 201 F.3d at 388 (determining that hospitals, as the recipients of beneficiaries’ services, are the “true employers” of H-1B nurses under 8 C.F.R. § 214.2(h), even though a medical contract service agency is the petitioner, because the hospitals ultimately hire, pay, fire, supervise, or otherwise control the work of the beneficiaries).

## B. Analysis

Here, the Petitioner has not demonstrated that it qualifies as a United States employer having an employer-employee relationship with the Beneficiary. 8 C.F.R. § 214.2(h)(4)(ii).

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As detailed above, the record of proceedings lacks sufficient consistent documentation evidencing what exactly the Beneficiary would do for the period of time requested or where exactly and for whom the Beneficiary would be providing services. Moreover, despite the Petitioner's claim that the [REDACTED] and/or [REDACTED] would be the end-client in this matter through a contractual agreement with the Petitioner, the record includes conflicting information sometimes referring to the [REDACTED] and/or [REDACTED] as the Beneficiary's actual employer, and sometimes referring to the Petitioner as the actual employer.

For example, the record includes an "H-1B Visa Checklist & Application Form" that identified the Beneficiary's employer as [REDACTED]. The Petitioner also submitted an employment offer to the Beneficiary on [REDACTED] letterhead, signed by the Beneficiary and the hotel's general manager, offering the Beneficiary employment with [REDACTED] as a business development manager. This letter goes on to briefly state the Beneficiary's employment date, salary, and the hotel's policies regarding performance reviews, holidays, vacations, other benefits, and restrictions on the terms of the Beneficiary's employment, among other provisions.

On the other hand, the record contains letters from both [REDACTED] and [REDACTED] attesting that they do not have any employment relationship with the Beneficiary, and that the Beneficiary is an employee of the Petitioner. The record also contains an offer of employment and an employment agreement between the Petitioner and Beneficiary. The Petitioner has not explained these discrepancies and established, through competent objective evidence, the truth of the matter. "[I]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence." *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92.

Furthermore, in a document identifying the Petitioner's claimed "Organization Structure," the Beneficiary is shown as ultimately reporting to the president of a different company. The Petitioner has not explained the nature of the relationship between itself, this other company, and the Beneficiary.

The Petitioner also has not consistently explained and documented the manner through which it will purportedly control the Beneficiary's work. For instance, the Petitioner states that its "IT services manager" will supervise the Beneficiary on-site, but has not explained in detail the role of its IT manager at the end-client's hotel. Moreover, the Petitioner's assertion that it "has full control [over the Beneficiary's] work on a day to day basis" is undermined by other evidence in the record, such as the master service agreement between itself ("Vendor") and the end-client ("Company") which specifically states that "[d]uring the term of their assignment to COMPANY or COMPANY's Client(s) facilities, all consulting personnel assigned by VENDOR shall be under the guidance of COMPANY for work and project schedules." In addition, the Petitioner states that the Beneficiary "will use the proprietary software, methodology, Quality Controls established by the Client" and "will use the tools, instruments, and other proprietary information that is available at the client site."

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These factors indicate that the Petitioner will not have “full control” over the Beneficiary’s work, as claimed.

Given the insufficient and inconsistent evidence in the record, the Petitioner has not sufficiently 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). There is insufficient, consistent 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. The petition cannot be approved for this additional reason.

### III. CONCLUSION

The burden is on the Petitioner to show 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 V-I- Inc.*, ID# 16716 (AAO June 1, 2016)