



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

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

MATTER OF B- INC.

DATE: JUNE 28, 2016

FORM I-129, PETITION FOR A NONIMMIGRANT WORKER DECISION

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

The Petitioner, a software development and consulting firm, seeks to temporarily employ the Beneficiary as a “programmer analyst” under the H-1B nonimmigrant classification for specialty occupations. See section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The 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 had not demonstrated (1) that the proffered position qualifies as a specialty occupation position; and (2) that it would have a valid employer-employee relationship with the Beneficiary.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the evidence in the record is sufficient to show that the petition should be approved.

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.

(b)(6)

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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 stated that the Beneficiary would work as a programmer analyst at its location in ██████████ Illinois. In a letter submitted with the initial filing, the Petitioner provided the following description of the duties of the proffered position:

- Identify client needs and requirements by establishing personal rapport with potential and actual clients and with other persons in a position to understand the service requirements;
- Programs computers by encoding project requirements in computer language; enter coded information into the computer.
- Confirm program operation by conducting tests; modify program sequence and/or codes.
- Provide reference for use of prime and personal computers by writing and maintaining user documentation; maintain help desk.
- Maintains computer systems and programming guidelines by writing and updating policies and procedures.

- Develops and maintains applications and databases by evaluating client needs; analyzing requirements; developing software systems.

The Petitioner stated that the position requires a bachelor's degree in computer science, engineering or a related field, as well as relevant industry experience."

### C. Analysis

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.<sup>1</sup>

#### 1. First Criterion

We turn first 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.<sup>2</sup> To inform this inquiry, we recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>3</sup>

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Computer Programmers"<sup>4</sup> corresponding to the Standard Occupational Classification code 15-1131.<sup>5</sup>

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<sup>1</sup> We observe that the Director's decision was based, in part, on findings that the Petitioner did not demonstrate that it has work for the Beneficiary to perform at its own location. To provide analysis of the specialty occupation issue, we will assume, *arguendo*, that the Petitioner has work available for the Beneficiary to perform.

The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

<sup>2</sup> Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

<sup>3</sup> All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

<sup>4</sup> Comparing the duties the Petitioner attributes to the proffered position to the duties the *Handbook* attributes to computer systems analysts (See <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-2>), it appears that the proffered position should have been classified as a computer systems analyst position, as described in O\*NET at SOC 15-1121, rather than as a computer programmer position. If the proffered position were found to have been misclassified, then the visa petition would be deniable as not supported by a corresponding LCA. See 8 C.F.R. § 214.2(h)(4)(i)(B)(1) and 20 C.F.R. § 655.705(b). However, we shall assume, *arguendo*, that the proffered position is a computer programmer position, to reach the Petitioner's assertions about the educational requirements of such positions.

<sup>5</sup> The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). We will

The *Handbook* states the following about the educational requirements of computer programmer positions: “Most computer programmers have a bachelor’s degree; however, some employers hire workers who have an associate’s degree. Most programmers get a degree in computer science or a related subject.” U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., “Computer Programmer,” <http://www.bls.gov/ooh/computer-and-information-technology/computer-programmers.htm#tab-4> (last visited June 27, 2016).

The *Handbook* makes clear that positions located with the “Computer Programmers” occupational category do not require a minimum of a bachelor’s degree in a specific specialty or its equivalent for entry for two reasons. First, it indicates that although some candidates who assume entry-level positions within the occupational category have a bachelor’s degree, they do not necessarily have a degree in a specific specialty. Second, it indicates that entry into some computer programmer positions is possible with an associate’s degree.

Further, the Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels) which, as noted, indicates that the Beneficiary to have only a basic understanding of the occupation. In that the Petitioner has indicated that the proffered position is among the least complex of positions located within the “Computer Programmers” occupational category, and the *Handbook* indicates that some positions within the occupational category require only an associate’s degree, the *Handbook* does not support the Petitioner’s position that the proffered position qualifies as a specialty occupation position by virtue of normally requiring a minimum of a bachelor’s degree in a specific specialty or its equivalent for entry. Moreover, the Petitioner has not provided documentation from another probative source to substantiate its assertion regarding the minimum requirement for entry into this particular position.

In addition, 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. Even assuming that the duties described by the Petitioner are the duties that the Beneficiary would actually perform if the visa petition were approved, they do not

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consider this selection in our analysis of the position. The “Prevailing Wage Determination Policy Guidance” issued by the DOL provides a description of the wage levels. A Level I wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. This wage rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that she will be closely supervised and her work closely monitored and reviewed for accuracy; and (3) that she will receive specific instructions on required tasks and expected results. U.S. Dep’t of Labor, Emp’t & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://flcdatacenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf). A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner’s job opportunity. *Id.*

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support the assertion that the proffered position qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

The record does not establish that a bachelor's or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

## 2. Second Criterion

The second criterion presents two, alternative prongs: "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[.]" 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong casts its gaze upon the common industry practice, while the alternative prong narrows its focus to the Petitioner's specific position.

### a. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the "degree requirement" (i.e., 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.

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. In addition, 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."

The Petitioner submitted several job vacancy announcements placed by other companies for our consideration under this prong. Some of those vacancy announcements were placed by companies that do not conduct business in the Petitioner's industry.<sup>6</sup> As such, those announcements are not

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<sup>6</sup> A financial services company, a "global water technology provider," and [REDACTED] for instance, placed some of those

directly relevant to this prong, which only pertains to positions located within the Petitioner's industry.

Most vacancy announcements require prior experience, and some require a considerable amount of very specific programming experience. By designating the proffered position a wage Level I position, however, the Petitioner has indicated that it is an entry-level position. As such, those vacancy announcements that require experience in programming do not appear to be parallel to the proffered position.

Some vacancy announcements require a bachelor's degree, but do not require a bachelor's degree in any specific specialty, or the equivalent. Other vacancy announcements state that a bachelor's degree is "preferred" for the positions they announce. However, a preference is not necessarily a minimum recruiting and hiring requirement. Thus, even if the advertised positions had been shown to be positions parallel to the proffered position and located within the Petitioner's industry, those vacancy announcements would not demonstrate that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent by virtue of similarity to them.<sup>7</sup>

One vacancy announcement indicates that an otherwise undifferentiated bachelor's degree in business would be a sufficient educational qualification for the position it announces. However, a degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. at 558. This vacancy announcement therefore does not support the assertion that the proffered position, by virtue of any similarity to the advertised position, requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

Finally, even if all of the vacancy announcements involved parallel positions at similar organizations conducting businesses within the industry, and specified a requirement for a minimum of a bachelor's degree in a specific specialty or its equivalent, we would still find that the Petitioner had not demonstrated what statistically valid inferences, if any, could be drawn from so few announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>8</sup>

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announcements.

<sup>7</sup> A claim that a bachelor's degree is a sufficient minimum requirement for entry into the proffered position 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 occupation. *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

<sup>8</sup> 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*

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).

b. Second Prong

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the Petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

A review of the record of proceedings finds 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 only a person with at least a bachelor's degree in a specific specialty, or its equivalent, can perform it. For example, the evidence of record does not establish why a few related courses or industry experience alone, or even an associate's degree, would provide insufficient preparation for the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties attributed to the proffered 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. Even assuming that the duty description the Petitioner provided is accurate, the record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that people without at least a bachelor's degree in a specific specialty, or its equivalent, can perform.

The LCA submitted by the Petitioner in support of the instant petition provides an additional indication that the proffered position is not particularly complex or unique relative to other positions within the "Computer Programmers" occupational category. As noted above, the Petitioner attested on the submitted LCA that the wage level for the proffered position is a Level I (entry-level) wage. Such a wage level is for a position which only requires a basic understanding of the occupation; the performance of routine tasks that require limited, if any, exercise of judgment, under close supervision and with work closely monitored and reviewed for accuracy; and the receipt of specific instructions on required tasks and expected results. While the Petitioner's assertions regarding the sophisticated and intense nature of the projects upon which the Beneficiary would work are acknowledged, the Level I wage-level designation undermines them.<sup>9</sup>

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*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.

<sup>9</sup> 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*

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupational category 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, and degrees that are less than a bachelor's degree. 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 Petitioner claims that the Beneficiary is well-qualified for the position, and references her qualifications. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position, and it did not identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. Accordingly, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

### 3. Third Criterion

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.

In response to the Director's request for evidence, the Petitioner provided copies of H-1B approvals issued to other employees. However, copies of those individuals' educational credentials were not submitted for our consideration.

Moreover, 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). If any of the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, they would constitute material and gross error on the part of the Director. It would be "absurd to suggest

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*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.

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). A prior approval does not compel the approval of a subsequent petition or relieve the Petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act, 55 Fed. Reg. 2,606, 2,612 (Jan. 26, 1990) (to be codified at 8 C.F.R. pt. 214). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of eligibility for the benefit sought. *See Tex. A&M Univ. v. Upchurch*, 99 F. App’x 556 (5th Cir. 2004). Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved nonimmigrant petitions on behalf of a beneficiary, we would not be bound to follow the contradictory decision of a service center. *See La. Philharmonic Orchestra v. INS*, 44 F. Supp. 2d 800, 803 (E.D. La. 1999).<sup>10</sup>

The record indicates that the Petitioner was established in 1996 and has 75 employees in the United States. However, the Petitioner did not submit sufficient evidence pertinent to the number of computer programmers that work for it now or have worked for it in the recent past, and evidence pertinent to their educational qualifications. The Petitioner has not demonstrated that it normally requires a minimum of a bachelor’s degree in a specific specialty or its equivalent for the proffered position and has not, therefore, satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

#### 4. Fourth Criterion

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the 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. Upon review of the totality of the record, and even assuming that the duties that the Petitioner described are the duties the Beneficiary would actually perform, the Petitioner has not established that the nature of those 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 this additional reason, the Petitioner has not demonstrated in the record that its

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<sup>10</sup> The approved permanent labor certification applications are similarly unpersuasive. Moreover, we note (1) that many of these permanent labor certification applications involved software developers, as position that is not located within the same occupational category as the proffered position; and (2) that an analysis of whether a given position is a “specialty occupation” is not undertaken as part of the adjudication of a permanent labor certification application.

proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Because the Petitioner has not satisfied any one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation.

## II. EMPLOYER-EMPLOYEE RELATIONSHIP

The remaining issue raised by the Director is whether the Petitioner has demonstrated that it would have an employer-employee relationship with the Beneficiary such that the Petitioner could meet the definition of a United States employer as that term is defined at 8 C.F.R. § 214.2(h)(4)(ii). However, as the Petitioner has not established the proffered position as a specialty occupation the petition cannot be approved, and we need not and will not address the matter further at this time.

## III. CORRESPONDING LABOR CONDITION APPLICATION

As the Petitioner did not demonstrate that the proffered position is a specialty occupation, we need not fully address other issues evident in the record. That said, we wish to identify an additional issue to inform the Petitioner that this matter should be addressed in any future proceedings.<sup>11</sup>

Specifically, the record does not currently demonstrate that the LCA submitted by the Petitioner corresponds to and supports the H-1B petition.

General requirements for filing immigration applications and petitions are set forth at 8 C.F.R. § 103.2(a)(1) in pertinent part as follows: “Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions . . . and such instructions are incorporated into the regulations requiring its submission.”

The regulations require that before filing a Form I-129 petition on behalf of an H-1B worker, a petitioner obtain a certified LCA from the DOL in the occupational specialty in which the H-1B worker will be employed. *See* 8 C.F.R. §§ 214.2(h)(4)(i)(B), 214.2(h)(4)(iii)(B)(1). The instructions that accompany the Form I-129 also specify that an H-1B petition must be filed with evidence that an LCA has been certified by DOL.

Moreover, while DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. The regulations state, in pertinent part:

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<sup>11</sup> In reviewing a matter *de novo*, we may identify additional issues not addressed below in the Director’s decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003) (“The AAO may deny an application or petition on a ground not identified by the Service Center.”).

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For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

20 C.F.R. § 655.705(b) (emphasis added).

The regulation at 20 C.F.R. § 655.705(b) therefore requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the Beneficiary.

Here, the Petitioner has not submitted an LCA that corresponds to the claimed duties of the proposed position. Specifically, it has not submitted an LCA certified for a position that corresponds to the level of work and responsibilities that the petitioner ascribes to the proposed position and to the wage-level corresponding to such a claimed level of work and responsibilities in accordance with the requirements of the pertinent LCA regulations.

The statements of record regarding the claimed level of complexity, independent judgment, and understanding required for the proposed position are materially inconsistent with the certification of the LCA for a Level I entry-level position. For example, the Petitioner has repeatedly referenced the sophisticated and complex nature of the projects upon which the Beneficiary would work, and refers to her extensive training. The record contains no explanation for this inconsistency regarding the proffered position's wage level. Thus, even if it were determined that the Petitioner had overcome the director's ground for denying this petition (which it has not), the petition could still not be approved because the Petitioner did not submit an LCA certified for the proper wage classification.

#### IV. 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 B- Inc.*, ID# 17313 (AAO June 28, 2016)