



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

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

MATTER OF S-T-, LLC

DATE: MAY 3, 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 “computer systems analyst” under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 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 (1) the proffered position qualifies as a specialty occupation; and (2) the Petitioner meets the definition of a U.S. employer pursuant to 8 C.F.R. § 214.2(h)(4)(ii).

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred in finding that it does not have specialty occupation work available for the duration of the H-1B requested period.

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

I. LAW

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

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

8 C.F.R. § 214.2(h)(4)(iii)(A). U.S. Citizenship and Immigration Services (USCIS) has consistently interpreted the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

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.* 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.

## II. PROFFERED POSITION

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as a “computer systems analyst.” In the letter of support, the Petitioner provided the Beneficiary’s job duties in the proffered position, as follows (verbatim):

In this position [of a computer systems analyst], [the Beneficiary] will develop, document and revise system design procedures, test procedures, and quality standards. He will expand or modify system to serve new purposes or improve work flow. He will test, maintain, and monitor computer programs and systems, including coordinating the installation of computer programs and systems. He will develop, document and revise system design procedures, test procedures, and quality

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standards. He will provide staff and users with assistance solving computer related problems, such as malfunctions and program problems. He will review and analyze computer printouts and performance indicators to locate code problems, and correct errors by correcting codes. He will confer with clients regarding the nature of the information processing or computation needs a computer program is to address. He will coordinate and link the computer systems within an organization to increase compatibility and so information can be shared. He will determine computer software or hardware needed to set up or alter system.

The Petitioner stated it requires at least a bachelor's degree in "Computer Science, Management Information Systems, Computer Engineering, Electronics and Communication, Electronic Engineering, Mechanical Engineering or other related fields of study."

In response to the Director's request for evidence (RFE), the Petitioner stated that the Beneficiary would be employed on the Petitioner's in-house project, which it described as "a software development project in which the Petitioner provides technical services to [an end-client] at the Petitioner's worksite." The Petitioner submitted a letter from the end-client, which identifies the project name as [REDACTED] the anticipated end date as "One year term (With high probability of extension)," and the work location as the Petitioner's office.<sup>1</sup>

This letter also lists the following job duties for the Beneficiary (verbatim):

- Modify existing software to correct errors, allow it to adapt to new hardware, or to improve its performance using tools such as, SSO, Oracle, and Federation Manager.
- Expand or modify system to serve new purposes or improve work flow.
- Confer with systems analysts, engineers, programmers and others to design system and to obtain information on project limitations and capabilities, performance requirements and interfaces.
- Analyze user needs and software requirements to determine feasibility of design within time and cost constraints.
- Test, maintain, and monitor computer programs and systems, including coordinating the installation of computer programs and systems.
- Develop, document and revise system design procedures, test procedures, and quality standards.
- Consult with customers about software system design and maintenance.
- Provide staff and users with assistance solving computer related problems, such as malfunctions and program problems.
- Coordinate software system installation and monitor equipment functioning to ensure specifications are met.

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<sup>1</sup> This letter reflects that the end-client's office is located in [REDACTED] Washington.

- Review and analyze computer printouts and performance indicators to locate code problems, and correct errors by correcting codes.

On appeal, the Petitioner provides another job description for the proffered position, along with the approximate percentage of time the Beneficiary will spend on each duty, as follows (verbatim):

#	Job Duty	% of Time Spent on Each Duty
1	• Review requirements, high-level document (HLD) for planning the project timelines;	9
2	• Analyze and develop complex business solutions using .NET, CA SiteMinder, SSO, Oracle, Java, JQuery and XML;	32
3	• Review and support environments in DEV, QA, UAT and PROD for various ongoing projects;	6
4	• Engage in full Software Development Life Cycle (SDLC) of the application;	10
5	• Engage in performance analysis of application to support multiple environments;	5
6	• Ensure quality by reviewing and optimizing code for better performance;	5
7	• Follow Agile-SCRUM methodology for project development;	12
8	• User version control system such as GIT and SNV;	13
9	• Document Standard Operational Procedures (SOP)	8
<b>Total</b>		<b>100%</b>

### III. 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>2</sup> Specifically, the record (1) does not describe the position's duties with sufficient detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.<sup>3</sup>

As a preliminary matter, we observe that the Petitioner and end-client have provided different descriptions of the proffered position and its associated job duties. For instance, the wording of the job duties provided by the Petitioner in its initial letter of support is taken almost verbatim from the Occupational Information Network (O\*NET) OnLine's Details Report for "Computer Systems

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

<sup>3</sup> 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.

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Analysts” corresponding to standard occupational classification (SOC) code 15-1132.<sup>4</sup> However, the wording of the job duties provided by the end-client is taken almost verbatim from O\*NET OnLine’s Details Reports for both “Computer Systems Analysts” and “Software Developers, Applications” (SOC code 15-1132). On appeal, the Petitioner provides a new description of the proffered position which does not contain any of the job duties previously listed in its initial support letter or in the end-client’s letter. The Petitioner has not provided an explanation for these various descriptions, and established through competent evidence which of the descriptions accurately represents the duties and responsibilities of the proffered position.<sup>5</sup>

In response to an RFE or on appeal, the Petitioner cannot offer a new position to the Beneficiary, or materially change a position’s associated job responsibilities or requirements. The Petitioner must establish that the position offered to the Beneficiary when the petition was filed merits classification for the benefit sought. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg’l Comm’r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm’r 1998).

We further observe that the Petitioner has not consistently identified and described the project to which the Beneficiary will be assigned. According to the end-client’s letter, the Beneficiary will be assigned to the project named [REDACTED]. The whitepaper submitted with the end-client’s letter identifies the product as [REDACTED] which was “developed to address the database access section for Sarbanes-Oxley compliance.”<sup>6</sup> On appeal, however, the Petitioner identifies the project product as [REDACTED] and describes it as “an automated software batch job control system for planning, organizing, scheduling, monitoring and reporting jobs.” Although on appeal the Petitioner states that [REDACTED] . . . is an internal component of [REDACTED] software product and is used for validating user credentials during authentication.” the [REDACTED] document submitted with the appeal contains no references to

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<sup>4</sup> See O\*NET Online Details Report for “Computer Systems Analysts,” <http://www.onetonline.org/link/details/15-1121.00> (last visited Apr. 29, 2016).

<sup>5</sup> The duty descriptions provided in the record were copied almost verbatim from O\*NET. The O\*NET descriptions may be appropriate when defining the range of duties that may be performed within an occupational category, but they do not adequately convey the substantive work that the Beneficiary will perform within the context of the Petitioner and/or end-client’s business operations and, thus, generally cannot be relied upon when discussing the duties attached to specific employment. The Petitioner’s job duties provided on appeal are similarly generic, and do not adequately specify what duties the Beneficiary will perform within the context of the end-client’s operations.

In establishing a position as a specialty occupation, a petitioner must substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition. Simply submitting a generic job description that is not specific to the Beneficiary, the Petitioner, and/or the end-client is insufficient to establish the substantive nature of the proffered position.

<sup>6</sup> The whitepaper also references [REDACTED] features, i.e., Database Security Scanner, Security Dashboard, Vulnerability Compliance Dashboard, and SOX Audit Report.

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██████████ or “Sarbanes-Oxley compliance,” which was the stated purpose of the product.<sup>7</sup>

In addition, there are several inconsistencies within the ██████████ document that lead us to question whether the Beneficiary will be assigned to this project. For example, the last “milestone” (implementation and support) of the project has a “planned end date” of November 10, 2017, but the Petitioner is requesting a three-year validity period ending on June 30, 2018.<sup>8</sup> There is no documentation explaining what work will be done after November 10, 2017. In addition, the Petitioner is requesting a start date for the Beneficiary of October 1, 2015, which falls in quarter four of 2015 (Q4-15). On the other hand, table 6.1 of the project document reflects that the end-client would have already hired its two “architect/system analysts” by quarter two of 2015 (Q2-15). We observe that the Petitioner is not listed anywhere in the document as one of the end-client’s “key partners.”

There are also other discrepancies regarding the overall resources dedicated to the project that lead us to further question the Beneficiary’s assignment. For example, table 6.1 of the project document indicates that the end-client will have a total of 14 people for Q4-15. On the next page on Figure 6.1, it indicates that they will have less than ten total resources during this same quarter. In addition, table 7.1 indicates that startup costs were expected to be a little less than \$500,000 for just the *beginning* of FY 2014, while on the next page, the *entire* FY 2014 costs were expected to be \$196,000. Again, “it is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence.” *Matter of Ho*, 19 I&N Dec. at 591.

Based on the above discrepancies and deficiencies, the record does not contain evidence sufficiently concrete and informative to demonstrate (1) the actual work that the Beneficiary will perform, (2) the complexity, uniqueness and/or specialization of the tasks, and (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty. The evidence of record is insufficient to establish that the proffered position qualifies as a specialty occupation.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we will discuss the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

#### A. First Criterion

We first turn to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for

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<sup>7</sup> The Petitioner also states on appeal that the Beneficiary will be involved in “various ongoing *projects*” (plural emphasized), but also claims that the Beneficiary will only be assigned to one project.

<sup>8</sup> The end-client’s letter states that the Beneficiary’s assignment is a one-year term with “high probability of extension” for an unspecified additional term.

entry into the particular position. 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>9</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 Systems Analysts" (SOC code 15-1121) at a Level I wage.<sup>10</sup>

We reviewed the chapter of the *Handbook* entitled "Computer Systems Analysts," including the sections regarding the typical duties and requirements for this occupational category.<sup>11</sup> The subchapter of the *Handbook* entitled "How to Become a Computer Systems Analyst" states, in pertinent part: "A bachelor's degree in a computer or information science field is common, although not always a requirement. Some firms hire analysts with business or liberal arts degrees who have skills in information technology or computer programming." U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., Computer Systems Analysts, <http://www.bls.gov/ooh/computer-and-information-technology/print/computer-systems-analysts.htm> (last visited Apr. 29, 2016).

The *Handbook* does not support the Petitioner's assertion that a bachelor's degree is required for entry into this occupation. While the *Handbook* indicates that a bachelor's degree in a computer or information science field is common, it does not report that there are any degree requirements for these jobs. Moreover, the *Handbook* continues by stating that a wide-range of degrees may be acceptable for positions in this occupation, including general-purpose degrees such as business and

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<sup>9</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>10</sup> The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels. 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. The Petitioner classified the proffered position at a Level I wage, which is the lowest of four assignable wage levels. We will consider this selection in our analysis of the position. 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 he will be closely supervised and his work closely monitored. For additional information, 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://flcdcenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://flcdcenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf).

<sup>11</sup> For additional information regarding the occupational category "Computer Systems Analysts," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Computer Systems Analysts, available at <http://www.bls.gov/ooh/computer-and-information-technology/print/computer-systems-analysts.htm> (last visited Apr. 29, 2016).

liberal arts.<sup>12</sup> The *Handbook* does not support the Petitioner's assertion regarding the educational requirements for its position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

## B. 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.

### 1. 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.

Upon review of the record, we find that the Petitioner did not submit any evidence to support this criterion of the regulations. Thus, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

### 2. 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.

To establish eligibility, the Petitioner must describe the specific duties and responsibilities to be performed by the Beneficiary in the context of the end-client's business operations, demonstrate that a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the Beneficiary for the period of employment requested in the petition. The Petitioner has not done so here. As previously discussed, the Petitioner has not adequately discussed the specific duties to be performed by the Beneficiary. The Petitioner also has not submitted sufficient, reliable evidence to demonstrate which project the Beneficiary will be assigned, or that a legitimate work assignment

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<sup>12</sup> USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although 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.

exists for him. We incorporate our earlier discussion and analysis regarding the evidence of record's inconsistencies and deficiencies with respect to the proffered position and its associated duties.

In addition, we considered the Petitioner's designation of the proffered position as an entry-level position within the occupational category (by selecting a Level I wage). This designation, when read in combination with the Petitioner's job descriptions and the *Handbook's* account of the requirements for this occupation, further suggests that the particular position is not so complex or unique that the duties can only be performed by an individual with a bachelor's degree or higher in a specific specialty, or its equivalent. While related courses may be beneficial in performing certain duties of the position, the Petitioner has not demonstrated how an established curriculum of 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. Accordingly, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

### C. 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.

The Petitioner stated in the Form I-129 that it was established in 2012 (approximately three years prior to the filing of the H-1B petition) and that it has 16 employees. The Petitioner did not submit information regarding employees who currently or previously held the position. The record thus does not establish that the Petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, directly related to the duties of the position. Therefore, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

### D. 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.

The Petitioner has not established that the proffered duties are more specialized and complex than duties for positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. We again incorporate our earlier discussion and analysis regarding the insufficient job and project descriptions, as well as the Petitioner's designation of the position as a Level I position (the lowest of four assignable wage-levels) relative to others within the same occupational category.<sup>13</sup> The Petitioner therefore has not demonstrated in the record that its

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<sup>13</sup> 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

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 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. Accordingly, the petition will be denied and the appeal dismissed.

#### IV. UNITED STATES EMPLOYER

The Petitioner also has not demonstrated that it qualifies as a United States employer as that term is defined at 8 C.F.R. § 214.2(h)(4)(ii).

As detailed above, the record of proceedings does not contain sufficient documentation evidencing what exactly the Beneficiary will do for the period of time requested or where exactly and for whom the Beneficiary will be providing services. For instance, the Petitioner and end-client provided different descriptions of the proffered position and its associated job duties, many of which were copied almost verbatim from O\*NET. The Petitioner also has not consistently identified and documented what project to which the Beneficiary will be assigned, and what specific job duties and responsibilities the Beneficiary will perform with respect to that project. Additionally, the evidence of record presents different descriptions of the project's timeline and resources which further lead us to question whether such a project exists.

Although the Petitioner asserts that the Beneficiary will work from the Petitioner's office in New Jersey, the Petitioner has not sufficiently explained how he will provide his services to the end-client, whose office is located in Washington. The Petitioner has not explained, for example, how the Beneficiary will perform the stated job duty of "[p]rovide staff and users with assistance solving computer related problems" for the end-client located in Washington. Merely claiming in its letters that the Petitioner will exercise complete responsibility and control over the Beneficiary, without evidence supporting the claim, does not establish eligibility in this matter. "[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)).

Given this specific lack of evidence, the Petitioner has not established 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

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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.

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company which it may represent, will have and maintain an 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 evidence detailing where the Beneficiary will work, the specific project to be performed by the Beneficiary, or for which company the Beneficiary will ultimately perform these services. The Director’s decision is affirmed and the appeal is dismissed for this additional reason.

#### IV. BENEFICIARY’S QUALIFICATIONS

Since the identified bases for denial are dispositive of the Petitioner’s appeal, we need not fully address other issues evident in the record. That said, we wish to identify another issue to inform the Petitioner that this matter should be addressed in any future proceedings.<sup>14</sup>

Specifically, the record does not currently demonstrate that the Beneficiary’s combined education and work experience is the equivalent of a U.S. bachelor’s degree in a specific specialty. While the claimed equivalency is based in part on experience, the record does not establish that the evaluator, [REDACTED] has authority to grant college-level credit for training and/or experience in the specialty, i.e., Management Information Systems, at [REDACTED] and that the [REDACTED] has a program for granting college-level credit based on an individual’s training and/or work experience in the particular specialty.

#### V. 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 S-T-, LLC*, ID# 17295 (AAO May 3, 2016)

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<sup>14</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.”).