



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

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

MATTER OF S-I, INC.

DATE: MAY 31, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an IT and healthcare consulting services firm, 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, California Service Center, denied the petition. The Director concluded that the Petitioner had not demonstrated that the proffered position qualifies as a specialty occupation position and 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 submits additional evidence and asserts that the evidence presented is sufficient to establish eligibility for the benefit sought.

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

### I. SPECIALTY OCCUPATION

#### A. Law

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

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

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.

#### B. The Proffered Position

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” corresponding to the Standard Occupational Classification code 15-1121.<sup>1</sup>

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<sup>1</sup> The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). We will 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

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When it filed the petition, the Petitioner provided the following description of the duties for the proffered position:

System Design (Gross Design & Modification)	10%
System Analysis	45%
Write code & Develop programs	15%
Developing / Creating New Code	10%
Downloading historical data	5%
Unit and System Testing and debugging	10%
Generating management reporting and implementation and provision of technical software support	5%

The Petitioner stated that the proffered position requires a minimum of a bachelor's degree or its equivalent in the computer sciences or engineering sciences.

Although the Petitioner's location is in [REDACTED] Illinois, the Form I-129, Petition for a Nonimmigrant Worker, states that the Beneficiary would work at [REDACTED] in [REDACTED] Illinois. Evidence in the record shows that this is the location of [REDACTED]

A letter from [REDACTED] provides the following duty description:

[The Beneficiary] is responsible for designing, developing and modifying software systems. His responsibilities include creative solutions to business problems, analyze the business requirements, work with business to clarify requirements, develop technical design, propose design alternatives, develop the application, conduct testing, implement software and support the software. He will be responsible for technical documentation. He will work in conjunction with business groups and IT to understand and document the non-functional requirements like functionality, scalability, performance, security and integration. He is responsible for conducting unit testing and also functional and integration testing, including preparation of test cases/scenarios and test data. He could work on multiple projects as a project team member, or independently on small projects.

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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 and reviewed for accuracy; and (3) that he 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://flcdatcenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://flcdatcenter.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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further stated:

For this role it requires technical expertise and strong knowledge of database environments and software methodologies-Agile; Strong knowledge Java, HTML, XML, Java script and JQuery, SQL; Solid understanding of computer software applications, including strong spreadsheet presentation skills, database applications, data modeling; extensive experience with data transfers/sharing using flat files; DB links and report writing/querying tools; Strong understanding of developing backend applications and systems as per business departments that will utilize all the income SQL Data and transaction as needed in a usable format. I am sure he has the required skills to handle the above tasks.

did not state a minimum educational requirement. As to the period during which anticipates using the Beneficiary's services, that letter states, "the term of the project is ongoing in duration."

The Petitioner provided the following updated job description in response to the Director's request for evidence (RFE) :

The following will be [the Beneficiary's] roles and responsibilities.

- To provide leadership and coordination of project teams consisting of management, Users, IS staff, and vendors. Performs systems analyst activities and makes recommendations in areas that require a high level of technical competency.
- To provide system architecture consulting and deliver System and Technical Requirement Document, Technical Design Documents, use cases, UML diagrams.
- Performs as project lead and directs systems analysts. Provide technical training, guidance, and resource support for end users and Departmental staff.
- Implements computer system requirements by defining and analyzing system problems; designing and testing standards and solutions.
- Coordinates the efforts of staff to locate, assess, install, test, and maintain computer software systems. Coordinates conversions and upgrades to vendor systems
- Provides application support and enhancements to existing applications. Defines system requirements, priorities, and viable alternatives.
- Communicate with leadership frequently on status and development of new proposals.
- Suggest process improvisations to enhance the efficiency of support team as well as overall business.
- Work collaboratively with client in setting up quality standards to ensure delivering quality solutions.

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- Provide mentorship to PI team technical.
- Work with operational and application development units to define business and system requirements for major system initiatives, review and report project status; develop documentation and deliverables.
- Analysis of system and user needs in order to document system requirements (includes requirements, design, process flows, communication and other business modeling documentations), lead requirement development sessions to create system requirement documents and design documents.
- Liaison with infrastructure, application and media team.

In another letter submitted in response to the RFE, the Petitioner stated:

[The Beneficiary] will perform the following duties while working at the [REDACTED] location: Expand or modify system to serve new purposes or improve work flow; 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; and provide staff and users with assistance solving computer related problems, such as malfunctions and program problems.

Review and analyze computer printouts and performance indicators to locate code problems, and correct errors by correcting codes; consult with management to ensure agreement on system principles; confer with clients regarding the nature of the information processing or computation needs a computer program is to address; read manuals, periodicals, and technical reports to learn how to develop programs that meet staff and user requirements; coordinate and link the computer systems within an organization to increase compatibility and so information can be shared; and determine computer software or hardware needed to set up or alter system.

### 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. Specifically, we find the Petitioner has not established the substantive nature of the duties the Beneficiary would perform if the visa petition were approved.

First, we note that the Petitioner has submitted numerous duty descriptions that vary throughout the record of proceedings, and has not specified which description corresponds to the proffered position. Further, the record of proceedings presents the duties in terms of abstract and generalized terms. For example, we observe that the job duties provided in response to the RFE are copied verbatim from the O\*NET summary report for the occupational category "Computer Systems Analysts" corresponding to SOC code 15-1121. See O\*NET Online Details Report for "Computer Systems Analysts," <http://www.onetonline.org/link/summary/15-1121.00> (last visited May 27, 2016). This type of

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description may be appropriate when defining the range of duties that may be performed within an occupational category, but it does not adequately convey the substantive work that the Beneficiary will perform within the Petitioner's business operations and, thus, generally cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in the context of that petitioner's business operations, as well as demonstrate 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. Simply submitting a generic job description that is not specific to the Beneficiary and the Petitioner's operations is insufficient to establish the substantive nature of the proffered position.

As noted above, 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. Here, the description provided by [REDACTED] like the other descriptions, contains an abstract description of duties performed by computer systems analysts in general, rather than a concrete description of the specific duties to be performed in the particular position proffered in the instant case. Specifically, the [REDACTED] indicates that the Beneficiary's responsibilities include "creative solutions to business problems," "analyze the business requirements," and "work with business to clarify requirement." Such statements – as so generally described – do not illuminate the substantive application of knowledge involved or any particular educational attainment associated with such application. Further, they do not provide any particular details regarding the demands, level of responsibilities and requirements necessary for the performance of these duties.

Moreover, we also observe numerous job duties indicating that the Beneficiary will perform managerial-level responsibilities, which contradicts the wage level designated for the proffered position in the LCA. For example, the Petitioner has stated that the Beneficiary will "provide leadership"; make "recommendations in areas that require a high level of technical competency"; work "as a project lead"; provide "technical training, guidance, and resource support for . . . Departmental staff"; "[p]rovide mentorship"; "exercise independent judgment"; "organize projects among a broad spectrum of personnel throughout the network, frequently under deadline pressure"; and that he would work "independently on small projects." The Petitioner also requires a candidate for the position to possess seven years of work experience. These duties and the seven-year experience requirement appear inconsistent with the Level I wage level designated in the LCA. In designating the proffered position at a Level I wage-level, the Petitioner indicated that the proffered position is a comparatively low, entry-level position relative to other positions within the "Computer Systems Analysts" occupational category and carries expectations that the Beneficiary would perform routine tasks that require limited, if any, exercise of judgment; that he would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results. The Petitioner's designation of the proffered position as a Level

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I, entry-level position is inconsistent with these and other stated duties, and raises additional questions regarding the substantive nature of the proffered position.<sup>2</sup>

In addition, the record indicates that the Beneficiary may not work exclusively at [REDACTED] location for the duration of the requested employment period. For example, the record contains a services agreement (SA) with [REDACTED] dated October 1, 2014. As the Petitioner did not sign this document, its validity is not clear. Further, the SA is accompanied by a purchase order calling for the Petitioner to provide the Beneficiary's services to [REDACTED] for "1 year with possible extensions" starting on February 1, 2016, but the purchase order was signed by neither party. As the Petitioner did not sign the SA, and neither party signed the purchase order, the binding nature of either document is unclear.

However, assuming that both documents are valid, it appears to indicate that the Beneficiary would work at the [REDACTED] location at least through January 31, 2017, but it does not indicate whether [REDACTED] agreed to utilize his services through September 20, 2018, which is the end of the period of requested employment.

The record also contains a statement of work signed by [REDACTED] and the Petitioner in October 2015; which calls for the Petitioner to provide the Beneficiary's services to [REDACTED] for "Duration of Twelve months extended thereafter," with a tentative start date of January 4, 2016. Whether or for how long those extensions are guaranteed or even contemplated has not been demonstrated. This document does not, in any event, demonstrate that the Beneficiary's work for [REDACTED] would be extended through any specific date beyond January 3, 2017. It does not, therefore, show that the Beneficiary could work at [REDACTED] location through the end of the period of requested employment.

Further, the purchase order is dated December 1, 2015, and the statement of work was ratified in October 2015, whereas the instant visa petition was submitted on April 7, 2015. As such, those documents are not evidence of any work that the Petitioner had available when it submitted the visa petition to which it could have assigned the Beneficiary. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978).<sup>3</sup>

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<sup>2</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 relatively higher than other positions *within the same occupation*. Nevertheless, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), an entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty or its equivalent. That is, a position's wage level designation may be a consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

<sup>3</sup> The agency made clear long ago that speculative employment is not permitted in the H-1B program. For example, a 1998 proposed rule documented this position as follows:

Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an

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Further still, in its August 19, 2015, letter, the Petitioner indicated that it might assign the Beneficiary to other work assignments or assign additional duties to him. Additionally, an employment offer letter from the Petitioner to the Beneficiary states, “[The Beneficiary’s] services will be provided at [the Petitioner’s] offices or Client locations.” It further states, “[The Beneficiary] would be required to relocate anywhere within the [United States], depending upon the business demands of the [Petitioner] as determined by the [Petitioner] and at the [Petitioner’s] sole discretion . . . .”

The evidence provided does not indicate that the Beneficiary would work exclusively at [REDACTED] Illinois location. As such, even if the Petitioner had demonstrated that the duties to be performed at [REDACTED] location qualified as specialty occupation duties, there is insufficient evidence that those duties would continue throughout the entire period of requested employment.

That the Petitioner did not establish the substantive nature of the work to be performed by the Beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.<sup>4</sup>

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alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor’s degree. See section 214(i) of the Immigration and Nationality Act (the “Act”). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

Petitioning Requirements for the H Nonimmigrant Classification, 63 Fed. Reg. 30,419, 30,419-20 (proposed June 4, 1998) (to be codified at 8 C.F.R. pt. 214). While a petitioner is certainly permitted to change its intent with regard to non-speculative employment, e.g., a change in duties or job location, it must nonetheless document such a material change in intent through an amended or new petition in accordance with 8 C.F.R. § 214.2(h)(2)(i)(E).

<sup>4</sup> Even if the proffered position were established as being that of a computer systems analyst, a review of the U.S. Department of Labor’s (DOL’s) *Occupational Outlook Handbook (Handbook)* does not indicate that, simply by virtue of its occupational classification, such a position qualifies as a specialty occupation in that the *Handbook* does not state a normal minimum requirement of a U.S. bachelor’s or higher degree in a specific specialty, or its equivalent, for entry into the occupation of programmer analyst. See 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->

For the reasons related in the preceding discussion, the Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. Also, at a more basic level, as reflected in this decision's discussion of the evidentiary deficiencies, the record lacks credible evidence that when the Petitioner filed the petition, the Petitioner had secured work of any type for the Beneficiary to perform during the requested period of employment. USCIS regulations require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(1). As was noted above, a visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp., supra*. For this reason also, the appeal will be dismissed and the petition denied.

## II. EMPLOYER-EMPLOYEE

We will briefly address the issue of whether or not the Petitioner qualifies as an H-1B employer. The United States Supreme Court determined that where federal law fails to clearly define the term "employee," courts should conclude that the term was "intended to describe the conventional master-servant relationship as understood by common-law agency doctrine." *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 322-23 (1992) (quoting *Cnty. for Creative Non-Violence v. Reid*, 490 U.S. 730 (1989)). The Supreme Court stated:

"In determining whether a hired party is an employee under the general common law of agency, we consider the hiring party's right to control the manner and means by which the product is accomplished. Among the other factors relevant to this inquiry are the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party."

*Id.*; see also *Clackamas Gastroenterology Assocs., P.C. v. Wells*, 538 U.S. 440, 445 (2003) (quoting *Darden*, 503 U.S. at 323). As the common-law test contains "no shorthand formula or magic phrase that can be applied to find the answer, . . . all of the incidents of the relationship must be assessed and weighed with no one factor being decisive." *Darden*, 503 U.S. at 324 (quoting *NLRB v. United Ins. Co. of Am.*, 390 U.S. 254, 258 (1968)).

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technology/print/computer-systems-analysts.htm (last visited May 27, 2016). As such, absent evidence that the position of computer systems analyst satisfies one of the alternative criteria available under 8 C.F.R. § 214.2(h)(4)(iii)(A), the instant petition could not be approved for this additional reason.

As such, while social security contributions, worker's compensation contributions, unemployment insurance contributions, federal and state income tax withholdings, and other benefits are still relevant factors in determining who will control the Beneficiary, other incidents of the relationship, e.g., who will oversee and direct the work of the Beneficiary, who will provide the instrumentalities and tools, where will the work be located, and who has the right or ability to affect the projects to which the Beneficiary is assigned, must also be assessed and weighed in order to make a determination as to who will be the Beneficiary's employer. Without full disclosure of all of the relevant factors, the Director would be unable to properly assess whether the requisite employer-employee relationship will exist between the Petitioner and the Beneficiary. Therefore, the Director's decision is affirmed, and the appeal is dismissed for this additional reason.

### III. NON-CORRESPONDING LCA

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>5</sup>

Specifically, the record does not currently demonstrate that the H-1B petition is supported by a corresponding LCA.

#### A. Legal Framework

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) stipulates the following, "Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed."

While the DOL is the agency that certifies LCAs before they are submitted to USCIS, the DOL regulations note that it is within the discretion of the U.S. Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) to determine whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part:

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. . . .*

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<sup>5</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.")

(Emphasis added.)

B. Analysis

As was observed above, the LCA was certified for a computer systems analyst position. The LCA also states that the proffered position is a Level I wage-level position.

As discussed above, in designating the proffered position at a Level I wage, the Petitioner has indicated that the proffered position is a comparatively low, entry-level position relative to others within the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the Beneficiary is only required to have a basic understanding of the occupation and carries expectations that the Beneficiary perform routine tasks that require limited, if any, exercise of judgment; that he would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results. As noted above, according to DOL guidance, a statement that the job offer is for a research fellow, worker in training or an internship is indicative that a Level I wage should be considered.

However, the September 11, 2015, job description provided states the following about the proffered position:

**MINIMUM QUALIFICATIONS**

Minimum of Seven years experience in systems analysis and/or programming required with project management or leadership responsibilities.

Must have ability to exercise independent judgment in design, planning, organizing, and performing systems analyst tasks. Some independent judgment required in setting priorities of tasks among multiple assigned projects.

Must have ability to communicate, motivate, and organize projects among a broad spectrum of personnel throughout the network, frequently under deadline pressure.

Strong knowledge of infrastructure (platform, network, storage, databases, applications and business).

Knowledge of information systems, including some familiarity with financial/business applications, managed applications, support on-line, interactive applications, and plan and perform medium- to large-scale computer projects.

Again, a Level I position is one for a beginning-level employee who will perform tasks requiring limited, if any, exercise of judgment. The proffered position, however, requires a minimum of seven years of experience, and the Petitioner has stated that the Beneficiary will “provide leadership”; make “recommendations in areas that require a high level of technical competency”; work “as a project lead”;

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provide “technical training, guidance, and resource support for . . . Departmental staff”; “[p]rovide mentorship”; “exercise independent judgment”; “organize projects among a broad spectrum of personnel throughout the network, frequently under deadline pressure”; and that he would work “independently on small projects.”

The duties of a Level I position are performed under close supervision pursuant to detailed instructions. According to the description provided, however, the proffered position involves project management or leadership responsibilities and design, planning, and organizing projects; and motivating a wide range of personnel, which strongly suggests that the Beneficiary would exercise a significant degree of independent judgment and would not be closely supervised.

The evidence in the record suggests that the proffered position is not a wage Level I position. We find that the Petitioner has not demonstrated, therefore, that the LCA submitted corresponds to the visa petition. The visa petition must be denied for this additional reason.

#### 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 S-I, Inc.*, ID# 16929 (AAO May 31, 2016)