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

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

MATTER OF A-S- CORP.

DATE: SEPT. 9, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an information technology consulting firm, seeks to temporarily employ the Beneficiary as a [REDACTED] applications developer" 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 Beneficiary will not be substantially employed in the qualifying duties of a software developer for the duration of the petition.

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 the proffered position is not a specialty occupation.

Upon *de novo* review, we will dismiss the appeal.<sup>1</sup>

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.

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<sup>1</sup> We follow the preponderance of the evidence standard as specified in *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

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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).

## II. PROFFERED POSITION

In the H-1B petition, the Petitioner stated that the Beneficiary will serve as a [REDACTED] applications developer.” In its support letter, the Petitioner provided the following job description:

[The Beneficiary] will work in the [REDACTED] platform and develop applications. She will be responsible for application conceptualization based on analysis of client and stakeholder requirements, configure, develop code, and build workflows in [REDACTED] tool to follow business processes. She will migrate code and data across environments for UAT and go-live. She will develop Java Code (as per the API’s) to create and modify objects in [REDACTED] and perform unit integration and system testing. She will design and develop security framework for performance team to access Service Level Agreement (SLA) data through cloud, and act as a [REDACTED] Subject Matter Expert and assist Process team and Governance team in defining processes and metrics. She will also participate in requirement analysis meetings and subsequent design specifications meetings to brainstorm available technical solution options. She will act as a [REDACTED] Subject Matter Expert and assist in designing CMDB (Configuration Management Database) and Asset

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Management modules. Also, she will assist higher management understand configuration management best practices and mapping in [REDACTED]

According to the Petitioner, the position requires at least a bachelor's degree in computer science, information technology, engineering or a related field.

### 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. 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>2</sup>

We find that the record of proceeding does not contain sufficient information regarding the specific job duties to be performed by the Beneficiary. That is, while the Petitioner indicated that the Beneficiary will be working for its client, [REDACTED] (Company N), throughout the duration of the petition, the Petitioner has not adequately corroborated its assertion.

In this case, the Petitioner is located in [REDACTED] New Jersey. The Petitioner indicated that the Beneficiary will be working for Company N either at Company N's office in [REDACTED] New Jersey, or at the Beneficiary's home in [REDACTED] New Jersey. The Petitioner claims on appeal that the Beneficiary will work on a large project on behalf of Company N as "Company N now serves as a [lead provider] and project implementer of the [REDACTED] software Tool for [REDACTED] program participants."

The record contains a master agreement and statement of work (SOW) with Company N, which outlines its contractual arrangement with the Petitioner.<sup>3</sup> The Petitioner's SOW with Company N for the Beneficiary states that Company N will "provid[e] the requirements of the project." We note that, as recognized by the court in *Defensor*, 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. In that case, 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

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<sup>2</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.

<sup>3</sup> On appeal, the Petitioner submits documents demonstrating that [REDACTED] is a partial owner of Company N, and that his prior ownership interest in the Petitioner no longer exists. We agree with the Petitioner that [REDACTED] prior ownership interest in the petitioning entity does not automatically negate the existence of a bona fide business relationship between the Petitioner and Company N. The Director's finding that the SOW between the Petitioner and Company N must have been self-generated due to [REDACTED] ownership interest in the Petitioner is therefore withdrawn based on the newly-submitted evidence.

basis of the requirements imposed by the entities using the beneficiary's services. *Id.* at 384. Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work. However, Company N's letter does not list the minimum requirements for the position, but only discusses why the Beneficiary is qualified to perform the duties of the position.<sup>4</sup> Even if we assume that Company N is the ultimate end client, we note that the end client's requirements do not establish that a bachelor's degree in a specific specialty is required for the position.

On appeal, the Petitioner claims that it "requires the services of [the Beneficiary] to join its team of software developers and computer engineers to meet contractual obligations" to help Company N "fulfill program participant work orders." However, the Petitioner states "[t]he sampling of 'program participant work orders' [that it previously provided] was not submitted to directly show the work orders on which the Beneficiary will work under the [Company N] project." Therefore, the record does not contain documents that outline contractual terms between Company N and its end clients for the project(s) on which the Beneficiary would specifically work, but only samples of work for other consultants. Without documentary evidence that delineates the contractual agreements between Company N and its clients for the actual projects that the Beneficiary is assigned to, including the duties and the requirements for the position, we are unable to determine the substantive nature of the proffered position.

Moreover, the Petitioner provided a copy of Company N's lease, which ended on May 31, 2016. Company N's letter dated November 23, 2015, states that it "will extend this lease in May 2016 for additional 1 year." Supporting evidence of this was not provided, however even if the Petitioner could provide us with a copy of an updated lease for Company N, Company N further states that this office space is "about 200 square feet and can seat up to 4 employees." As the Petitioner did not submit any documentation regarding the number of workers Company N employs, where all of Company N's employees are currently located, or whether Company N has any other offices besides the one listed in the lease, we cannot verify whether Company N has sufficient space for the Beneficiary to work. "[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)).

Further, we find that there are inconsistencies and discrepancies in the petition and supporting documents, which undermine the Petitioner's credibility with regard to its claim that the Beneficiary

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<sup>4</sup> Company N's discussion of the Beneficiary's qualifications is not probative for these proceedings as we cannot determine if a particular job is a specialty occupation based on the qualifications of a beneficiary. A beneficiary's credentials to perform a particular job are relevant only when the job is first found to qualify as a specialty occupation. USCIS is required instead to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether the beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].").

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will work only at Company N's office or the Beneficiary's home for the duration of the petition. When a petition includes numerous discrepancies, those inconsistencies will raise serious concerns about the veracity of the Petitioner's assertions.

For example, as a sample of "the type of work that [REDACTED] contracts out to Company N to fulfill and on which the Beneficiary will work," one of the SOWs the Petitioner submits on appeal, which is between Company N and [REDACTED] is for a senior technology consultant to work from November 16, 2015, to December 31, 2015, at a client site in California. In fact, the majority of SOWs the Petitioner submitted in response to the RFE are also for consultants to work at client sites at various locations throughout the United States, rather than at Company N's office indicated in the lease. Therefore, if Company N's SOWs are, in fact, typical of the SOWs through which Company N will contract the Beneficiary to its clients as the Petitioner claims, it appears likely that the Beneficiary's assignments will be short-term in duration and may require her to travel to different client sites.

As additional evidence that the Beneficiary may work at end-client sites not listed in the petition, the SOW between the Petitioner and Company N for the Beneficiary to work as a [REDACTED] Developer for Company N states that the Petitioner would be responsible for the Beneficiary's travel, per diem and lodging costs. The Petitioner has not provided an explanation of why the Beneficiary's SOW specifically mentions reimbursement for her travel in contrast to its stated intention of employing the Beneficiary only at Company N's office or at the Beneficiary's home, both of which are in New Jersey.

Because of the discrepancies discussed above, we cannot determine the nature and scope of the Beneficiary's employment. The record lacks evidence sufficiently concrete and informative to demonstrate: (1) the actual work that the Beneficiary would perform; (2) the complexity, uniqueness and/or specialization of the tasks; and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty. "[I]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence." *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the Petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92.

Therefore, we are precluded from 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 entry into the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4. Thus, the

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Petitioner has not satisfied any of the criteria under the applicable provisions at 8 C.F.R. § 214.2(h)(4)(iii)(A).

#### IV. RFE ISSUANCE

Finally, as to the Petitioner's perceived error in the Director's failure to issue a second RFE, we note that there is no requirement for USCIS to issue any RFE (let alone a second RFE) pertinent to a ground later identified in the decision denying the visa petition. The regulation at 8 C.F.R. § 103.2(b)(8) permits the Director to deny a petition for failure to establish eligibility without having to request evidence regarding the ground or grounds of ineligibility identified by the Director. Also, even if the Director had erred as a procedural matter in not issuing a second RFE or notice of intent to deny (NOID) relative to the Petitioner's lack of evidence to establish the proffered position as a specialty occupation, it is not clear what remedy would be appropriate beyond the appeal process itself. The Petitioner has, in fact, supplemented the record on appeal. Therefore, it would serve no useful purpose to remand the case simply to afford the Petitioner yet another opportunity to supplement the record with new evidence.

#### 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 A-S- Corp.*, ID# 17647 (AAO Sept. 9, 2016)