



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

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

MATTER OF C-I-, INC.

DATE: SEPT. 23, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an IT consulting company, seeks to employ the Beneficiary as a “programmer 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 the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

The matter is now before us on appeal. In its appeal, the Petitioner submits new evidence and asserts that the evidence of record is sufficient to demonstrate that the proffered position qualifies as a specialty occupation.

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

**I. SPECIALTY OCUPATION**

**A. Legal Framework**

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

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

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

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

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

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. *Id.* 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 duties to be performed for the client companies, and the type and educational level necessary to perform that particular work.

B. The Proffered Position

The Petitioner seeks to employ the Beneficiary as a full-time programmer analyst for a period of approximately three years. The Petitioner, which is located in Pennsylvania, indicated on the H-1B petition that the Beneficiary would work off-site at the address of [REDACTED] in [REDACTED] North Carolina. The Petitioner submitted a Labor Condition Application (LCA) to support the visa petition and reported two worksites for the Beneficiary: (1) [REDACTED] in [REDACTED] North Carolina; and (2) [REDACTED] in [REDACTED] Illinois.

(b)(6)

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In support of the petition, the Petitioner submitted a letter listing the duties of the proffered position as follows:

- Correct errors by making appropriate changes and rechecking the program to ensure that the desired results are produced.
- Conduct trial runs of programs and software applications to be sure they will produce the desired information and that the instructions are correct.
- Write, update, and maintain computer programs or software packages to handle specific jobs such as tracking inventory, storing or retrieving data, or controlling other equipment.
- Write, analyze, review, and rewrite programs, using workflow chart and diagram, and applying knowledge of computer capabilities, subject matter, and symbolic logic.
- Perform or direct revision, repair, or expansion of existing programs to increase operating efficiency or adapt to new requirements.
- Consult with managerial, engineering, and technical personnel to clarify program intent, identify problems, and suggest changes.
- Perform systems analysis and programming tasks to maintain and control the use of computer systems software as a systems programmer.
- Compile and write documentation of program development and subsequent revisions, inserting comments in the coded instructions so others can understand the program.
- Prepare detailed workflow charts and diagrams that describe input, output, and logical operation, and convert them into a series of instructions coded in a computer language.
- Consult with and assist computer operators or system analysts to define and resolve problems in running computer programs.

According to the Petitioner, the position requires at least a bachelor's degree in computer science, engineering, computer applications, IT, CIS, MIS, or a related field, or its equivalent.

The Petitioner submitted, *inter alia*, its Software Project Services Agreement with [REDACTED] (Company E). The Petitioner supplemented its RFE response with a letter from Company E confirming that the Beneficiary would be working at its business premises in [REDACTED] North Carolina, pursuant to a contract with the Petitioner. This letter listed the job duties for the Beneficiary, along with the percentages of time he would spend on each listed duty, as follows:

- Systems Analysis (10%)
- Systems Design and Architecture (5%)
- Data Modeling (10%)
- Meetings and Discussions (10%)
- Actual Coding (35%)
- Code Walk Through & Unit Testing (10%)
- Documentation (10%)

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- Web Application Integration and Testing (10%)

### C. Analysis

To ascertain the intent of a petitioner, USCIS must look to the Form I-129 and the documents filed in support of the petition to determine the exact position offered, the location of employment, the proffered wage, et cetera. Here, the Petitioner stated that it wishes to employ the Beneficiary for a three year period; however, the record lacks documentation regarding the work that the Beneficiary would perform to sufficiently substantiate that it has H-1B caliber work for the entire requested period.

For instance, the Petitioner represented on the certified Labor Condition Application (LCA) that the Beneficiary would work in two geographic locations: (1) [REDACTED] North Carolina; and (2) [REDACTED] Illinois. However, the remaining evidence of record – including the Form I-129 petition and supporting documentation – identify only client and one worksite (in North Carolina) for the Beneficiary. The Petitioner has not explained and documented what the Beneficiary would do in [REDACTED] Illinois, who would employ him, what duties he would perform for that entity, the length of his assignment there, who would oversee his work, or any other pertinent aspects of his employment in Illinois.<sup>1</sup>

Furthermore, while the Petitioner has submitted documentation pertinent to the Beneficiary's assignment to Company E in North Carolina, these documents are insufficient to substantiate that he would perform H-1B caliber work for that entity for the entire requested period. The Petitioner submitted its Software Project Services Agreement with Company E, as well as a letter from this company. However, neither of these documents specifies the length of the Beneficiary's assignment.

Moreover, the documentation does not present sufficient details about the client project and the actual tasks the Beneficiary would perform within the context of that specific project, or the educational requirements needed to perform the assigned tasks. We note again 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' required duties and educational requirements is critical.

The letter from Company E does not reference any specific project the Beneficiary would be assigned to at its worksite. The Software Project Services Agreement merely identifies the name of the project as the "[Company E] [REDACTED]" and briefly describes the scope of work as involving "developing Front-end website for a learning management system." It does not, however, further explain the nature and complexity of the project

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<sup>1</sup> "[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)).

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or provide other pertinent information such as project timelines, deliverables, staffing, and educational/work experience requirements.

In fact, the Software Project Services Agreement does not specifically identify the Beneficiary or the role of the programmer analyst. This agreement notably states that the services to be provided to Company E are “outlined in Statement of Work on Clients’ behalf” and “described and otherwise further defined in the Proposal.” However, the Petitioner has not submitted the actual Statement of Work, Proposal, or any other similar documentation which contractually binds the Beneficiary’s services to Company E and sets forth the terms and conditions of his claimed assignment there.

Furthermore, we agree with the Director that the Petitioner’s job descriptions are insufficient to demonstrate the substantive nature of the position and its associated job duties.<sup>2</sup> The Petitioner’s list of job duties are copied verbatim from the O\*NET Details Report for the occupational category “Computer Programmers” corresponding to SOC code 15-1131.<sup>3</sup> While this type of generic description may be appropriate when defining the range of duties that may be performed within an occupational category, it does not adequately convey the specific duties and tasks the Beneficiary would perform, and 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 the beneficiary in the context of that petitioner’s business operations – or in this case, Company E’s business operations and project – in order to demonstrate that a legitimate need for an employee exists, and that H-1B caliber work is available for the period of employment requested in the petition.<sup>4</sup> Simply submitting a generic job description that is not specific to the Beneficiary is insufficient to establish the substantive nature of the proffered position.

On appeal, the Petitioner submits a letter from [REDACTED]. In his letter, [REDACTED] lists the same job duties proposed for the Beneficiary that are copied verbatim from O\*NET. Based on these duties, [REDACTED] concludes that the Petitioner’s position requires at least a bachelor’s degree in computer science or a related field, or its equivalent. We carefully evaluated [REDACTED] assertions in support of the instant petition but, again, we find that simply relying on a generic job description that is not specific to the Beneficiary and Company E is insufficient to establish the substantive nature of the proffered position.

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<sup>2</sup> On the LCA, the Petitioner states that the proffered position corresponds to Standard Occupational Classification (SOC) code and title 15-1131, “Computer Programmers,” from the Department of Labor’s (DOL) Occupational Information Network (O\*NET), at a Level I wage rate.

<sup>3</sup> See O\*NET Online Details Report for “Computer Programmers,” <http://www.onetonline.org/link/details/15-1131.00> (last visited Sep. 21, 2016).

<sup>4</sup> USCIS regulations affirmatively 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). The H-1B classification is not intended for companies to engage in speculative employment and hire foreign workers to meet possible workforce needs arising from potential business expansions, customers, or contracts. The agency made clear long ago that speculative employment is not permitted in the H-1B program. See, e.g., 63 Fed. Reg. 30419, 30419 - 20 (Jun. 4, 1998).

The job duties provided in Company E's letter are also insufficient to demonstrate the substantive nature of the position and its associated job duties. This letter lacks references to any specific project; moreover, the brief list of job duties contained in this letter, such as "systems analysis" and "actual coding," are not described with a sufficient level of specificity to communicate (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. Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty.

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

Accordingly, 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. The petition will be denied and the appeal dismissed for this reason.

## II. EMPLOYER-EMPLOYEE RELATIONSHIP

We will enter an additional basis for denial, i.e., that the evidence of record does not establish that the Petitioner would be a "United States employer" having "an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee." 8 C.F.R. § 214.2(h)(4)(ii).

### A. Legal Framework

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<sup>5</sup> We highlight, for example, the statement in the DOL's *Occupational Outlook Handbook (Handbook)* chapter on the "Computer Programmers" occupational classification that "[a] program's purpose determines the complexity of its computer code." *Occupational Outlook Handbook*, 2016-17 ed., "Computer Programmers," <http://www.bls.gov/ooh/computer-and-information-technology/print/computer-programmers.htm> (last visited Sep. 21, 2016). We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. The *Handbook's* statement is consistent with our conclusion that, without additional evidence regarding the actual end-client(s) and project(s) involved, and the Beneficiary's specific job duties for each client project(s), the Petitioner has not established the complexity of the proffered position and its associated job duties.

Section 101(a)(15)(H)(i)(b) of the Act defines an H-1B nonimmigrant, in pertinent part, as an individual:

[S]ubject to section 212(j)(2), who is coming temporarily to the United States to perform services . . . in a specialty occupation described in section 214(i)(1) . . . , who meets the requirements for the occupation specified in section 214(i)(2) . . . , and with respect to whom the Secretary of Labor determines and certifies to the [Secretary of Homeland Security] that the intending employer has filed with the Secretary [of Labor] an application under section 212(n)(1) . . . .

The term “United States employer” is defined in the Code of Federal Regulations at 8 C.F.R. § 214.2(h)(4)(ii) as follows:

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

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

(Emphasis added); *see* Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act, 56 Fed. Reg. 61,111, 61,121 (Dec. 2, 1991) (to be codified at 8 C.F.R. pt. 214). Although “United States employer” is defined in the regulations at 8 C.F.R. § 214.2(h)(4)(ii), the terms “employee” and “employer-employee relationship” are not defined for purposes of the H-1B visa classification. Therefore, in considering whether or not one will be an “employee” in an “employer-employee relationship” with a “United States employer” for purposes of H-1B nonimmigrant petitions, USCIS will look to common-law agency doctrine and focus on the common-law touchstone of “control.” *See Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318 (1992); *Clackamas Gastroenterology Assocs., P.C. v. Wells*, 538 U.S. 440 (2003).

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

service agency is the petitioner, because the hospitals ultimately hire, pay, fire, supervise, or otherwise control the work of the beneficiaries).

It is important to note, however, that the factors listed in *Darden* and *Clackamas* are not exhaustive and must be evaluated on a case-by-case basis. Other aspects of the relationship between the parties relevant to control may affect the determination of whether an employer-employee relationship exists. Furthermore, not all or even a majority of the listed criteria need be met; however, the fact finder must weigh and compare a combination of the factors in analyzing the facts of each individual case. The determination must be based on all of the circumstances in the relationship between the parties, regardless of whether the parties refer to it as an employee or as an independent contractor relationship. See *Clackamas*, 538 U.S. at 448-49; EEOC Compl. Man. at § 2-III(A)(1).

## B. Analysis

Applying the *Darden* and *Clackamas* tests to this matter, we find that the evidence of record does not establish that the Petitioner will be a “United States employer” having an “employer-employee relationship” with the Beneficiary as an H-1B temporary “employee.” Specifically, we find that the record of proceedings does not contain sufficient, consistent, and credible documentation confirming and describing the assignment(s) and project(s) on which the Beneficiary would work, for whom and where the Beneficiary would perform his duties, and other salient aspects of his employment. Therefore, the key element in this matter, which is who exercises control over the Beneficiary, has not been substantiated.

As discussed above, the Petitioner reported on the LCA that the Beneficiary would work at two business locations: one in North Carolina, and one in Illinois. The Petitioner has not provided details about the Beneficiary’s work in Illinois (e.g., identified which client the Beneficiary would work for in Illinois, what duties he would perform for that entity, the length of his assignment there, the terms and conditions of his work in Illinois). Further, the Petitioner stated on the H-1B petition that it submitted an itinerary with the petition; however, the record does not contain an itinerary with the dates and locations of his services as required by the regulations. 8 C.F.R. § 103.2(a)(1) and (b)(1), 8 C.F.R. § 214.2(h)(2)(i)(B).

Furthermore, the Petitioner has not sufficiently documented the terms and conditions of the Beneficiary’s assignment to Company E. The record does not contain sufficient documentation from Company E, such as a Statement of Work or Purchase Order, which sets forth the details of the Beneficiary’s assignment. Although the Petitioner submitted a letter from Company E which states that the Petitioner “reserves the right to hire, fire[,] supervise and otherwise control the work of the H-1B employee,” it must be noted that the letter (as well as the Petitioner’s evidence) does not explain and document in detail how the Petitioner would supervise and otherwise control the Beneficiary’s day-to-day activities at Company E’s business premises in North Carolina. The letter from Company E simply identifies the Beneficiary’s direct supervisor as the Petitioner’s human resources manager, but does not further explain such aspects as (1) how she would exercise this

claimed supervision and control, and (2) the basis of her knowledge (as a human resources manager) to oversee the work of a programmer analyst.<sup>6</sup>

Additionally, the Software Project Services Agreement makes several references to an unidentified “Client” of Company E. For instance, this agreement states that the authorized services are “outlined in Statement of Work on Clients’ behalf.” Further according to this agreement, the “deliverables” refers to “the services and work product specified in the Proposal to be delivered . . . to the Client.” However, the Petitioner has not identified who this other “Client” is, where this entity is located, and the nature of its relationship to the Petitioner, Company E, and the Beneficiary. Again, “going 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. at 165.

Overall, the record of proceedings lacks sufficient documentation evidencing exactly what the Beneficiary would do for the period of time requested as well as where exactly and for whom the Beneficiary would be providing services. Given this specific lack of evidence, the Petitioner has not established who has or would have actual control over the Beneficiary’s work or duties, or the condition and scope of the Beneficiary’s services. Thus, the Petitioner has not established whether it has made a bona fide offer of employment to the Beneficiary based on the evidence of record or that the Petitioner, or any other company which it may represent, would 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).

Without full disclosure of all of the relevant factors, we are unable to find that the requisite employer-employee relationship would exist between the Petitioner and the Beneficiary. For this additional reason, the petition will be denied.

### III. ITINERARY REQUIREMENT

We also find that the Petitioner did not comply with the itinerary requirement at 8 C.F.R. § 214.2(h)(2)(i)(B).

#### A. Legal Framework

The regulation at 8 C.F.R. § 214.2(h)(2)(i)(B) states, in pertinent part:

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<sup>6</sup> It appears that the human resources manager would be located approximately 440 miles from the Beneficiary’s worksite in North Carolina and 745 miles from the worksite in Illinois. Given the distance, it is incumbent upon the Petitioner to establish how the human resources manager would exercise this claimed supervision and control over the Beneficiary.

*Service or training in more than one location.* A petition that requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with USCIS as provided in the form instructions. The address that the petitioner specifies as its location on the Form I-129 shall be where the petitioner is located for purposes of this paragraph.

The itinerary language at 8 C.F.R. § 214.2(h)(2)(i)(B), with its use of the mandatory “must” and its inclusion in the subsection “Filing of petitions,” establishes that the itinerary as there defined is a material and necessary document for an H-1B petition involving employment at multiple locations, and that such a petition may not be approved for any employment period for which there is not submitted at least the employment dates and locations.

#### B. Analysis

Here, the Petitioner marked on the H-1B petition that it would submit an itinerary for the Beneficiary. The Petitioner also submitted a certified LCA indicating that the Beneficiary would work at two different locations during the requested period of employment. But the Petitioner has not provided the required itinerary. 8 C.F.R. § 214.2(h)(2)(i)(B) (requiring an itinerary where “services to be performed or training to be received in more than one location”). The petition must be denied on this additional basis as well.

### IV. NEED FOR SERVICES

We further find that the Petitioner did not comply with the filing requirement at 8 C.F.R. § 214.2(h)(9)(i)(B).

#### A. Legal Framework

USCIS is prohibited from approving a petition filed earlier than six months before the date of actual need for a beneficiary's services. 8 C.F.R. § 214.2(h)(9)(i)(B).

For H-1B classification, the petitioner is required to submit written contracts between the petitioner and the beneficiary, or if there is no written agreement, a summary of the terms of the oral agreement under which the beneficiary will be employed. *See* 8 C.F.R. § 214.2(h)(4)(iv)(A) and (B). Further, a petitioner must establish eligibility at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). Any evidence submitted in connection with an H-1B petition is incorporated into and considered part of the petitioner's request. *Id.*

#### B. Analysis

In the instant case, the Petitioner submitted the Form I-129 petition on April 7, 2015. With the petition, the Petitioner submitted an offer of employment letter from the Petitioner to the Beneficiary with the terms of the agreement under which the Beneficiary will provide his services. The letter is

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dated April 1, 2015 (just a few days prior to the filing of the H-1B petition). In the letter, the Petitioner offers the Beneficiary a position as a programmer/analyst, starting on October 10, 2015. Thus, despite the October 1, 2015 start date listed on the petition, the petitioner indicated that its actual need for the beneficiary's services is more than six months after the H-1B petition was filed.

Thus, the visa petition was impermissibly filed more than six months before the date of actual need for the beneficiary's services. The regulations preclude the approval of the petition. 8 C.F.R. § 214.2(h)(9)(i)(B).

#### V. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the Petitioner's burden to establish 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 C-I, Inc.*, ID# 11986 (AAO Sept. 23, 2016)