The Petitioner, a software development and consulting firm, seeks to employ the Beneficiary temporarily as a “big data engineer” 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 of the California Service Center denied the Form I-129, Petition for a Nonimmigrant Worker, concluding that the record did not establish eligibility, due to a lack of evidence to establish that the position qualified as a specialty occupation. The Director further determined this same deficiency in evidence adversely impacted the Petitioner’s ability to demonstrate an employer-employee relationship with the Beneficiary. On appeal, the Petitioner submits additional evidence and asserts that the Director denied the petition in error.

Upon de novo review, we will dismiss the appeal.

I. SPECIALTY OCCUPATION

A. Legal Framework

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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) adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the offered 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.\(^1\)

We construe the term “degree” to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position.\(^2\)

B. Analysis

While the petition was before the Director, the Petitioner indicated it would deploy the Beneficiary to [end-client] through an agreement with [vendor]. The Petitioner is located in Michigan while the end-client is located Texas. The Petitioner provided two letters from the end-client listing the proffered position’s duties and its acceptable degree types.

For the reasons discussed below, we have determined that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. Specifically, we conclude that the record does not demonstrate definitive, non-speculative employment for the Beneficiary. As a result, the Petitioner has not established the substantive nature of the position, which precludes a determination that the proffered position qualifies as a specialty occupation under at least one of the four regulatory criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A)-(4).

We conclude the material on record is insufficient to establish the Petitioner secured the Beneficiary’s assignment on any particular project as requested. The evidence of the prospective work consists of contractual material between the Petitioner and the vendor, as well as letters from the vendor and the end-client.

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1. 8 C.F.R. § 214.2(h)(4)(iii)(A).
2. 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”).
1. Discussion of a Specific and Non-speculative Employment Requirement

On appeal, the Petitioner claims that the Director premised its concept of speculative employment on the position the former Immigration and Nationality Service (INS) expressed in 63 Fed. Reg. 30,419, 30,419-20 (Federal Register). The Petitioner contends that U.S. Citizenship and Immigration Services (USCIS) acts in an arbitrary and capricious manner when it enforces a Proposed Rule that the agency did not finalize. The Petitioner claims that USCIS has been applying the proposal within the Federal Register within a 2018 policy memorandum. The Petitioner further alleges that this office has issued decisions that relied on the Proposed Rule in an unauthorized manner. The Petitioner makes these statements relating to the Director’s discussion of the need for evidence that sufficiently establishes the availability of specialty occupation work. More specifically, the Director indicated that due to the Petitioner placing the Beneficiary at the end-client site via the vendor, that it must demonstrate it has specific and non-speculative qualifying assignments in a specialty occupation for the timeframe it requested on the petition. The Director further indicated that the Petitioner should have offered evidence to corroborate the claims within correspondence from the petitioning entity, the vendor, and the end-client.

First, the referenced USCIS policy memorandum neither cites to nor mentions the Proposed Rule the Petitioner discusses. Second, the Petitioner does not sufficiently detail how it concludes that the Director “clearly premised its definition of ‘speculative’ on the position taken by Legacy INS in the” Proposed Rule. The Petitioner should not make broad and blanket allegations of errors of this type without providing specific details of the reasoning that led it to such a conclusion. The reason for filing an appeal is to provide an affected party with the means to remedy what it perceives as an erroneous conclusion of law or statement of fact within a decision in a previous proceeding. Without such an error specifically identified for this broad type of accusation, the Petitioner has failed to identify the basis for this allegation. Next, the Petitioner discusses several recent decisions from this office that it portrays as “defining ‘speculative employment’ based” on the Federal Register. However, the Petitioner did not submit or cite to any decisions from this office in which we provided a “definition” of speculative employment. Therefore, we are left without any means to verify or to address the Petitioner’s allegations.

While the statute and the regulation do not place direct focus on the availability of specialty occupation work or speculative employment topics, other regulatory provisions appear to indirectly obviate this concept. For instance, a petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time it files the petition. In line with this requirement, when it files the petition, a petitioner should be able to demonstrate that it has secured qualifying work for a beneficiary in accordance with the dates of intended employment it lists within Part 5 of the Form I-129. Because this Petitioner relies on prospective work to qualify, it must demonstrate that such work is more likely than not to exist for the dates it lists in Part 5 of the form. A visa petition may not be approved for a future date after a petitioner or a beneficiary becomes eligible under a new set of

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4 See 8 C.F.R. § 103.3(a)(1)(v).
5 8 C.F.R. § 103.2(b)(1).
facts. Therefore, it is a petitioner’s responsibility to show that it has satisfied the preponderance of the evidence standard that it will not only provide qualifying work for a beneficiary, at the location listed within Part 5 of the Form I-129, but also at that same location for the period it requested.

A petitioner should not file an H-1B petition for the maximum time permitted to simply serve as a placeholder in which to submit an amended petition when and if there are any material changes to a beneficiary’s terms or conditions of employment as specified in an original petition. The dates of intended employment within Part 5 of the Form I-129 should only reflect the dates the Petitioner is able to demonstrate eligibility. The Form I-129 and the accompanying instructions contain six options for employers to select for the basis of its requested nonimmigrant classification, depending on the type of employment they are seeking. One of these options is the continuation of previously approved employment without any changes and with the same employer. Therefore, the agency has provided employers with a provision to request additional time for a beneficiary to perform work under the same terms and conditions that USCIS previously approved.

We note other regulatory provisions that appear to indirectly obviate the concept of speculative employment. The regulation at 8 C.F.R. § 214.2(h)(2)(i)(B) requires the Petitioner to submit “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.” If the Petitioner does not possess enforceable assurances with another entity that it has definitive and qualifying work for the Beneficiary, it is unclear how it can demonstrate that it has secured specific and non-speculative work for the dates and addresses it specified on the itinerary. In other words, if the Petitioner only expects or anticipates that an identified project will continue throughout the period it listed on the itinerary, then it has not sufficiently established a basis to extend an ending employment date beyond that for which it has a sufficient means to guarantee the proposed work.

Furthermore, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B)(2) states that the Petitioner will comply with the terms of the U.S. Department of Labor’s (DOL) ETA Form 9035 & 9035E, Labor Condition Application for Nonimmigrant Workers (LCA). While DOL certifies the LCA, USCIS determines whether the LCA’s content corresponds with and supports the H-1B petition. The terms of the LCA partly include the address where the Beneficiary will work, and the period in which the foreign national will work at that address. Such information is crucial, as it establishes the prevailing wage that the

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7 See 20 C.F.R. § 655.705(b) (“DHS determines whether the petition is supported by an LCA which corresponds with the petition . . . .”). See also Matter of Simeio Solutions, 26 I&N Dec. 542, 546 n.6 (AAO 2015), which states: “DOL reviews LCAs ‘for completeness and obvious inaccuracies’ and will certify the LCA absent a determination that the application is incomplete or obviously inaccurate. Section 212(n)(1)(G)(ii) of the Act. In contrast, USCIS must determine whether the attestations and content of an LCA correspond to and support the H-1B visa petition.
8 DOL regulations governing LCAs state that “[e]ach LCA shall state . . . [t]he starting and ending dates of the nonimmigrants’ employment . . . [and] [t]he place(s) of intended employment.” 20 C.F.R. § 655.730(c)(4)(iv)-(v). DOL regulations further define the term “place of employment” as the worksite or physical location where the work actually is performed by the H-1B nonimmigrant. See 20 C.F.R. § 655.715. Regarding the dates listed on the LCA, DOL regulations define the term “period of intended employment” as the time period between the starting and ending dates inclusive of the H-1B nonimmigrant’s intended period of employment in the occupational classification at the place of employment as set forth in the labor condition application. Id.
Petitioner must pay to the Beneficiary. Any material change to that situation would require an amended petition and a new LCA. The Petitioner must include similar information on the Form I-129. These elements form part of the basis for the petition approval, and the Petitioner is required to submit evidence that corroborates its material claims within the petition.  

While neither the statute nor the implementing regulation contain the detailed information upon which the agency is making a determination, this creates a scenario in which there is a gap for the agency to fill. Silence in the statute normally creates ambiguity the agency must resolve. We further note that because the former INS acknowledged within the Federal Register, that “[h]istorically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment,” this appears to illustrate that this is not a change in the manner in which the agency evaluates the availability of specialty occupation work for H-1B petitions.

Based on the above, the Petitioner has not established that USCIS is precluded from evaluating whether the organization demonstrated that it had non-speculative specialty occupation work available for the Beneficiary as requested on the petition.

2. Contractual Material on Record

Turning to the contractual material on record, the Sub-vendor Agreement and the Work Orders the Petitioner submitted in its response to the Director’s request for evidence (RFE), and the material the Petitioner presents on appeal are also inadequate.

First, all the contractual material in the record was executed between the Petitioner and the vendor, but do not include the end-client. As a result, these are not binding agreements demonstrating the end-client would provide qualifying work for the Beneficiary. Second, the Work Order executed between the Petitioner and the vendor in the RFE response lists the agreement period between April 2, 2018, and August 27, 2021. While this material may illustrate an agreement for the Beneficiary to work pertaining to the intermediate vendor, it does not relate to a similar obligation relating to the end-client. Additionally, the Petitioner submitted a Work Order when it filed the petition that only covered the dates between April 2, 2018, and June 29, 2018. Consequently, when the Petitioner filed the petition it only demonstrated an agreement with the vendor for approximately three months that also fell short of the Beneficiary’s requested start date by three months.

Further, the Petitioner has not demonstrated that the proffered position would be available for the Beneficiary as requested. We do not find the Petitioner’s arguments to be sufficient relating to an open-ended contractual arrangement that has no foreseeable termination date (i.e., or successive one-year terms as specified in the Sub-vendor Agreement). The Petitioner and the vendor executed the Sub-vendor Agreement in August 2015, and it was scheduled to remain in effect for one year, with annual renewals. This contract also indicated it would attach Work Orders reflecting a client’s acceptance of the prospective candidate, and that the services it would provide would be measured within Key Performance Metrics outlined in Exhibit C. However, the Petitioner did not offer any such Exhibit C for the record.

9 See 8 C.F.R. § 103.2(b)(1).
Additionally, such an open-ended agreement—considering the current fact pattern and the supporting evidence within the record—is not sufficient to demonstrate that the project will be ongoing, as requested, without probative corroborating material to establish the project’s actual duration. As a result, the Petitioner did not possess assurances through contractual material that the proffered position would be available for the Beneficiary. From this perspective, it is unclear what the Petitioner based its request upon for the Beneficiary to work on this project for almost three years. This is particularly important in a case such as this where the existence of the proffered position appears dependent entirely upon the willingness of the end-client to provide it.

Within the appeal, the Petitioner incorrectly indicates that the Director stated “that nothing was provided to show the relationship to [the end-client], the nature of the services being contracted for by the end-client, or ‘the specific duties the beneficiary would perform under contract for your [] clients.’” The Director first discussed the lack of sufficient and probative evidence to demonstrate the availability of specialty occupation work at the end-client site. The portion of the Director’s denial the Petitioner cites expressed a different determination when she actually indicated that the material within the record from or pertaining to the end-client did not sufficiently demonstrate the contractual relationship between the vendor and the end-client. This left the Director questioning whether the Petitioner had sufficiently demonstrated what services the Beneficiary would perform, and for what entity when it had not supplied material that adequately illustrated a binding commitment on the end-client’s part to provide any work for the Beneficiary. Consequently, we disagree with the Petitioner’s assertion that the Director stated that nothing was provided to demonstrate the relationship with the end-client. Instead, she merely indicated that what the Petitioner had provided did not satisfy its burden of proof.

Consequently, the Petitioner has not demonstrated through the contractual material in the record, that it had secured specific and non-speculative employment for the Beneficiary for the timeframe it requested on the petition.

3. Other Claimed Material

On appeal, the Petitioner claims the Director ignored evidence, and that this material sufficiently surpasses the preponderance of the evidence standard. Further, the Petitioner indicates that the agency improvidently applies the concept of speculative employment, which the Director discussed throughout the denial decision. The Petitioner cites to several judicial decisions for the prospect that an agency’s decision is arbitrary and capricious if its determination does not have a “rational connection” to the evidence. The Petitioner identifies the relevant evidence as the letters from the vendor and the end-client, as well as the contracts between itself and the vendor.

Even if we were to set aside the above-described deficiencies, we would conclude that materially relevant statements made without supporting documentation are of limited evidentiary value and are generally insufficient to satisfy a petitioner’s burden of proof. Based on the record at hand, the

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11 Matter of Sofiici, 22 I&N Dec. 158, 165 (Comm’r 1998). The reviewing authority’s determination may not be permitted to rest on mere speculation, surmise, or conjecture. The Petitioner must support assertions—be it the petitioning
end-client letters do not carry sufficient probative value or force to demonstrate specialty occupation work exists for the Beneficiary. These letters are equivalent to assertions rather than substantiating evidence to support such assertions. These statements made without supporting documentation (e.g., contractual documents that include the end-client) are of limited evidentiary value and are insufficient to satisfy the Petitioner’s burden of proof. While client letters may illuminate the type of duties a beneficiary will perform, and the necessary qualifications one must possess in order to perform these functions, such letters do not sufficiently demonstrate the timeframe in which the actual work will take place, nor do they create a binding obligation for the end-client to provide the work.

Moreover, we observe evidentiary anomalies that significantly reduce the weight of the end-client letter submitted with the RFE response. First, the end-client listed the proffered position’s duties within 22 bullet points. However, all but four duties appear to be copied directly from the Petitioner’s initial cover letter as well as the petitioning organization’s website for multiple positions, to include the big data engineer and the senior Salesforce administrator positions. Not only does this call the veracity of the end-client’s statements into question, but it also illustrates that the Petitioner has not demonstrated that the duties originated from the end-client where the work will occur, in accordance with Defensor v. Meissner, 201 F.3d 384, 387-88 (5th Cir. 2000). We also observe that within their letter, the end-client did not identify the project or how the Beneficiary’s work would further the efforts on any project.

The Petitioner also argues against the application of the Defensor decision, indicating USCIS can only find this decision persuasive if it went through rulemaking as outlined in the Administrative Procedures Act. We disagree with the Petitioner’s position as the Fifth Circuit Court of Appeals merely identified the location where the actual work would take place, and ascertained that the entity that engaged in that work should be the one that identifies the position responsibilities and prerequisites. The Petitioner did not lay out a legal reasoning that an agency must engage in substantive rulemaking before following a circuit court’s opinion.

Lacking from the record are contracts that include the end-client, or the types of documents commonly executed pursuant to such contracts, such as work orders, statements of work, invoices, receipts, or similar evidence that would illustrate the actual work the Beneficiary would perform on a project or on multiple projects. This is particularly important in a case such as this where the existence of the proffered position appears dependent entirely upon outside clients to provide it. The Petitioner, however, has not established that is has secured a commitment from such an outside client to actually provide the work described in this petition. If a petitioner is unable to establish that qualifying work organization’s own assertions or another party’s— with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010). When a fact is claimed to be true, and is based on irrevocable agreements, the Petitioner should produce probative material that surpasses simple pronouncements within correspondence. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. See Id. at 376 (quoting Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm’r 1989)). The quality of correspondence does not measure up in a preponderant fashion in comparison to that of binding contractual materials, and is inadequate to satisfy the Petitioner’s burden of proof.

12 See Openings, (June 11, 2019), http:///openings/ incorporated into the record of proceedings.
actually exists, we cannot determine whether the proffered position is a specialty occupation. When the Petitioner chose to engage in its current business model that includes outsourcing its personnel to work at another employer’s worksite, coupled with allocating H-1B beneficiaries to that same assignment, its burden correspondingly increased pertaining to certain eligibility considerations (e.g., whether it could demonstrate that sufficient work would be available for the Beneficiary, or that the requisite employer-employee relationship would exist). These considerations may be less applicable to U.S. citizen or permanent resident status employees. However, when employing nonimmigrants in the United States, employers must meet the requirements of the respective visa classification.

Moreover, under the Petitioner’s claimed scenario—one in which we simply accept assertions that are not corroborated with probative material—it could merely claim that work exists, and attempt to support that with materials that do not establish a binding duty to provide work. Were we to adopt this position, this could permit unqualified employers to secure a foreign nationals’ services based on hypothetical or unproven work assignments. Such a reading could be to the detriment of other U.S. employers, as those who are unqualified could secure a visa under the cap, eliminating other companies from consideration under this numerically limited classification. Not only could this do harm to U.S. employers that might actually qualify, but also to the integrity of the H-1B program in general.

Without probative evidence—that tends to prove or disprove the point at issue—relating to the project’s duration and the Beneficiary’s role in the project, the Petitioner has not demonstrated how his role in future assignments requires “attainment of a bachelor’s or higher degree in the specific specialty.” This outlines why the Petitioner has not establish that, at the time of filing, it had secured the Beneficiary’s assignment on any particular project, which is insufficient to demonstrate eligibility.

4. Stand-alone Statements Claims

Next, we will address the Petitioner’s citations pertaining to the sufficiency of affidavits and stand-alone statements. The Petitioner first cites to Matter of Brantigan, 11 I&N Dec. 493, 495 (BIA 1966) noting the Board of Immigration Appeals (BIA) “reversed the denial of a Form I-130 visa petition based on an Affidavit from the petitioner’s daughter.” We note that the Petitioner characterizes the BIA as reversing the denial, and predating that reversal on an affidavit. However, the Petitioner has not explained that the facts of the present case are sufficiently similar to those in the Brantigan decision. We observe that the BIA in Brantigan merely reopened the proceedings for the agency to question the daughter in person and under oath to evaluate the veracity of her statements, and to ascertain what impact her personal testimony might have upon that petitioner’s case. An

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13 We must review the actual duties the Beneficiary will be expected to perform to ascertain whether those duties require at least a baccalaureate degree in a specific specialty, or its equivalent, as required for classification as a specialty occupation. To accomplish that task in this matter, we review the duties in conjunction with the specific project(s) to which the Beneficiary will be assigned. To allow otherwise, results in generic descriptions of duties that, while they may appear (in some instances) to comprise the duties of a specialty occupation, are not related to any actual services the Beneficiary is expected to provide.

14 Section 214(i)(l)(B) of the Act.

15 See 8 C.F.R. § 103.2(b)(1); Michelin Tire Corp., 17 I&N Dec. at 249.
accepted concept is that the evaluation of the credibility of a live witness is better performed by an interviewing officer in person, than by a reviewing body acting on a written record of that evidence.\textsuperscript{16} The BIA did not reverse the adverse decision based on the daughter’s affidavit alone.

Turning to the Petitioner’s citation to \textit{Matter of Treasure Craft of California}, 14 I&N Dec. 190 (Reg’l Comm’r 1972), it claims that the Commissioner rejected the filing party’s assertions, but only where they were contradicted by other material within the record. We do not consider this to be a full representation of the Commissioner’s holdings in this case. The \textit{Treasure Craft} decision contains two holdings pertaining to the sufficiency of going on record with statements alone. Regarding the first, counsel in the \textit{Treasure Craft} case argued that the petitioner only needed to state that the training the petitioning organization offered could not be obtained outside the United States. The Commissioner stated the “argument that the petitioner need only go on record as stating that training is not available outside the United States is rejected in this matter.”\textsuperscript{17}

Within the Commissioner’s second holding, it stated: “We also reject the argument that the petitioner may rely solely upon his statement ‘on record’ that the beneficiaries will not displace United States workers. . . . The petitioner’s statement must be given due consideration; however, this Service is not precluded from rejecting such statement when it is contradicted by other evidence in the record of the matter under consideration.”\textsuperscript{18} It appears the Petitioner grasped onto the second scenario in the \textit{Treasure Craft} headnote regarding a claim that was contradicted by other evidence, while ignoring the first scenario that only included an assertion. Notably, another decision that references the \textit{Treasure Craft} case exemplifies that going on record without providing evidence that preponderantly demonstrates eligibility is not sufficient to satisfy the filing party’s burden of proof.\textsuperscript{19} Furthermore, we have also indicated that statements should be supported with relevant, probative, and credible evidence.\textsuperscript{20} Consequently, the Petitioner has not established that assertions that are not contradicted by evidence satisfy its burden of proof.

Next, in the appeal brief, the Petitioner surmises that “if all evidence submitted as part of this petition falls under the Declaration contained in Part 7 of the I-129 Form, then the information provided to USCIS carries the weight of sworn testimony.” (Emphasis in original). The Declaration the Petitioner refers to is the Petitioner’s certification under the penalty of perjury that all of the information contained in the petition and the supporting documents are complete, true, and correct.

The Petitioner has not supported its statement that USCIS should presume that signing under the penalty of perjury inherently means that all material claims a filing party makes are accurate. However, we note that except where a different standard is specified by law, a petitioner must prove eligibility for the requested immigration benefit by a preponderance of the evidence.\textsuperscript{21} Under the preponderance of the evidence standard, the evidence must demonstrate that the petitioner’s claim is

\textsuperscript{17} \textit{Id}. at 193.
\textsuperscript{18} \textit{Id}. at 194.
\textsuperscript{19} \textit{See Soffici}, 22 I&N Dec. at 165.
\textsuperscript{20} \textit{See Chawathe}, 25 I&N Dec. at 376; \textit{see also id}. at 371-72 (discussing statements that are not supported by probative material will not meet a filing party’s burden of proof).
\textsuperscript{21} \textit{Id}. at 375-76.
“probably true.”\textsuperscript{22} We will examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. If a petitioner submits relevant, probative, and credible evidence that leads us to believe that the claim is “more likely than not” or “probably” true, it has satisfied the standard of proof. Stated another way, a petitioner must establish that there is greater than a fifty percent chance that a claim is true.

Before any such burden can be satisfied, the factfinder must evaluate the raw evidence, finding it to be sufficiently reliable and sufficiently probative to demonstrate the truth of the asserted proposition with the requisite degree of certainty.\textsuperscript{23} We have discussed several deficiencies associated with the Petitioner’s evidence and the Petitioner has not demonstrated that its evidence is sufficiently reliable and sufficiently probative to support its assertions. In summary, the Petitioner has not demonstrated that its signature under the penalty of perjury should eliminate all questions relating to the veracity of its claims or of the evidence it provides in support of the petition.

Furthermore, the end-client and vendor letters: (1) were not affidavits as they were not sworn to or affirmed by the declarants before an officer authorized to administer oaths; or (2) in lieu of having been signed before an officer authorized to administer oaths or affirmations, did not contain the requisite statement, permitted by Federal law, that the signers, in signing the statements, certify the truth of the statements, under penalty of perjury.\textsuperscript{24} Consequently, this material, if not corroborated with probative evidence, is also insufficient to satisfy the Petitioner’s burden of proof.\textsuperscript{25}

Even if we considered the end-client letters as sufficient, we observe an additional issue. The end-client’s first letter drafted in August 2018 indicated the Beneficiary would be starting his project in April 2018, almost five months before the date on this letter. The Petitioner did not explain why it provided a letter from the end-client that lacked contemporaneous information. The record lacks independent, objective, and probative evidence that resolves this discrepant information and points to where the truth lies.\textsuperscript{26}

5. Arbitrary and Capricious Claims

Regarding the arbitrary and capricious nature of the Director’s decision, the Petitioner supports this allegation by citing to \textit{Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.}, 463 U.S. 29, 52 (1983). In citing to \textit{State Farm}, the Petitioner stated that “[i]t is one of the most basic principles of due process and administrative law that governs the Service that the agency cannot ignore evidence.” The Petitioner alleges that the Director “entirely disregarded the letter from the end-client.” A review of the Director’s decision reveals that while she considered the end-client letter, she determined it was not sufficiently probative to establish the end-client would provide the work for the Beneficiary. As we noted above, based on the fact pattern in this case, assertions within the end-client

\textsuperscript{22} Id. at 376.
\textsuperscript{23} \textit{Concrete Pipe & Products of California, Inc.}, 508 U.S. at 622.
\textsuperscript{24} See \textit{Black’s Law Dictionary} (10th ed. 2014) and 28 U.S.C. § 1746, respectively.
\textsuperscript{25} \textit{Soffici}, 22 I&N Dec. at 165.
\textsuperscript{26} See \textit{Matter of Ho}, 19 I&N Dec. 582, 591-92 (BIA 1988).
correspondence is of limited evidentiary value and is insufficient to satisfy the Petitioner’s burden of proof. It is unnecessary that the degree of the agency’s weight accorded to these letters correlates with the weight the Petitioner bestows upon them, provided the agency considers the content and grants an appropriate value.\footnote{Visinscia v. Beers, 4 F. Supp. 3d 126, 134 (D.D.C. 2013).} Accordingly, the Petitioner has not demonstrated that the Director acted arbitrarily or capriciously based on the Supreme Court decisions it provided.

Nevertheless, we will discuss the Petitioner’s other claims regarding the arbitrary and capricious nature of the Director’s decision. For additional support, the Petitioner cites to \textit{Matter of Koden}, 15 I&N Dec. 739, 740 (BIA 1974; A.G. 1976; BIA 1976) for the proposition that reasonable inferences should be drawn from statements alone. The Petitioner indicated that such “reasonable inferences” should be considered highly probative. Based on this presumption, the Petitioner states that the record was sufficient for the petitioning organization to meet its burden for approval of the H-1B petition. We do not agree with the Petitioner’s characterization of the holding within the \textit{Koden} decision. In that decision, the Attorney General drew inferences from a witness’ testimony that an interpreter, acting on an attorney’s behalf, had offered to pay the witness for every foreign national she would refer to the attorney. This was in the context of a broader issue of the attorney’s misconduct. The Attorney General concluded that:

\begin{quote}
[T]he inferences that could properly be drawn from the [witness’] testimony, together with other evidence, established the charge. Concerning this testimony the Board stated that while it was “not highly probative of whether she would in fact have been paid . . . , the mere fact that an offer of this nature was made to the witness strongly indicates that [the interpreter] desired to induce the witness to refer aliens to the [attorney]” . . . [T]he testimony was not hearsay, as that term is generally understood, inasmuch as [the interpreter’s] assertion was not offered to prove the truth of the matter asserted. See Rule 801(c), Federal Rules of Evidence, 28 U.S.C. (Supp. IV), Appendix. The question was not whether [the interpreter] would in fact have paid [the witness] for refereeing [sic] clients to [the attorney], but whether a relationship of an unethical character existed between [the attorney] and [the interpreter]. [Footnote omitted]. The evidentiary value of the statement arose not from reliance upon [the interpreter’s] truthfulness, but from an inference derived from the fact that an offer of this nature was made at all.\footnote{Id. at 745.}
\end{quote}

First, the statements from the witness were not being relied upon to establish a fact. However, within the present appeal, the Petitioner requests that its own statements, as well as those from the vendor and the end-client, be ascribed with demonstrating a fact—that specialty occupation work would be available for the Beneficiary throughout the requested period on the petition. Second, while the Petitioner indicates that the material within the record—statements from the parties that are not corroborated by a more probative form of evidence—should be considered “highly probative” on their own right. We do not gather this determination from the Attorney General’s statements. In fact, within the BIA’s portion of the \textit{Koden} decision, it indicated that the witness’ testimony was not highly probative as it related to the fact of whether or not the interpreter would have paid her.\footnote{Id. at 760.} Moreover,
the BIA not only considered the inferences it drew from the witness’ testimony, but it coupled that “with the other evidence against [the attorney] and the almost inescapable inferences to be drawn from that evidence, [which] convinces us that [the attorney] and [the interpreter] entered into a compensated client referral arrangement.” Consequently, the Petitioner has not shown that the Koden decision weighs in its favor to demonstrate that the Director should have granted more weight to the statements within the end-client and vendor correspondence.

Business needs require companies to regularly amend plans and change direction. A contract provides the structure and expectations that allow all contracted entities to plan accordingly. In the present case, the Petitioner has not met its burden demonstrating the details within the agreements between the vendor and the end-client. However, we observe that the Sub-vendor Agreement executed between the Petitioner and the vendor reflected the client could terminate the basis for this petition at any time with only one day’s notice and the vendor could terminate for convenience for any or no reason with only fifteen day’s notice. This accentuates the importance of binding agreements, especially in this case as the Petitioner is requesting that USCIS grant the Beneficiary’s services in excess of a 35-month period.

In the same manner that the Petitioner contracted to provide personnel to the vendor, the petition the organization filed with USCIS is another form of an agreement that the organization consented to perform in the manner and methods outlined in the petition. And in order to comply with the agreed upon terms with USCIS, the Petitioner must be able to demonstrate by a preponderance of the evidence that it will supply specialty occupation level work, at the location listed on the petition and on the LCA, and for the amount of time it listed on these two government forms. The Petitioner has not offered sufficient evidence demonstrating that for the period it requested on this petition, that it would have qualifying specialty occupation work for this foreign national in accordance with the standard occupational classification code it listed on the LCA.

Therefore, the Director’s conclusion that the correspondence from the Petitioner, vendor, and end-client was insufficient, and that the organization should offer more probative and corroborating evidence was not arbitrary and capricious. On appeal the Petitioner states it has provided “relevant, credible and probative evidence establishing, by at least a preponderance of the evidence that [the Petitioner] has specialty occupation work for the Beneficiary to perform in H1B status at [the end-client] and that [the end-client] agrees that the work by the Beneficiary at its own office will be of a specialty occupation nature . . . .” We disagree that the evidence is sufficiently probative or that the Petitioner’s evidence and claims establish by a preponderance that the specific specialty occupation work will exist for the timeframe the Petitioner requested on the petition.

In summary, we conclude that the Petitioner has not established the substantive nature of the work the Beneficiary will perform. This precludes us from evaluating whether 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 one; (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 two;

30 Id. at 763.
31 See the Sub-vendor Agreement sections 3(i) and 16(a).
(3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion two; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion three; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion four. Based on the foregoing, we cannot conclude that the proffered position qualifies as a specialty occupation.

Considering the preponderance of the evidence standard, the Petitioner’s prediction that it will have prospective work available for the Beneficiary—whether it be on an unspecified project, or on an existing project that it only expects to continue—is not sufficient to satisfy this standard of proof. Based on the foregoing, we cannot conclude that the proffered position qualifies as a specialty occupation, and we will dismiss the appeal.32

II. EMPLOYER-EMPLOYEE RELATIONSHIP

Because the Petitioner has not demonstrated eligibility as noted above, we decline to reach and hereby reserve the Petitioner’s appellate arguments regarding its claimed employer-employee relationship with the Beneficiary.33

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is a petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as Matter of H-G-S, Inc., ID# 4001716 (AAO Nov. 13, 2019)

32 Because the issues identified above preclude approval of this petition, we will not discuss the Petitioner’s remaining assertions on appeal.

33 See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).