U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9097587

Date: JUNE 8, 2020

Appeal of California Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (H-1B)

The Petitioner seeks to temporarily employ the Beneficiary 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 petition, concluding that the Petitioner did not sufficiently establish that: (1) the proffered position qualifies as a specialty occupation; and, (2) it qualifies as a United States employer with an employer-employee relationship with the Beneficiary.[1]

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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:

[1] On appeal, the Petitioner asserts that the Director only denied the petition on two grounds - determining that the Petitioner did not sufficiently establish: (1) "the actual work to be performed by the Beneficiary", and (2) that it qualifies as a United States employer with an employer-employee relationship with the Beneficiary. The Petitioner stated "we are only addressing the issue[s] regarding the employer-employee relationship and availability of specialty occupation work." However, as the Director also concluded in her denial that the Petitioner did not establish that the proffered position qualifies as a specialty occupation, we will also address this H-1B eligibility issue.

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

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

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

(*1*) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(*2*) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

(*3*) The employer normally requires a degree or its equivalent for the position; or

(*4*) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

8 C.F.R. § 214.2(h)(4)(iii)(A). 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. *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, 387-88 (5th Cir. 2000).

B. Proffered Position

The Petitioner indicated that the proffered position is an "IT Application Analyst" [IAA] and submitted a certified labor condition application (LCA)[2] for the "Software Developers, Applications" occupational category corresponding to the Standard Occupational Classification (SOC) code 15-1132. The Petitioner has submitted job descriptions for the proffered position.[3] For instance, in

[2] A petitioner submits the LCA to U.S. Department of Labor (DOL) to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the area of employment or the actual wage paid by the employer to other employees with similar duties, experience, and qualifications. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

[3] We acknowledge that the Petitioner submitted additional information for the job duties, and have closely considered and reviewed this material, as with all evidence in the record. For example, the Petitioner discussed the Beneficiary's previous coursework for the purpose of correlating the need for the Beneficiary's education with the associated job duties of the position. However, we are required to follow long-standing legal standards and determine first, whether the proffered position qualifies for classification 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

response to the Director's request for evidence (RFE) the Petitioner provided a list of the Beneficiary's job functions, the relative time percentage that he will devote to each job function, along with underlying job duties for each function, which for the sake of brevity we will summarize, as follows:

- Design and develop flows in Mulesoft ESB suing Anypoint Studio for enterprise level complex data integration across multiple, disparate systems; (50%)
- Work on Relational Database Management Systems; (15%)
- Use Bamboo for CI (Continuous Integration) and CD (Continuous Deployment); (5%)
- Analyze business requirements and design documents by interacting with the Data Governance, Technical Architects, Business Analysts, and Leads; (10%)
- Conduct Unit and Functional tests using MUnit; (15%)
- Follow Agile Methodology with a 2-week Sprint process, which include iterative application development, Daily Stand-Ups, End of Sprint – Sprint Planning, Sprint Retrospective Meetings, and Three Amigos; (5%)

C. Analysis

Upon review of the record in its totality and for the reasons set out below, we conclude first that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. Specifically, the Petitioner has not established the substantive nature of the work that the Beneficiary will perform, which precludes a finding that the proffered position satisfies any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).[4]

The Petitioner located in Florida, indicates in the petition and on the LCA that it will deploy the Beneficiary to an end-client's location in Iowa to work as an IAA pursuant to contractual agreements, as follows:[5] Petitioner → G- (mid-vendor) → P- (end-client).

On a fundamental level, the record lacks a detailed explanation or documentation from the contractual parties, including the end-client, regarding the particular end-client project(s) to which the Beneficiary will be assigned. 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.

(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].").

[4] The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. Although we may not discuss every document submitted, we have reviewed and considered each one.

[5] The Petitioner most recently employed the Beneficiary through STEM-related post-completion optional practical training. 8 C.F.R. § 274.a.12(c)(3)(i)(C); 8 C.F.R 214.2(f)(10)(ii)(C), and has provided copies of wage statements for his employment with the Petitioner.

The Petitioner initially states that the Beneficiary "will be temporarily employed as an [IAA] and will be based at the Petitioner's client's office." In response to the Director's RFE the Petitioner indicates that the end-client is a "global investment management firm," and describes the project to which the Beneficiary will be assigned as follows:

> The Marketing Collateral Automation Project [*project*] is about automating the factsheet production for [the end-client's asset management arm] to include stabilization, improved service level, consolidation, scalability, and oversight.
>
> For mutual funds, a factsheet is a basic three-page document that gives an overview of a mutual fund. For potential investors, this is a necessary and easy report to read before delving more deeply. The fact sheet will give the following information: fees, risk assessment; and returns.
>
> There are many people and manual processes involved in generating fact sheets. The [*project's*] goal is to reduce and eventually eliminate manual business processes to increase speed to market for delivery of factsheets. This will, in turn, improve operational efficiency and risk mitigation and these three factors will ultimately improve customer/client experience.

Importantly, the Petitioner did not present material that would delineate the Beneficiary's specific role and responsibilities as a member of the end-client's technology development team(s) for this *project*. To further illustrate, the Petitioner emphasized throughout the proceedings that the Beneficiary will liaise or interact with various end-client personnel and stakeholder groups, including:

- Analyze business requirements and design documents by interacting with the Data Governance, Technical Architects, Business Analysts, and Leads;
- [Engage in] peer review of code;
- Work in coordination with Quality Assurance personnel in testing the Mule application across Test, Pilot, and Production environments;
- Provide status updates and reporting metrics to the program leadership;
- Conduct and coordinate triage calls with users, and;
- Participate in Agile Scrum meetings.

Though the Petitioner described the job duties of the position, the evidence does not show the operational structure within this initiative in a manner that would establish the Beneficiary's role. The submitted material does not communicate the work that the Beneficiary will perform on a day-to-day basis within the context of the end-client's *project*, and the correlation between that work and a need for a particular education level of highly specialized knowledge in a specific specialty.

The Petitioner's position descriptions appear to have the Beneficiary performing software application development duties which may be consistent with the LCA for a position within the "Software Developers, Applications" occupational category. For example, the Petitioner states that the Beneficiary will be "[t]ranslat[ing] mapping documents and requirements specifications documents into technical design," "[b]uilding code to design the integrations between the application and SFTP server," and "[a]nalysis of business requirements and design documents by interacting with the

Technical Lead, Architect, and Business Analysts." The Petitioner provides further discussion about the job duties of the position in response to the Director's request for evidence (RFE), indicating for instance, that the Beneficiary will "[c]onvert data formats such as XML, CSV, and JSON," "[i]mplement synchronous and asynchronous messaging scopes using Apache Active MQ in Mule," and "[c]reate stored procedures and SQL queries to get/update financial information and send it to Informatica." While these descriptions identify the use of software development languages, hardware, and data formats to perform information technology job functions, without a more complete position description and specific information detailing what role the end-client expects the Beneficiary to play within its development projects, we cannot conclude that the Beneficiary's actual position and overall level of responsibility require the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation.

The Petitioner also provided third-party supplier agreements between the Petitioner and the mid-vendor, and the mid-vendor and the end-client, which indicate that the nature of the contractual relationships between the parties is one in which the mid-vendor has agreed to provide the Petitioner's personnel to the end-client in order to augment the end-client's staff engaged in information technology-related development projects. The mid-vendor contracted with the Petitioner to provide personnel to work directly with the end-client at the end-client location. Toward that end, the January 2000 end-client agreement with the mid-vendor specified, in pertinent part:

> 2. Statement of Work. For each engagement under this Agreement, the services to be performed by the [the mid-vendor] at Client's request will be described in a statement of work [SOW]. Each [SOW] and amendment hereto must be signed by both parties and must state that it is made pursuant to this Agreement. . . .
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> . . . .
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> 4. Fees. Each [SOW] shall specify whether fees for the engagement will be on a time-and-materials basis, a fixed price basis, or a combination of both.
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> . . . .
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> 8. Change Orders. A [SOW] shall describe the work to be performed and may contain a list of assumptions on which delivery dates or prices are based. If the scope of the project or assumptions change during the course of the engagement, the changes shall be described in a change order to be signed by both parties. The change order shall set forth any changes to delivery dates and/or prices that the parties agree are fair in light of the changed scope or assumptions.
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> . . . .
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> 12. Invoices. Client shall not be billed or be liable for any charges other than those described and authorized in the [SOW], in this Agreement or in a subsequent writing signed by Client. . . .

. . . .

14. Client's Responsibilities. In connection with each [SOW], Client shall (a) designate one employee of Client as a project manager who shall be [the mid-vendor's] primary point of contact for all questions and issues relating to the engagement. . . .

. . . .

The end-client's agreement with the mid-vendor reflects that the end-client will issue supplemental documentation such as SOWs to the mid-vendor detailing the services to be provided and the fees for such services. Further, the end-client's SOWs are to identify the work to be performed in accordance with the overarching end-client agreement. Though requested by the Director in her RFE, the record does not contain SOWs, work orders or other contractual documentation specific to the Beneficiary's assignment under the end-client agreement, between the mid-vendor and the end-client.[6] On appeal, the Petitioner submits an email from the mid-vendor, indicating "[the end-client] no longer sends us SOWs," noting "[t]hey are all electronic through their Vendor Management System." The Petitioner indicates on appeal that "[e]ven though the Petitioner requested the relevant document, [the mid-vendor] was not able to provide it because, as a company policy, [the end-client] does not issue SOWs."

Companies are generally permitted, of course, to keep sensitive information confidential. This does not, however, relieve the Petitioner of the need to demonstrate the existence of H-1B caliber work for the Beneficiary to perform during the period of requested employment. The claim a document is confidential does not provide a blanket excuse for a petitioner not providing such a document if that document is material to the requested benefit. Although a petitioner may always refuse to submit confidential commercial information if it is deemed too sensitive, the Petitioner must also satisfy the burden of proof and runs the risk of a denial. *Cf Matter of Marques,* 16 I&N Dec. 314 (BIA 1977) (holding the "respondent had every right to assert his claim under the Fifth Amendment[; however], in so doing he runs the risk that he may fail to carry his burden of persuasion with respect to his application.").

The Petitioner has also submitted a copy of the mid-vendor's agreement with the Petitioner, which provides among other things:

> Each consultant assigned to a particular work project by [the Petitioner] will maintain an individual purchase order [PO]. The [PO] will specify, among other things, the name(s) of the individuals provided by [the Petitioner], the types of services requested by [the mid-vendor's] Client ("Purchase Order Services"), the tasks or project to be performed by the assigned individual(s), the fee for the work, the acceptance criteria, the commencement and completion dates for the assignment. . . .

[6] "Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the [petition]." 8 C.F.R. § 103.2(b)(14).

The mid-vendor POs each identify the Beneficiary and the end-client, and indicate under "description of the services to be performed" that the Beneficiary will be employed at the end-client location as an "[IAA]; duties as directed by client." Contrary to the PO requirements specified in the mid-vendor's overarching agreement with the Petitioner, neither PO identifies the specific tasks or end-client project(s) to which he will be assigned, or the requirements of the position.

Absent fully executed contracts and accompanying statements of work (or similar documentation) between the Petitioner and the mid-vendor; and, the mid-vendor and the end-client, the record lacks evidence of any legal obligation on the part of the end-client to provide the position described by the Petitioner in this petition.[7] Therefore, we conclude that the mid-vendor and end-client contractual material is not probative towards establishing the specific terms and conditions of the Beneficiary's end-client work assignment. It is the Petitioner's burden to prove by a preponderance of evidence that it is qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 376. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.*

Moreover, the letters from the end-client and the mid-vendor do not identify or discuss the specific project(s) to which the Beneficiary will be assigned. The mid-vendor's letter indicates that the Beneficiary "is currently work[ing] on a project for our client." The March 2019 end-client letter notes that the Beneficiary "is a contractor" obtained through the mid-vendor who is "performing the [IAA] role at our facility campus." The July 2019 end-client letter states that the Beneficiary "has been assigned to work as an [IAA] at [the end-client location]. We also observe that the Petitioner has not sufficiently demonstrated that the signatories of the end-client letters were authorized by the end-client to provide such letters. The March 2019 letter is classified by the end-client for "Internal Use," and is signed by M-T- who indicates that she is employed in "human resources." The July 2019 letter is classified by the end-client as "Personal," and is signed by J-B- who indicates that she is an "IT Leader." The signatories did not identify whether they are employees of the end-client, and if so, whether they were authorized to provide letters classified for "internal use" or as "personal" to external parties on behalf of the end-client. Nor did they explain how they came to have knowledge of the terms and conditions of the Beneficiary's employment at the end-client location. The Petitioner must resolve these inconsistencies and ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Therefore, we conclude that these letters hold little probative value.[8]

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[7] *Cf. Galaxy Software Solutions, Inc. v. USCIS*, No. 18-12617, 2019 WL 2296824, at *7 (E.D. Mich. May 30, 2019) (describing the petitioner's "fail[ure] to provide all of the contracts governing the relationships between the corporate entities in the chain" as a "material gap").

[8] *See Matter of Chawathe*, 25 I&N Dec. at 376. We also observe that the end-client letters inconsistently describe the requirements of the position. The March 2019 end-client letter identifies job tasks that do not appear to be job functions, but instead resemble general knowledge and skill requirements for an information technology position, such as "experience with mulesoft," "knowledge of business unit applications," and "maintain a high degree of accuracy and confidentiality." Notably, it did not specify any degree requirements for the position. In contrast, the July 2019 end-client reiterates the Petitioner's minimum position requirements of a bachelor's degree or its equivalent in computer science or engineering (Electrical/Electronics) or IT or IS. The Petitioner must also resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 591-92. For this additional reason, the end-client letters are not probative towards establishing the terms and conditions of the Beneficiary's assignment *as imposed by the end-client*. *See Defensor*, 201 F.3d at 387-88.

On appeal, the Petitioner emphasizes "the end-client has engaged the services of the Petitioner through the vendor," noting "the end-client has some specific requirements, which under contractual obligations, by entering into the series of contracts, the Petitioner has undertaken to provide." However, the Petitioner has not submitted any end-client contractual documentation specific to the Beneficiary's assignment. It further states "USCIS is well aware of the difficulties companies like the Petitioner face in obtaining and providing letters and related documentation, which is practically impossible AND should not be insisted upon." Notably in this case the Petitioner describes an end-client contingent worker hiring process whereby firms such as the Petitioner are provided with the end-client's "Purchase Order Services" describing the desired services to be performed for the end-client. According to the mid-vendor agreement - prior to the issuance of the mid-vendor's PO, such firms present candidates for consideration who they believe will meet the end-client's requirements to perform the specific end-client assignments. If the candidate is accepted for the assignment, the mid-vendor's PO is executed to facilitate the candidate's end-client consulting assignment. Therefore, the Petitioner's assertion that end-client documentation specifically relating to the Beneficiary's assignment is "practically impossible to obtain" seems incongruent with other evidence within this petition.[9]

The Petitioner also provided copies of the Beneficiary's work emails at the end-client location which reflect that the end-client's staff assign various tasks to the Beneficiary. While this material shows that the Beneficiary was involved in performing information technology-related tasks, such as determining whether certain source files can have null values for software testing purposes, performing software "bug-fixes," providing updates to staff regarding software pilot testing, and making requests of other staff to test various applications, the material in record does not sufficiently illustrate the scope and complexity of the Beneficiary's work assignments therein, or the nature of his position as a member of the end-client *project* development team. Further, the Beneficiary's status report tasks, such as "[w]orked on fixing a couple of production issues," "[h]ad backlog grooming wherein we groomed the User Stories for coming sprints," and "[c]oded all Sourcerules user stories that needed refactor to match with the current architecture (60 user story points)," considered outside of the context of the end-client's *project* add little insight into the substantive nature of the position. As discussed, the general references in the petition regarding the Beneficiary's assignment to "projects" do not sufficiently establish that working on such projects require highly specialized knowledge and at least a bachelor's degree in a specific specialty.

Considering the evidence in its entirety, we conclude that the record lacks sufficient documentation regarding the end-client *project* to which the Beneficiary will be assigned, and the specific work that the Beneficiary would perform during the intended period of employment. Nor does the Petitioner provide sufficient detail regarding the Petitioner's specific role with respect to the Beneficiary's day-to-day work while at the end-client site. We note again that the record lacks (1) SOWs, work orders or other contractual documentation specific to the Beneficiary's assignment under the end-client agreement, between the mid-vendor and the end-client; and, (2) the mid-vendor's purchase orders do not identify critical details, such as the end-client project to which the Beneficiary will be assigned, and his job tasks therein.

[9] *Matter of Ho*, Dec. at 591-92.

The Petitioner also submitted a letter from Professor W-, who determined that the nature of the duties of the position require "at least a bachelor's degree in computer science or engineering (electrical/electronics) or information technology or information systems." After careful consideration, we conclude that the opinion letter is not persuasive. The professor, indicates that his opinion is based upon a review of (1) the Petitioner's letters submitted in support of the petition, (2) the Petitioner's business, and (3) his "own independent research." However, he did not specifically discuss what his independent research activities entailed, nor were his research efforts documented in the record.

For instance, while he opined that "[a]mong industry professionals, it is widely recognized that individuals [employed in the proffered position] must have [the professor's previously stated requirements]," his letter does not substantiate his conclusions, such that we can conclude that the Petitioner has met its burden of proof. Here, the professor does not reference, cite, or discuss any studies, surveys, industry publications, authoritative publications, or other sources of empirical information which he may have consulted to complete his evaluation.

Importantly, the professor indicates that the "[IAA] with [the Petitioner would be required to perform a range of duties to design, development, and implementation of integration services and applications based on clients' existing infrastructure and technical design documents," but does not reference the specifics of the particular projects upon which the Beneficiary would work for the instant end-client. He also quotes the job functions and job duties present in the record, which we previously stated are insufficient for determining what the Beneficiary would be doing in his IAA role at the end-client location. Therefore, his level of familiarity with the proposed job duties as they would be performed in the context of the end-client's business has also not been substantiated.

Further, the professor provided narrative regarding academic degrees that would be acceptable for entry into the proffered position, and identified various coursework therein. However, he did not discuss any detailed course of study or the "educational foundation" provided by those degrees in relation to the specific duties of the position at the end-client location. We conclude that the Petitioner has not demonstrated through the professor's analysis how an established curriculum of courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to successfully serve in the proffered position.

For the reasons discussed, we conclude that the opinion letter from the professor is insufficient to satisfy the first criterion. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988) (The service is not required to accept or may give less weight to an advisory opinion when it is "not in accord with other information or is in any way questionable."). For the sake of brevity, we will not address other deficiencies within the professor's analyses of the proffered position.

Because the Petitioner has not established the substantive nature of definite, non-speculative work that the Beneficiary will perform for the stated end-client, we are unable to evaluate 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 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. We therefore conclude that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.[10]

II. EMPLOYER-EMPLOYEE RELATIONSHIP

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding whether it will be a "United States employer" having an "employer-employee relationship" with the Beneficiary as an H-1B temporary "employee." *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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).

III. CONCLUSION

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. The Petitioner has not met that burden here, and the petition will remain denied.

ORDER: The appeal is dismissed.

[10] As the lack of probative and consistent evidence in the record precludes a conclusion that the proffered position is a specialty occupation and is dispositive of the appeal, we will not further discuss the Petitioner's assertions on appeal.