U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8496894

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) an employer-employee relationship will exist between the Petitioner and the Beneficiary.

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 101(a)(15)(H)(i)(b) of the Act defines an H-1B nonimmigrant as a foreign national "who is coming temporarily to the United States to perform *services . . . in a specialty occupation* described in section 214(i)(1) . . . " (emphasis added). Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), defines the term "specialty occupation" as an occupation that requires "theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(l) of the Act, but adds a non-exhaustive list of fields of endeavor. In addition, 8 C.F.R. § 214.2(h)(4)(iii)(A) provides that the

proffered position must meet one of four criteria to qualify as a specialty occupation position.[1] Lastly, 8 C.F.R. § 214.2(h)(4)(i)(A)(*1*) states that an H-1B classification may be granted to a foreign national who "*will perform services in a specialty occupation . . .* " (emphasis added).

Accordingly, to determine whether the Beneficiary will be employed in a specialty occupation, we look to the record to ascertain the services the Beneficiary will perform and whether such services require the theoretical and practical application of a body of highly specialized knowledge attained through at least a bachelor's degree or higher in a specific specialty or its equivalent. Without sufficient evidence regarding the duties the Beneficiary will perform, we are unable to determine whether the Beneficiary will be employed in an occupation that meets the statutory and regulatory definitions of a specialty occupation and a position that also satisfies at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The services the Beneficiary will perform in the position determine: (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. 8 C.F.R. § 214.2(h)(4)(iii)(A).

Further, as recognized by the court in *Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000), where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. The court held that the former Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. *Id.* Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

By regulation, the Director is charged with determining whether the petition involves a specialty occupation as defined in section 214(i)(1) of the Act. 8 C.F.R. § 214.2(h)(4)(i)(B)(*2*). The Director may request additional evidence in the course of making this determination. 8 C.F.R. § 103.2(b)(8). In addition, a petitioner must establish eligibility at the time of filing the petition and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1).

[1] 8 C.F.R. § 214.2(h)(4)(iii)(A) must be read with the statutory and regulatory definitions of a specialty occupation under section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). 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").

B. Proffered Position

The Petitioner indicated that the proffered position is a "TIBCO developer" arranged for through a series of contractual relationships with intermediary vendors and an end-client, 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. Within these proceedings the Petitioner has submitted various job descriptions for the proffered position.[3] For instance, the Petitioner initially provided a list of the job duties for the position which were quoted by the mid-vendor and the end-client in their letters, as follows (verbatim):

- Development, Enhancements, Testing and deployment of codes in all environments (Dev, QA state, prod) using TIBCO Administrator;
- Work on TIBCO Business-Works, Designer, TIBCO Foresight products, TIBCO Hawk, TIBCO EMS and TIBCO Administrator;
- Participate in projects through the entire SDLC life cycle, i.e. design, implementation, deployment, and testing;
- Design and develop component based (Restful API services) and traditional SOAP services by breaking down tightly couple interfaces to accommodate and scale increasing client data;
- Configure Web Services using SOAP/JMS and SOAP/HTTP for varied business requirements;
- Work on installation and maintenance of TIBCO Servers during upgrade from BW 5.9 to BW 5.13 and BW 6.3;
- Lead the effort in enhancing the common logging library and create Splunk queries and dashboards using Splunk for data visualization;
- Resolution of defects (if any) identified in the delivered codes;
- Frequent interaction with client, business teams, external vendors, functional and application team members for requirement gathering and analysis;

[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 (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].").

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 Texas, indicates in the petition and on the LCA that it will deploy the Beneficiary to an end-client's location in Minnesota to work as a "TIBCO developer" through two intermediary vendors pursuant to contractual agreements, as follows:

Petitioner → K-F- (mid-vendor) → B- (prime-vendor) → U-B- (end-client).

The Petitioner provided contractual documentation to illustrate this relationship. Nonetheless, it has not established definitive, specialty occupation employment for the Beneficiary.[5] The Petitioner initially indicated "the Beneficiary will be stationed at the end-client through [the mid-vendor]," and provided a letter from the mid-vendor who "confirmed" this contractual relationship. It submitted a copy of its agreement with the mid-vendor for the Petitioner's provision of "temporary personal services" to the mid-vendor's clients pursuant to "separate work order[s] setting forth the name of the mid-vendor client, the rate for the services and other terms and conditions relevant to the specific services to be provided by [the Petitioner]." The supporting mid-vendor work order references a February 2013 master services agreement between the mid-vendor and the prime-vendor (on behalf of the end-client), and indicates that the Beneficiary will be placed with the end-client as a TIBCO developer for a ten month period of time ending in September 2019, before the requested employment start date in the petition. Later, in response to the Director's request for evidence (RFE), the Petitioner explains "at the time of filing the petition, [the Petitioner] was unaware of the additional intermediary company, [B-], within the corporate chain," even though the prime-vendor was specifically referenced to be part of the contractual chain for the Beneficiary's placement with the end-client in the initially submitted mid-vendor work order.

The Petitioner asserts in the RFE response that it provides evidence sufficient to demonstrate "an already existing corporate relationship" between the parties. However, the evidence does not establish what the parties actually agreed to. For instance, the Petitioner submitted a two-page 2018 "Special Amendment Number 4 to Supplier Master Services Agreement Statement of Services" between the mid-vendor and the prime-vendor "with respect to [the mid-vendor's] providing of [c]ontract [w]orkers to [the end-client]." The text in the first page is entirely redacted, while page two contains the signatures of the contracting parties. Therefore, we are unable to determine what facets of the previous agreements this fourth amendment seeks to change. Further, the Petitioner has not provided the initial agreement between the parties or any of the prior amendments to that agreement. In light

[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.

of the redacted omissions, we conclude the Petitioner's submission of the fourth amendment to an undisclosed contractual agreement further diminishes its evidentiary value, as it deprives us of the remaining portions that may reveal information either advantageous or detrimental to the petitioning organization's claims, and therefore, is of little probative value. Likewise, the Petitioner's submission of substantially redacted job order documentation for the mid-vendor's placement of the Beneficiary with the end-client is similarly lacking. It also provided a 2016 contractual addendum between the prime-vendor and the end-client, which discusses the need for the prime-vendor to obtain updated certificates of insurance from contingent worker suppliers, which is not relevant to the specifics to the Beneficiary's end-client placement through the asserted contractual relationship between the parties.

On appeal, the Petitioner asserts that this material sufficiently demonstrates "an already existing relationship" between the end-client and the prime-vendor, the prime-vendor and the mid-vendor, and the mid-vendor and the Petitioner. Further, the mid-vendor letter submitted on appeal indicates "[the mid-vendor] can only provide a partially redacted version of agreement between [the prime-vendor] and [the mid-vendor]. The contract between the [prime-vendor] and [the end-client] is confidential."[6] However, the contractual material in the record does not adequately describe or document the specific services to be provided through the contractual relationships between and amongst the Petitioner, the intermediary vendors, and ultimately the end-client. 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.* The Petitioner has not done so through the submission of these documents.

Though requested by the Director in her RFE, the lack of complete contractual documentation specific to the Beneficiary's employment is important because, in this case, the existence of the proffered position appears entirely dependent upon the willingness of the end-client to provide it.[7] Absent fully executed contracts and accompanying statements of work (or similar documentation, such as copies of electronic requisitions and work orders) between the Petitioner and the mid-vendor; the mid-vendor and the prime-vendor; and, the prime-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.[8] The Petitioner did not document the contractual terms and conditions of the Beneficiary's employment *as imposed by the end-client*. *See Defensor*, 201 F.3d at 387-88 (where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical).

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[6] 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."). Both the Freedom of Information Act and the Trade Secrets Act provide for the protection of a petitioner's confidential business information when it is submitted to USCIS. *See* 5 U.S.C. § 552(b)(4), 18 U.S.C. § 1905. Additionally, the petitioner may request pre-disclosure notification pursuant to Executive Order No. 12,600, "Predisclosure Notification Procedures for Confidential Commercial Information." Exec. Order No. 12,600, 52 Fed. Reg. 23,781 (June 23, 1987).

[7] "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).

[8] *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").

While relevant, the letters from the end-client and the mid-vendor are not sufficient to fill this gap, as they do not sufficiently describe the contractual relationship between the parties such that we can ascertain the nature and terms of that relationship and determine whether there is, in fact, a legal obligation on the part of the end-client to provide the proffered position. For instance, the end-client's letters do not detail its legal obligation to offer employment to the Beneficiary beyond noting that it contracted with the prime-vendor "as Managed Service Provided for their Contingent Workforce Program. [The prime-vendor] has contracted with [the mid-vendor] to provide IT expertise for [an end-client] project. The Beneficiary is employed by [the Petitioner]."

Significantly, the Petitioner has not sufficiently demonstrated that the signatory of the end-client letters is authorized by the end-client to provide such letters. The letters were written on end-client letterhead, and the signatory, K-G-, claims therein to be an "assistant vice president" for the end-client. However, the signatory does not further explain how he came to have knowledge of the terms and conditions of the Beneficiary's employment at the end-client location.

The signatory also does not provide further narrative of his own qualifications to opine regarding the Beneficiary's employment, to include discussing on the end-client's behalf the specific observations in his letters about the nature of the contractual relationships that collectively form the basis of the Beneficiary's assignment at the end-client location. The Director concluded in her denial that the record did not show that K-G- was an authorized official of the end-client who is involved in the Beneficiary's contractual placement with the end-client. We agree.

On appeal, the Petitioner asserts "[t]he person issuing the [end-client] letter is an [a]ssistant [v]ice [p]resident at the [e]nd-[c]lient. It should be evident that he had the authority to issue such letters." Notably, other material in the record casts doubt about the Petitioner's claims regarding the K-G-'s position with the end-client. For instance, the Petitioner provides a copy of the Beneficiary's end-client directory. The directory lists the Beneficiary's end-client "manager hierarchy" which reflects that he reports to K-S-, who in turn reports to K-H-. The directory also lists 22 of the Beneficiary's "peers," including K-G-, the purported end-client assistant vice president.

Additionally, the Petitioner provides an end-client organization chart which lists K-G- as also reporting to K-S- who is stated to be a "Sr. Dev Manager," who in turn reports to K-H- who is stated to be a "Sr. Dev Group Manager." K-G-'s position title is not noted in the organization chart. However, it seems incongruent that an assistant vice president would report to a senior dev manager. 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, these letters, without more, hold little probative value.[9]

In summary, the record lacks evidence of any legal obligation on the part of the end-client to provide the position to the Beneficiary as described by the Petitioner in this petition, let alone determine its substantive nature so as to ascertain whether it is a specialty occupation. If we cannot determine whether the proffered position as described will actually exist, then we cannot ascertain its substantive

[9] *Matter of Chawathe*, 25 I&N Dec. at 376.

nature so as to determine whether it is a specialty occupation.[10] Nonetheless, even if we were to set these foundational deficiencies aside, we would still be unable to ascertain the substantive nature of the proffered position.

A crucial aspect of this matter is whether the duties of the proffered position are described in such a way that we may discern the actual, substantive nature of the position. As noted, the record lacks sufficient evidence to substantiate the Beneficiary's assignment as represented by the Petitioner. Again, when a beneficiary will perform the work for entities other than the petitioner, evidence of the client companies' job requirements is critical. *Defensor*, 201 F.3d at 387-88. When determining whether a position is a specialty occupation, we look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the performance of those duties within the context of that particular employer's business operations.

Though requested by the Director in her RFE, the Petitioner did not provide sufficient evidence of how the Beneficiary's specific job duties relate to the end-client's products and services.[11] In this case, the record describes the proffered position with the end-client as that of a contract worker hired to augment the end-client's existing information technology staff, but the Petitioner does not sufficiently describe the nature of actual work that the Beneficiary will perform at the end-client location.[12] The Petitioner indicates that the Beneficiary will be employed on the "Internal Fraud Real Time Payments" project, noting "various interfaces have been developed with TIBCO suite of products for [the end-client]. This includes Fraud, Payment processing engine, Order remittance, Correspondence, Finance related interfaces to support business." The mid-vendor's job order references the Beneficiary's job title but does not identify or discuss the end-client's project. Similarly, the mid-vendor's letters indicate that the Beneficiary will be employed with the end-client "subject to the [end-client's] project requirements." The end-client's letters also indicate that the Beneficiary is employed on the end-client's "project" without further elaboration.

We take also note of the identical language and typographical errors in correspondence from the Petitioner, the mid-vendor, and the end client within their letters.[13] For example, the statement that the Beneficiary will "Development, Enhancements, Testing and deployment of codes in all environments (Dev, QA state, prod) using TIBCO Administrator" appears in correspondence from all three entities submitted in response to the RFE, to include the capitalization within the quote. We further question the language used by the end-client to describe the Beneficiary's duties as a contract worker on its own projects. For example, the end-client indicates in both of its letters that the

[10] 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 - 30420 (June 4, 1998).

[11] 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.

[12] The Petitioner has also submitted photos of the Beneficiary at the end-client's premises, work emails, and his end-client work badge as verification of his employment at the end-client location.

[13] The Petitioner has not provided letters or other contractual documentation from the prime-vendor specific to the Beneficiary's assignment.

Beneficiary will "[d]esign and develop component based (Restful API services) and traditional SOAP services by breaking down tightly couple interfaces to accommodate and scale increasing client data," and will have "[f]requent interaction with client, business teams, external vendors, functional and application team members for requirement gathering and analysis." It seems incredible that the end-client would discuss activities conducted within its own projects as those involving "client data," or frequent interaction with the "client," which raises additional questions.[14]

When we consider the unique irregularities and similarities between and amongst the letters from all three entities, we conclude that the Petitioner has not established by a preponderance of the evidence that the duties originated from the end-client. The Petitioner must also resolve these ambiguities in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, Dec. at 591-92. While we are unable to determine the original source of the proposed duties, it remains the Petitioner's burden to demonstrate the duties relate to the actual work the Beneficiary will perform at the end client worksite. The Petitioner must also establish the duties are the requirements actually imposed by the entity using the Beneficiary's services.[15] Here, the Petitioner has not offered sufficiently probative evidence in this matter. *Matter of Chawathe*, 25 I&N Dec. at 376.

Moreover, the Petitioner's job duty listings describe general information technology job functions, which lend insufficient insight into the relative complexity and specialization of the Beneficiary's day-to-day duties. For instance, job duties such as "[p]articipate in projects through the entire SDLC life cycle, i.e. design, implementation, deployment, and testing," "[c]onfigure Web Services using SOAP/JMS and SOAP/HTTP for varied business requirements," and "[r]esolution of defects (if any) identified in the delivered codes," do not provide sufficient detail regarding the work these duties with the end-client will entail, and how these tasks merit recognition of the proffered position as a specialty occupation. As discussed, the verbatim repetition of the Petitioner's generally-stated duties in the mid-vendor and end-client letters adds little to our understanding of the Beneficiary's actual duties.

Here, the generalized information in the record does not establish the necessary correlation between the proffered position and the need for a particular level of education, or educational equivalency, in a body of highly specialized knowledge in a specific specialty. It is not evident that the proposed duties as variously described in the record, and the position that they comprise, merit recognition of the proffered position as a specialty occupation. That is, to the extent they are described, the proposed duties do not provide a sufficient factual basis for conveying the substantive matters that will engage the Beneficiary in the actual performance of the proffered position.

Further, the Petitioner has not consistently stated the minimum educational requirement for this position. The Petitioner initially indicated that minimum requirements for entry into the position are at least a bachelor's degree, or the equivalent in computer science, computer information systems, computer technology, or a related field. Later, it specified a minimum requirement of at least an unspecified bachelor's degree or equivalent in [a] related field. It contemporaneously indicated a

[14] We also incorporate our previous determination that the Petitioner has not sufficiently demonstrated that the signatory of the end-client letters was authorized by the end-client to provide such letters. *Matter of Ho*, Dec. at 591-92.
[15] *Defensor*, 201 F.3d at 387-88.

requirement that bachelor degrees in fields such as computer science, telecommunications, electronics, electrical, information systems management or a related field would suffice.[16]

The Petitioner also submitted an opinion letter from Professor K-, who presents his own position requirements, e.g. at least a bachelor's degree in computer science, computer information systems, computer technology, or closely related fields. However, the Petitioner does not explain why the position requirements in the opinion letter differs from some of the position requirements that it put forth, nor does it explain the reasons for its own variances in position requirements within the record. Professor K- also do not address the differences between the minimum requirements for the position as stipulated by the Petitioner relative to his own conclusions regarding the position requirements.[17]

Professor K-'s evaluation restates the duties of the position as initially provided by the Petitioner and opines that such duties equate the position to a specialty occupation. The professor generally references DOL's Occupational Information Network (O*NET) and Occupational Outlook Handbook (*Handbook*) for the proposition that "most positions similar to the TIBCO Developer at [the Petitioner] require a four-year degree." He appears to suggest that such positions are categorically a specialty occupation. We disagree. In this matter, the Petitioner must provide evidence of the actual day-to-day duties described so that those duties may be analyzed to determine if the position is appropriately classified under the "Software Developers, Applications" occupational category designed in the LCA, and further whether the duties as described require a bachelor's degree in a specific discipline, or the equivalent. Many technology occupations may be performed with a general degree (either at the bachelor or the associate level) and certifications or undefined experience in a particular program or third-party software.

Professor K- analyzes the Petitioner's position description and asserts that the position is a specialty occupation. However, his evaluation does not identify or discusses the nature of the project upon which the Beneficiary will work for the end-client and how such duties may factor into such a project. Therefore, we find the professors' opinion letters lends little probative value to the matter here. *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 professors' analyses of the proffered position.

Considering the evidence in its entirety, we conclude that the record lacks sufficient probative documentation from the end-client regarding the projects and initiatives to which the Beneficiary will be assigned, and the actual work that the Beneficiary would perform to establish the substantive nature of the work the Beneficiary will be performing for the end-client, and the associated applications of specialized knowledge that their actual performance will require.[18]

The Petitioner has not established the substantive nature of definitive H-1B-caliber work that the Beneficiary will perform for the stated end-client. Thus, 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

[16] The end-client reiterated the Petitioner's last set of requirements in its letters. However, for the reasons discussed, the end-client letters are not probative for establishing the end-client's requirements.
[17] *Matter of Ho*, Dec. at 591-92.
[18] *Matter of Chawathe*, 25 I&N Dec. at 376.

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. Accordingly, the Petitioner has not established that the proffered position is a specialty occupation.[19]

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 an employer-employee relationship will exist between the Petitioner and the Beneficiary. *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.

[19] 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.

Additionally, for this same reason, we will not address whether the Petitioner's employment agreement and employment offer letters with the Beneficiary impose conditions that violate statutory and regulatory provisions related to the Petitioner's payment of the required wage, fees and costs. *See generally* 20 C.F.R. § 655.731(a), (b), (c).